FOSTERING COMPETITION IN ASEAN

OECD Competitive Neutrality Reviews

ASEAN

SMALL-PACKAGE DELIVERY SERVICES

OECD
BETTER POLICIES FOR BETTER LIVES

UK Government

ASSOCIATION OF SOUTHEAST ASIAN NATIONS

OECD Competitive Neutrality Reviews: Small-Package Delivery Services in ASEAN

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Foreword

As one of the fastest growing regions in the world, Southeast Asia has benefited from broadly embracing economic growth models based on international trade, foreign investment and integration into regional and global value chains. Maintaining this momentum, however, will require certain reforms to strengthen the region's economic and social sustainability. This will include reducing regulatory barriers to competition and market entry to help foster innovation, efficiency and productivity.

The logistics sector plays a significant role in fostering economic development. As well as its contribution to a country's GDP, a well-developed logistics network has an impact on most economic activities. An efficient logistics system can improve a country's competitiveness, facilitate international trade and enhance its connectivity to better serve consumers and meet the needs of regionally integrated production facilities for reliable delivery of inputs and outputs.

OECD Competitive Neutrality Reviews: Small-Package Delivery Services in ASEAN, undertaken within the framework of the ASEAN Competition Action Plan, assesses the impact of state-owned enterprises on competition in ASEAN. The analysis focuses on small-package delivery services, a fundamental part of the logistics sector due to their important role in the rapidly growing e-commerce sector. In parallel, the OECD has assessed the impact of regulation on competition in the logistics sector in *OECD Competition Assessment Reviews: Logistics Sector in ASEAN*.

The OECD assessment was conducted in consultation with the authorities and local stakeholders in each ASEAN member state, with the support of the ASEAN Secretariat and the ASEAN Economic Reform Programme under the UK Foreign, Commonwealth & Development Office (UK Government). The assessment identifies 44 issues of competitive neutrality where changes could be made to foster competition in the small-package delivery services sector by levelling the playing field between public and private companies. This could benefit ASEAN significantly as in the recent past e-commerce has grown less rapidly than other countries in Asia, even if this trend now seems to be changing. This report offers policy recommendations that can help the governments in each ASEAN member state address structural and regulatory shortcomings in the small-package delivery services sector.

These structural reforms have become even more pressing as the ASEAN economy is expected to have shrunk by 4.4% in 2020 (compared to a growth rate of 4.4% in 2019) due to the COVID-19 pandemic. These policy recommendations contribute to reforms that can help the ASEAN economy resume sustainable growth and job creation, by enhancing competitiveness, encouraging investment and stimulating productivity in the logistics service sector, with knock-on economy-wide effects and benefits for its consumers.

I congratulate the governments of ASEAN member states, as well as the ASEAN Secretariat and the UK Foreign, Commonwealth & Development Office (UK Government), on their efforts to lift regulatory barriers to competition and to improve the business environment. The OECD looks forward to continuing and broadening its co-operation with ASEAN to support further its reforms to the benefit of its citizens.

Greg Medcraft

Director, OECD Directorate for Financial and Enterprise Affairs

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- UK Foreign, Commonwealth and Development Office (FCDO).
- Brunei Darussalam:
  - Darussalam Assets
  - FDI Action and Support Centre (FAST)
  - Maritime and Port Authority
  - Ministry of Transport and Infocommunications, Brunei Postal Services Department
  - Ministry of Transport and Infocommunications, Land Transport Department
  - Ministry of Finance and Economy, Registry of Companies and Business Names.

- Cambodia:
  - Cambodia Post
  - Ministry of Economy and Finance
  - Ministry of Land Management
  - Ministry of Post and Telecommunications
  - Ministry of Public Works and Transportation.
- Indonesia:
  - Coordinating Ministry for Economic Affairs, SOE Division
  - DAMRI
  - Indonesian Investment Coordinating Board (BKPM)
  - Ministry of Communication and Information Technology, Directorate General of Post and Information Technology
  - Ministry of Co-operatives and SMEs, E-commerce Division
  - Ministry of State-Owned Enterprises
  - Ministry of Transportation, Directorate General of Rail Transportation
  - PELNI
  - PT Kereta Api Indonesia
  - PT Pos Indonesia.
- Lao PDR:
  - Ministry of Finance
  - Ministry of Industry and Commerce
  - Ministry of Public Works and Transport.
- Malaysia:
  - Khazanah Nasional Berhad
  - Malaysia Communications and Multimedia Commission
  - Ministry of Communications and Multimedia
  - Ministry of Economic Affairs
  - Pos Malaysia.
- Myanmar:
  - Ministry of Commerce
  - Ministry of Planning, Finance, and Industry
  - Ministry of Transport and Communications, Postal Regulations Department
  - Myanmar Investment Commission
  - Myanmar National Airlines
  - Myanmar Port Authority
  - Myanmar Post
  - Myanmar Railways.
- The Philippines:
  - Department of Information and Communications Technology, Postal Regulation Division
  - Department of Finance, Privatization and Management Office
  - Department of Trade and Industry

  - Department of Transportation, Land Transportation Office
  - Governance Commission for Government-Owned or Controlled Corporations
  - Philippine Postal Corporation.
- Singapore:
  - Economic Development Board
  - Infocomm Media Development Authority
  - Ministry of Trade and Industry
  - Ministry of Finance
  - Singapore Land Authority
  - Singapore Post
  - Temasek International.
- Thailand:
  - Ministry of Digital Economy and Society
  - Ministry of Transport, Department of Land Transport
  - State Enterprise Policy Office
  - Thailand Post.
- Viet Nam:
  - Central Institute for Economic Management
  - Ministry of Information and Communications
  - State Capital Investment Corporation
  - Vietnam eCommerce and Digital Economy Agency
  - Vietnam Post Corporation.
- The following stakeholders were also interviewed:
- **Brunei Darussalam.** Archipelago Group; Bolloré Logistics; Brunei Darussalam International Chamber of Commerce & Industry; Brunei Delivery Service; Brunei Malay Chamber of Commerce and Industry; Brunei International Air Cargo Centre; DHL Express; kadairuncit.com and naindah.com; MOC; Muara Port Company; and SDV Logistics.
- **Cambodia.** Advanced Glory Logistics, American Chamber of Commerce in Cambodia, DHL Express, European Chamber of Commerce in Cambodia, Kerry Worldbridge Logistics; Phzar; and TSP Express Cambodia (FedEx Express).
- **Indonesia.** Association of Courier Service Companies (ASPERINDO); European Business Chamber of Commerce; J&T Express; Land Transport Trade Association (ORGANDA); Lazada; Pandu Logistik; RPX; and TIKI.
- **Lao PDR.** Bolloré Logistics Laos; DHL Express Laos Sole; and Fair & Easy.
- **Malaysia.** EU-Malaysia Chamber of Commerce and Industry; KTM Distribution; Malay Chamber of Commerce Malaysia; Malaysia Logistics Supply Chain Association; Malaysia Productivity Corporation; Nationwide Express; Port Klang Authority; Shopee; and SME Corporation.
- **Myanmar.** British Chamber of Commerce; DHL; MGL Express; and ZawGyi Mart.
- **The Philippines.** Confederation of Truckers Association of the Philippines; LBC Express; and Supply Chain Management Association of the Philippines.
- **Singapore.** DHL Express; Gogovan; and Lazada.
- **Thailand.** European Association for Business and Commerce; Thai Federation on Logistics; Thai National Shippers' Council; and Thai Retailers Association.

- **Viet Nam.** DHL-VNPT Express; US-ASEAN Business Council; Vietnam Association for Women Entrepreneurs; Vietnam Association of Small and Medium Enterprises; Vietnam Chamber of Commerce and Industry; and Vietnam Women Entrepreneurs Council.

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The information in this report is updated as of the date of finalisation of the individual country reports, while economic forecasts have been updated with more recent figures reflecting the impact of the COVID-19 pandemic.

The findings in this report are the result of an independent assessment by the OECD based on an analysis of selected (prioritised) legislation, stakeholder interviews and desk research. The recommendations are the result of this analysis and are non-binding.

Fostering competition in ASEAN

ASEAN member states have agreed to implement significant reforms towards market liberalisation and elimination of competition distortions as part of the ASEAN Competition Action Plan 2016-2025 (ACAP 2016-2025), which provides strategic goals, initiatives and outcomes to fulfil the competition-related vision of the AEC Blueprint 2025. In order to increase awareness of the benefits and role of competition in ASEAN, the ACAP 2016-2025 provides for an assessment to be conducted on the impact of non-tariff barriers on competition in the markets of ASEAN Member States followed by recommendations.

The logistics sector was chosen by the ASEAN Secretariat and ASEAN Expert Group on Competition (AEGC) as it can play a significant role in increasing ASEAN’s economic development, and is included in the AEC Blueprint’s 12 priority integration sectors. Indeed, efficient logistics can play a significant role in increasing a country’s economic development by facilitating international trade and improving its competitiveness. By developing an efficient logistics system, a country can enhance its connectivity to better serve its importers and exporters, and satisfy the needs of regionally integrated production facilities for reliable just-in-time delivery of inputs and outputs.

Against this background, the ASEAN Secretariat, with funding from the ASEAN Economic Reform Programme under the UK Foreign, Commonwealth & Development Office (UK Government), tasked the OECD to assist with the implementation of Initiatives 4.1 and 4.2 of the ACAP 2016-2025. These two initiatives require an assessment of the impact of competition law and policy on the markets of all 10 ASEAN member states, both in general (4.1) and with a focus on state-owned enterprises (4.2).

This report contributes to ACAP Outcome 4.2.1 (Impact of state-owned enterprises and government-linked monopolies on competition), building on a competitive neutrality assessment in the small-package delivery services sector.

This regional report concludes a series of ten similar assessments, one for each ASEAN member state.

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Abbreviations and acronyms

3PL	Third-party logistics
ACCC	Australian Competition and Consumer Commission
ACM	Authority for Consumers and Markets, Netherlands
ACRF	ASEAN Comprehensive Recovery Framework
	Agence des Participations de l'État
AVE	Ad valorem equivalents
	Business-to-business
	Business-to-consumer
	Brunei dollar
	Brunei Postal Services Department, Brunei Darussalam
BUMN	SOE (*badan usaha milik negara), Indonesia*
	Compound annual growth rate
	Courier, express and parcel
CMA	Competition and Markets Authority, UK
CMSC	Committee for Management of State Capital, Viet Nam
CNMC	National Commission on Markets and Competition, Spain
CPRs	Commonwealth Procurement Rules, Australia
CPTPP	Comprehensive and Progressive Trans-Pacific Partnership
ERGP	European Regulators Group for Postal Services
EUR	Euro
GBE	Government Business Enterprise, Australia
GCG	Governance Commission for Government-Owned and -Controlled Corporations, Philippines
GCI	Global Competitiveness Index, World Economic Forum
GLIC	Government-linked investment company
GLM	Government-linked monopoly
GOCC	Government-owned or -controlled corporation
GSO	General Statistical Office, Viet Nam
ICT	Information and communications technology
ITF	International Transport Forum

MYR	Malaysian ringgit
NCP	National Competition Policy, Philippines
NEDA	National Economic and Development Authority, Philippines
NEM	New Economic Model, Malaysia
PCC	Philippine Competition Commission, Philippines
PEEC	Public establishment with economic characteristics, Cambodia
PHP	Philippine peso
PMO	Privatization and Management Office, Philippines
	Postal Transformation Plan for Sabah and Sarawak, Malaysia
	Regional Comprehensive Economic Partnership
SCIC	State Capital Investment Corporation, Viet Nam
SEG	State economic group, Viet Nam
SEPO	State Enterprise Policy Office
SGD	Singapore dollar
SGEI	Services of general economic interest
SOHC	State-owned holding companies, Indonesia
TLC	Temasek-linked corporation, Singapore
TPP	Trans-Pacific Partnership
UNECE	

Executive summary

The principle of competitive neutrality

Competitive neutrality ensures that all enterprises, public or private, domestic or foreign, face the same set of rules, which enhances allocative efficiency throughout the economy. It addresses, for instance, distortions of competition caused by the state playing an active role in commercial markets or by state measures distorting competition between privately owned entities and entities owned by, or linked to, the state. Ensuring a level playing field is crucial when designing or optimising the legal and regulatory environment. Harmonisation of regulation in ASEAN member states to avoid special rights, privileges and disadvantages for state-owned enterprises can help to achieve a regional level playing field, providing increased incentives for investments and contributing to ASEAN economic integration.

The growth of e-commerce and small-package delivery services

Cross-border e-commerce transactions have introduced new dynamics to international trade, while transforming value chains and requiring logistics companies to shift their business models. This shift is even more relevant in ASEAN, where member states are moving from export-oriented to consumer-driven economies. The crisis caused by the COVID-19 pandemic has further expedited the shift to e-commerce, leading to long-term changes and further market growth with initiatives to provide connectivity to "vulnerable communities", removing barriers for SMEs, and providing easier access to products with better price and quality. The rapid growth in e-commerce markets is driving unprecedented increase in demand for small-package delivery services.

State-owned enterprises in ASEAN

State-owned enterprises play a significant role in many ASEAN member states. While their importance varies across the region, governments often rely on state-owned enterprises for the development of industrial policies. Legal frameworks differ between ASEAN member states. While certain have adopted specific laws and regulations for state-owned enterprises, others apply general corporate rules. In other member states, specific laws and regulations on state-owned enterprises complement general corporate rules by providing more detailed and prevailing regulation. In several ASEAN member states, state-owned enterprises have undergone significant reforms in recent years. In some instances, however, there have been substantial delays in their implementation or they have been related to only a limited number of state-owned enterprises.

State-owned enterprises in small-package delivery services

Several state-owned enterprises are among the largest players in their respective domestic markets for small-package delivery services. In most instances, these state-owned enterprises are the incumbent postal operators that prior to the sector's full or partial liberalisation held monopoly rights. These state-owned enterprises have different legal forms across ASEAN member states, with the predominant form being the fully incorporated entity. Most of those fully incorporated entities are fully or majority-owned by the state, while some are listed on national stock exchanges. A small number of ASEAN member states maintain significant direct or indirect shareholdings or strategic veto rights in listed companies. Statutory corporations, which are those incorporated according to enterprise-specific legislation, are also present. In a few member states, small-package delivery services are performed by ministerial departments.

A clear trend towards liberalisation of the postal sector has been observed across ASEAN. Monopoly rights have been progressively lifted in small-package delivery services, and global integrators as well as regional and local players have entered these markets. Despite a clear trend towards liberalisation and increasingly competitive markets, state-owned enterprises' activities continue to constitute a significant portion of small-package delivery services in several member states. Moreover, the majority of these state-owned enterprises are entrusted with public-policy objectives.

Estimated benefits of improving competitive neutrality in small-package delivery services

The expected benefits from implementing the OECD recommendations detailed in this report include increases in (i) consumer welfare (for instance, through lower prices), (ii) foreign direct investment into the small-package delivery services sector, (iii) development of SMEs and employment, (iv) cross-border trade, and (v) gender equality. Only some of these benefits can be quantified, depending on the available data.

Based on a conservative estimate, the implementation of the recommendations could be expected to bring a benefit for the ASEAN economy of around EUR 93 million a year for each 1% decrease of the price of delivery of a small package. As the market for small-package delivery services is expected to grow at a compound annual growth rate (CAGR) of 12% between 2020 and 2025, this benefit could increase to EUR 141 million a year for each 1% price decrease by 2025. An average price decrease of delivering a small package of 5% would lead to a benefit of between EUR 464 and EUR 699 million a year.

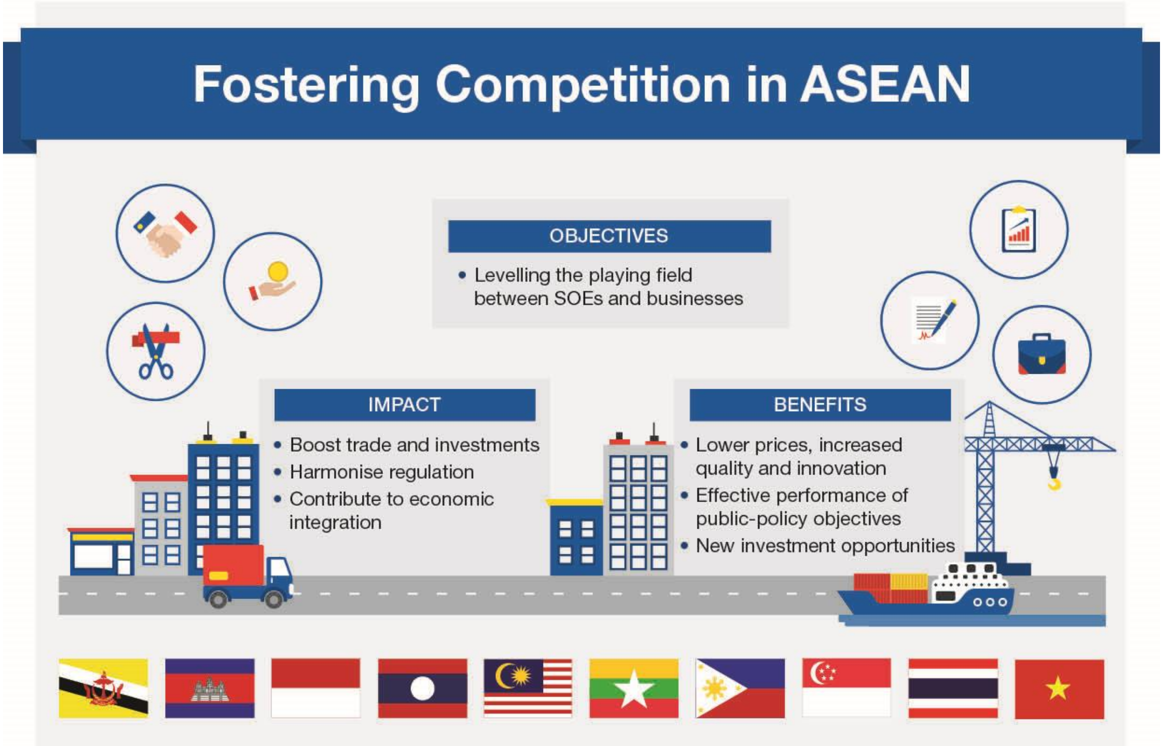
OECD key recommendations to ASEAN member states

1. Public-service obligations should be clearly defined and state-owned enterprises should be adequately compensated for these obligations. Compensation should be based on criteria that are objective, transparent and established in advance. Irrespective of the compensation mechanism, accounting separation and reporting requirements should be established to ensure that government subsidies and other direct or indirect funds for public-service obligations are not used by state-owned enterprises to cross-subsidise small-package delivery services that are in competition with private-sector operators.
2. Governments should separate the regulatory functions and commercial activities of state-owned enterprises. Where state-owned enterprises are in the form of ministerial departments, corporatisation plans should be implemented by establishing separate entities subject to generally applicable corporate laws and operating small-package delivery services on a commercial basis.
3. While a certain level of political oversight in state-owned enterprises with public-policy objectives is legitimate, governments should limit excessive governmental intervention in day-to-day management. Transferring ownership to a specialised agency or a designated ministry could support these efforts, if such a structure is sufficiently sheltered from undue political interference.
4. Governments should adopt implementing acts at legislative or ministerial level or through competition authorities and sectoral regulators exercising competition-law powers, to clarify the

principle that state-owned enterprises are covered by applicable competition laws. The scope of any exemptions should be narrowed to remove, in particular, activities such as state-owned enterprises' commercial activities that are in competition with privately owned enterprises.

5. Governments should allocate resources to competition authorities for advocacy initiatives about competitive neutrality, including initiatives that focus on specific sectors such as small-package delivery services that involve the relevant state-owned enterprises and other government agencies.
6. Governments should subject state-owned enterprises' commercial activities to the same licensing requirements applicable to other providers of small-package delivery services. Alternatively, they should consider lowering the burden on licensees by simplifying licensing procedures and introducing measures to neutralise state-owned enterprises' potential cost advantage.
7. Public-procurement rules should treat all potential suppliers equitably, without discrimination and irrespective of ownership, with state-owned enterprises subject to requirements comparable to those demanded from private bidders.
8. Governments should ensure that state-owned enterprises' debt financing is obtained on commercial terms and under the same market conditions as state-owned enterprises' competitors. Any state loans and guarantees to state-owned enterprises or loans by state-owned financial institutions should be provided at arm's length; subject to appropriate due diligence, and reflective of market interest rates without the influence of an implicit or explicit state guarantee.
9. Governments should adopt a more commercial approach to state ownership by applying harder budget constraints, with funds provided to state-owned enterprises through the state budget subject to a required minimum rate of return consistent with private companies in the same sector and in similar circumstances.
10. Governments should ensure that tax regimes give equal treatment to the commercial activities of both state-owned enterprises and their private-sector competitors.

