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Insights into Economic Charter Change and the Case for Services Reform

Ramonette B. Serafica

Philippine Institute for Development Studies

CONTACT US:

RESEARCH INFORMATION DEPARTMENT
Philippine Institute for Development Studies

18th Floor, Three Cyberpod Centris - North Tower
EDSA corner Quezon Avenue, Quezon City, Philippines

publications@pids.gov.ph
(+632) 8877-4000

https://www.pids.gov.ph

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Abstract

This essay discusses the rationale for economic charter change through the lens of services reform and identifies three issues with the current proposal of Congress: the retention of the legislative franchise requirement, the exclusion of mass media from the scope of the amendments, and the choice of the liberalization approach. To harness the full potential of services as an engine of economic growth and development in the 21st century, the paper recommends addressing these issues and removing all the specific restrictions that have been locked in the 1987 Constitution, namely: **Art. XII Sec. 11** (public utility), Art. **XII Sec. 14** (practice of all professions), **Art. XIV Sec. 4(2)** (educational institutions); **Art. XVI Sec. 11(1)** (mass media); and **Art. XVI Sec. 11(2)** (advertising industry). Liberalization must be pursued as part of a broader structural reform agenda. This involves improving regulations and strengthening institutions that will foster an economic environment that supports robust competition, encourages innovation, and facilitates the efficient allocation of resources. The reforms will contribute to higher productivity, which the Constitution itself recognizes "as the key to raising the quality of life for all, especially the underprivileged" (**Art. XII Sec.1**).

Keywords: services, restrictions, trade, investment, regulation

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Insights into Economic Charter Change and the Case for Services Reform

Ramonette B. Serafica [*]

1. Introduction

A constitution contains fundamental principles and norms to guide all actions of the government. It can bind states to certain social, economic, or developmental goals and include socio-economic rights, directive principles, or other declarations of intent or commitment. As the supreme law of the land, all legislations, regulations, procedures, and institutions must operate within the framework provided by the constitution (Bulmer 2017, Hedling 2017). "*It is usually neither practical nor beneficial for a constitution, when envisioned as a long-term, general framework for operation of the state, to go into details. It is impossible to predict how society will look in the future and what its specific circumstances and needs will be*" (Hedling 2017, p. 3).

The 1987 Constitution of the Philippines outlines the basic principles governing the economy. As a matter of policy, "the State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all" (**Art. II Sec. 9**). In addition, "the State shall develop a self-reliant and independent national economy effectively controlled by Filipinos" (**Art. II Sec 19**). With respect to the National Economy and Patrimony, the first section states that "the goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged" (**Art. XII Sec.1**). Furthermore, **Art. XII. Sec. 10** says that Congress shall reserve to Philippine citizens or corporations at least 60 percent owned by Filipino citizens certain areas of investment when the national interest dictates. Moreover, preference will be given to qualified Filipinos in the grant of rights, privileges, and concessions covering the national economy and patrimony. The same section directs the State to "regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities". **Sec. 12** and **Sec. 13** require the State to "promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive" and to "pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity," respectively.

These statements, in general, establish the key principles for managing the national economy and provide the overall direction for conducting trade and investment policy. They also affirm that the government has the mandate to pursue policies that will achieve our nation's aspirations. Apart from providing the general framework, the Constitution contains additional conditions, however. It includes a specific investment policy instrument, the foreign equity limit, a peculiar detail not commonly found in the constitutions of other countries.[1] The

[*] Senior research fellow, Philippine Institute for Development Studies (PIDS). The views expressed in this paper do not reflect the position or official policy of the Institute. The author is solely responsible for the analysis and conclusions in this paper, including any errors.

[1] See Appendix. See also the OECD Services Restrictiveness Index (STRI) Database, which contains the laws and regulations in force in the services sector in OECD and select non-OECD members, including a number of ASEAN economies (https://www.oecd.org/trade/topics/services-trade/).

limitations, moreover, largely relate to services, which are not part of the national patrimony.[2] Indeed, all the ownership limitations affect the supply of services except for the provision on "the exploration, development, and utilization of natural resources" (**Art. XII Sec. 2**), although exploration and development (and perhaps even utilization) can be considered service activities depending on the context.[3]

The inclusion of specific restrictions in the country's supreme law did not originate with the 1987 Constitution. The 1935 Constitution included ownership limitations in public utilities, although citizens of the United States enjoyed national treatment or parity rights, which ended in 1974 (Sicat 2008). The 1973 Constitution expanded the covered industries with the addition of foreign equity limits in education and absolute prohibition in mass media. The 1987 Constitution retained the restrictions, relaxed the limitation on advertising by allowing up to 30 percent foreign ownership, and added the restriction on the practice of all professions unless permitted by law. See Table 1.

Table 1. Constitutional limitations on foreign participation in services

Sector and the maximum foreign equity allowed	1935 Constitution	1973 Constitution	1987 Constitution
Public utility 40%	Article XIII. General Provisions. Sec. 8	Article XIV. The National Economy and the Patrimony of the Nation. Section 5.	Article XII. National Economy and Patrimony. Sec. 11
Practice of all professions Limited to Filipino citizens, save in cases prescribed by law	NONE	NONE	Article XII. National Economy and Patrimony. Sec. 14.
Educational institutions* 40%	NONE	Article XV. General Provisions. SEC.8. (7)	Article XIV. Education, Science and Technology, Arts, Culture and Sports Sec. 4. (2)
Mass media 0%	NONE	Article XV. General Provisions. Sec.7. (1)	Article XVI. General Provisions. Sec. 11. (1)
Advertising industry 30%	NONE	Advertising considered part of mass media**	Article XVI General Provisions. Sec. 11. (2)

Notes: *1973 Constitution - Educational institutions, other than those established by religious orders, mission boards, and charitable organizations; 1987 - Educational institutions, other than those established by religious groups and mission boards.
**As cited in Desierto (2009), based on Presidential Decree No. 1018 (Limiting the Ownership and Management of Mass Media to Citizens of the Philippines and for Other Purposes), September 22, 1976, "the term 'mass media' refers the print medium of communication, which includes all newspapers, periodicals, magazines, journals, and publications and all advertising therein, and billboards, neon signs and the like, and the broadcast medium of communication, which includes radio and television broadcasting in all their aspects and all other cinematographic or radio promotions and advertising" (Section 1).
Source: Author's compilation (https://www.officialgazette.gov.ph/constitutions/)

Should we keep the restrictions and continue to bind the specific limitations in the Constitution? Or do we let the government, as mandated in **Art**. **XII Sec. 10**, regulate foreign

[2] In the context of the Philippine Constitution, the Supreme Court considers national patrimony to consist of natural resources and cultural heritage (Fernandez 2007).
[3] For example, specialized support services incidental to mining provided on a fee or contract basis includes exploration services (https://psa.gov.ph/classification/psic/section/B).

investments in line with national goals and priorities? What types of restrictions should be removed? This essay seeks to explain the implications of these decisions.

2. The critically important role of services in economic growth and development

Services play a fundamental function in economic growth and development. They increase the productivity of human and physical capital, as well as facilitate transactions through space (telecommunications and transport services) and time (financial services) (Francois and Hoekman 2010). *Change-effecting services* transform people and things, increasing the value of a good along each step of the production chain, while *margin services* facilitate the change of ownership of products or financial assets (UN 2009).

Services are important for achieving the Sustainable Development Goals (SDGs) as a source of exports, employment, and household income. Equally important, achieving many of the SDGs will depend on improving the performance of various service sectors (Fiorini and Hoekman 2018). Addressing poverty and hunger, improving health and educational outcomes, and reducing regional disparities will require increasing the capacity and productivity of various service activities, such as transportation, distribution, logistics, ICT services, vocational training, and medical services. The sector promotes gender-inclusive growth too. The share of female employment is higher in services compared to manufacturing. As services expand, female representation in the labor market will also increase (WB 2023). Although the services sector dominates the Philippine economy at the national level, its contribution varies across regions and sub-sectors. To bridge the gaps and leverage services to achieve regional development goals, specific types of distributive, producer, personal, and social services are needed that suit local economic characteristics and conditions (Serafica, Vergara, & Oren, 2021).

The inefficient production of services acts as a tax on production (Mattoo, Rathindran, & Subramanian, 2006). Access to various producer services like R&D, telecommunications, logistics, and financial services are crucial for the competitiveness of agriculture and manufacturing. The creative economy, a new engine of growth contributing 7.1 percent to GDP in 2023, includes a number of service activities such as audiovisual services, publishing, advertising, and entertainment (PSA 2024). Many services, including telecommunications, software and IT consulting, and information services, drive the digital economy, which accounted for 8.4 percent of GDP in 2023 (Bukht and Heeks 2017, PSA 2024).

2.1 The benefits of removing restrictions in services: It's not just about FDI

Advocates of economic charter change have been highlighting the expected increase in foreign direct investment (FDI) from relaxing equity limitations. Indeed, the service sector is now the primary recipient of investment activity globally, accounting for 72 percent of the total FDI stock in 2020 (Stephenson and Zhan 2024). In several countries in East Asia and the Pacific today, the growth rate of services continues to outperform that of manufacturing, not only in terms of investments but also in trade. Moreover, the increase in digitally deliverable services trade was almost twice the increase in goods trade between 2005 and 2021 (WB 2023). FDI inflows as a share of GDP has fallen globally, however, suggesting that competition for foreign investment has become more challenging today (WB 2024). Since 2010, FDI has stopped growing at the same pace as global trade and GDP, although the pattern varies between sectors. While cross-border investment in manufacturing has been stagnant, FDI in services has increased. Moreover, the trend towards more services is evident in both developed and developing countries (UNCTAD 2024).

The growing importance of services had been observed since the 1980s leading to a marked shift in the structure of FDI increasingly towards the sector (UNCTAD 2004). Factors driving international investment in services today include (1) the increase in manufacturing's use of services as an input (e.g., R&D, design) and supply of services as an add-on output (e.g., repair and maintenance contracts, customer support packages), (2) the rising demand for digital services, (3) the shift to high value-added services offshoring, (4) more options for non-equity modes of investment (franchising, licensing, and management contracts), (5) heightened interest in sustainability-linked services (e.g., renewable energy, water management, and green transport), and (6) the restructuring of global supply chains to enhance resilience (Stephenson and Zhan 2024). There are various factors that influence investment decisions, and a number of them are beyond the government's control, such as a country's geographic location or the strategies of other countries on direct investments (both outward and inward). However, the government can be proactive in reforming its own policies and institutions.

FDI is a prerequisite to supply services through commercial presence, a mode of services trade. In deciding where to expand, a company will first check whether it is allowed to enter a market and assess the operating rights given (Echandi & Sauvé 2020). Barriers to services trade are in the form of regulations rather than tariffs. They may apply to entry/establishment or ongoing operations and may be discriminatory or non-discriminatory in nature (McGuire 2003; Deardoff and Stern 2008). Restrictions can also be distinguished by how they drive prices up: do they create rents (a markup over cost), or do they raise the cost of production/doing business? The foreign ownership limitation is an example of a **rent-generating restriction.** Entry barriers create rents for existing service providers, which can charge higher prices as long as they are protected from competition. When more firms are allowed, competitive pressures reduce the markup, benefiting consumers through lower prices as well as the government through higher tax revenues from industry expansion. **Cost-raising restrictions** include red tape or compliance costs (both formal and informal). When excessive regulation increases the real cost of producing the service and/or doing business, removing these restrictions leads to a saving of real resources (Dee 2005, OECD 2017). Licensing requirements and how they are administered raise the cost of doing business depending on the steps, paperwork, and fees required. Administrative costs are also incurred by the bureaucracy. When the number of licenses is limited, and government officials decide on the allocations, competition for those licenses occurs. Moreover, resources will be devoted to increasing the chances, or expected size, of license allocations such that government officials too receive part of the rents. Thus, aside from the usual costs associated with licensing, there is the additional **cost of competitive rent-seeking** (Krueger 1974). Recognizing the different types of restrictions that affect the supply of services is crucial for understanding the rationale for economic charter change.