Infographic 1. Fostering Competition in ASEAN – Competitive Neutrality in small-package delivery services to strengthen e-commerce



Competitive neutrality in small-package delivery services to strengthen e-commerce

SELECTED SOE SPECIAL RIGHTS AND DUTIES	SELECTED PRINCIPLES RECOMMENDED TO ASEAN MEMBER STATES
1. Entrusted public-policy objectives 2. Preferential regulation 3. Regulatory and commercial functions within SOEs 4. Preferential financial support by the state	1. Apply high standards of transparency and adequate compensation for public-policy objectives 2. Do not exempt SOEs' economic activities from the application of general laws and regulations 3. Separate regulatory and state's ownership functions in SOEs 4. Ensure that SOEs' economic activities face market-consistent conditions in access to finance

Key facts

1 regional report

44 recommendations

10 country reports

Over **130** public and private stakeholders consulted in ASEAN

19% of e-commerce growth between 2015-2021[1]

[1] OECD (2018), Economic Outlook for Southeast Asia, China and India 2018 - Update Promoting Opportunities in E-commerce

1 State-owned enterprises and competition policy

1.1. Introduction

State-owned enterprises (SOEs) play a significant role in many national economies around the world. According to OECD calculations, around a fourth of the largest global companies (i.e. Fortune Global 500) are entirely or largely owned by the state (OECD, 2020, p. 148[1]). Many large SOEs operate key upstream and downstream activities in international supply chains, such as public utilities, manufacturing, metals and mining, and petroleum (OECD, 2016[2]). Moreover, their status as publicly owned enterprises allows them to play a critical role in pursuing (political or economic) objectives and in contributing to developmental goals of many countries (OECD, 2015[3]).

The role and importance of SOEs differ substantially between regions, countries and sectors. In OECD countries (and beyond), SOEs' roles evolved significantly between 1990 and 2010, with large privatisation initiatives motivated by market liberalisation throughout the 1990s and early 2000s (OECD, 2009[4]). At the same time, many governments have sought to rationalise the enterprises they continue to own, subjecting them to the same laws and treatment as private enterprises and professionalising their ownership and governance. In ASEAN, SOEs still represent a major part of many economies measured by percentage of GDP, employment and fiscal revenues; they remain indispensable players in key sectors, building, maintaining and operating critical infrastructure, delivering critical services, and providing public employment.

In order to ensure optimal economic outcomes, SOEs should compete against private entities on a level playing field where products and services are offered in competition or in areas where private-sector businesses could potentially compete. At the same time, governments should recognise – to an appropriate and relevant extent – SOEs' socio-economic and policy objectives.

Several ASEAN member states have initiated SOE reforms in view of improving economic outcomes. In the context of these ongoing reforms, ASEAN member states could capitalise on the experiences of OECD and other partner countries and on key principles developed by the OECD, including those elaborated in the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, adapting these to the national socio-economic context (OECD, 2015[5]).[1]

1.2. Definition of state-owned enterprises

Countries, including ASEAN member states, differ with respect to the institutions that are considered SOEs. Moreover, different terms are used when referring to SOEs, including, state-owned companies, state-owned entities, state enterprises, publicly owned corporations, public companies, government-owned companies, government-owned or -controlled corporations, government-linked monopolies (GLMs), or government-linked companies (GLCs).

For this study, the following factors are relevant in determining whether an entity is an SOE.

1. **Ownership structure**
   a. **Enterprise wholly owned by the state.** An enterprise over which the state exercises full ownership would most likely qualify as an SOE. The enterprise's institutional or legal form, such as whether joint stock companies, limited liability companies and partnerships limited by shares, is not generally a determining factor.
   b. **Enterprise controlled by the state.** An enterprise controlled by the state should ordinarily be considered an SOE. "Control" should be assessed in a substantive way. It would normally be established in cases where the state, by directly or indirectly holding a majority of shares or voting rights in an enterprise, exercises influence over an enterprise's strategic decisions, such as approval of budgets, business plans and major investments, as well as the appointment of senior management.[2] In countries where the state invests in a wide range of companies through sovereign wealth funds or state holding companies, the state may exercise indirect control. The state can exercise an equivalent degree of control in situations where, for example, an enterprise's by-laws allow the state to appoint the majority of the board of directors or assign a "golden share" that gives veto rights over certain strategic decisions. Not all equity stakes amounts to control, however. For instance, small equity holdings of less than 10% held by independent asset managers, such as public pension funds, would not ordinarily amount to control and an enterprise would not be considered an SOE. Similarly, enterprises temporarily controlled by the state in the course of bankruptcy or similar procedures would not ordinarily be SOEs.
2. **Economic nature of activities.** An entity established by law, including statutory corporations, whose purposes or activities are largely economic in nature would be considered an SOE. An economic activity is one that involves offering goods or services in a given market and which could, at least in principle, be carried out by a profit-seeking private operator. Economic activities take place in markets open to competition or where competition could occur.

Therefore, for the purposes of this study, an SOE is any entity recognised by national laws as an enterprise in which the government exercises ownership and/or control, and which engages in economic activities, either exclusively or alongside public-policy objectives. This includes listed companies in which governments have maintained significant direct or indirect shareholdings or strategic veto rights. SOEs also include statutory corporations, whose legal personality is established through specific legislation, engaging in economic activities. Finally, economic activities carried out from inside the government sector, such as by ministerial departments, are also considered in the study, despite not qualifying as an enterprise with a separate legal personality.

1.3. SOEs, competition and competitive neutrality

There is broad consensus that competition creates significant benefits for consumers in terms of more choice, advanced products and services, higher quality and lower prices (OECD, 2014[6]). Competition enhances productivity growth and consumer welfare. This productivity growth leads to faster growth for the overall economy and job creation. For instance, when Australia engaged in broad pro-competitive regulatory reforms in the 1990s, its Productivity Commission estimated that these reforms resulted in a GDP increase of at least 2.5%. Importantly, research has also shown that competitive restrictions have a disproportionately negative impact on the poor meaning that pro-competition policies, by eliminating cartel-like market conditions, can substantially enhance living standards for the economically disadvantaged or impoverished by reducing prices and increasing real income (Ennis, Gonzaga and Pike, 2017[7]).

Competition can also play an important role in achieving other government policies, including those promoting consumer protection, entrepreneurship, innovation, investment, corporate governance, equal opportunities, effective public procurement and open trade. Indeed, competition benefits are an important reason for governments' liberalisation and deregulation policies.

That said, sound and effective competition does not always arise naturally: the temptation is strong for economic players to restrict competition to achieve greater profits. SOEs sometimes have the ability and the incentive to engage in anti-competitive conduct, which can be as harmful as restrictions of competition by private competitors. Governments and competition authorities must therefore recognise the fundamental role of competition law and policy in markets where publicly and privately owned entities are (or could be) competing with each other.

Such fundamental principles are reflected in the *ASEAN Economic Community Blueprint 2025*, which affirms that one of the elements necessary to increase the region's productivity is to ensure "a level playing for all firms, regardless of ownership". This is also identified as the fundamental goal of competition policy and law.[3] These principles are also noted in the 2010 *ASEAN Regional Guidelines on Competition Policy*, in which the ASEAN Expert Group on Competition (AEGC) stated that: "Competition policy should be an instrument of general application, *i.e.*, applying to all economic sectors and to all businesses engaged in commercial economic activities (production and supply of goods and services), including State-owned enterprises".[4] This key consensus results in no ASEAN member state granting SOEs a general exemption from competition laws.

Competitive neutrality is a principle according to which all enterprises are provided a level playing field with respect to a state's ownership, regulation and activity in the market. It addresses, for instance, distortions of competition caused by the state playing an active role in commercial markets or by state measures distorting competition between privately owned entities and entities owned by, or linked to, the state.

The rationale for pursuing competitive neutrality is two-fold. An economic rationale is that it enhances allocative efficiency throughout the economy. Where economic actors – whether state-owned or private – are put at an undue disadvantage, goods and services are no longer produced by those who can do it most efficiently. This leads to lower real income and suboptimal use of scarce resources, such as inefficient production methods or reduced innovation, relative to a baseline scenario (in which there is a level playing field) (OECD, 2019, p. 39[8]). Levelling the playing field lowers entry barriers and allows for new, possibly more efficient or innovative, firms to enter the market. This in turn lowers prices, and increases quality and innovation. Another rationale is linked to governments' dual roles as regulators ensuring both a level playing field and the fulfilment of public-service objectives. Although the political commitment to maintaining a level playing field is generally strong, state-led commercial activities can still damage the competition landscape through deliberate or unintentional departures from competitive neutrality (OECD, 2012[9]).

Finally, harmonisation of regulation resulting in special rights, privileges and duties for SOEs across ASEAN member states can effectively contribute to a regional level playing field, providing increased incentives for investments across ASEAN (including in markets where SOEs are present). This will ultimately contribute to ASEAN economic integration.

1.3.1. SOEs and departures from competitive neutrality

Governments may take deliberate decisions to depart from competitive neutrality in cases where SOEs' activities may be necessary to correct market failures or to achieve other policy objectives. Their choices for non-neutrality can include both economic rationales (circumstances where the economic outcome may be made more efficient through state intervention) and broader policy rationales (in which case social objectives may justify exceptions to economic efficiency principles) (OECD, 2012[9]; Capobianco and Christiansen, 2011[10]).

A common economic rationale for SOEs is the correction of market failures. While the majority of markets may be best served by economic players pursuing ordinary commercial objectives, certain markets have special characteristics that can lead to "market failures", in which the ordinary interaction of supply and demand does *not* lead to the most economically efficient outcome. In such identifiable circumstances, an SOE whose operating principles depart from ordinary profit maximisation may achieve the most efficient attainable outcome. The rationale for correcting market failures is widely observed in industries with "natural monopoly" characteristics where – due to cost structures – it would not be economically efficient or likely in practice for competitors to operate, at least on certain levels of the value chain. This effect is particularly common in network industries and utility industries, such as segments of the telecommunications and electricity industries, and domestic water supply, where economies of scale and network effects often legitimise the presence of a single provider.

A further economic rationale is that, in some markets, "externalities" – wider social benefits or costs not captured in the price – associated with a product or service may make the market outcome inefficient, justifying provision of the product or service through an SOE.[5]

Beyond these economic rationales for SOEs, a number of broader policy rationales may also be relevant. First, governments may identify certain basic services that should be accessible to all members of society through a single provider with public-service obligations (PSO). Such services typically include 1) communication services, such as postal services and telecommunications; and 2) utilities, such as electricity and water distribution. PSO typically require the provision of a minimum level or standard of service to all consumers, often including those in sparsely populated areas where provision is uneconomic. PSO do not necessarily require the presence of an SOE and instead may be imposed on privately owned operators, with loss-making services compensated through cross-subsidisation from other services or direct government transfers (or both). Governments may decide, however, that it is more effective to achieve these objectives through an SOE rather than a privately owned operator.

Furthermore, governments may have strategic or industrial policy objectives in exercising ownership rights over certain industries. These national interest objectives may include:

1. protecting the viability of sectors viewed as being of systemic importance
2. maintaining state ownership of strategic industries, such as national defence
3. supporting nascent or emerging industries that may be seen as strategically important in the future
4. more broadly, achieving developmental goals.

In addition, governments may have fiscal objectives for SOEs, such as ensuring a profit stream – in the form of dividends, for example – from SOEs to the national budget. Other objectives may also include the support of interest groups, such as public employees. In some countries, SOEs remain a major source of employment and can provide better employment conditions than those in the private sector (OECD, 2017[11]). Finally, SOEs have been an important driver for sustainable investments and development (OECD, 2020[1]).

Therefore, when assessing the level playing field between public and private entities and potential competitive neutrality distortions, an SOE's socio-economic role and policy objective should be considered. It is key, however, that these objectives are made fully transparent.

1.3.2. Key distortions of competition by SOEs

Whether intentional or not, departures from competitive neutrality can result in significant distortions of competition. An SOE's market competitiveness can be enhanced (or impaired) through government ownership or connections in a number of ways, including:[6]

1. **Monopolies and advantages as incumbents.** Governments may entrust SOEs with exclusive or monopoly rights over certain activities; these may foreclose access to competitors, as well as artificially enhance SOEs' competitiveness in other markets open to competition.
2. **Other preferential treatment.** SOEs may not be subject to the same regulatory regimes as private firms; examples include exemptions from licensing or reporting requirements.
3. **Lack of separation between regulatory and commercial functions.** SOEs may be entrusted with both commercial and regulatory functions, or the same government entity may act as sectoral regulator and as owner of the SOE.
4. **Exemptions from generally applicable corporate rules.** The different legal forms of SOEs could lead to apply corporate rules, exempting, for instance, SOEs from bankruptcy, insolvency procedures or hostile takeovers.
5. **Outright subsidies.** SOEs may receive direct state subsidies – not equally accessible to all – or may benefit from other forms of state assistance to sustain their commercial operations, including favourable tax regimes or exemptions.
6. **Concessionary financing and state guarantees.** SOEs may enjoy credit provided directly by governments or through state-controlled financial institutions at below-market interest rates; this distortion is also linked to explicit or implicit state guarantees.

Box 1.1. The building blocks of competitive neutrality

Governments should address the following "building blocks" to seek competitive neutrality.

1. Streamline state-owned businesses, in terms of structure or corporate form.
2. Identify costs of any given function and develop appropriate cost-allocation mechanisms for effective transparency and disclosure.
3. Apply market-based rates of return to state-owned activities operating in a commercial and competitive environment.
4. Provide adequate, transparent, and accountable compensation where the performance of public policy functions is required by government.
5. Subject state-owned businesses, to the greatest extent feasible, to the same tax environment as private enterprises.
6. Subject state-owned businesses, to the largest extent feasible, to the same regulatory environment as private enterprises.
7. Subject state-owned businesses to financial market discipline by not providing preferential access to finance.
8. Adopt procurement policies and procedures that are competitive, non-discriminatory and safeguarded by appropriate standards of transparency.

Source: (OECD, 2012[9]).

2 Economic overview

2.1. ASEAN key economic features

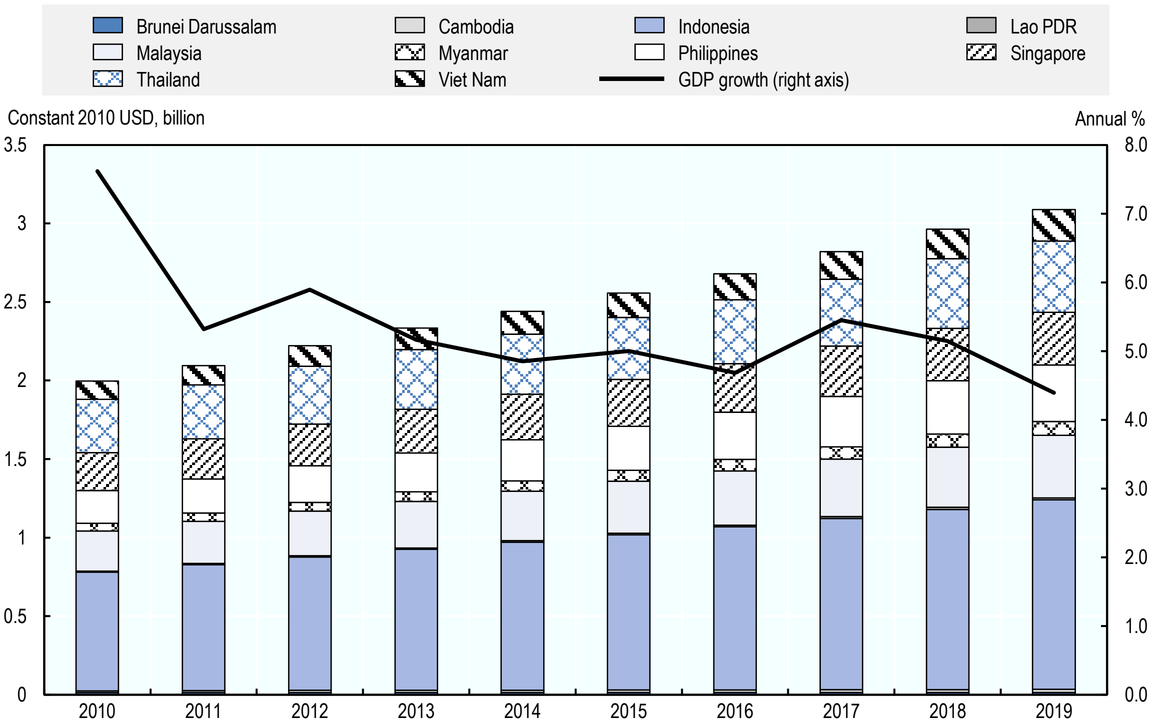
Located in the heart of the Asia-Pacific region, the ASEAN member states span an area of approximately 4.49 million km^2 (3% of the world's total land area) and have a combined population of 671 million people (8.5% of the world's population), the third largest population block after China and India (Worldometer, 2020[12]). ASEAN's high share of working-age population provides a large productive workforce serving a market with a fast-growing middle-class of potential consumers that is bigger than North America and the European Union. Over the past 20 years, the region's labour-force participation rate has been stable at levels that compare favourably with the OECD average. During that period, unemployment rates were relatively low in most countries and, before the COVID-19 pandemic, were even below 2% in certain ASEAN member states.

Figure 2.1. ASEAN key economic figures

Source: (ASEAN Macro-economic Database, 2020[13]) https://data.aseanstats.org/.

In 2019, the total combined GDP of the ten member states was USD 3.1 trillion, making ASEAN the fifth largest economy in the world. GDP has almost doubled since 2005, when it was USD 1.54 trillion. Figure 2.2 shows the increase in GDP since 2010. Member states registered an average GDP growth of 5.4% over the period 2010-2019 with the highest growth rates of 6.8% on average recorded in Cambodia, Lao PDR, Myanmar and Viet Nam. GDP per capita has followed a similar trend reaching USD 4 818 in 2019 compared to USD 3 299 in 2010. Particularly significant improvement in GDP per capita was recorded in Lao PDR and Myanmar over the 2000-2019 period, increasing by over 600% (ASEAN Secretariat, 2020[14]). While trade has played an important role in ASEAN's economic development, domestic demand is also becoming an essential driver of the region's solid and steady growth performance.

Figure 2.2. ASEAN GDP and average growth rate, 2010-19



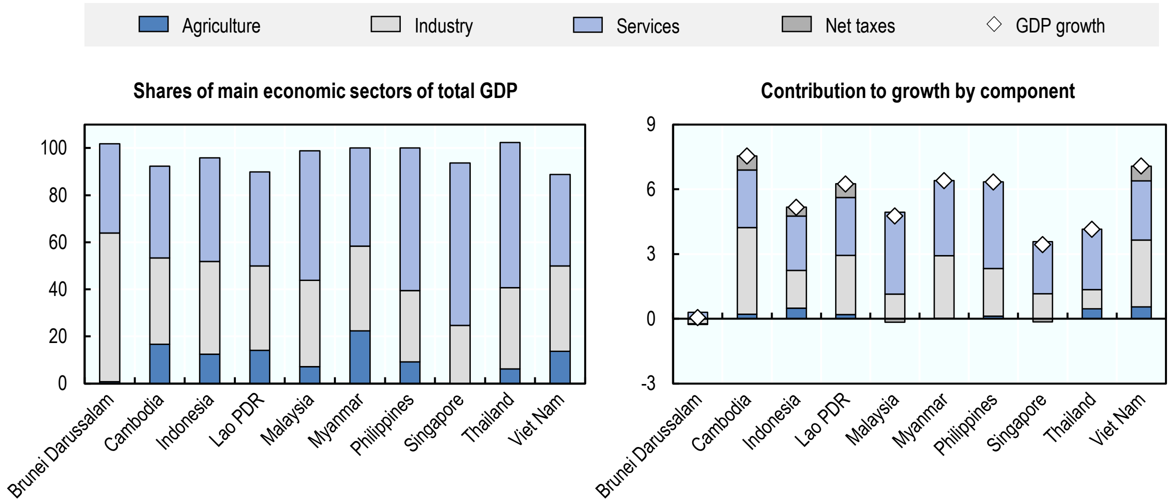
Source: (World Bank, 2020[15]).

Figure 2.3 shows that while economic structures differ across ASEAN, services was both the leading sector and main driver of growth across member states in 2018. This sector's share of regional GDP increased from 46.6% in 2005 to 50.6% in 2019 (ASEAN Secretariat, 2020[14]).

The existence of ASEAN, in addition to the region's strategic geographic position and its historical role as a trade hub, has played a key role in spurring international trade and FDI inflows. Total values of trade in both goods and services have increased significantly over the past ten years in the region and in 2019 reached more than USD 2.8 trillion for goods and USD 844.5 billion for services, while total FDI inflows were valued at USD 160.5 billion.