How will liberalization lead to improvements within the sector? Will it result in an influx of substandard services, as some fear? The industry regulator (or private sector council in the case of advertising) must ensure that firms, regardless of nationality, adhere to quality and ethical standards. Furthermore, there are powerful safeguards (by way of natural selection and elimination) that are intrinsic to the competitive process itself. Note that foreign firms face some disadvantages vis-à-vis local firms. However, they may still be motivated to enter the market if they have certain advantages that could make their operations profitable (Hymer 1976). Apart from the cost of doing business, which affects all firms, foreign companies face additional challenges. Local firms have better information about the market and operating environment, and the initial cost of acquiring such information could be substantial. Moreover, the risk of expropriation is typically higher for foreign than national firms. Another barrier comes from exchange rate risks, for example, when the currency of the host country where revenues are earned depreciates. Nonetheless, foreign firms may still find it profitable to enter the local market if they possess certain advantages which can offset the risks. Examples include an efficient production function, superior technology or knowledge, or a differentiated product (Hymer 1976). In the same way that Philippine companies (e.g., ICTSI, Manila Water, Metro Pacific, and PHINMA) venture overseas where they can compete and expect to earn an acceptable risk-adjusted return on their investment, rational foreign companies will likewise enter the domestic market if they believe they can compete by offering a unique product or better service than the incumbents in terms of price, quality, or both. With liberalization, firms that have a novel product, provide better service, or are more efficient than the existing industry players will self-select to enter the Philippines. Relaxing the restrictions is one of the key elements of a comprehensive strategy for developing competitive services, as it will change the nature of domestic rivalry and induce local firms to create and sustain their competitive advantage (Serafica 2016).

The gains from removing restrictions in services spill over to other sectors too, delivering economy-wide benefits. Reforms do not only lead to own-sector improvements but also contribute to productivity gains in downstream industries, particularly manufacturing, as evidenced in the cases of the Czech Republic (Arnold, Javorcik, & Mattoo 2011), India (Arnold, Javorcik, Lipscomb, & Mattoo 2012), Chile (Fernandes & Paunov 2012), and Indonesia (Duggan, Rahardja, & Varela 2013). Because of the significant forward linkages of transport and communications services, back-of-the-envelope estimates show that the full and effective implementation of the 2022 Public Service Act, as amended, could increase the total factor productivity (TFP) of industries by 3.2 percent on average. Moreover, the productivity boost would be higher in sectors that rely intensively on telecom and transport inputs, such as the manufacture of metals and electric equipment (WB 2023). In addition to the impact of services reform on industry performance, both within and downstream, there is a positive relationship between lower barriers to services trade and access to services that are relevant to realizing several SDGs, suggesting that reducing levels of restrictiveness could improve access to services that are essential to these goals (Fiorini and Hoekman 2018).

2.2 Liberalization does not mean deregulation

At the sectoral level, certain market failures exist that warrant regulation, but in general, these have nothing to do with the nationality of the service supplier and should be applied across the board. For example, infrastructure services are typically dominated by a few large firms which control bottleneck facilities. As a result, access regulations are needed to prevent vertically integrated companies from treating downstream competitors in an anti-competitive manner. To deal with asymmetric information, government and professional bodies ensure that service providers meet certain qualification requirements and are duly accredited. In services that tend to produce negative externalities, such as pollution from transport services, emissions standards are put in place to reduce the spillover costs. To preserve the national culture and traditions or protect vulnerable groups from harmful materials, content regulation can be used, and incentives can be provided to promote good programming. To minimize the possible trade-restrictive effects of domestic regulations, measures relating to licensing requirements and procedures, qualification requirements and procedures and technical standards must adhere to certain good regulatory practices such as transparency, certainty, and predictability (WTO 2021, 2024; Serafica and Oren 2022).

Upgrading services must involve a broader policy agenda for structural reform, comprising key elements such as eliminating restrictions to entry and exit; relaxing barriers to services trade; addressing market failures through appropriate regulations; monitoring and fixing unnecessary impediments; establishing credible institutions to design, implement, and evaluate regulations; and ensuring transparency of policy and regulatory processes (Findlay 2011). Getting the institutional framework right is critical to effective regulation. The independent regulator governance model represents best practice in infrastructure service regulation (Brown et al. 2006). Moreover, there must be a clear separation between industry policy and regulation, where the former may be subject to political accountability while the latter must be shielded from political pressure as well as industry influence to ensure that regulations are implemented in a fair and impartial manner. Ultimately, the regulator is accountable to the courts and not to the voters (Marcus et al. 2024). With the proper mandate and the autonomy to exercise its authority, the sector regulator can efficiently and effectively evaluate the technical and financial capabilities of firms, monitor their performance, and discipline the industry. The creation of the Bangko Sentral ng Pilipinas (BSP) and its regulatory independence could offer lessons for strengthening other regulatory institutions in the country (Serafica and Oren 2024).

Safeguards to protect national security are critically important. According to UNCTAD (2023), the number of countries using FDI screening on national security grounds has increased in recent years. The scope of screening mechanisms has also expanded, indicating growing concerns about foreign acquisition of companies with critical know-how and strategic technologies or firms engaged in new services activities deemed strategic. Business activities that have access to sensitive personal information or are capable of manipulating public interest values and opinions have also received increased scrutiny. The 2022 Public Service Act, as amended, contained a screening provision prohibiting investments by an entity controlled by or acting on behalf of a foreign government, or foreign state-owned enterprises from owning capital in any public service classified as public utility or critical infrastructure (RA No. 11659 Sec. 24). The governance of the investment screening mechanism (who is responsible and how it is administered) and other elements of the regulatory framework (requirements, procedures, sanctions, etc.) can help enhance the predictability, transparency, and administrative efficiency of screening regimes, without weakening efforts to attract FDI (UNCTAD 2023). To minimize possible negative impacts on investment flows, certain guidelines have also been proposed in the design and implementation of investment policies relating to national security, such as transparency of policies, non-discrimination, proportionality of measures, accountability of implementing authorities, and predictability of outcomes (OECD 2024d).

3. Comments on the current proposals of Congress

Resolution of Both Houses (RBH) No. 6 titled "A Resolution of Both Houses of Congress Proposing Amendments to Certain Economic Provisions of the 1987 Constitution of the Republic of the Philippines, particularly on Articles XII, XIV, and XVI," filed in the Senate and the counterpart measure in the House of Representatives, RBH 7, propose to add the phrase "unless otherwise provided by law" in specific economic sections. The two Resolutions have the following similar proposed amendments:

Public utility - Propose to amend Section 11 of Article XII (National Patrimony and Economy) as follows:

"Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens, **UNLESS OTHERWISE PROVIDED BY LAW**; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. **UNLESS OTHERWISE PROVIDED BY LAW**, the participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines."

Education - Propose to amend Paragraph 2, Section 4 of Article XIV (Education, Science and Technology, Arts, Culture, and Sports) as follows:

"Section 4. (2) **BASIC** educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions.
The control and administration of educational institutions shall be vested in citizens of the Philippines, **UNLESS OTHERWISE PROVIDED BY LAW**."

Advertising - Propose to amend Paragraph 2, Section 11 of Article XVI (General Provisions) as follows:

"(2) xxx Only Filipino citizens or corporations or associations at least seventy per centum of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry, **UNLESS OTHERWISE PROVIDED BY LAW**.
UNLESS OTHERWISE PROVIDED BY LAW, the participation of foreign investors in the governing body of entities in such industry shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such entities must be citizens of the Philippines."

The specific amendments will allow flexibility in policymaking as the restrictions in these sectors can now be adjusted through ordinary legislation. The two versions differ on how members of Congress are to vote on the proposed amendments.

While the proposals are significant, especially as these will "institutionalize the reforms laid down in the Public Service Act to liberalize industries, promote efficient service delivery, and foster competition as an enduring policy" (RBH6, RBH7), there are key issues that must be addressed if we are to take advantage of this opportunity to amend the economic provisions of the 1987 Constitution.

3.1 End the legislative franchise system

A restrictive provision in the Constitution that is both cost-raising and rent-generating is the requirement of a legislative franchise for public utilities. Part of **Art. 12. Sec. 11** states, "Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires." In both RBH 6 and RBH 7, there is no intention to relax this requirement since the proposed phrase "unless otherwise provided by law" was not added in this sentence. If we are committed to improving the business climate for both foreign and domestic investors, then we must reform the licensing regime in the Philippines, end the legislative franchise system, and strengthen the regulatory institutions in the country.

A legislative franchise requirement is not usually found in the constitutions of other countries.[4] As discussed in the previous section, it is also not necessary since an independent regulatory authority is better qualified to make licensing decisions. Securing and maintaining a congressional franchise adds to the cost of doing business. It duplicates the functions of the regulator and increases investment risks. In telecommunications, for example, the process of obtaining a franchise from Congress and a certificate of public convenience and necessity from the National Telecommunications Commission can take an average of five years, slowing down investment in telecommunications infrastructure and services as well as in other ICT and ICT-enabled services (Barcenas 2019).

In addition to raising the cost of doing business, the legislative franchise requirement also creates rents since this particular license applies to economic activities where limitations on market access and national treatment exist. The restriction could be traced to the Philippine Organic Act of 1902 and the Jones Law of 1916, both passed by the US Congress, which stipulated that no franchise shall be granted "except under the conditions that it shall be subject to amendment, alteration, or repeal by the Congress of the United States" in Sections 74 and 28, respectively. Such power by the legislature was retained by the Philippine Congress in the 1935 Philippine Constitution and continues to this day. Thus, for more than a century now, rent-generating opportunities have been enshrined (and rent-seeking behavior sanctioned) in the highest law of the land.

3.2 Liberalize mass media too

Conspicuously absent from the scope of the proposed amendments is mass media. Under the 1987 Constitution, mass media is 100 percent nationalized, although the rationale is not explicitly mentioned. The limitation is included in the General Provisions of the Constitution, and not under National Economy and Patrimony. Whereas **Art. XVI Sec. 11. (2)** on advertising says that it is "impressed with public interest," no similar justification for the full nationalization of mass media is stated in **Art. XVI Sec. 11. (1)**. In fact, the preceding section encourages the "balanced flow of information into, out of, and across the country, in accordance with a policy that respects the freedom of speech and of the press" (**Art. XVI. Sec. 10**).

According to the government's *Functional Literacy, Education and Mass Media Survey*, mass media refers to "technology that is intended to reach a mass audience. It is the primary means of communication used to reach the vast majority of the general public. The most common platforms for mass media are newspapers, magazines, radio, television, and the internet" (PSA 2021, p. 12). Obviously, the internet was not yet available to the public when restrictions on mass media were first introduced in the 1973 Philippine Constitution. With digital technologies, the mass media landscape continues to be transformed. Described as media convergence, digitalization has altered the boundaries between previously separate media,

[4] See Appendix. See also the OECD Services Restrictiveness Index (STRI) Database, which contains the laws and regulations in force in the services sector in OECD and select non-OECD members, including a number of ASEAN economies (https://www.oecd.org/trade/topics/services-trade/).

enabling the use of cross- and transmedia methods and narrative forms. Immersive media technologies based on virtual and augmented reality technologies are also emerging. Although technological advancements have mostly affected production and distribution, content creation is expected to be influenced by innovations in machine learning (Godulla and Böhm 2023).

The direct contribution of mass media to economic output can be gleaned from the share of Information and Publishing in GDP, which was 0.25 percent in 2023.[5] Although its contribution is quite small, mass media plays a significant role in society and in economic life. It is instrumental in disseminating knowledge and ideas, serving as a conduit for market information, thereby helping producers and consumers make better decisions (Owen 2002). Mass media industries are also part of the creative sector, which the government recognizes as a new pillar of growth.

Based on the OECD Services Restrictiveness Index (STRI) Database, which captures the regulatory regime of the services sector in OECD and select non-OECD members, mass media is generally open in most countries. Table 2 below shows the foreign ownership limits in APEC economies that are included in the database. In broadcasting, some countries impose higher foreign equity limits in terrestrial broadcasting than in cable and satellite TV, while others treat all platforms equally. In most countries, broadcasters are also required to allocate a certain duration of transmission time to locally produced programs. Other restrictions on foreign entry include caps on the proportion of shares that foreign investors can acquire in publicly controlled companies, investment screening mechanisms, limitations on the acquisition and use of land and real estate, and residency requirements for key personnel (OECD 2024a). Similar restrictions exist in the motion pictures and sound recording sectors (OECD 2024b, 2024c).

Table 2. Maximum foreign equity share allowed (%) – 2023

Economy	Programming and broadcasting activities	Motion picture, video and television programme activities	Sound recording and music publishing activities
Australia	100	100	100
Canada	20	100	100
Chile	100	100	100
China (People's Republic of)	0	0	0
Indonesia	20	100	100
Japan	100	100	100
Korea	49	100	100
Malaysia	30	100	100
Mexico	0	100	100
New Zealand	100	100	100
Peru	0	100	100
Russia	20	100	100
Singapore	49	100	100

[5] Retrieved from https://www.psa.gov.ph/statistics/national-accounts/data-series on April 19, 2024. Information and Publishing includes Division 58. publishing activities; Division 59. motion picture, video and television programme production, sound recording and music publishing activities; and Division 60. programming and broadcasting activities. It is part of Section J. Information and Communication of PSIC 2009.

Thailand	25	100	100
United States	20	100	100
Viet Nam	100	51	100

Notes:

China - Investments in the production of television programmes (without broadcasting) is possible subject to a joint venture requirement.

Mexico - Foreign investment in a Mexican company is not allowed except on the basis of reciprocity (up to 49% of equity in cable. television and broadcasting companies).