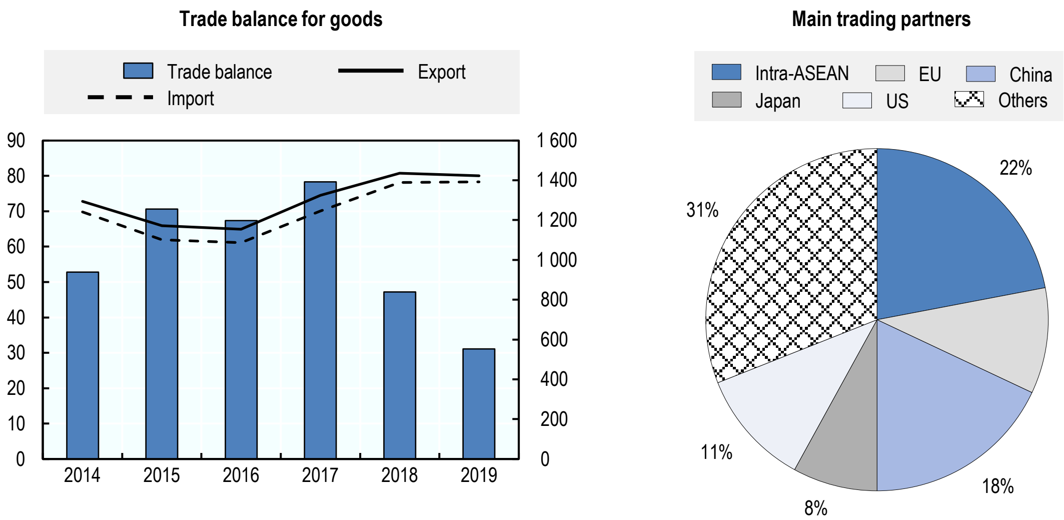
ASEAN's total trade in goods more than doubled in the period 2009 to 2019, with a steady positive trade balance. Figure 2.4 shows that intra-ASEAN trade accounts for the largest share of the region's total trade reaching 22% in 2019. ASEAN's top three trading partners in 2019 were China (18%), the United States (10.5%) and the European Union (10%). Manufacturing goods constitute the largest share of both total exports and imports in ASEAN exceeding 75% in seven countries out of ten.

Figure 2.3. Percentage shares of main economic sectors of total GDP and contribution to growth by component, 2019



Note: The sum of these three sectors may not add up to 100% due to differences in how statistical discrepancies are treated by countries. The latest available data on contribution to growth by component for Cambodia, Lao PDR and Myanmar are from 2018. In the data compilation, the agriculture sector refers to agriculture, fisheries and forestry. Net taxes are equal to gross tax minus subsidies. Thailand uses chain volume measures, and the sum of contributions to growth is not necessarily equal to GDP growth. Viet Nam has not to publish the demand-side components of GDP. The data are as of June 2020.
Source: (ASEAN Macro-economic Database, 2020[13]); (OECD, 2020[16]).

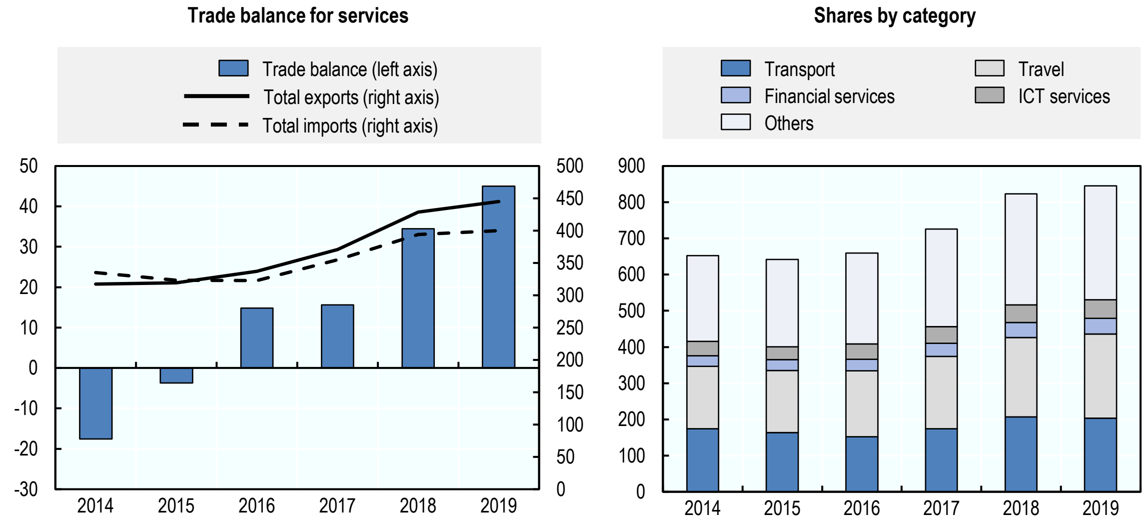
Figure 2.4. Trade balance for goods (billions, USD) and main trading partners, 2014-19



Source: (ASEAN Macro-economic Database, 2020[13]) https://data.aseanstats.org/.

After a continuous deficit for nearly all the preceding decade, ASEAN's balance of trade in services has recorded a surplus since 2016. It reached USD 44.9 billion of a total trade volume of USD 844.5 billion in 2019, while extra-ASEAN services trade increased to 85.2%. Figure 2.5 shows that of services sub-sectors, travel (27.6%) and transport (24.1%) contributed the most to total services trade in 2019.

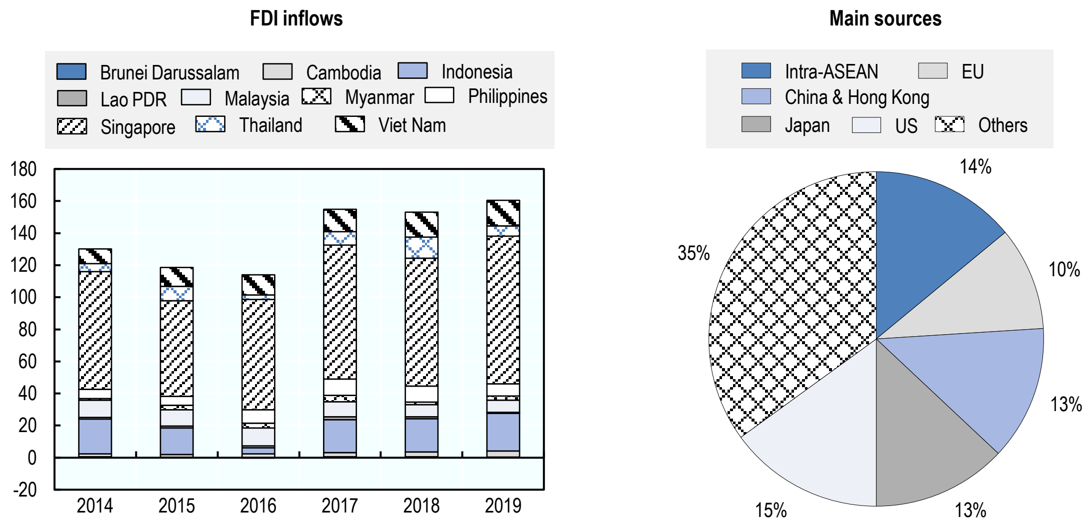
Figure 2.5. Trade balance for services (billion, USD) and shares by category, 2014-19



Source: (ASEAN Macro-economic Database, 2020[13]).

Alongside international trade, FDI has increasingly become a driving factor in ASEAN's economic development. FDI stocks amounted to 76% of ASEAN GDP in 2016, up from 25% in 2006. The share of FDI attracted by ASEAN, compared with OECD countries, has increased. In 2016, FDI stocks in ASEAN were 10% of those of OECD countries (OECD-UNIDO, 2019[17]). The United States (15.2%), Japan (12.7%) and the European Union (10.1%) were the largest extra-ASEAN source of FDI inflows in 2019 (Figure 2.6). Intra-ASEAN FDI inflows had risen to 14% of total inflows reaching USD 22.36 billion, fivefold the 2005 value. The service sector was the largest recipient (61.2%), followed by manufacturing (35%).

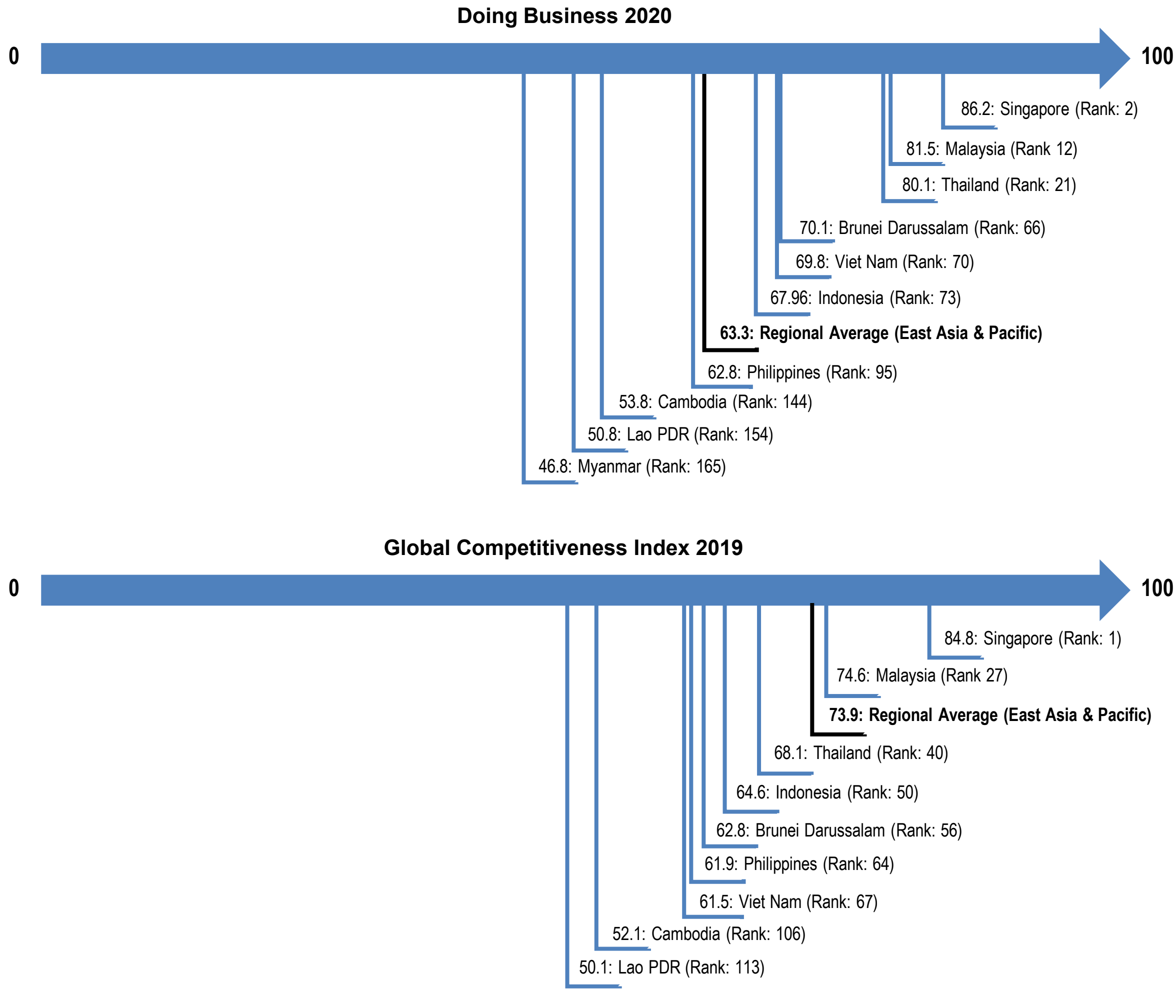
Figure 2.6. FDI inflows (billions, USD), 2014-19, and their main sources, 2019



Source: (ASEAN Macro-economic Database, 2020[13]).

ASEAN's increasing FDI attractiveness is a reflection of its high quality and fast improving business environment, as recorded in the World Bank's *Doing Business 2020* report and the World Economic Forum 2019 Global Competitiveness Index (GCI) (Figure 2.7). These latest ranking confirm the quality of the business environment of certain member states, such as Singapore, Malaysia and Thailand (they are among the top 50 worldwide in the 2019 GCI and the 2020 Doing Business rankings). Others member states have recorded great improvements in their business environment, such as the Philippines, which rose 29 places in *Doing Business 2020* compared to 2019, and Viet Nam, which rose 10 places in the most recent GCI. More generally, *Doing Business 2020* notes that most ASEAN member states perform well in access to credit with an average regional rank of 82, while there were notable reforms in construction permits and starting a business (World Bank, 2020[18]).

Figure 2.7. ASEAN *Doing* Business *2020* and Global Competitiveness Index 2019 rankings

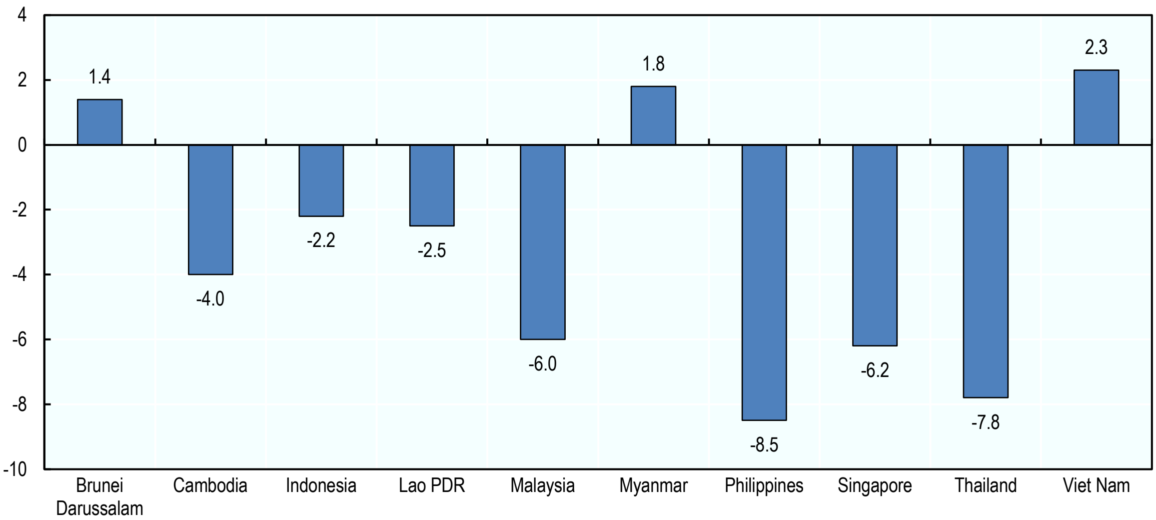


Source: (World Bank, 2020[18]) (World Economic Forum, 2019[19]).

The COVID-19 pandemic that began in early 2020 has interrupted decades of strong and sustained economic growth. As one of the first regions affected by the virus's rapid spread, ASEAN has faced supply-chain disruption and stalled demand, which have limited flows of travel, trade and investment. The economic downturn caused by domestic containment measures has weighed on private consumption and investment and the region is now in a severe recession that will have important effects on the job market. Economic performance is expected to weaken significantly across ASEAN countries in 2020 compared to

2019 (Figure 2.8). The region's economy as a whole is expected to contract by 4.4% in 2020 before growth rises to 5.2% in 2021, barring a second wave of infections (Asian Development Bank, 2020[20]).[7]

Figure 2.8. Expected real GDP growth, 2020



Source: (Asian Development Bank, 2020[20]).

The COVID-19 pandemic has highlighted the importance of ASEAN-level co-ordination and co-operation. On 9 June 2020, the ASEAN Expert Group on Competition (AEGC) released a "Joint Statement in Response to the Coronavirus Disease (COVID-19) Pandemic", which noted the continuing importance of competition law, regional co-operation and enforcement by national competition authorities.[8] On 12 November 2020, the association adopted the ASEAN Comprehensive Recovery Framework (ACRF) and an implementation plan, which offered a regional policy response for post COVID-19 recovery.[9] It set out five broad strategies that will drive recovery: enhancing health systems; strengthening human security; maximising the potential of intra-ASEAN market and broader economic integration; accelerating inclusive digital transformation; and advancing towards a more sustainable and resilient future. Competition policy and regional co-operation will continue to play a key role in this context.

2.2. Overview of the SPDS sector

2.2.1. Definition of a small package

There are various definitions of "small package" in the logistics industry. One method is its weight, with the upper limit determined by how much a single person can handle without using any specific equipment. Different market participants use different weight limits,[10] but a commonly used upper weight limit is 31.5 kilogrammes for a package. A separate category called "parcels" also exists, which is often used to identify packages with a weight of up to 20 kilogrammes within the framework of the Universal Postal Union (UPU).[11]

No definition of small packages appears in any legislation across ASEAN member states. Certain national postal services in member states distinguish between small packages (with a weight of up to 2 kilogrammes) and parcels (with a weight of up to 20 kilogrammes). They also use different weight limits depending on specific agreements with other SPDS providers.

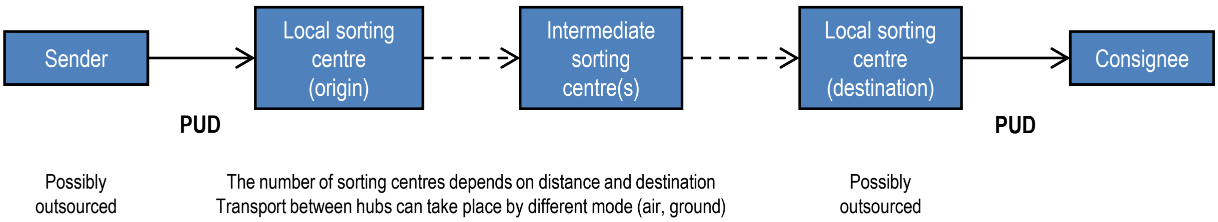
Small-package delivery services (SPDS or courier services) refer to the delivery of small packages from a pick-up location to a drop-off (delivery) location.[12] These services are mainly segmented into: 1) express and deferred (or non-express); 2) domestic and international; 3) business-to-business (B2B) and business-to-customer (B2C); or 4) transport by air, transport by land and transport by sea.

2.2.2. SPDS market structure and value chain

The SPDS industry is made up of companies that transport small packages from one location to another. An important feature of this market is that packages are picked up at a point of origin and delivered to destination. Known as pickup and delivery (PUD), this involves vehicles transporting small packages from senders to consignees, through local centres and final-stage sorting facilities. Another important feature of the industry is the ability to track a shipment at every step of the delivery process.

A package moving from sender to consignee will pass through a varying number of "nodes" before reaching its final destination.[13] SPDS are inherently multimodal, using small trucks, cars or messengers for PUD and other modes of transport such as truck, rail or air for longer distances.

Figure 2.9. Overview of steps in a small-package delivery service



Source: OECD analysis based on European Commission case COMP/M.6570 – UPS/ TNT Express, 30/1/2013 and (Dennis, 2011[21]).

Different actors are active in the SPDS value chain, roughly split between integrators and non-integrators.[14] An integrator has operational control over the SPDS logistical chain from origin to destination (including air transport), so that it can ensure delivery to meet a time commitment. The global integrators are FedEx/TNT, DHL and UPS.

There are several types of non-integrators active in the SPDS value chain.

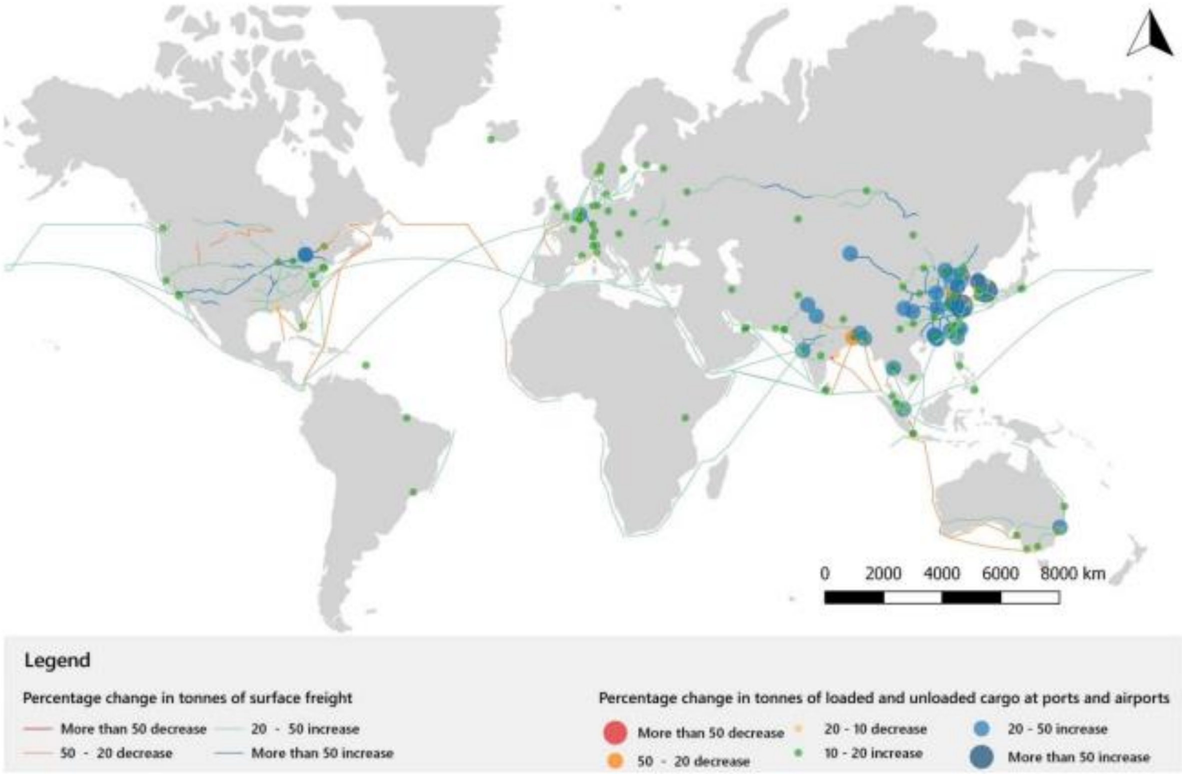
1. **Incumbent postal operators.** In many countries, the incumbent domestic postal operator is active in domestic and international SPDS. Generally, declining mail volumes have forced these operators to develop new business areas such as logistics, and in particular, SPDS.[15]
2. **Regional, national or local SPDS companies and partner networks.** These are often concentrated in the domestic small-package market. They may form alliances and partner networks to offer wider-ranging SPDS and expand into neighbouring countries.
3. **Smaller companies with a domestic PUD ground service in one or more countries**.