Peru - Only Peruvians or corporations incorporated and domiciled in Peru may hold authorizations and licenses to broadcast. Before 16 December 2007 the participation of foreigners in these corporations was limited to a maximum of 40%. However, after this date this provision was declared unconstitutional and instead. a reciprocity principle applies.

Source: OECD Services Restrictiveness Index (STRI) Database (https://data-explorer.oecd.org/vis?lc=en&df[ds]=DisseminateFinalDMZ&df[id]=DSD_STRI_POLICY%40DF_STRI_POLICY_MAIN&df[ag]=OECD.TAD.TPD&df[vs]=1.0&av=true&pd=2023%2C&dq=A..ANS.J592%2BJ591%2BJ60.1_1_1%2B1_1_3%2B1_1_4%2B1_2_1..&to[TIME_PERIOD]=false&vw=tb accessed on April 16, 2024).

There have been various legal interpretations of what is covered by the constitutional restriction. Based on the legal opinions of the Securities and Exchange Commission (SEC), most websites and digital platforms would be considered mass media, including those that feature products and services provided by users and third parties (e.g., online marketplaces, learning platforms, and other publishers of third-party content) or publish advertisements. With the exception of one case in 2018, digital platforms continue to operate and have not faced any legal action for violating the foreign equity rule. Weak and inconsistent enforcement of rules increases regulatory uncertainty (Serzo 2021).

The prohibition itself negatively affects the growth of the digital economy. First, they inhibit innovation by limiting funding opportunities for local start-ups from product development to scaling up. Foreign platforms will also be hesitant to introduce novel products to the Philippine market as they may face various penalties from fines to revocation of permits if found to have violated the equity restrictions. Civil and criminal penalties could also be imposed on the company directors and officers. Second, the prohibition leads to cross-border regulatory arbitrage, forcing firms to move to jurisdictions where risks are more manageable. Risk-averse digital platforms and start-ups that need additional funding to scale up may resort to different levels of regulatory arbitrage (Serzo 2021). See Table 3.

Table 3. Types of cross-border regulatory arbitrage

Type	Features and implications
Absolute relocation	Platform relocates to a preferred jurisdiction and will not hire service providers in the Philippines. It will also not market or provide any product or service. Filipinos could still access the services of the digital platform unless blocked.
Hub relocation	Head office is relocated to the preferred jurisdiction. Platform maintains limited operations in the Philippines. Local companies would only be allowed to provide the following outsourced services to their principal: software development, customer support, contact centers, and back-office support. While such activities may benefit the labor market, these will not directly spur the development of local digital platforms or products.

Fictional relocation	Platform may opt not to organize a body corporate in the Philippines yet continue to engage in business in the country. Like hub relocation but instead of maintaining cost centers, a digital platform would keep active operations in the Philippines by providing goods and services to customers and set up logistic and marketing hubs to serve Filipino consumers. Such platforms may also maintain personnel in the country without creating an employer-employee relationship and classify the workers as independent contractors instead. This arrangement may be structured such that sales transactions occur offshore, and only fulfillment services are done locally. Since sales are concluded offshore, the platforms may avoid paying taxes arising from such transactions.

Source: Serzo (2021, p.25-28)

These companies will relocate to another jurisdiction but could still earn revenues from the Philippine market through the cross-border supply of digital services. After all, the country's market size, demographics, and appetite for social media would be difficult to ignore. However, resorting to any of the three subtypes of cross-border arbitrage involves potential revenue losses for the Philippine government. Furthermore, such arrangements not only weaken the government's capacity to collect taxes but also undermine its ability to enforce consumer protection regulations and other laws beyond national borders (Serzo 2021). It has been suggested that adjustments to the interpretation of the coverage of mass media could be made without changing the Constitution. But since the scope of mass media is constantly evolving and increasingly amorphous with media convergence and new technologies, should every prospective investor in digital services first ask the SEC for an opinion, then elevate the matter to a higher agency or court to decide with finality?

Private equity funds, specialized venture capital funds, and global digital firms have been investing in developing countries to create and develop digital enterprises (UNCTAD 2017). A country can accelerate its digital transformation by capitalizing on the substantial contribution of multinational corporations to the digital economy. These include strengthening the financial capital base through investments in the local digital ecosystem, promoting talent development through collaborations with local schools and enterprises, increasing the number of digital products for the home and overseas markets through research and development (R&D), and supporting domestic supply chains by outsourcing some operations to local firms. Also, the presence of a major technology MNE serves as a strong signal to other international firms and could stimulate further interest and investment (AlphaBeta 2017).

3.3 Adopt a pro-innovation approach to liberalization

Currently, the FDI regime follows a **negative list** approach. The 12th Regular Foreign Investment Negative List (EO 175 s. 2022) identifies the economic activities where foreign ownership is limited by mandate of the Constitution and specific laws (List A) and activities where foreign ownership is limited for reasons of security, defense, risk to health and morals and protection of small and medium scale enterprises (List B). Thus, economic activities that are not included in the negative list are fully open to foreign ownership. In both Resolutions, the proposed amendment seeks to add the phrase "unless otherwise provided by law." However, we do not know yet if the new law will just reduce the scope of the limitation specifying the activities that are still closed or if the new law will identify the sector or subsectors that will be open, in full or in part, thus creating a **positive list** of liberalized economic activities.

In principle, either approach can reflect the same level of liberalization. For example, if there are ten sectors in the economy and three sectors are closed to foreign ownership, the positive list would identify the seven sectors that are open, while the negative list would enumerate the three sectors that are closed. Either approach can be adopted, and there would be no doubt as to whether a particular sector is open or closed. This would work in a neat and static world. Uncertainty arises when two lists are maintained and an entirely new product or service is introduced. If it was not originally included in the positive list, then by default, the existing constitutional limitation would prevail even if it was not the policy intention.[6] With the Fourth Industrial Revolution, the development of new products and services is expected to accelerate, creating new industries.

It gets even more complicated when a new service offering does not fall neatly under a specific industry category.[7] If we want to encourage the introduction of novel products and services in the market, including those developed by local start-ups that may need foreign funding to scale up, a concise negative list of specific industries is preferable to a positive list of open industries, no matter how exhaustive, since we cannot predict the industries of the future.

Rather than add the phrase "unless otherwise provided by law," a forward-looking and pro-innovation liberalization approach would be to just remove the restrictive provision in the Constitution. Foreign ownership limitations in a particular economic activity, if any, could be legislated as part of the policy agenda for that sector and then included in the foreign investment negative list. For consistency and to further avoid the identity dilemma, the limitation on the practice of professions in **Art. XII Sec. 14** should be deleted as well. The Annex on Professions in the 12th Regular Foreign Investment Negative List (EO 175 s. 2022) contains the restrictions with respect to specific professions (part A) and the corporate practice of professions (part B). Moreover, a labor market test is required under the Labor Code of the Philippines.[8]

4. Final remarks

AmBisyon Natin 2040's goal of a prosperous middle-class society free of poverty can only be realized through sustained TFP growth while accelerating capital accumulation (WB 2018). Sustaining high TFP growth, in turn, requires removing restrictive regulations, instituting reforms to strengthen market competition, and improving the trade and investment climate (WB 2018a, 2018b). Restrictions in key services sectors of the economy have been locked in the Constitution for many decades now (the legislative franchise requirement for more than a century). Fortunately, the people can change the fundamental law of the land—a right not enjoyed universally.

What kind of policy and institutional setting do we need to harness services and maximize its economic contribution, not just as a source of jobs and income but as an enabler of the growth of other sectors? One that is adaptable to the opportunities and challenges of the 21st century. While the current proposals of Congress represent significant changes, we should use this opportunity to end the legislative franchise system, open up mass media, and adopt a liberalization approach that encourages innovation. Thus, specific restrictions in the Constitution related to services should be removed, namely: **Art. XII Sec. 11** (public utility),

[6] The "identity crisis" is somewhat averted in the case of public utilities, which are described in the Public Service Act, not in the Constitution. The 2022 Public Service Act, as amended, still follows the negative list approach by listing the specific economic activities that are considered public utilities (and therefore covered by the Constitutional restriction) and also provides the criteria for classifying a public service as a public utility.

[7] These types of issues have in fact been raised with the SEC (Barcenas 2019; Serzo 2021).

[8] Ironically, the Philippines has a restrictive regime despite being "one of the demandeurs of labor mobility" in international fora (Tabladillo 2009, p .1).

Art. **XII Sec. 14** (practice of all professions), **Art. XIV Sec. 4(2)** (educational institutions), **Art. XVI Sec. 11(1)** (mass media), and **Art. XVI Sec. 11(2)** (advertising industry). An industry policy or sectoral law that is subject to updates should establish the appropriate limitations, if any, which are then reflected in the negative list of foreign investments.

To maximize the benefits, liberalization must be pursued as part of a broader structural reform agenda. This involves improving regulations and strengthening institutions that will foster an economic environment that supports robust competition, encourages innovation, and facilitates the efficient allocation of resources. The reforms will contribute to higher productivity, which the Constitution itself recognizes "as the key to raising the quality of life for all, especially the underprivileged" (**Art. XII Sec.1**). There are a lot of problems confronting the country that it is tempting to dismiss economic charter change in favor of seemingly more pressing issues. To appreciate the importance of removing the restrictive provisions sooner rather than later, perhaps it is wise to heed the words of 2008 Nobel Laureate in Economics Paul Krugman: "*Productivity isn't everything, but in the long run it is almost everything*" (Krugman 1997, p. 11).

5. References

AlphaBeta. (2017). *Digital Nation: Policy Levers for Investment and Growth.* Sydney: AlphaBeta. Retrieved March 11, 2024, from https://aicasia.org/policy-advocacy/digital-nations-report/

Arnold, J. M., Javorcik, B. S., & Mattoo, A. (2011). Arnold, Jens M., Beata S. Javorcik, and Aaditya Mattoo. 2011. "Does Services Liberalization Benefit Manufacturing Firms? Evidence from the Czech Republic". *Journal of International Economics, 85*(1), 136–46.

Arnold, J. M., Javorcik, B. S., Lipscomb, M., & Mattoo, A. (2012). *Services Reform and Manufacturing Performance: Evidence from India. World Bank Policy Research Working Paper No. 5948.* Washington DC: The World Bank. Retrieved April 15, 2024, from https://ssrn.com/abstract=1988036

Barcenas, L.-L. A. (2019). ICT regulation and regulatory authority. *Policy Notes No. 2019-02*. Quezon City: Philippine Institute for Development Studies.

Brown, A. C., Stern, J., Tenenbaum, B., & Gencer, D. (2006). *Handbook for Evaluating Infrastructure Regulatory Systems.* Washington, DC: World Bank. doi:10.1596/978-0-8213-6579-3

Bukht, R., & Heeks, R. (2017). Defining, conceptualising and measuring the digital economy. *GDI Development Informatics Working Papers 68*. Manchester, UK: University of Manchester Global Development Institute. Retrieved March 31, 2023, from http://hummedia. manchester.ac.uk/institutes/gdi/publications/workingpapers/di/di_wp68.pdf

Bulmer, E. (2017). *What is a Constitution? Principles and concepts (2nd edition).* Stockholm: International Institute for Democracy and Electoral Assistance (International IDEA). Retrieved April 5, 2024, from https://www.idea.int/publications/catalogue/what-is-a-constitution

Deardorff, A. V., & Stern, R. M. (2008). Empirical Analysis of Barriers to International Services Transactions and the Consequences of Liberalization. In A. Mattoo, R. M. Stern, & G. Zanini (Eds.), *A Handbook of International Trade in Services* (pp. 169-220). New York: Oxford University Press Inc.

Dee, P. (2005). *A Compendium of Barriers to Services Trade.* Prepared for the World Bank. Retrieved March 28, 2024, from https://crawford.anu.edu.au/pdf/staff/phillippa_dee/Combined_report.pdf

Desierto, D. A. (2009, October 8). Restriction and Rhetoric: A Critique of the Constitutional Prohibition Against Foreign Ownership in Philippine Mass Media. *The Journal of Applied Economy, Forthcoming*. Retrieved 16 April, 2024, from https://ssrn.com/abstract=1485587

Duggan, V., Rahardja, S., & Varela, G. (2013). Service Sector Reform and Manufacturing Productivity: Evidence from Indonesia. *World Bank Policy Research Working Paper No. 6349*. Washington, DC: The World Bank. Retrieved April 14, 2024, from https://ssrn.com/abstract=22103

Echandi, R., & Sauvé, P. (2020). Investment Facilitation and Mode 3 Trade in Services Are Current Discussions Addressing the Key Issues? *Policy Research Working Paper 9229*. Washington, D.C.: World Bank.