Many SPDS operators, both in ASEAN and around the world, offer ancillary services as a way to diversify, including warehousing and value-added services such as quality-control, packaging, labelling and tagging.[16]

2.2.3. E-commerce growth and its impact on the SPDS sector

The advent and rapid growth of e-commerce is already changing logistics and is likely to play an increasingly dominant role in the way people obtain goods.[17] Emerging business models offering free return of goods, tighter delivery windows, lower transport and transaction costs are leading to demand growth (ITF, 2019[22]). According to International Transport Forum (ITF) simulations on disruptive transport scenarios, e-commerce is expected to generate a considerable increase in air and road freight transport and an even greater rise in urban operations and deliveries thanks to increased demand for SPDS. Figure 2.10 shows the projected shifts of transport flows in the e-commerce sector by 2050. Southeast Asia is among the regions where an increase of 20% to 50% in tonnes of loaded and unloaded cargo is expected at ports and airports over the next 30 years.

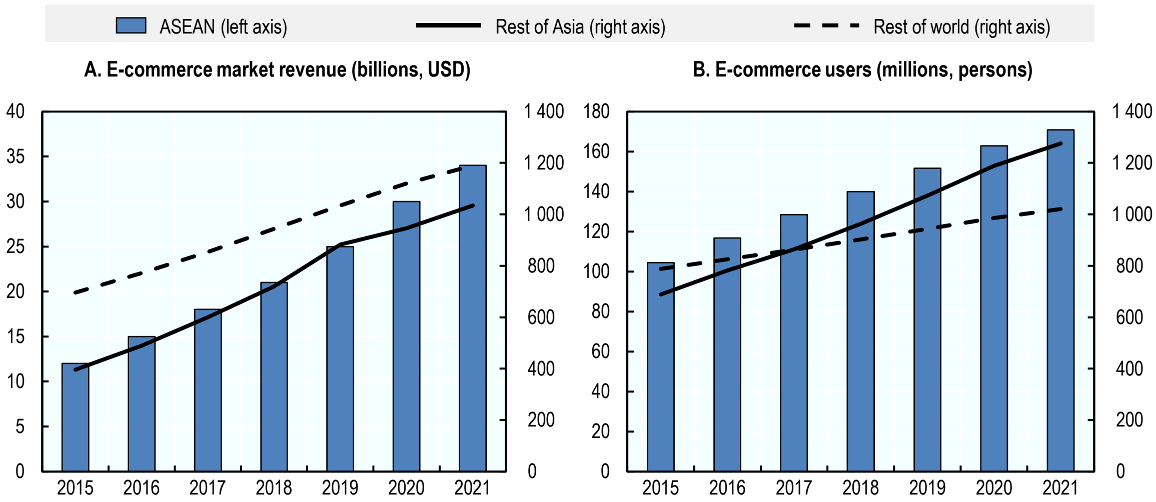
Figure 2.10. E-commerce and projected impact on freight transport, 2020-50



Source: (ITF, 2019[22]).

The e-commerce market in ASEAN remains relatively small compared to other Asian countries and other regions of the world,[18] but is expected to have grown at a double-digit pace with a compound annual growth rate (CAGR) of 19% in the seven-year period 2015-2021 (see Figure 2.11, Panel A). This may be a conservative estimate, as a 2019 study that covered the six largest markets in the region (Indonesia, Malaysia, the Philippines, Singapore, Thailand and Viet Nam) reported that the e-commerce market in these six countries was then worth USD 39 billion and predicted that it would grow to USD 153 billion by 2025, at a CAGR of 39% between 2015 and 2025 (Google, Temasek, Bain & Company, 2019[23]). The number of e-commerce users is growing fast and is expected to reach 170 million users in 2021 (see Figure 2.11, Panel B) as ASEAN member states' average Internet penetration rate is surpassing 60%, spurred by the boom of Internet users in several countries, especially Indonesia and the Philippines (OECD, 2018[24]).

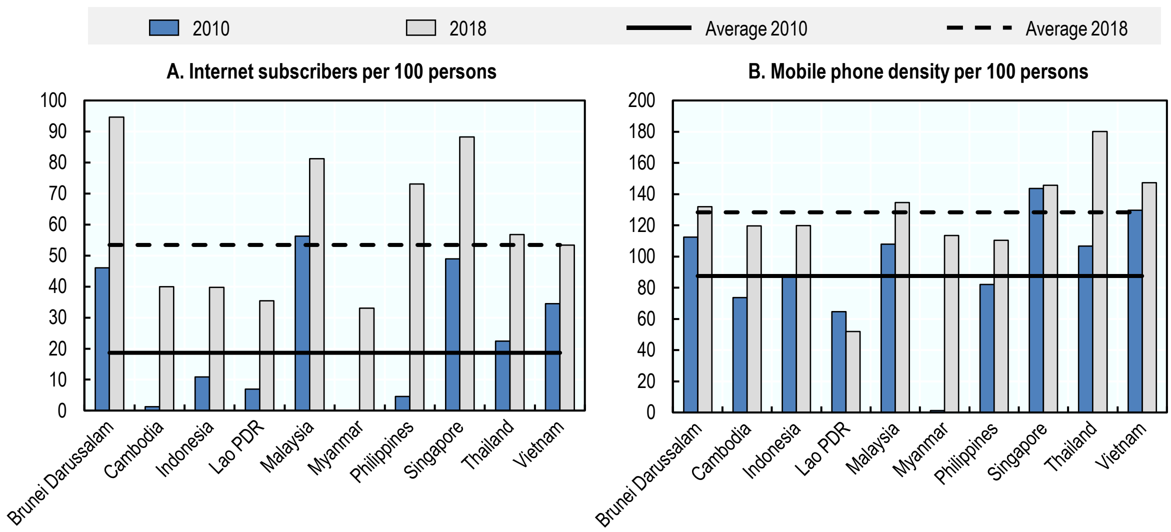
Figure 2.11. E-commerce market trends in ASEAN, 2015-21



Source: (OECD, 2018[24]).

This trend is driven by an increasingly highly connected and Internet-enabled population across ASEAN member states with a total number of 360 million people connected to the Internet in 2019, 100 million more than in 2015 (Google, Temasek, Bain & Company, 2019[23]). The total number of Internet subscribers in all ASEAN member states reached 57.6 per 100 population in 2019, more than sevenfold the number in 2005. The same trend is reflected in mobile-phone connectivity with an average regional density of 128.3 (per 100 persons) in 2018, an increase of about 46.6% compared to 2010 (see Figure 2.12). The COVID-19 pandemic is expected further to accelerate this trend with the imperative of digitalisation and digital connectivity becoming the cornerstone of the post-pandemic world (OECD, 2020[16]).

Figure 2.12. Internet and mobile-phone access connectivity, 2019



Source: (ASEAN, 2019[25]).

Globally, cross-border e-commerce B2B transactions, as well as B2C transactions, have introduced new dynamics to international trade, while transforming value chains and requiring logistics companies to shift their business models. International supply chains, once dominated by air and sea freight providers, are evolving rapidly into e-commerce-driven regional supply chains heavily influenced by domestic express and SPDS suppliers. This shift in logistics dynamics is even more relevant in Southeast Asia as countries in the region are moving from export-oriented to consumer-driven economies.

In ASEAN, the rapid increase in the scale of e-commerce – and so the concomitant rise in the importance of SPDS – is being driven by multiple factors including: 1) rising levels of the use of information and communications technology (ICT); 2) the development of ICT infrastructure; 3) improved transportation infrastructure and logistics capabilities; 4) the use of e-commerce payment systems; and 5) the legal and regulatory environment (OECD, 2018[24]). Ensuring a level playing field and stimulating competition plays a crucial role when optimising the legal and regulatory environment.

ASEAN adopted the Work Programme on Electronic Commerce 2017-2025[19] on 7 September 2017 and ASEAN Economic Ministers signed the ASEAN Agreement on Electronic Commerce on 12 November 2018.[20] Both show that ASEAN has recognised the potential of the digital economy, and the need to develop the region's e-commerce industry by creating a conducive environment for its growth through advancing trade rules and building up greater digital connectivity in the region.

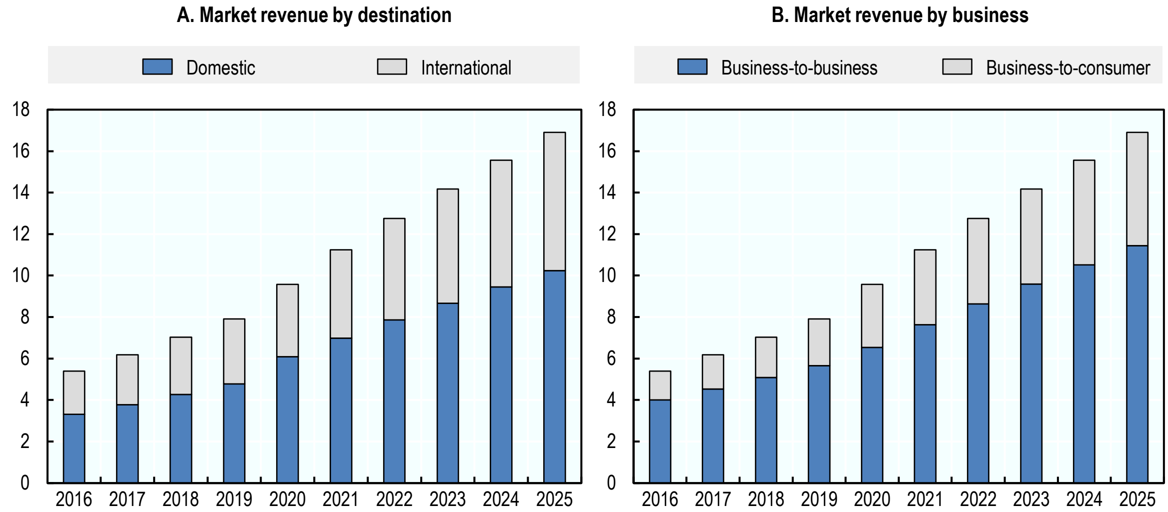
Signed in November 2020, the Regional Comprehensive Economic Partnership (RCEP) between all ASEAN member states, Australia, China, Japan, Korea and New Zealand (see Box 3.1) emphasises the importance of trade liberalisation and promoting e-commerce among the signatories. Chapter 12 of the agreement requires them to adopt or maintain a legal framework that creates a conducive environment for e-commerce development, including the protection of e-commerce users' personal information. Chapter 8 on trade in services stipulates the substantial removal of restrictive and discriminatory measures affecting trade in services, including in the distribution and logistics sectors.

In addition to the RCEP, four ASEAN member states, namely Brunei Darussalam, Malaysia, Singapore and Viet Nam are among the signatories of the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) (see Box 3.1). Chapter 10 on cross-border trade in services applies to measures affecting the access to and use of distribution, transport or telecommunications networks and includes an annex on express delivery services.

2.2.4. Key figures of the SPDS sector

As noted, the rapid growth in e-commerce markets in ASEAN and beyond is driving unprecedented increase in demand for SPDS. Across ASEAN member states, the SPDS market is evolving rapidly although it remains relatively fragmented with different international logistics providers and domestic players that are still dominating their respective local markets. ASEAN total market revenues for courier, express and parcel (CEP) delivery were estimated at USD 7.92 billion in 2019, and are expected to reach USD 16.91 billion by 2025, registering a 13.49% CAGR over the 2020-2025 period (Mordor Intelligence, 2020[26]). Domestic activities generated about 60% of total market revenues in 2019. The B2B segment accounted for the largest share (about 71%) of market revenue in the same year, but the growth prospects of the B2C segment are expected to grow faster with 15.9% CAGR over the 2020-2025 period and a projected worth of USD 5.47 billion by 2025 (Figure 2.13, Panel B).

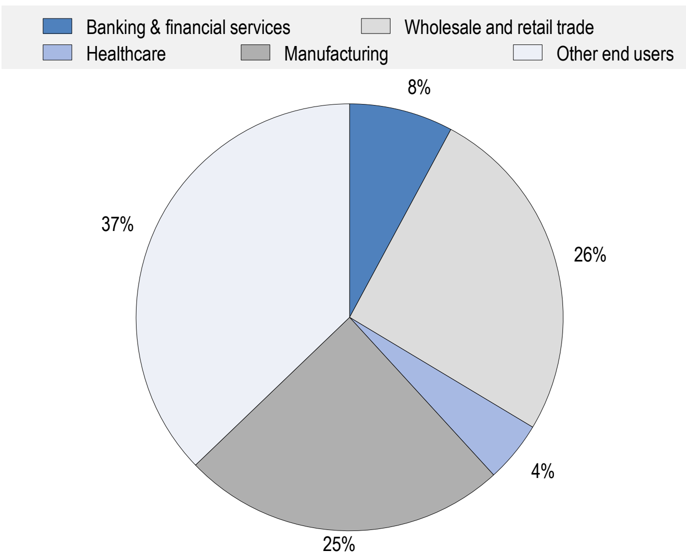
Figure 2.13. ASEAN SPDS market revenue, 2016-25



Source: (Mordor Intelligence, 2020[26]).

In terms of SPDS end users, the wholesale and retail trade (including e-commerce) and the manufacturing sectors represented half of total revenue in 2019 at around USD 4 billion (Figure 2.14). The wholesale and retail trade sector was the major contributor to the SPDS market during the COVID-19 pandemic, mainly through e-commerce, but also thanks to the emerging trend of omni-channel retailing across several ASEAN member states. The sector will continue to be a major driver for the SPDS market with 17.7% CAGR over the 2019-2025 period and revenue over USD 5 billion by 2025 (Mordor Intelligence, 2020[26]).

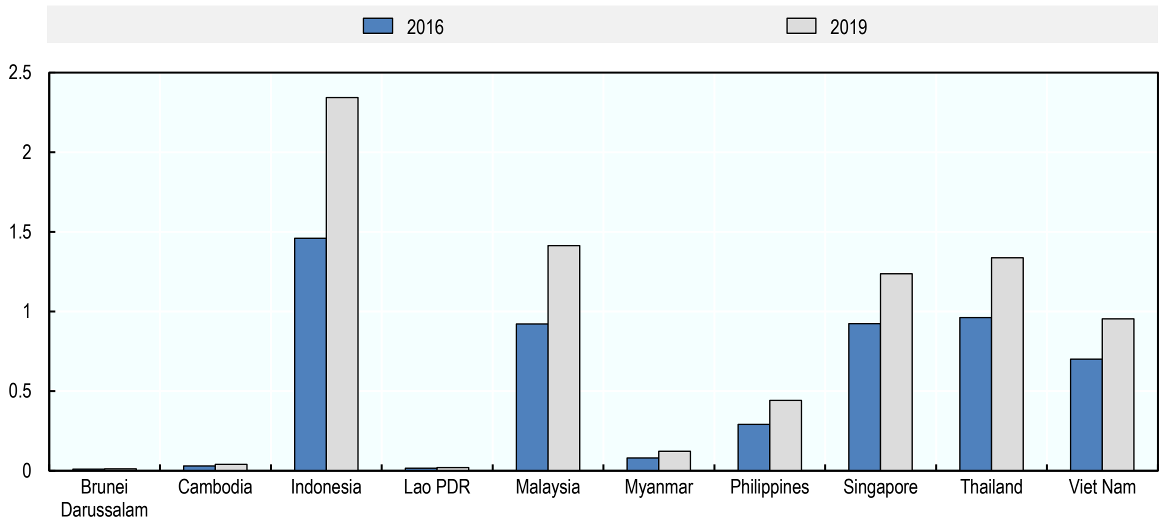
Figure 2.14. ASEAN SPDS market revenue by sector, 2019



Source: (Mordor Intelligence, 2020[26]).

In 2019, Indonesia's SPDS market accounted for almost 30% of the total ASEAN SPDS-sector revenues, followed by Malaysia (18%) and Thailand (17%) (see Figure 2.15). According to recent estimates, the Indonesian SPDS market is projected to exceed USD 5 billion in revenue by 2025 with the highest regional CAGR of 16% over the 2019-2025 period, followed by Malaysia (14%), the Philippines (14%) and Myanmar (13%) (Mordor Intelligence, 2020[26]).

Figure 2.15. ASEAN SPDS market revenue by country, 2016 and 2019

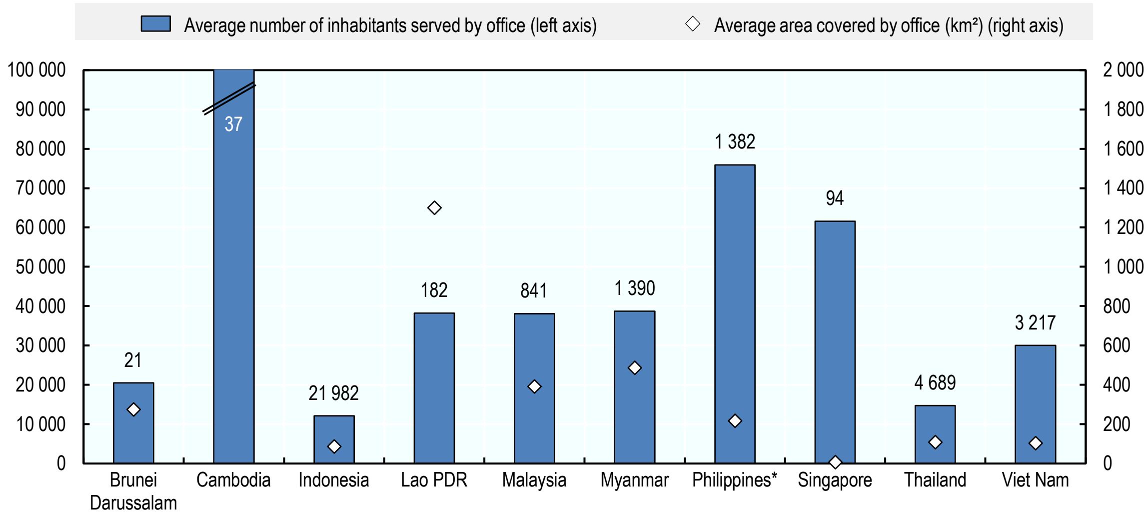


Source: (Mordor Intelligence, 2020[26]).

A number of third-party logistics (3PL) companies, including local, regional and international players, are active in the ASEAN SPDS market. These include DHL, JNE Express, Kerry Express, FedEx, UPS and Citra Van Titipan Kilat (TIKI). In 2019, several SOEs were also among the top-ten players in the ASEAN SPDS sector, including Singapore Post, Thailand Post, Vietnam Post and Pos Malaysia. In a number of member states, national postal companies are among the largest players in the domestic B2C segment as they can leverage their extensive network of post offices. However, this very much depends on the local context and market characteristics. Figure 2.16 shows the different market dynamics in member states in 2018. Certain, such as Indonesia and Thailand, have relatively dense post-office networks with the average number of inhabitants for each office below 15 000 and average area covered by a permanent office of around 100 km^2.Other member states, including Cambodia and Lao PDR, have a more sparse post-office network with the average area covered by a permanent office of over 1 000 km^2.

The crisis caused by the COVID-19 pandemic will lead to long-term changes. It will likely expedite the shift to e-commerce, especially for consumers until recently more resistant to online retail channels. Bricks-and-mortar businesses will also evolve offering services beyond retail, including last-mile deliveries (World Economic Forum, 2020[27]). Digital transformation is already occurring rapidly in ASEAN. Cambodia, Lao PDR and Myanmar recorded an annual growth of approximately 20% in e-commerce users in April 2020 compared to the previous year while high annual growth rates of online sales (above 15%) were recorded in Indonesia, Thailand, the Philippines and Malaysia. As seen in Figure 2.13, Panel B, total e-commerce market revenues are expected to grow by 20% in 2020, almost double the CAGR over the 2016-2019 period, with the B2C segment performing notably strongly (+35%). This trend is expected to be maintained post-pandemic, leading to further market growth with accelerated government and business initiatives to provide connectivity to "vulnerable communities", removing barriers for SMEs, and providing easier access to products with better price and quality (World Economic Forum, 2020[27]).