Elkins, Z., & Ginsburg, T. (2022, October 24). Characteristics of National Constitutions, Version 4.0. *Comparative Constitutions Project*. Retrieved March 23, 2024, from comparativeconstitutionsproject.org.

Fernandes, A., & Paunov, C. (2012). Foreign Direct Investment in Services and Manufacturing Productivity: Evidence for Chile. *Journal of Development Economics, 97*, 305–21.

Fernandez, J. B. (2007). 2007 Constitutional dimensions of national patrimony. *Philippine Law Journal, 82*(2), 62-27.

Findlay, C. (2011). The Impacts and Benefits of Structural Reforms in the Transport, Energy and Telecommunications Sectors in APEC Economies. In *The Impacts and Benefits of Structural Reforms in the Transport, Energy and Telecommunications Sectors in APEC Economies* (pp. 1-30). Singapore: APEC Policy Support Unit. Retrieved April 5, 2024, from https://www.apec.org/publications/2011/01/the-impacts-and-benefits-of-structural-reforms-in-transport-energy-and-telecommunications-sectors

Fiorini, M., & Hoekman, B. (2018). Services trade policy and sustainable development. *World Development, 112*, 1-12. Retrieved from https://doi.org/10.1016/j.worlddev.2018.07.015

Francois, J., & Hoekman, B. (2010). Services Trade and Policy. *Journal of Economic Literature, 48*, 642-692.

Godulla, A., & Böhm, S. (2023). Introduction . In A. Godulla, & S. Böhm (Eds.), *Digital Disruption and Media Transformation How Technological Innovation Shapes the Future of Communication* (pp. 1-14). Switzerland: Springer Nature. doi:https://doi.org/10.1007/978-3-031-39940-4

Hedling, N. (2017). *The Fundamentals of a Constitution.* Stockholm: International Institute for Democracy and Electoral Assistance (International IDEA). Retrieved April 5, 2024, from https://www.idea.int/publications/catalogue/fundamentals-constitution

Hymer, S. (1976). *The International Operations of National Firms: A Study of Direct Foreign Investment.* Cambridge: The MIT Press. Retrieved March 27, 2024, from https://www.semanticscholar.org/paper/The-International-Operations-of-National-Firms%3A-A-Hymer/1aa2e99ebd1f56a07e6107d56dcfbd

Krueger, A. O. (1974). The Political Economy of the Rent-Seeking Society . *The American Economic Review, 64*(3), 291-303.

Krugman, P. (1997). *The Age of Diminished Expectations.* Cambridge, Massachusetts: The MIT Press.

Marcus, J. S., Herrero, A. G., & Guetta-Jeanrenaud, L. (2024). Promotion of high-capacity broadband in the face of increasing global stress. *Telecommunications Policy, 48*(1). doi:https://doi.org/10.1016/j.telpol.2023.102643.

Mattoo, A., Rathindran, R., & Subramanian, A. (2006). Measuring Services Trade Liberalization and Its Impact on Economic Growth: An Illustration. *Journal of Economic Integration, 21*(1), 64-98.

McGuire, G. (2003). Methodologies for Measuring Restrictions on Trade in Services. In A. Sidorenko, & C. Findlay (Eds.), *Regulation and Market Access* (pp. 40-77). Canberra: Asia Pacific Press.

OECD. (2017). *Services Trade Policies and the Global Economy.* Paris: OECD Publishing.

OECD. (2024). *OECD Services Trade Restrictiveness Index (STRI): Broadcasting Services 2023.* Paris: OECD. Retrieved April 15, 2024, from https://www.oecd.org/trade/topics/services-trade/documents/oecd-stri-sector-note-asbrd.pdf

OECD. (2024). *OECD Services Trade Restrictiveness Index (STRI): Motion Picture Services, 2023.* Paris: OECD. Retrieved April 15, 2024, from https://www.oecd.org/trade/topics/services-trade/documents/oecd-stri-sector-note-asmot.pdf

OECD. (2024). *OECD Services Trade Restrictiveness Index (STRI): Sound Recording Services 2023.* Paris: OECD. Retrieved April 15, 2024, from https://www.oecd.org/trade/topics/services-trade/documents/oecd-stri-sector-note-assou.pdf

OECD. (2024). Recommendation of the Council on Guidelines for Recipient Country Investment Policies relating to National Security. *OECD/LEGAL/0372*. Paris: OECD. Retrieved April 11, 2024, from https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0372

Owen, B. M. (2002). Media as Industry: Economic Foundations of Mass Communications. In S. Djankov, R. Islam, & C. McLeish, *The Right to Tell: The Role of Mass Media in Economic Development WBI development studies* (pp. 167-185). Washington, D.C.: World Bank Group. Retrieved January 18, 2024, from http://documents.worldbank.org/curated/en/957661468780322581/The-right-to-tell-the-role-of-mass-media-in-economic-development

PSA. (2021). *The 2019 Functional Literacy, Education and Mass Media Survey (FLEMMS) Final Report.* Quezon City: The Philippines Statistics Authority. doi:ISSN 1908-0905

PSA. (2024, April 25). *Digital Economy contributes 8.4 percent to the Economy in 2023*. Retrieved April 26, 2024, from Philippine Statistics Authority: https://www.psa.gov.ph/content/digital-economy-contributes-84-percent-economy-2023

PSA. (2024, March 24). *Philippine Creative Economy Reaches PhP 1.72 Trillion in 2023, Contributing 7.1 Percent to the Gross Domestic Product*. Retrieved March 26, 2024, from Philippine Statistics Authority: https://www.psa.gov.ph/content/philippine-creative-economy-reaches-php-172-trillion-2023-contributing-71-percent-gross

Serafica, R. B. (2016). Sustaining the Competitiveness of Philippine Services. *Philippine Journal of Development, 41 & 42*(1 & 2), 111-134.

Serafica, R. B., & Oren, Q. C. (2022). A review of the Philippines participation in trade in services agreements. *PIDS Research Paper Series No. 2022-06*. Quezon City: Philippine Institute for Development Studies.

Serafica, R. B., & Oren, Q. C. (2024). Upgrading the ICT Regulatory Framework: Toward Accelerated and Inclusive Digital Connectivity. *PIDS Research Paper Series 2024-02*. Quezon City: Philippine Institute for Development Studies.

Serafica, R. B., Vergara, J. C., & Oren, Q. C. (2021). Regional Analysis of the Philippine Services Sector. *PIDS Research Paper Series 2021-04*. Quezon City: Philippine Institute for Development Studies.

Serzo, A. L. (2021). Philippine Regulations for Cross-Border Digital Platforms: Impact and Reform Considerations. *Research Paper Series No. 2021-08*. Quezon City: Philippine Institute for Development Studies.

Sicat, G. P. (2008). Philippine economic nationalism. *The Philippine Review of Economics, 45*(2), 1-44.

Stephenson, M., & Zhan, J. X. (2024, January 15). *6 opportunities for investment in services to drive future growth*. Retrieved April 2, 2024, from World Economic Forum: https://www.weforum.org/agenda/2024/01/opportunities-investment-services-drive-growth

Tabladillo, S. B. (2009). The Philippine Labor Market Test in a Global Working World. *ILS Discussion Paper Series 05-2009*. Manila: Institute for Labor Studies.

UN. (2009). *System of National Accounts 2008 (SNA).* New York: United Nations.

UNCTAD. (2004). *World Investment Report 2004: The Shift Towards Services.* Geneva: United Nations.

UNCTAD. (2017). *World Investment Report 2017: Investment and the Digital Economy.* Geneva: United Nations.

UNCTAD. (2023). The Evolution of FDI Screening Mechanisms – key trends and features. *Investment Policy Monitor February 2023 Issue 25*. Geneva: United Nations.

UNCTAD. (2024). Global economic fracturing and shifting investment patterns. Geneva: United Nations. Retrieved April 26, 2024, from https://unctad.org/system/files/official-document/diae2024d1_en.pdf

WB. (2018). *Fostering Competition in the Philippines: The Challenge of Restrictive Regulations.* Washington, D.C.: The World Bank. Retrieved April 21, 2024, from https://documents.worldbank.org/en/publication/documents-reports/documentdetail/478061551366290646/fostering-competition-in-the-philippines-the-challenge-of-restrictive-regulations

WB. (2018). *Growth and Productivity in the Philippines: Winning the Future.* Washington, D.C.: The World Bank. Retrieved April 13, 2024, from https://www.worldbank.org/en/country/philippines/publication/growth-and-productivity-in-the-philippines-winning-the-future

WB. (2023). *Services for Development: East Asia and Pacific Economic Update, October 2023.* Washington, DC: The World Bank. Retrieved March 20, 2024, from https://www.worldbank.org/en/publication/east-asia-and-pacific-economic-update

WB. (2024). *Global Economic Prospects, January 2024.* Washington, DC: World Bank. Retrieved April 5, 2024, from https://openknowledge.worldbank.org/handle/10986/40715

WTO. (2021, November 26). Joint Initiative on Services Domestic Regulation Reference Paper on Services Domestic Regulation. *WT/L/1129 Annex 1*. Geneva: WTO. Retrieved April 10, 2024, from https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/1129.pdf&Open=True

WTO. (2024). Services Domestic Regulation. *Factsheet 2024-1*. Geneva: WTO. Retrieved April 10, 2024, from https://www.wto.org/english/tratop_e/serv_e/sdr_factsheet_feb24_e.pdf

6. Appendix

The Comparative Constitutions Project (CCP) documents the characteristics of national constitutions written since 1789. Version 4.0 of the dataset covers the constitutions of all independent states from 1789 to 2021 (Elkins and Ginsberg 2022).

The CCP dataset was used to determine if other constitutions include specific foreign equity restrictions and require a legislative franchise in the services sector. The search was limited to the year 2021. Furthermore, it focused on one variable – FORINVES, which asks if the constitution mentions "foreign investment" or "foreign capital". The possible values for FORINVES are as follows:

1. Yes, protection of foreign investment
2. Yes, promotion of foreign investment
3. Yes, both
4. No

96. other, please specify in the comments section

97. Unable to Determine

The next step was to identify the countries with a value of "96" and to check the relevant texts.

Following these steps, only one other country aside from the Philippines was found to include foreign ownership restrictions in services – Brazil, which limits foreign participation in health assistance, journalism, and broadcasting. See Box 1 below.

Box 1. Relevant text from the Constitution of Brazil 1988 (rev. 2017): Equity limitations in services

Art 199

Health care is open to private enterprise.

3. Direct or indirect participation of foreign firms or capital in health assistance in the Country is prohibited, except for cases provided by law.

Art 222

Ownership of firms of journalism and broadcasting of sounds and images with sounds is restricted to native-born Brazilians or those naturalized for more than ten years, or to legal entities organized under Brazilian law and having their headquarters in the Country.

1.In either case, at least seventy percent of the total capital and voting capital of firms of journalism and broadcasting of sounds and images with sounds must be owned, directly or indirectly, by native-born Brazilians or those naturalized for more than ten years, who must manage the activities and determine the programming content.

2. In any means of social communication, editorial responsibility and the activities of selecting and directing programming are restricted to native-born Brazilians or those naturalized for more than ten years.

3. Irrespective of the technology utilized for rendering the service, electronic means of social communication shall observe the principles enunciated in art. 221, in the form of a specific law, that shall also guarantee the priority of Brazilian professionals in the execution of national productions.

4. Participation of foreign capital in the firms dealt with in § 1° shall be regulated by law.

5. Changes in controlling shareholders in the firms dealt with in § 1° shall be communicated to the National Congress.

Source: Constitute (retrieved April 28, 2024, from https://www.constituteproject.org/constitution/Brazil_2017)

Brazil's Constitution also mentions the role of the executive and congress to grant, renew, and cancel concessions or permits in broadcasting. See Box 2 below.

Box 2. Relevant text from the Constitution of Brazil 1988 (rev. 2017): Concessions and permits in services

Article 223

The Executive has the power to grant and renew concessions, permits and authorizations for the services of broadcasting sounds and images with sounds, observing the principle of the complementary roles of private, public and state systems.

1. The National Congress shall consider such acts within the time period of art. 64, §§ 2° and 4°, starting from the date of receipt of the message.
2. Non-renewal of concessions or permits requires approval by at least a two-fifths nominal vote of the National Congress.
3. Grants or renewals shall be legally effective only after consideration by the National Congress, in accordance with the preceding paragraphs.
4. Cancellation of a concession or permit prior to its expiration date requires a judicial decision.
5. The term of a concession or permit shall be ten years for radio stations and fifteen years for television stations.

Source: Constitute (retrieved April 28, 2024, from https://www.constituteproject.org/constitution/Brazil_2017)

This exercise simply takes the relevant texts at face value and does not make any further analysis to determine comparability with the Philippine case (for example, in terms of the similarities and/or differences in the form of government, its structure, or political systems). A direct and in-depth examination of all the constitutions in the world by a legal specialist may yield additional findings.