Figure 2.16. Domestic post network by country



Note: The numbers in the figures indicate the total number of permanent post offices. Data for the Philippines are for 2017.
Source: (UPU, 2020[28]).

3 ASEAN state-owned enterprises and SPDS

3.1. State-owned enterprises (SOEs) in ASEAN member states

3.1.1. The definition of SOEs in ASEAN

Like OECD countries, ASEAN member states have no uniform definition of SOEs and use different terms when referring to them. Various elements such as their legal forms, the percentage of state ownership, and the extent to which they operate commercial activities are considered in defining them. Table 3.1 provides an overview of SOEs' definitions and their respective legal basis in the ten ASEAN member states.

Table 3.1. SOEs as defined in ASEAN member states

ASEAN member state	Definition	Legal basis
Brunei Darussalam	N/A	N/A
Cambodia	SOEs, also called public enterprises, are legal entities with financial autonomy. There are three types of SOEs: 1) state company, in which all capital is owned by the state and which has financial autonomy; 2) public establishment with economic characteristics (PEEC), a public legal entity with autonomous financial management producing and/or selling goods or services with often exclusive rights for specific areas; and 3) joint-venture, in which over 51% of capital is owned by the state and the minority is owned by private investors.	Law of 17 June 1996 on General Statute of Public Enterprises
Indonesia	SOEs (*badan usaha milik negara* or BUMN in Indonesian) are companies wholly or partly, directly or indirectly, owned by or form part of government. Three types of SOEs exist: 1) *perusahaan perseroan* (*persero*), state-owned limited liability enterprises of which at least 51% of the shares is owned by the state and whose principal objective is to seek profit; 2) *perseroan terbuka*, state-owned limited liability enterprises that are listed (through an initial public offering), and so only partially held by the state; and 3) *perum*, public enterprises wholly owned by the state to serve the public interest in the form of providing high-quality goods and/or services.	Law No. 19/2003 on State-Owned Enterprises dated 19 June 2003
Lao PDR	SOEs, also called state enterprises or state companies, are those which are established by the state with its capital contribution more than 50% of the total capital or by transferring other types of enterprise to a state enterprise.	2013 Law on Enterprises (No.46/NA) dated 26 December 2013, amended in 2014
Malaysia	SOEs can be 1) statutory bodies, which are incorporated companies whose functions are spelled out in specific legislation; 2) companies established under the Companies Act; and 3) *yayasans* or foundations. SOEs can be divided into two main categories: 1) government-linked investment companies (GLICs), and 2) government-linked companies (GLCs). Both are either directly or indirectly owned by the federal government or state governments. GLICs are mostly holding companies or investment companies; GLCs (including their subsidiaries and affiliates) are defined as companies with a primarily commercial objective in which the Malaysian government has a controlling stake, either directly or through GLICs.	Act 777, Companies Act 2016

ASEAN member state	Definition	Legal basis
Myanmar	SOEs are enterprises incorporated either under the State-owned Economic Enterprises Law (1989) or the Special Company Act (1950). Moreover, many SOEs are in the form of ministerial departments.	State-owned Economic Enterprises Law (No. 9/1989) or Special Company Act (No. 54/1950)
The Philippines	SOEs or government-owned or -controlled corporations (GOCCs) are defined as "any agency organised as a stock or nonstock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock". A minimum government ownership, defined as 50%+1 of the outstanding capital, qualifies entities as GOCCs. There are two main categories of GOCCs in the Philippines: 1) non-chartered GOCCs, which are organised under the Corporation Code of the Philippines; and 2) chartered GOCCs, which are created (and vested with functions) by a special law or charter and for which the Corporation Code only applies insofar as its provisions do not conflict with the charter.	Republic Act No. 10149, GOCC Governance Act of 2011
Thailand	SOEs are defined as either special agencies established by law for a particular purpose that are 100% owned by the government, or limited-liability companies or public companies with government ownership of over 50%. There are two types of SOEs in Thailand: government agencies (also called statutory corporations) and incorporated SOEs.	Budget Procedures Act, B.E. 2561 (2018)
Singapore	SOEs are not defined in legislation. "SOEs" in Singapore include companies incorporated under the Companies Act that are owned by the Singapore government (either directly or through other government agencies) or by Temasek Holdings having significant control or influence. They are commonly referred to as government-linked corporations (GLCs) or Temasek-linked corporations (TLCs).	Companies Act (Chapter 50/2006 Revised Edition)
Viet Nam	In the Law on Enterprises, SOEs are defined as enterprises under 100% state ownership. The General Statistical Office (GSO), however, uses a broader definition to include any enterprise in which the government owns 51% or more of the share capital.	Law No. 68/2014/QH13 on Enterprises; Law No. 69/2014/QH13 on Management and Utilisation of State Capital Invested in Enterprises' Manufacturing and Business Activities

Source: (OECD, 2016, pp. 21-22[29]); (OECD, 2013, p. 70[30]).

3.1.2. The importance of SOEs in ASEAN

SOEs as a tool for industrial policy and economic development

While the importance of SOEs varies across the region, ASEAN member states are "among the most widely cited examples of a proactive use of SOEs for development … with key companies in the network industries controlled by the state and assigned roles in fostering development since the early days of independence" (OECD, 2015, p. 29[3]).[21] SOEs are widespread in ASEAN member states, while their historical background, development, and current roles in the region are very diverse (Samphantharak, 2019[31]). Governments often rely on SOEs for the development of their industrial policies, with formal regulation and legislation playing a less important role.

In ***Brunei Darussalam***, Darussalam Assets is a government-linked holding company established in 2012 and owned by the Minister for Finance Corporation. It has a portfolio of SOEs active in various sectors and considers itself "an integral part of the Government led initiative to spur economic development".[22]

In ***Malaysia***, SOEs are an essential instrument of the country's development strategy (Putrajaya Committee on GLC High Performance, 2015[32]).

In the ***Philippines*****,** the 1987 Constitution reaffirmed the state's role as an economic player: "Government-owned and controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability".[23]

In **Indonesia**, the key role of the state in achieving economic goals and objectives is recognised in Article 33(1) and (2) of the 1945 Constitution, which mandates that the economy "shall be organised as a common endeavour" and sectors of production "which are important for the country and affect the life of the people shall be under the powers of the State". Consequently, in many of these sectors, SOEs are the main market player or even hold a state monopoly.[24]

In **Viet Nam**, SOEs play an essential role in ensuring the socialist orientation of the national economy, having a strong presence in several key sectors.

SOEs as prominent players

SOEs also continue to play a key role in several ASEAN member states' economies and maintain prominent positions in domestic markets. In some cases, member states retain – through SOEs – monopolies in important sectors.

In ***Brunei Darussalam***, SOEs are active in a number of key sectors, including oil and gas, telecommunications, transport, and energy generation and distribution, either in the form of wholly state-owned companies or in joint ventures with foreign investors (Bryane, 2017[33]). Darussalam Assets has a portfolio that includes SOEs active across the economy in sectors including telecommunications, energy generation and distribution, transport (logistics and aviation), agribusiness, food and beverage, leisure and tourism, healthcare, education, and real estate.[25]

In ***Cambodia***, as a result of the shift from a planned economy to a market-driven system in the 1990s, the government has privatised several SOEs. As reported in OECD (2018[34]), the country had 187 wholly owned SOEs in 1989; by the end of 2000, 160 had been wholly or partially privatised. Based on information provided by the Ministry of Economy and Finance, as of February 2020, 13 SOEs remained in Cambodia, including 2 joint ventures.

In ***Indonesia***, since its independence in 1945, SOEs have grown to play an important role in the country's economy. Over the past 76 years, Indonesia has tried several times to decrease the size and importance of the state sector, but, according to the 2019 OECD Services Trade Restrictiveness Index, the state retains "a prominent role" in the Indonesian economy with "at least one major state-owned enterprise in all sectors except for computer services, motion pictures and sound recording" (OECD, 2019[35]). In 2018, SOEs employed 152 969 people and their assets had a value equivalent to 54.7% of GDP.[26]

In ***Lao PDR***, as transition toward a market economy, the government began privatising SOEs in 1986. Despite a steady reduction in the number of SOEs, they still have a significant role in the country's economy, being active in key sectors such as finance, mining, energy and telecommunications. In 2017, the OECD (2017, p. 138[36]), based on the National Committee for Business Development of Lao PDR, reported that SOEs had assets of USD 11.7 billion, revenues of USD 2.8 billion, and profits of USD 119 million.

In ***Malaysia***, SOEs today still constitute a significant part of the national economic structure. They remain the main providers of key strategic utilities and services, and drive infrastructure and industrial projects (OECD, 2013, p. 70[30]; Gomez, 2018[37]). Although no official list of SOEs exists, only Minister of Finance (Incorporated), a government investment special purpose vehicle, holds direct majority shareholding in 70 companies.[27] Moreover, based on publicly available information, as of July 2017, the Malaysian government owned 42% of the value of firms listed on the national stock exchange, Bursa Malaysia, including majority stakes in a number of listed companies.[28]

In ***Myanmar***, SOEs remain of great significance to the country's economy (Bauer et al., 2018[38]; World Bank, 2017[39]) generating significant income for the public budget. Historically, SOEs have been a prominent feature of the national economy and, in 2014, 639 SOEs were active in various industries, employing around 145 000 people and generating the equivalent of 12% of GDP in fiscal revenue (OECD, 2014[40]). Since then, the government has implemented large-scale reforms, as a result of which Myanmar now has 31 SOEs under 5 ministries, according to OECD research. This number does not include numerous SOEs controlled by the military. Many of the SOEs have the form of ministerial departments.

The ***Philippines*** saw a steady rise in the number of SOEs from 65 in 1970, 303 in 1985, to 605 by 2010 (OECD, 2015, p. 63[3]). They remain major players in the country's economy notwithstanding recent rationalisations of the sector through streamlining, reorganisations, mergers, privatisations and abolitions. In 2018, the Governance Commission for GOCCs reported 120 GOCCs active in the Philippines with a total asset value of approximately USD 150 billion (PHP 7 916.07 billion), net worth of approximately USD 69 billion (PHP 3 626.28 billion), and overall income of approximately USD 4 billion (PHP 225.43 billion) (Governance Commission for GOCC, 2018[41]).

Thailand had 56 SOEs in 2018, with total assets of USD 385 billion, a combined net income of USD 5.5 billion, and 270 000 employees or 0.7% of the Thai labour force (US Department of State, 2018[42]).

In **Singapore**, the state has had a key role in the country's economic growth, with SOEs playing a major role in industrial policy since independence. In the 1970s, the government decided to streamline its equity holdings and establish two holding companies: Sheng-Li (made up of defence-related companies) and Temasek. In the process, the government transferred SOE shares at book value to Temasek.[29] Temasek still owns stakes in a large number of Singapore companies. Since the early 2000s, Temasek has also globalised its activities. As of 31 March 2020, Temasek's net portfolio was worth approximately USD 225 billion (SGD 306 billion) with 24% of its portfolio invested in Singapore and 76% overseas.

In 2015, ***Viet Nam*** had more than 780 wholly owned SOEs whose total assets were equivalent to approximately 80% of Viet Nam's GDP; their total debt was approximately USD 69 million (VND 1.5 trillion) or the equivalent of 39% of GDP (OECD, 2018, p. 25[43]). SOEs were also estimated to account for more than one-third of Vietnamese companies' total assets, and represent 450 out of the approximately 700 companies publicly listed on the Ho Chi Minh and Hanoi Stock Exchanges (OECD, 2018[44]; 2018[44]).

While they continue to play an important role in member states' economies and contribute to ASEAN's economic growth, SOEs can, in certain circumstances, crowd out domestic and foreign privately owned enterprises and so undermine economy-wide efficiency. This reinforces the need to maintain a level playing field in those markets in which they are active.

Certain ASEAN SOEs are expanding internationally into other member states and beyond the ASEAN region. This has raised additional concerns, in particular as to whether their advantages in their domestic markets may distort the level playing field in other countries where they operate (OECD, 2015, p. 35[3]).

Box 3.1. SOEs and competitive neutrality in the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership Agreement (RCEP)

The **Comprehensive and Progressive Trans-Pacific Partnership (CPTPP)** grew out of the TPP, a free-trade agreement signed in 2016 by 12 countries: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Viet Nam. The agreement was renamed the CPTPP after the withdrawal of the United States in 2017. In December 2018, the CPTPP entered into force in the first six countries to ratify the agreement (Australia, Canada, Japan, Mexico, New Zealand, and Singapore) and in January 2019, the CPTPP entered into force in Viet Nam.

Designed to create a comprehensive trade and investment regulatory framework that facilitates market access, the CPTPP aims to go beyond traditional free trade agreements by addressing innovative issues such as the development of the digital economy and the role of both SOEs and SMEs.

Chapter 17 of the CPTPP deals with SOEs and designated monopolies, introducing rules on non-discriminatory treatment, non-commercial assistance and transparency. Brunei Darussalam, Malaysia, Singapore and Viet Nam benefit from certain exemptions, including *ad hoc* transparency mechanisms, the possibility to allow state financing and other commercial assistance to SOEs (in limited circumstances and subject to conditions), and a transitional period for the application of certain provisions. Chapter 17 also supports the sharing of competitive neutrality best practices to ensure a level playing field between SOEs and privately owned businesses.

The **Regional Comprehensive Economic Partnership Agreement (RCEP)** is an agreement that aims to "establish a modern, comprehensive, high-quality, and mutually beneficial economic partnership framework to facilitate the expansion of regional trade and investment and contribute to global economic growth and development".[1] The RCEP was signed in November 2020 by all ASEAN member states, Australia, China, Japan, New Zealand, and Korea.

Chapter 13 of the RCEP has the objective "to promote competition in markets, and enhance economic efficiency and consumer welfare, through the adoption and maintenance of laws and regulations to proscribe anticompetitive activities, and through regional cooperation on the development and implementation of competition laws and regulations".[2]

With regard to competitive neutrality principles, under Article 13.3(5), the parties committed to apply their respective competition laws and regulations "to all entities engaged in commercial activities, regardless of their ownership" and that any "exclusion or exemption from the application of … competition laws and regulations, shall be transparent and based on grounds of public policy or public interest".[3] Annexes 13A to 13D prescribe transitional periods ranging between three to five years for Brunei Darussalam, Cambodia, Laos PDR and Myanmar to comply with these obligations.

Notes:
[1] Article 1.3.a, Chapter 1, RCEP, https://rcepsec.org/wp-content/uploads/2020/11/Chapter-1.pdf.
[2] Article 13.1, Chapter 13, RCEP, https://rcepsec.org/wp-content/uploads/2020/11/Chapter-13.pdf.
[3] Article 13.3.5, Chapter 13, RCEP, https://rcepsec.org/wp-content/uploads/2020/11/Chapter-13.pdf
Source: (OECD, 2019, p. 123[45]); Australian Government (2018[46]), *Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, www.dfat.gov.au/sites/default/files/tpp-11-treaty-text.pdf; ASEAN (2020[47]), *Joint Leaders' Statement on the Regional Comprehensive Economic Partnership (RECPP)*, https://asean.org/joint-leaders-statement-regional-comprehensive-economic-partnership-rcep-2; RCEP (2020[48]), Regional Comprehensive Agreement, https://rcepsec.org/legal-text.

3.2. SOE ownership models

Within a state administration, the "ownership function" of SOEs is identified as being held by the state body that exercises voting rights and other shareholder's rights on behalf of the government, holds the power and responsibility to appoint boards of directors, and sets and monitors strategic objectives.

The exercise of state ownership over commercial SOEs – those active in the marketplace and performing commercial activities in competition (or potential competition) with other commercial entities[30] – typically follows one of the five ownership models (OECD, 2018, pp. 23-24[49]).

Table 3.2.SOE ownership models

Ownership model	Main features
Centralised model	One government institution exercises ownership function as shareholder in all commercial SOEs controlled by the state; it can be either a specialised ownership agency or a designated government ministry.
Co-ordinating agency	Specialised government units or central agencies act as advisors to line ministries (shareholders) on technical and operational issues, with their most important mandate often being to monitor SOE performance.
Twin track	Two different government institutions exclusively exercise ownership functions on their respective portfolios of SOEs.
Dual model	Two government institutions – often the relevant line ministry and the finance ministry – share the ownership function in a commercial SOE.
Decentralised model	No single institution exercises ownership functions with line ministries in practice running SOEs as an extension of their ministerial powers.

Source: (OECD, 2018, pp. 23-24[49]).

The OECD has observed that the exercise of ownership rights should be clearly identified within the state administration and centralised in a single ownership entity or at least carried out by a co-ordinating body with sufficient capacity and competencies (OECD, 2015[5]). In fact, in OECD countries a tendency to centralise the state's ownership function has made it easier to pursue public policy and regulation consistent with competitive neutrality; this has helped ensure that responsibility for ownership and regulation remain separate. Moreover, countries with elements of centralised ownership are generally more likely to subject SOEs to specific reporting requirements that either complement – or compensate for the absence of – other existing reporting requirements.

As seen in the country descriptions below, there is no single SOE ownership model within ASEAN member states. Even where prevailing ownership models can be characterised, differences and exceptions can be observed (as is also often the case in OECD countries). For instance, in member states that have embraced centralised models, certain SOEs nevertheless remain overseen – for political or strategic reasons – by line ministries or other state bodies.

- ***Brunei Darussalam*** has several SOEs formally incorporated and registered as part of Darussalam Assets, a government linked holding company; in certain instances, however, commercial activities are exercised directly by ministerial departments.
- ***Cambodia*** can be characterised as a decentralised model. A number of major economic activities are carried out either by the general government sector or by enterprises that, while not classified as SOEs, are closely linked to the public authorities. The Ministry of Economy along with the responsible line ministries or authorities exercise close control over operation and financial status of SOEs of which the state owns either 100% or a majority.
- ***Indonesia*** can be characterised as a centralised model with a dedicated ministry, the Ministry of State-Owned Enterprises, exercising state-ownership functions in most SOEs. Only five SOEs

remain under the ownership of the Ministry of Finance; these are part of a Special Mission Vehicle (SMV) programme.[31]

- ***Lao PDR*** can be characterised as a decentralised model with the Ministry of Finance exercising state-ownership functions in around one third of the SOEs, with the remainder under the responsibility of different government institutions. No government entity co-ordinates or oversees all or a majority of SOEs.
- ***Malaysia*** can be characterised as a centralised model with exceptions. The government has organised its SOE portfolio under the purview of several government-linked investment companies (GLICs). The most important of these GLICs, Minister of Finance (Incorporated), functions as a division of the Ministry of Finance.
- ***Myanmar*** can be characterised as a decentralised model with line ministries exercising state-ownership functions in SOEs in their respective sectors.
- ***The Philippines*** can be characterised as a model with a co-ordinating agency, the Governance Commission for Government-Owned and -Controlled Corporations (GCG), under the supervision of the Office of the President.
- ***Thailand*** can be characterised as a centralised model under the State Enterprise Policy Office (SEPO), which is part of the Ministry of Finance. SEPO exercises state-ownership rights in many SOEs and is also secretariat to the committees responsible for monitoring and overseeing SOEs.
- ***Singapore*** can be characterised as a centralised model under a holding-company structure through Temasek Holdings, which is under the purview of the Ministry of Finance.[32] Its portfolio includes majority or full share ownership of SOEs. Temasek's portfolio does not include, however, all SOEs operating in the country.
- ***Viet Nam*** can be characterised as a decentralised ownership model. A co-ordinating agency, the Committee for Management of State Capital (CMSC), currently manages 19 large SOE groups, even if ownership is still exercised by line ministries and provincial committees responsible for sectoral policy and regulation. State economic groups (SEGs) also act as holding companies for a number of SOE subsidiaries or affiliates. Finally, the State Capital Investment Corporation (SCIC) under the Ministry of Finance is assigned to manage state capital in many SOEs for the purposes of restructuring and sale.

Despite many ASEAN member states maintaining decentralised state-ownership models, some have introduced a degree of overall policy management through co-ordinating agencies or holding companies that oversee at least a portion of the SOEs.

- Between 2005 and 2015, ***Malaysia*** introduced a degree of policy co-ordination through the GLC Transformation Programme, a government initiative targeting a subset of 20 significant SOEs (OECD, 2017, p. 11[50]). However, a large number of SOEs remained unaffected by this reform.
- In 2005, ***Viet Nam*** established the State Capital Investment Corporation (SCIC), a ministerial-level agency acting as sole representative of the state's shareholdings in corporatised (or equitised) SOEs. SCIC is organised as a financial holding company, entirely owned by the state, although it appears that it typically acquires minority stakes to improve SOEs' performance, which it then divests. Moreover, SCIC does not usually retain control over SOEs that are already managed by line ministries. In 2018, Viet Nam established the CMSC to improve SOE co-ordination and provide strategic guidance to 19 SOE groups, including SCIC.

3.3. SOE reforms in ASEAN

In several ASEAN member states, SOEs have undergone significant reforms in recent years. In some instances, however, there have been substantial delays in their implementation or they have interested only a limited number of SOEs.

3.3.1. Indonesia

Since 2014, Indonesian president Joko Widodo has radically changed the government's SOE strategy. The new policy stresses the need for SOEs to take a more active role in economic development and gives renewed emphasis to specific objectives, including contributing to national advancement. As a result, the government deprioritised the privatisation process, and SOEs became a key part of the government's drive to expand infrastructure spending and gained access to financing tools, such as preferential lending by state-owned banks, project guarantees and asset securitisation. In 2016, after years of increased state capital injections (*penyertaan modal negara*), the government proposed a different – and more sustainable – way to expand the SOE sector with the establishment of sectoral state-owned holding companies (SOHCs) across 16 sectors. SOEs were to become subsidiaries of such SOHCs and co-operate with one another in general business activities, financing, procurement, and capacity development, under SOHC co-ordination. In the longer term, the government said it envisaged the creation of a "holding company" similar to Singapore's Temasek Holdings or Malaysia's Khazanah Nasional; these can be successful models of management if the government can adopt an arm's-length approach to SOEs' operational decision-making. Legislation to implement this new model has yet to be drafted.

3.3.2. Malaysia

In 2010, the government's *New Economic Model 2011-2020* (NEM) plan stated that "heavy government and government-linked company presence have discouraged private investment" and that "the government as both business owner and regulator of industries faces conflicts of interest that can … give GLCs an unfair advantage over private firms" (National Economic Advisory Council, 2010, p. 45; 135[51]). In the NEM, the government committed to divest "GLCs in industries where the private sector is operating effectively" and to operate GLCs "on a strict commercial basis, free of government interference and without government preferential treatment" (National Economic Advisory Council, 2010, p. 133; 136[51]). The *Mid-Term Review of the Eleventh Malaysia Plan 2016-2020*, published in 2018, identified SOE policies as a strategy to improve market efficiency with the aim to strengthen sectoral growth and structural reforms (Ministry of Economic Affairs, 2018[52]). It states that: "focus will be given in reviewing and streamlining the role of state-owned enterprises (SOEs) and monopoly entities to meet the objectives of enhancing market efficiency and fair competition" (Ministry of Economic Affairs, 2018, Chapter 15, p. 14[52]) and to increase transparency. According to the *Mid-Term Review*, a "special ministerial committee" will review policies and concessions and formulate a national policy and governance framework "to align SOEs … with the broader national development agenda" (Ministry of Economic Affairs, 2018, Chapter 15, p. 14[52]). The OECD understands that a review of holding company Minister of Finance (Incorporated) is ongoing. Moreover, according to the *Mid-Term Review*, the government will undertake "a review of existing legislation governing the operation of SOEs" and "a single oversight authority will be established to consolidate information on assets and liabilities of SOEs as well as produce and publish a comprehensive financial report" (Ministry of Economic Affairs, 2018, Chapter 10, p. 13 [52]). Finally, the *Mid-Term Review* recognised "issues with overlapping roles" and with the appointment of boards of directors and top management (Ministry of Economic Affairs, 2018, Chapter 8, p. 11[52]).

3.3.3. The Philippines

Established in 2000, the Privatization and Management Office (PMO), an agency attached to the Department of Finance, is assigned assets of abolished SOEs or unserviceable government-owned assets and then designs the bidding rules for privatisation.[33] In 2013, to support the transformation of SOEs, GCG established a Multi-Sector Governance Council (GCG Memorandum Circular No. 2013-04) and in 2015 released Guidelines Covering the Merger or Abolition/Dissolution of GOCCs (GCG Memorandum Circular No. 2015-03). These prescribe that a decision to "transform" – either merge, dissolve or abolish – an SOE must be guided by key considerations, including whether: 1) an SOE's functions remain relevant or consistent with the national development policy; 2) an SOE is still achieving desired outcomes in a cost-efficient way; and 3) an SOE is involved in activities that would be better carried out by the private sector.

Box 3.2. National Competition Policy in the Philippines

On 30 July 2020 in Joint Memorandum Circular No. 01-2020, the National Economic and Development Authority (NEDA) and the Philippine Competition Commission (PCC) formulated a National Competition Policy (NCP).

One of its key elements is that government agencies should be guided by competitive neutrality. It states that SOEs "shall not enjoy net competitive advantages or be subjected to disadvantages over private sector businesses simply by virtue of public sector ownership, unless it can be clearly demonstrated that the greater public interest will be served and there is lack of commercial viability".

To promote competitive neutrality, the NCP requires government agencies to: 1) re-assess SOEs' mandates; 2) recommend separation of SOEs' proprietary and regulatory activities; 3) assess and monitor the impact of existing subsidies and state interventions in favour of SOEs; 4) establish guidelines for granting subsides; and 5) implement measures to neutralise the advantages or disadvantages for SOEs.

Source: Republic of the Philippines (2020[53]), "The National Competition Policy of the Philippines", Joint Memorandum Circular No. 01-2020, https://law.upd.edu.ph/wp-content/uploads/2020/08/NEDA-PCC-JMC-No-01-2020.pdf.

3.3.4. Thailand

The *Twelfth National Economic and Social Development Plan (2017-2021)* acknowledges that many SOEs suffer high losses and are "interfered with or controlled by other organisations", while there is a "lack of unity" about their supervisory structures. It also notes that certain SOEs "assume both the role of regulator and operator", resulting in unfair competition with the private sector to the detriment of consumers.[34] The *Twelfth Plan* envisages an adjustment to the remuneration and benefits systems enjoyed by SOE executives, as well as reforms to the enterprises' long-term development strategies – including restructuring and mergers – to realign them with their core missions and objectives. Moreover, it insists upon the importance of separating SOEs' roles as policymakers, regulators and operators by "enhancing the regulatory and supervisory framework for SOEs".[35]

A major reform of the SOE sector entered into force on 22 May 2019. It is founded upon five pillars: 1) the State Enterprise Policy Committee (SEPC) became a "legal body", with SEPO as its secretariat unit and its guidelines having a binding effect over SOEs; 2) a five-year SOE economic plan was formally introduced; 3) guaranteed government compensation for expenses and revenue losses incurred as a result of public-service obligations in line with the five-year SOE economic plan; 4) more concrete performance assessment; and 5) centralised corporate governance guidelines and monitoring of corporate-governance standards.

3.3.5. Viet Nam

The *Socio-Economic Development Strategy for 2011-2020* recognised the need to: 1) "continually renovate financial mechanisms and policies applied to state-owned enterprises" through "further innovation and raising the effectiveness of state-owned enterprises' operation"; 2) "facilitate the privatisation of state-owned enterprises"; 3) "establish strong and multi-owned economic groups, in which the state plays a governing role", and 4) "clearly define the state ownership and the right to do business in these enterprises".[36] The *Five-Year Socio-Economic Development Plan 2016-2020* also acknowledged that the restructuring of SOEs had achieved positive results, enhancing management capabilities, transparency and defining the rights and responsibility of the state's representative entities. At the same time, restructuring, "equitisation" and divestment plans have not met the targeted progress and the implementation of corporate-governance models, inspection and internal monitoring has been slow or inadequate. The *Development Plan* also highlights certain SOE-related measures to improve economic productivity, efficiency and competitiveness, including: 1) restructuring SOEs in order to improve efficiency and transparency, by promoting privatisation and divestments from non-primary line industries; 2) establishing an agency for managing state capital; and 3) enacting legislative reforms to allow private enterprises to have equal access to resources (especially capital, land properties and natural resources).

3.4. SOEs active in the SPDS sector

For this study, the OECD focused on SOEs active in the SPDS sector in each ASEAN member state. In most instances, these SOEs – listed in Table 3.3 – are the incumbent postal operators that held monopoly rights prior to the postal sector's full or partial liberalisation.

Table 3.3. List of relevant SOEs

ASEAN member state	Relevant SOE or GLC	Legal form
Brunei Darussalam	Brunei Postal Services Department (BPSD)	Ministerial department
Cambodia	Cambodia Post	Incorporated entity
Indonesia	Pos Indonesia	Incorporated entity
Lao PDR	Entreprise des Postes Lao (Lao Post)	Incorporated entity
Malaysia	Pos Malaysia	Incorporated and listed entity
Myanmar	Myanmar Post	Ministerial department
The Philippines	Philippine Postal Corporation (PHLPOST)	Statutory corporation
Thailand	Thailand Post	Incorporated entity
Singapore	Singapore Post (SingPost)	Incorporated and listed entity
Viet Nam	Vietnam Post Corporation (Vietnam Post); Viettel Post Joint Stock Corporation (Viettel Post)	Incorporated entity / Statutory corporation

Note: The OECD understands that the government of Brunei Darussalam plans to corporatise BPSD by transferring its assets to Darussalam Assets, while maintaining full public ownership.
While Pos Malaysia does not consider itself a GLC and despite Khazanah's divestment of its entire stake (32.31%) to DRB-HICOM in 2011, it can be viewed as a GLC for the purposes of this report. This is as result of the government holding a special rights redeemable preference share in the company through MOF Inc.
SingPost is currently an "associate company" of SingTel, with Temasek deemed as its "controlling shareholder" under the Singapore Exchange Main Board Listing Rules.

3.4.1. Legal framework and corporate structure

SOEs' legal frameworks differ between ASEAN member states. While certain have adopted specific laws and regulations for SOEs, others apply general corporate rules. In other member states, specific laws and regulations on SOEs complement general corporate rules by providing more detailed and prevailing regulation.

As reflected in Table 3.3, the SOEs relevant to this report have different forms. The predominant form is the fully incorporated entity, which is incorporated according to the respective companies' laws; among those fully incorporated SOEs, certain are listed on national stock exchanges. In addition to fully and majority-owned enterprises, a small number of ASEAN member states maintain significant direct or indirect shareholdings or strategic veto rights in listed companies. While veto rights may not strictly qualify these companies as SOEs in their respective national legal frameworks, they are considered SOEs for the purpose of this report. Statutory corporations, which are those incorporated according to enterprise-specific legislation, are also present. In a few other member states commercial SPDS are performed by ministerial departments.

The corporatisation of relevant SOEs has contributed towards creating a more level playing field. Incorporating SOEs has notionally subjected them to similar regulatory treatment to privately owned enterprises, while also aligning their reporting and disclosure requirements (OECD, 2017, p. 12[50]).[37]

3.4.2. Mandate and public-policy objectives

The majority of relevant SOEs are entrusted with public-policy objectives, which are often reflected in principle-based provisions in sectoral regulations or in the legislative act establishing the SOE. In most cases, these public-policy objectives are related to ensuring a minimum level of delivery across the country.

In **Indonesia**, Pos Indonesia's monopoly on the delivery of documents and packages below two kilogrammes was lifted in 2009. However, Law No. 38/2009 on Post makes the government responsible for a guaranteed universal postal service to all its citizens.[38] While it is tasked with putting the universal postal service out to tender, none has been organised since Law No. 38/2009 came into force in 2009 and Pos Indonesia has remained the designated PSO operator.

In ***the Philippines***, Republic Act No. 7354 (Postal Service Act) states that the delivery of letters and other mail matters is "a basic and strategic public utility which the State shall provide, directly or indirectly". On that basis, it is PHLPOST's responsibility to deliver mails and parcels "throughout the Philippines", as well as to develop and operate a network that "extends or makes available, at least ordinary mail service, to any settlement in the country".[39]

In ***Myanmar***, Myanmar Post as an SOE has a duty to provide delivery services to any point within the country, even though – strictly speaking – it has no legal obligation.

In ***Thailand***, under the Postal Service Act, B.E. 2477, Thailand Post enjoys a legal monopoly in the segment of letter and postcard delivery and must deliver everywhere in the country, which in practice makes it the universal service provider for letters and postcards up to two kilogrammes.

In ***Viet Nam***, Prime Minister Decision No. 674/2007/QD-TTg mandated Vietnam Post with managing and developing the "public postal network",[40] and providing other public services at the request of state agencies. Vietnam Post was also engaged in "community activities" such as providing free delivery services for charities. Four years later in 2011, Prime Minister Decision No. 41/2011/QD-TTg appointed Vietnam Post as the public-service operator making it the "designated enterprise" as defined in the Law on Post. Vietnam Post's public-service obligations are set out in its Charter.

In addition to SOEs' delivery obligations, governments in certain ASEAN member states identify the relevant SOEs as key actors in developing and expanding SPDS to support e-commerce growth and

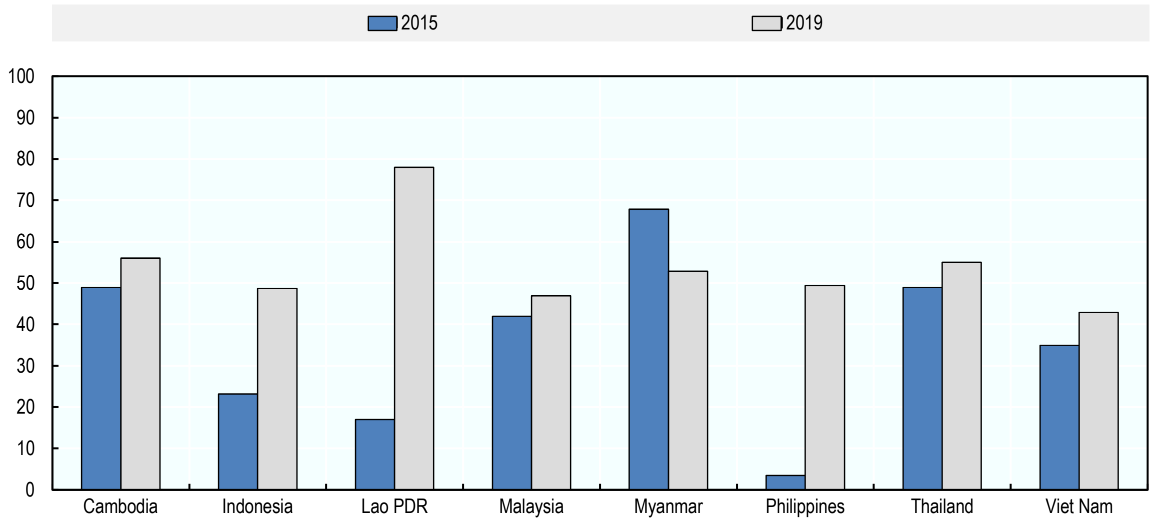
SMEs' transition to online sales. Examples are government initiatives that foster a co-operation between relevant SOEs, line ministries, government agencies in charge of e-commerce policies, and SMEs. For instance, in ***Indonesia***, the government has assigned an important role to Pos Indonesia in the development of e-commerce in the country. In ***Malaysia***, Pos Malaysia – in partnership with the Malaysian Communications and Multimedia Commission – launched the Postal Transformation Plan for Sabah and Sarawak (PTPSS) initiative "to expand mail delivery coverage in rural areas" and "to create jobs and catalyse economic development for the rural communities" (Pos Malaysia, 2019, p. 92[54]).

3.4.3. Relevant SOEs' SPDS

A clear trend towards liberalisation of the postal sector has been observed across ASEAN. Monopoly rights have been progressively lifted in SPDS, and global integrators as well as regional and local players have entered these markets.

Despite a clear trend towards liberalisation and increasingly competitive markets in SPDS (see Section 2.2.4), SOEs' activities continue to constitute a significant portion of SPDS in several ASEAN member states, in particular for the domestic market.

Figure 3.1. Percentage of UPU designated operators' income generated by parcels and logistics services in selected ASEAN member states



Note: No data available for Brunei Darussalam and Singapore.
Source: UPU data (http://pls.upu.int/pls/ap/ssp_report.main2020?p_language=AN&p_choice=BROWSE).

Brunei Darussalam

While BPSD's mail business is significantly decreasing, its SPDS volumes increased from approximately 25 000 small packages (small packets and parcels) in 2004 to approximately 268 000 in 2018.[41] International revenues have also increased as a result of domestic demand and the volume generated through the UPU system for inbound last-mile deliveries.[42] In SPDS, BPSD is mainly active in the B2C and C2C segments, with its B2B business small and limited to the domestic market.

Cambodia

Cambodia Post provides SPDS both domestically and internationally. Despite its country-wide network, stakeholders have said that it has neither a strong presence in domestic SPDS, nor is it a close competitor of global integrators for international SPDS.

Indonesia

Pos Indonesia estimates its market share in SPDS at 15%. Almost 62% of Pos Indonesia's revenue came from its mail and parcel business, of which 42% was mail and 58% parcels. According to Pos Indonesia's *Annual Report 2018*, the mail delivery business declined in 2018 by 3%, while the parcel delivery business increased by 31%.[43] Pos Indonesia expects its parcel business to further increase in the future.

Lao PDR

Lao Post has an extensive network which covered 88% of all districts in the country in 2016 (UNDP & MPI, 2016, p. 25[55]). It seems that Lao Post (through its Express Mail Service) is the only company in the country that directly handles both international and domestic express deliveries. Moreover, in some instances, Lao Post acts as intermediary for other SPDS providers.

Malaysia

The decline of the mail business and the liberalisation of the SPDS sector has led Pos Malaysia to transform and diversify its business. The B2B segment is mainly covered by the supply-chain solutions of Pos Logistics, a Pos Malaysia subsidiary. In the B2C segment, Pos Malaysia operates through its service Pos Laju, which is "the nation's leading courier provider with the largest courier fleet in Malaysia and the widest delivery network coverage" (Pos Malaysia, 2019, p. 36[54]). Pos Laju operates 99 branches and 39 "kiosks" throughout the country, and handled approximately 100 million items in 2018-2019 (Pos Malaysia, 2019, p. 17[54]); in remote areas, it relies on Pos Malaysia's mail network. In financial year 2018-2019, Pos Laju's revenue of approximately USD 204 million (MYR 824 million) was 35% of Pos Malaysia's total revenue, a rise of 6% compared to the previous year (Pos Malaysia, 2019, p. 36[54]). Major e-commerce platforms, such as Lazada and Shopee, use Pos Laju for SPDS (Pos Malaysia, 2019, p. 92[54]).

Myanmar

Myanmar Post is the largest player in the SPDS sector in Myanmar. It has 1 391 post offices covering 97% of the country. Myanmar Post accounts for over 50% of the market, despite being regarded by some stakeholders as less efficient than privately owned SPDS providers for express deliveries. In 1997, Myanmar Post and DHL entered into a joint venture to provide SPDS, mainly serving the international B2B segment.

The Philippines

PHLPOST has one of the largest networks in the Philippines and operates both non-express (postal) services and express (courier) services. For domestic express mail delivery, it relies on land transport (and on air transport for specific areas) using its fleet of approximately 380 vehicles. It outsources sea and air transport services (and occasionally road transport services). For remote areas with no postal facilities, PHLPOST's door-to-door delivery service for parcels is replaced with the delivery of pick-up information. Notwithstanding its competitive rates, it seems that PHLPOST does not have a strong reputation for small-package express delivery.

Singapore

SingPost's SPDS business encompasses activities under both its "post and parcel" and "logistics" segments. The post and parcel segment comprises the core postal and parcel (up to 30 kilogrammes) delivery business. This includes domestic post and parcels, international post and parcels, as well as products and services transacted at the post offices. The post and parcel segment includes also deliveries performed by its courier service Speedpost. The logistics segment comprises freight forwarding and e-commerce logistics, which includes front-end e-commerce solutions, warehousing, fulfilment, delivery and other value-added services offered in the region. Approximately 80% of SingPost's delivery volumes are letters, with SPDS remaining a small part of its deliveries. SingPost's "post and parcel" business accounted for approximately USD 567 million (SGD 765 million) of approximately USD 978 million (SGD 1.32 billion) total revenue in 2018-2019 and for approximately USD 561 million (SGD 763 million) out of approximately USD 963 million (SGD 1.31 billion) in 2019-2020.[44] In 2018, SingPost's CEO stated that as the "lowest cost provider in the industry", it has the opportunity to increase its market share (estimated at 20%) in the domestic SPDS segment.[45]

Thailand

Over the past five years, Thailand Post has improved its network by increasing its number of outlets from 1 169 to 1 198 and it now owns 18 warehouses, known as "mail centres".[46] In 2018, it handled more than 14 million parcels.[47] For its international services, in 2018, Thailand Post entered into a co-operation deal with DHL Express International (Thailand), allowing its over-the-counter customers to send both documents and packages using DHL's global network.[48]

Viet Nam

Vietnam Post is active in SPDS mainly through its joint venture with DHL in the international express delivery segment, and through VN Post Express JSC in the domestic express delivery segment.[49] Vietnam Post's SPDS business is heavily concentrated in the domestic B2C segment: approximately 90% of its SPDS business is domestic deliveries, while 95% of its SPDS business is made up of B2C deliveries. Non-express deliveries account for 60% of Vietnam Post's deliveries, express deliveries for 40%.[50] In 2018, Vietnam Post's total revenue was approximately USD 929 million (VND 21 trillion); its postal business (including SPDS) accounted for approximately USD 354 million (VND 8 trillion).[51]

4 Competitive neutrality and SOEs' special rights, privileges and duties

This section assesses the SOEs' advantages and disadvantages that may hinder competitive neutrality in ASEAN member states. It identifies international good practices and offers recommendations to address issues of competitive neutrality. Each sub-section starts by setting out the general principles guiding the assessment, which are mainly taken from the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*.

Box 4.1. OECD Guidelines on Corporate Governance of State-Owned Enterprises

The OECD Guidelines on Corporate Governance of State-Owned Enterprises are recommendations to governments on how to ensure that SOEs operate efficiently, transparently, and in an accountable manner.

The Guidelines are the internationally agreed standard for how governments should exercise their state-ownership functions to avoid both passive ownership and excessive state intervention. SOEs are the main providers of key public services in many countries and often prominent actors in international markets. Good governance of SOEs and ensuring that SOEs operate in a sound competitive and regulatory environment is essential for efficient markets and economic growth. The Guidelines cover the following areas: 1) rationales for state ownership; 2) the state's role as an owner; 3) SOEs in the marketplace; 4) equitable treatment of shareholders and other investors; 5) stakeholder relations and responsible business practices; 6) disclosure and transparency; and 7) responsibilities of SOE boards.

The Guidelines were first developed in 2005 and updated in 2015. The updated Guidelines were adopted by the OECD Council in July 2015 as part of a Recommendation of the Council.

Following the adoption of the Guidelines, in 2018, the OECD published a compendium with up-to-date information on SOEs' institutional, legal and regulatory frameworks presented country-by-country, drawing on practices in up to 50 jurisdictions and international good practices. In 2020, the OECD published a report that documented changes in state ownership and SOE governance in both OECD and partner economies, and assessed the extent to which the Guidelines have served as a "roadmap for reform" in individual countries.

Sources: (OECD, 2015[5]) (OECD, 2018[49]) (OECD, 2020[56]).

4.1. Legal monopoly and public-service obligations

General principles

SOEs are often entrusted with public-policy objectives. These could include the delivery of public services as well as other special obligations undertaken in the public interest.

In order to maintain a level playing field with private competitors, SOEs need to be adequately compensated for the fulfilment of public-policy objectives, with measures taken to avoid both overcompensation and under-compensation.

Where SOEs combine economic activities and public-policy objectives, high standards of transparency and disclosure regarding their cost and revenue structures must be maintained, allowing for an attribution to main activity areas. Costs related to public-policy objectives can be funded by the state and should be disclosed.

Source: (OECD, 2015, pp. 15, 46-47[5]).

4.1.1. Scope of legal monopoly

Incumbent state-owned postal operators have been historically granted monopoly rights to ensure that they provided services to the entire population, including to those located in remote areas, while ensuring their financial viability. These monopoly rights have been traditionally accompanied by regulation concerning rates charged to customers and service performance standards.

International comparison

Since the late-1990s, in a number of OECD countries, monopolies granted to state-owned postal operators have been lifted or their scope reduced to promote competition. For instance, the market is fully open to competition for all postal items (although with different schemes applicable to the scope, awarding and execution of universal service obligations) in France, Germany and the United Kingdom. In countries where monopoly rights have been maintained, the scope is strictly limited to well-defined mail services. For instance, Australia Post has an exclusive right to carry letters – generally less than 250 grammes – within Australia, while Canada Post has the “sole and exclusive privilege” of collecting, transmitting and delivering letters to addressees within Canada.

In cases where an operator holds certain monopoly rights, the risk arises that its commercial activities are cross-subsidised by revenues deriving from its monopoly rights. To mitigate this risk, in Australia, the Australian Competition and Consumer Commission (ACCC) carried out an annual assessment to determine whether Australia Post cross-subsidised its competitive services with revenues from its statutory monopoly services. The tests ACCC used to assess cross-subsidies were based on a publicly available methodology.[52]

Findings in ASEAN

While the scope of the legal monopolies assigned to the state-owned (or previously state-owned) incumbent postal operators differs across ASEAN, the OECD has nevertheless found that the SPDS market has been liberalised in all member states. In other words, no ASEAN member state grants monopoly rights in the market for SPDS to its relevant SOE. There are, however, member states in which the relevant SOEs maintain monopoly rights in neighbouring markets, such as for the delivery of letters, documents and other printed material. The OECD observes that such monopoly rights may affect the level playing field in the SPDS sector in two ways.

In a few instances, the OECD found that legislation is insufficiently clear about the scope of the monopoly. In particular, it is unclear whether the relevant SOEs hold monopoly rights beyond traditional mail services, and more specifically whether they extend, at least partially, to SPDS. These provisions can result in an undue advantage for the relevant SOEs, increasing uncertainty for privately owned SPDS providers and, in one instance, restricting the ability of or increasing costs for other SPDS providers to perform deliveries of small e-commerce items.

Moreover, in certain ASEAN member states, monopoly rights granted to the relevant SOEs are accompanied by regulation, in particular, on price. This has an impact on the SOEs' overall performance and therefore distorts the level playing field in the SPDS market. On the one hand, a high level of regulated prices for monopoly services may generate revenue for SOEs that can then be used to cross-subsidise activities in competition with private-sector operators. On the other hand, low regulated prices may result in SOEs operating monopoly services (often as result of public-service obligations) at a loss, which can affect the SOEs' overall viability and performance.

Recommendations

1. Governments should ensure full clarity and transparency around monopoly rights granted to relevant SOEs, for instance, by explicitly excluding delivery services of express mail, parcels and small packages. Alternatively, where applicable, governments might consider lifting these monopoly rights, which would in effect be a further liberalisation of the sector.
2. Where monopoly rights remain in place, governments should maintain price regulation for services provided under monopoly and ensure that prices: 1) reflect SOEs' actual costs; 2) are based on separate and transparent accounting criteria; and 3) take into account any other public funds or subsidies accessible to SOEs.

4.1.2. Level of compensation for public-service obligations

The majority of the public-service obligations in the postal sector with which SOE are generally obliged to comply – often irrespective of whether they hold monopoly rights – are universal-service obligations (USO). These are a set of requirements to ensure that all users receive a minimum range of services of specific quality, irrespective of their location and the related cost to the USO provider. A USO is commonly used in regulated industries – especially those with natural monopolies – to ensure that all areas of a country are served. While it can be met by any number of providers, most countries have opted for a single provider, usually designated for a limited period of time and selected through various procedures, including direct appointment or other public-procurement procedures. Regulatory conditions for the provision of USO vary across countries, but usually include requirements such as the type of services, the frequency or quality of delivery, and network coverage – letterboxes and post offices – for the general public.

Compensation for public-service obligations, including USO, takes different forms in OECD countries ranging from public funding and state budgets to contributions from other providers or consumers. In a few instances, the designated USO provider is not directly compensated for these services, but rather indirectly compensated for USO-related costs through above-cost regulated rates and residual monopoly rights.

An adequate compensation of public-service obligations is crucial to ensuring competitive neutrality. If SOEs are overcompensated for the fulfilment of public-service obligations, it can result in an indirect subsidy for their commercial activities that are in competition with private-sector operators, distorting the level playing field. SOEs may be able to exclude competitors in commercial activities by pricing below cost thanks to commercial activities cross-subsidised with compensation received for public-service obligations. Under-compensation of public-service obligations can also raise competitive neutrality issues as it can jeopardise an SOE's ability to compete with private-sector operators in commercial activities and ultimately affect its overall viability. Adequate compensation to SOEs for their public-service obligations can take different forms and be achieved through different legislative and contractual mechanisms.

International comparison

In the Netherlands, a price cap applies to the USO for both letters and parcels, which is intended to limit the level of return on sales to a maximum of 10%. For this purpose, the Netherlands Authority for Consumers and Markets (ACM) has defined a basic tariff, called the tariff headroom, which is updated annually, taking into account – among other considerations – the general consumer price index and USO volumes. PostNL is allowed to set its tariffs within this headroom. This price regulation ensures that PostNL is sufficiently compensated with a market-determined rate of return for its USO.

In Poland, provision of USO by the SOE, Polish Post, is compensated by a fund financed by contributions equal to a percentage of the relevant revenues earned by all postal providers, including Polish Post and, if necessary, complemented by direct grants from the state budget. This compensation plan was notified to the European Commission under EU state aid rules.[53] The European Commission found that: 1) the compensation to Polish Post was based on a robust methodology, which ensured that funding did not exceed the cost of the PSO; and 2) the level of contributions requested from the different operators was proportionate and non-discriminatory.[54]

In Norway, the SOE Posten Norge receives regular direct state compensation based on USO net costs, which are calculated as the profits forgone due to the obligation (Copenhagen Economics, 2017[57]).[55]

The European Commission has considered compensation schemes legitimate after conducting an "overcompensation test" and if subject to accounting separation. For instance, the European Commission authorised: 1) the United Kingdom to grant a network subsidy to the Post Office to keep open and modernise non-commercially viable offices, such as those in rural areas; 2) Italy to grant compensation to Poste Italiane for its USO and for reduced postal tariffs offered to publishers, not-for-profit organisations and electoral candidates; and 3) France to grant compensation to La Poste to finance the public service of delivering press items to citizens and the provision of postal services in remote areas.

Box 4.2. Determining adequate compensation for public-service obligations in the European Union

In its 2003 *Altmark* judgement, the European Court of Justice held that public-service compensation does not constitute state aid when four cumulative conditions are met.

1. The recipient firm must have public-service obligations and the obligations must be clearly defined.
2. The parameters for calculating the compensation must be objective, transparent and established in advance.
3. Compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public-service obligations, taking into account the relevant receipts and a reasonable profit.
4. Where the firm is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the lowest cost to the community, the level of compensation for the operator of public-service obligations must be determined on the basis of an analysis of the costs of a typical well-run company.

In cases where at least one of these "*Altmark* conditions" is not fulfilled, the public-service compensation will be examined under state aid rules.

Source: Case C-280/00, Judgment of 24 July 2003, Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH, and Oberbundesanwalt beim Bundesverwaltungsgericht, ECLI:EU:C:2003:415.

Findings in ASEAN

In all ASEAN member states the relevant SOEs are also the designated USO providers. Moreover, in many, the relevant SOEs are also required to comply with other public-service obligations.

A first competitive neutrality issue observed is that the relevant SOE in certain ASEAN member states has a general duty to provide delivery services across the country, even if this is not the result of a specific legal obligation and the scope and requirements of the public-service obligation are not clearly defined. This makes establishing adequate compensation extremely difficult and raises questions about what level of performance for these services can be legally expected.

Moreover, the OECD observed that, in certain ASEAN member states, SOEs are providing delivery services to central governments, government agencies and local authorities without receiving adequate compensation.

Finally, in several ASEAN member states, the relevant SOEs receive no direct compensation or public funding for their public-service obligations. Instead, funds are often provided in the form of soft (state) budget constraints, meaning that an SOE can obtain more state resources ex post than budgeted. The lack of direct compensation, paired with insufficient disclosure and accounting separation (see Section 4.1.3), is problematic for competitive neutrality. In one instance, the OECD found that while the relevant SOE in the past had access to a compensation "package", this had been phased out and replaced by "indirect compensation" through periodical increases of regulated rates and through tax and land-use benefits.

Recommendations

1. Public-service obligations should be clearly defined and SOEs should be adequately compensated for USO and other public-service obligations. Compensation should be based on criteria that are objective, transparent and established in advance.
2. An SOE should be adequately compensated for services rendered to the state, often as part of its public-service obligations. Compensation can be detailed in legislation or through contractual mechanisms, and can take various forms as long as it is properly identified and accounted.
3. Regulated rates for USO should reflect an SOE's actual costs and take into account any other public funds, grants or (direct or indirect) subsidies accessible to an SOE.

4.1.3. Disclosure obligations and accounting separation

A key element to calculate the adequate level of compensation for the fulfilment of public-service obligations are operating costs. To assess whether compensation is adequate, it is crucial to ensure that any costs related to the fulfilment of public-service obligations be clearly identified and disclosed. For this purpose, accounting separation is crucial to ensure that activities reserved for the relevant SOEs (or other designated USO providers) do not provide a conduit for cross-subsidisation, which may result in market distortions.

International comparison

In the European Union, the EU Postal Services Directive (97/67/EC, amended by Directives 2002/39/EC and 2008/6/EC) establishes a regulatory framework for European postal services, including the compensation of USO providers. The Directive allows EU member states to cover the "net cost" of USO providers, which is calculated as the profit forgone due to the obligation.

In the Netherlands, the designated USO provider PostNL is subject to reporting obligations that include a system for allocating costs and revenues to its USO. PostNL must submit an annual financial report to the ACM, accompanied by an assurance report by an independent auditor, to certify that its financial accounting system complies with these obligations and is being properly applied.

In Spain, Article 26 of the Law No. 43/2010 (Postal Act) establishes the obligation of the designated operator – currently, Correos – to use analytical accounting that make it possible to separate USO accounts from those of other services. Moreover, Correos must submit a calculation of the net cost of the USO for validation each financial year. The National Commission on Markets and Competition (CNMC) has the power to verify the correct allocation of costs and revenues in Correos's accounts annually. In April 2020, Correos was required by CNMC to resubmit its accounts after it wrongly charged revenues and expenses of certain services as part of the USO.[56]

In Australia, guidance in *Australian Government Competitive Neutrality Guidelines for Managers* states that:

> *"There needs to be organisational separation (either accounting or legal) of commercial and non-commercial activities. It is necessary to separate business activities from other government activities to ensure that Budget-funded activities do not effectively cross-subsidise commercial operations. Cross-subsidisation of these activities is undesirable, as it is not a transparent use of government funds and places private sector competitors at a disadvantage" (Australian Government, 2004, p. 37[58]).*

In its regulatory accounts, Australia Post provides disaggregated revenue and cost information to ACCC, which exercises key responsibilities in the regulation of postal services (see Section 4.4.2). This information serves as a basis for the ACCC's test for assessing cross-subsidies, in particular whether Australia Post is unfairly competing by using revenue from its reserved services for which it has a statutory monopoly to cross-subsidise the services it provides in competition with other businesses.[57]

Findings in ASEAN

In several ASEAN member states, there is no clear rule on how to calculate SOEs' costs in fulfilling USO and other public-service obligations. Moreover, in certain member states, SOEs are not required to separate revenues and costs of commercial activities from their public-service obligations in their accounts. In one member state, the OECD found that, although accounting separation is encouraged by the sectoral regulator, the SOE is neither legally required to do it, nor does it in practice. In another, the OECD found clear guidelines recommending a separation of the SOE's "public accounts" and "commercial accounts", with specific requirements for the revenue derived from public services and the allocation of direct and indirect costs, yet the relevant SOE does not comply with these guidelines.

Recommendations

1. Governments should ensure transparency in the compensation of public-service obligations.
2. Irrespective of the compensation mechanism, accounting separation and reporting requirements should be established to ensure that government subsidies and other direct or indirect funds for USO and other public-service obligations are not used by SOEs to cross-subsidise SPDS activities that are in competition with private-sector operators.
3. Where guidelines on accounting separation and reporting requirements are already in place, governments should ensure that SOEs are in compliance.

4.2. Separation of regulatory powers and commercial functions

General principle

A clear separation between a state's ownership rights in SOEs and its regulatory functions in a sector is a fundamental prerequisite for ensuring a level playing field and for avoiding competitive distortions, which may derive, for instance, from actual or perceived conflicts of interest.

Source: (OECD, 2015, pp. 20, 45-46[5]).

When a government plays a dual role by operating in a market it also regulates, a conflict of interest can (or may be perceived to) arise. For example, line ministries have a vested interest in ensuring that an SOE succeeds in a market in which it both operates and regulates, and this can often lead to actual and perceived favouritism. A clear separation between operation and regulation is a fundamental prerequisite for ensuring a level playing field and avoiding competitive distortions. Its lack has two kinds of anti-competitive effects. First, a perceived conflict of interest can be just as damaging as an actual conflict of interest as privately owned operators can be discouraged from entering a market in the first place or from expanding their presence, which distorts potential competition and results in sub-optimal investments. Second, favouritism may distort actual competition where privately owned operators are present in the market. Without explicit safeguards to separate the government's regulatory role from its role as an investor in SOEs, customers and private investors may fear unfair regulatory treatment. For these reasons, it is important to separate the government bodies owning or voting the shares in SOEs from the line ministries responsible for policy and regulation.

As indicated in the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, the exercise of ownership rights should be clearly identified within the state administration and should be centralised in a single ownership entity, or, if this is not possible, carried out by a co-ordinating body. This ownership entity should have the capacity and competencies to effectively carry out its duties. The success of a centralised ownership model is also to some extent dependent of the quality of overall public governance, the legal environment and the political importance assigned to the ownership function. In addition, the government should develop a transparent ownership policy, defining the overall rationale for state ownership, the state's role in the governance of SOEs, how the state will implement its ownership policy, and the respective roles and responsibilities of those government offices involved in its implementation (OECD, 2015, pp. 18-19[5]).

International comparison

The trend in OECD countries to centralise the state's ownership function (see Chapter 3) has made it easier to pursue competitive neutrality-consistent public policy and regulation and contributed to reducing risks of regulatory capture.[58] Moreover, the full corporatisation of SOEs, which has seen them subjected to similar regulatory treatment as private-sector enterprises, has also served to level the playing field (OECD, 2018[49]).

In France, the Agence des Participations de l'État (APE), a special agency under the Ministry of the Economy and Finance, exercises state-ownership rights over SOEs, including over the postal operator La Poste.

In Finland, the majority of SOEs – including postal operator Posti Group – are directly under the Prime Minister's Office, with a few "special task companies" under other ministries. The Ownership Steering Department of the Prime Minister's Office is responsible for the preparation and practical implementation of the state ownership policy and steering of SOEs in Finland. In 2007, Finland adopted a reform, which led to the separation of the state's ownership function from its regulatory functions.

In the postal sector, many countries have established independent regulatory authorities. For instance, EU member states were required under Article 22 of the EU Postal Services Directive to "designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators". The same provision specifies that EU member states that "retain ownership or control of postal service providers shall ensure effective structural separation of the regulatory functions from activities associated with ownership or control".[59] These regulatory authorities are also members of the European Regulators Group for Postal Services (ERGP), an advisory group to the European Commission that facilitates consultation and co-operation and ensures the consistent application of the postal and parcel legislation.[60]

Findings in ASEAN

In several ASEAN member states, although SOEs have been corporatised, line ministries responsible for SPDS policy and regulation continue to own stakes and therefore exercise ownership rights. This issue emerged even in certain member states that have already centralised the ownership function in most SOEs and separated it from (other) regulatory and policy functions carried out by line ministries. In fact, in these countries, SOEs active in SPDS remain under the control of line ministries and the safeguards needed to avoid actual or perceived conflicts are absent. Moreover, in certain member states, the line ministry in charge of sectoral regulation has no ownership rights over the relevant SOE, yet continues to exercise a large degree of operational control over it.

A related competitive neutrality issue is that in a few ASEAN member states no structural separation exists between regulatory powers and commercial functions, as relevant SOEs are ministerial departments under the same ministry that exercises regulatory powers over the SPDS sector in which the SOE is active. In particular, the OECD found that in one member state, this lack of structural separation results, in practice, in the SOE being directly involved in regulatory functions, such as reviewing and assessing licensing applications of potential competitors. As a result, the relevant SOE can filter licence applicants and prevent the entry of competitors. Another related issue concerns the fact that, through regulatory reporting requirements, the SOE has access to competitors' commercially sensitive information such as data on revenues, costs and volumes. To address these issues, the OECD understands that a reform envisages the establishment of an independent regulator in charge of the SPDS sector.

Finally, the OECD found that certain SOEs maintain the power to establish (and enforce) sectoral regulation applicable to their private-sector competitors, despite being structurally separate from their line ministries. This regulatory power conferred to an SOE conflicts with its role as a commercial operator competing with other SPDS providers.

Recommendations

1. Agencies and line ministries responsible for policies and regulation in the SPDS sector should perform these functions without actually or perceivingly favouring certain businesses or discriminating between state-owned or private-sector businesses.
   a. As a first step, line ministries could issue internal guidelines to ensure a degree of functional separation between departments with regulatory and policy functions from those with ownership functions over SOEs.
   b. A further degree of separation between line ministries and SOEs could be achieved by transferring the shareholding in these SOEs to a specialised and well-resourced ownership agency or a designated government ministry whose sole responsibility is to exercise SOE ownership rights at arm's length, with sufficient independence and shielded from undue political interference.

2. Governments should separate the regulatory functions and commercial activities of SOEs and amend sectoral regulation accordingly. This separation can be achieved, for instance, by transferring regulatory functions to a sectoral regulator that can exercise these powers objectively, impartially and consistently.
3. Where SOEs are in the form of ministerial departments, corporatisation plans should be implemented by establishing separate entities operating SPDS on a commercial basis with independent management.

4.3. State influence over SOEs' commercial decisions

General principle

The boards of SOEs should have the necessary authority, competencies and objectivity to carry out their functions of strategic guidance and management monitoring. They should act with integrity and be held accountable for their actions. Rules and procedures for nominating and appointing a CEO should be transparent and respect lines of accountability between the CEO, the board and the ownership entity.

Source: (OECD, 2015, pp. 26, 36[5]).

SOEs with a solid corporate governance structure can be as effective as private-sector firms (OECD, 2020, p. 7[59]). Boards of directors have a central role in SOEs' commercial performance. In recent decades, governments have made efforts to professionalise boards of SOEs to attribute them greater power and autonomy through effective and transparent nomination and appointment procedures, independence requirements, and periodic performance evaluations (OECD, 2020, p. 64[56]).

International comparison

To clearly define the respective roles of the state and the SOE decision-making bodies, some governments have established state-ownership policies that make an explicit commitment to empower and respect SOEs' boards and executive management.

In Finland, the *2016 Government Resolution on State-Ownership Policy* affirms that: "the State adheres to the division of responsibilities and duties between a company's decision-making bodies and owners" as provided in the generally applicable corporate rules and that SOE boards of directors are subject to the responsibilities, obligations and rights generally applicable under corporate rules. Moreover, this policy clearly affirms that "the decision-making body central for ownership steering is the company's board of directors", that "key criteria in proposing candidates for board membership include experience and expertise" and that "the board appointments will be based on the company's needs".[61]

Many OECD countries also have restrictions on the nomination of government officials and civil servants as board members. In Australia, the appointment of departmental officers to boards of SOEs (or Government Business Enterprises, GBEs) could only be considered in exceptional circumstances, taking into account their ability to represent the government's interests, business skills, and any potential conflicts of interest.[62] In Finland, one civil servant from the ownership entity (and in some cases another from a relevant administration) can serve on an SOE's board, but potential conflict issues are avoided by generally not allowing political appointees to serve on SOE boards (OECD, 2013, p. 52[60]).

Findings in ASEAN

In a small number of ASEAN member states, there is no corporate-governance framework applicable to SOEs. There are no transparent rules concerning the selection and appointment of SOEs' boards and senior management, nor criteria to appoint independent directors. Consequently, SOE board members are often selected from pools of government officials and bureaucrats.

Some ASEAN member states have introduced basic rules to prevent conflicts of interests such as prohibiting government officials from maintaining their government positions after being appointed as SOE board members. However, these measures appear insufficient as stakeholders in various member states have confirmed that SOEs remain politically influenced. Such political interference can be seen, for instance, in the nomination process for boards: it is common for the government to reward politicians with seats on SOE boards. Even where there is a formal mechanism in place for the selection and appointment of SOE directors, the procedure is not immune from political influence and screening mechanisms have been bypassed to appoint government officials. In addition, there is no consistency across ASEAN member states on information disclosure about SOE board members, with very few SOEs publishing information about board members on their websites and in annual reports.

Undue influence of the state via politically-motivated board composition has a potential impact on the effective management of SOEs. For instance, in ASEAN the OECD found that board members do not always have either the necessary competence and experience or sufficient independence or objectivity to effectively carry out their functions.

Other ASEAN member states have improved corporate governance standards applicable to SOEs, yet despite these reforms, in some the government's influence seems to extend beyond the state's ownership role and to impact on SOEs' day-to-day operations. The OECD found that, in one instance, an SOE's commercial decisions, such as the establishment of subsidiaries, joint ventures or an acquisition, require the approval of state bodies outside of the ownership entity. Although these decisions may impact upon the state's budget, there are legitimate business reasons for establishing a subsidiary or joint venture. For example, subsidiaries can improve an SOE's competitiveness by facilitating entry into a new business or through the provision of specialised services. Similarly, the establishment of a joint venture may often have pro-competitive effects such as combining firms' areas of expertise or enhancing an SOE's ability to lower prices or increase output through possible new services or efficiencies created by a joint venture.

Recommendations

1. Governments should develop, disclose and implement a clear state-ownership policy that establishes the rationale for state ownership and the state's role in SOE governance.
2. While a certain level of political oversight in SOEs with public-policy objectives is legitimate, governments should work to increase SOE boards' independence and limit excessive governmental intervention in SOEs' day-to-day management. Transferring ownership to a specialised agency or a designated government ministry could support these efforts, if such a structure is sufficiently sheltered from undue political interference.
3. Governments should improve transparency around the nomination process of SOEs' boards by fully disclosing information about prospective members, including their qualifications, with an emphasis on the selection of qualified candidates and minimum requirements for number of independent directors.
4. Governments should refrain from appointing an excessive number of directors from within state-run bodies. Limiting board membership of representatives of the ownership entity (or other state officials) – while appointing independent directors – could increase professionalism and reduce excessive government intervention.

5. Governments should implement measures to take into account conflicts of interest in the selection and appointment of SOEs' boards and to address conflicts of interest within SOE boards. For instance, directors should be required to disclose any conflicts of interest to the board, which must then decide how they can or should be mitigated (for example, directors should recuse themselves from any involvement with issues that create conflicts of interest).
6. Cases for which an ownership entity needs to obtain approval from other government bodies for an SOE's commercial decisions should be limited and relate only to an SOE's significant transactions, such as those that are high risk or exceed a certain value.

4.4. SOEs under competition laws

General principle

Avoiding exemptions to or non-uniform application of competition law for SOEs competing with private entities is important to prevent SOEs being incentivised to engage in anticompetitive behaviour that can be as harmful as restrictions of competition by private competitors. Exemptions from competition rules may also hamper economic efficiency in sectors where competition may currently be unfeasible, but where new entrants could enter the market in the longer term.

4.4.1. Scope of exemptions

Some distortions of competitive neutrality can be addressed by competition laws as long as enforcement applies irrespectively of whether firms are state-owned or privately owned, and their conduct is assessed under the same standards. It has been observed that SOEs may have stronger incentives (and ability) than private firms to engage in anti-competitive conduct. Their broader objectives may lead to commercial strategies potentially causing anti-competitive effects, such as below-cost pricing and cross-subsidisation, which can raise competitors' costs or preclude entry of more efficient competitors in the market (OECD, 2009, pp. 37-39[61]).

When assessing SOEs' conduct, it is also important that authorities with competition enforcement powers act – and are perceived to act – independently, without undue influence from other government bodies. Independence means that an authority is free from external influence and relies on evidence and competition rules to make decisions about when to investigate and when to apply and interpret competition rules. Such independence ultimately makes for a more sound and effective competition policy regime that helps foster investment.

There is general consensus that competition law should apply to both state-owned and private firms engaged in economic activities as exemptions shielding SOEs may distort competition, for instance, by allowing SOEs to abuse their market power to the detriment of consumers.

Finally, many competition authorities have advocacy powers that can effectively contribute to mitigating competitive neutrality distortions, even though resource constraints may affect the impact of these initiatives.

International comparison

In the European Union, competition law applies to all firms, irrespective of whether they are state-owned or private. A narrow exemption applies to so-called services of general economic interest (SGEI), which are economic activities that public authorities identify as being of particular importance to citizens and that would not be supplied (or would be supplied under different conditions) if there were no public intervention. Examples include transport networks, postal services and social services. Under Article 106(2) of the Treaty on the Functioning of the European Union:

> *"undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject … to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them."*

In the United States, federal government entities may qualify for an exemption from antitrust laws. However, government-owned entities that are not instrumentalities of the federal government cannot benefit from this broad exemption. In a 2004 case (*United States Postal Service v. Flamingo Industries (USA) Ltd.*),[63] the US Supreme Court ruled that federal antitrust laws did not apply to the US Postal Service because it was "an independent establishment of the executive branch" that exercised "significant governmental powers" and, at the same time, "lacked the power to set prices unilaterally and the responsibility to maximize profits". In 2006, legislation established that the US Postal Service is subject to federal antitrust law with regard to the provision of services when in competition with other players.[64] Moreover, entities may enjoy conduct-specific exemptions for work performed on behalf of the federal government, though state or local government enterprises do not enjoy automatic exemptions from the federal antitrust laws. However, they still may enjoy an exemption by virtue of the so-called state action doctrine,[65] which must be interpreted narrowly (OECD, 2018, pp. 2-4[62]).

Findings in ASEAN

No ASEAN member state fully exempts SOEs from competition laws, although in a number, competition laws provide for specific exemptions. As it remains unclear how these provisions are interpreted and enforced in practice, they can provide grounds to exempt SOEs or certain SOEs' activities from competition rules. This issue is even more relevant when the SOE is part of the government, and not a separate legal entity.

In other ASEAN member states, SOEs' conduct in sectors where they enjoy monopoly rights fall outside the scope of applicable competition laws. A strict interpretation and independent assessment of such provisions is required as conduct in monopolised sectors may affect adjacent competitive markets in which these SOEs also operate. This is the case, for instance, for incumbent postal operators, which are often active in both a monopoly market, such as for mail, and a liberalised one, such as for SPDS, in which they compete with privately owned enterprises using their well-established networks. Anticompetitive effects on the liberalised market may result from conduct of dominant companies such as cross-subsidisation, which may occur when the postal incumbent is over-compensated to perform public-service obligations and uses part of these funds to compete in the liberalised market, or "tying", which occurs when the purchase of a product or service in which the company is dominant is conditional on the purchase of another product or service.

In one instance, the OECD found that should market participants file a complaint the competition authority consults with an SOE's line ministry before taking any action against the company. This finding raises concerns as to whether certain competition agencies can withstand pressure from within government when investigating SOE conduct. In fact, the enforcement of competition laws against SOEs can create intra-governmental friction.

Recommendations

1. Governments should adopt implementing acts at legislative or ministerial level or through competition authorities and sectoral regulators exercising competition-law powers, to clarify the principle that SOEs are covered by applicable competition laws. The scope of any exemptions should be narrowed to remove, in particular, activities such as SOEs' commercial activities that are in competition with privately owned enterprises.
2. During enforcement actions, competition authorities should narrowly interpret any exemption from competition laws when SOEs conduct in sectors exempted may have an impact on activities in competition with privately owned enterprises. Competition authorities should act independently when conducting technical assessments of any anti-competitive conduct by SOEs.
3. Where governments commit to competitive neutrality, competition authorities should oversee these commitments. Governments should allocate resources to competition authorities for advocacy initiatives about competitive neutrality, including initiatives that focus on specific sectors such as postal services and SPDS, and that involve relevant SOEs and other government agencies.

4.4.2. Competition-related provisions in sectoral regulation

As SPDS are often subject to specific regulation, SOEs active in this sector may be exempted from general competition laws, but subject to competition-related provisions under sectoral regulation. In regulated sectors, countries typically deal with issues of competition law in one of three ways: 1) a competition agency has jurisdiction over competition law in regulated sectors, in some instances combined with regulatory powers; 2) a competition agency and a sectoral regulator have concurrent authority to enforce a single competition-law standard, with co-operation arrangements in place; or 3) the sectoral regulator has sole competence to enforce competition-related provisions.

Concurrent authority between competition authorities and sectoral regulators often raises questions as to which body "prevails" and whether there are risks of "forum shopping", with investigated entities (or third-party complainants) pushing for cases to be dealt with by the body they believe most likely to provide a favourable decision (OECD, 2019, p. 23[63]). Concurrent authority, as well as having a sectoral regulator with sole competence to enforce competition-related provisions for a specific sector, also requires a degree of co-operation to ensure that authorities act consistently. Safeguards may be needed to ensure that competition-related provisions in sectoral regulation reflect wider applicable competition laws and that comparable standards are enforced.

While sectoral regulators have the advantage of in-depth knowledge of their sector, they also need to be well equipped with competition expertise to allow them to enforce competition laws or competition-related provisions in sectoral regulations effectively. Sectoral regulators exercising competition-law powers should be fully independent from line ministries in charge of sectoral policies. This is particularly important when line ministries exercise ownership rights over the SOEs active in the relevant sector due to actual or perceived conflicts of interest that may arise.

International comparison

Some OECD countries have integrated regulators and competition authorities.[66] In Australia, the ACCC is a competition and consumer-protection authority, but it also has key responsibilities in regulating postal services.[67] In the Netherlands, the ACM also has powers to issue sector-specific regulation in postal services.[68] In Spain, the CNMC works to guarantee, preserve, and promote proper functioning of the postal sector.[69]

Concurrent authority between competition authorities and sectoral regulators is not very common in OECD countries (OECD, 2019[63]). One example is the United Kingdom, where the Financial Conduct Authority has concurrent powers with the Competition and Markets Authority (CMA) to enforce competition law regarding the provision of financial services.[70]

Findings in ASEAN

In certain ASEAN member states, sectoral regulators – which in some cases correspond to line ministries – have the exclusive competence to enforce competition-related provisions in the SPDS sector. This may create actual (or perceived) conflicts of interest when line ministries responsible for sectoral regulation also exercise ownership rights in (and have representatives on the boards of) SOEs operating in the SPDS sector. This should be avoided as it could discourage private competitors from entering the market or lead to sub-optimal investment levels in the sector. Even when a sectoral regulator is separated from a line ministry, issues can arise with regard to the regulator's independence if the line ministry that controls an SOE in the relevant sector can dismiss a regulator's board members or issue directions about its powers and functions.

The OECD also found instances in which the sectoral regulator and the competition authority have concurrent powers over the SPDS sector with the regulator having specific competition powers and the sectoral regulation containing competition-law provisions that do not necessarily reflect general competition law. Moreover, there is no specific provision addressing issues of competence between these regulators, with similar issues arising as to the sectoral regulator's independence when enforcing competition provisions.

Recommendations

1. Governments should harmonise the substantive requirements in competition laws and sectoral regulations; introduce clear criteria or guidelines to "direct traffic" in relation to which agency is competent to undertake investigations; and implement regulation or guidelines to address inter-agency co-operation.
2. Governments could consider providing competition authorities with sole competence over the sector's competition law, where this reform can mitigate risks for competition-law enforcement in the SPDS sector.

4.5. SOEs and SPDS regulation

General principle

SOEs undertaking economic activities should not be exempted from the application of general regulations. Regulations should not unduly discriminate between SOEs and their market competitors.

Source: (OECD, 2015, pp. 20, 47-49[5]).

4.5.1. Licensing requirements

Licensing requirements may be in place for legitimate reasons, but to ensure competitive neutrality, they should apply in an equal and non-discriminatory way to SOEs and private-sector firms. For instance, SOEs already active in the market – often as monopolists prior to the introduction of a licencing regime – should not be exempted. If it is not feasible to extend licensing requirements to them, measures to neutralise their cost advantage might be introduced.

Licensing or authorisation requirements may impose substantial costs on businesses, especially when transparency in administrative procedures is insufficient. Moreover, limiting the overall number of licensees in a sector where an operating licence is required may create barriers to entry and so confer an undue advantage on incumbents such as SOEs in (recently) liberalised sectors.

International comparison

The EU Postal Services Directive requires EU member states to respect certain procedural requirements in their administration of general authorisations and individual licences. The procedures, obligations and requirements shall be transparent, accessible, non-discriminatory, proportionate, precise and unambiguous, made public in advance, and based on objective criteria. Article 9 of the Directive distinguishes for authorisation purposes between services within the scope of universal services and those outside, such as commercial SPDS. For the latter, EU member states may introduce an authorisation requirement only “to the extent necessary to guarantee compliance with the essential requirements” such as correspondence confidentiality, network security for the transport of dangerous goods, and respect for the terms and conditions of employment and social-security schemes. The Directive also prescribes that authorisations for non-universal services may not be limited in number or impose technical or operational conditions other than those necessary to fulfil obligations. The Directive leaves it up to EU member states to decide whether SPDS need a license or authorisation, and there is no uniformity among them. Where public postal operators are treated differently from other service providers in this regard, it is not the result of being state-owned, but rather their status as universal-service providers, and as such not subject to an authorisation regime (WIK-Consult, 2009[64]).

In the last years, many countries have fully liberalised SPDS and lifted licensing regimes. In the United Kingdom, for instance, the Postal Services Act 2011 replaced the previous licensing regime with a general authorisation regime allowing operators to provide SPDS and other postal services without a licence or prior authorisation from the sectoral regulator, Ofcom.

Australian Government’s Competitive Neutrality – Guidelines for Managers affirm that it should be ensured that government businesses do not have any regulatory advantage (in the form of licensing requirements) as a consequence of their status. This may require them to comply with regulations from which they are exempted and to make “regulatory payments” or equivalent payments to the Official Public Account (the federal central bank account). The policy is not prescriptive about how such payments should be made. Where compliance is not possible, government businesses should seek to neutralise any derived cost advantage in such a way as to "notionally account for regulatory payments or the cost of complying with regulatory requirements when calculating the costs used to determine … pricing strategies" (Australian Government, 2004, pp. 27-28[58]).

Findings in ASEAN

Regulatory requirements to operate SPDS vary widely across ASEAN. Certain ASEAN member states require SPDS providers to obtain a licence or makes them subject to a registration obligation with the relevant line ministry or sectoral regulator; this requirement is often accompanied by periodic reporting obligations. Both represent a regulatory cost for businesses. In some of these member states, the application process appears relatively burdensome due to the time required to obtain approval (ranging from a few weeks to a few months) and the substantial fees. Consequently, stakeholders reported that, at least in some of these member states, many SPDS providers operate illegally. In one instance, a moratorium is currently preventing the issuance of new licences and permissions to extend the geographic scope of existing licences, creating a barrier to entry.

In a number of ASEAN member states, licensing requirements for private-sector SPDS providers do not apply equally to the relevant SOEs, nor are the SOEs subject to any regulatory fees. This difference in the regulatory burden between SOEs and private-sector SPDS providers often derives from the fact that the SOEs were already active (often as monopolists) in the countries before licensing systems were introduced. In other cases, the OECD identified specific legal provisions affirming the SOE's right to operate postal services in the country. This different treatment is a clear advantage for the relevant SOEs in terms of regulatory costs and burden as it increases operating costs for private-sector SPDS providers.

Recommendation

1. Governments should subject the SOE's commercial activities to the same licensing requirements applicable to other SPDS providers. Alternatively, they should consider lowering the burden on licensees by simplifying licensing procedures and introducing measures to neutralise SOEs' potential cost advantage.

4.5.2. Price regulation for SOEs' SPDS

SOEs are sometimes expected to fulfil special responsibilities and obligations for social and public policy purposes. This can be accompanied by regulation of the prices at which SOEs must sell their products and services. This principle is relevant in the SPDS sector, in particular when SOEs are entrusted with public-service obligations such as USO or conferred monopoly rights.

International comparison

Where there is price regulation, this is typically limited to USO and services under monopoly, while commercial SPDS performed by SOEs in competition with private-sector firms fall outside the scope of price regulation. In Sweden, for example, all SPDS providers are free to set their own prices, with one exception that applies to PostNord, the state-owned holding company formed by the merger of Sweden and Denmark's incumbent postal operators in 2009. Since 1998, postage rates for domestic single-piece letters up to 500 grammes have been subject to a price cap and, as USO provider, PostNord must take this into account. As the volume of letters has decreased sharply since then, but distribution costs are largely fixed, the price-increase ceiling was increased in 2019, allowing for additional room to raise prices to compensate for the increased unit costs caused by the decline in volume (Swedish Post and Telecom Authority, 2020[65]).

Findings in ASEAN

The OECD has found that in certain ASEAN member states, sectoral regulators or line ministries have issued price regulations. Their scope vary in their coverage of services (whether mail or mail *and* small packages) and SPDS providers. The type of price regulation also varies from fixed rates to minimum rates. Price regulation affects the level playing field in the SPDS sector in certain member states.

In one instance, regulated minimum rates appear to be based on the SOE's published rates. In theory, a minimum price regulation based on an SOE's actual rates could confer on it an undue competitive advantage. However, in this example, while the SOE must comply with the regulation, there is no mechanism to monitor compliance among private-sector SPDS providers, which in practice disregard these minimum rates by offering discounts to (mainly large) customers. At the same time, these minimum rates also appear to have a limited impact on the SOE's competitors, which often charge higher rates by providing premium services. Without active compliance monitoring, this price regulation actually results in a competitive disadvantage for the SOE, which does not have the flexibility to lower its rates, contrary to its competitors.

In another instance, a fixed-price regulation only applies to the SOE and any decision it takes to apply discounted rates – even for large customers – requires prior approval by the ministry in charge of sectoral regulation. These fixed rates have not increased in the past 40 years. Stakeholders suggested that the SOE's rates are set at a level below cost, discouraging international market participants from entering (and effectively competing in) the domestic SPDS segment. A similar issue emerged in another member state, where a fixed-price regulation was only applicable to the SOE, with average rates set three to four times lower than its competitors', resulting in the SOE being unprofitable. SOEs' below-cost prices can have a distorting effect on the market even if their pricing strategy does not amount to full predation in the competition-law sense.[71] It may be sufficient that it uses an artificially low cost base created by its advantages as an SOE to distort competitive market outcomes. Moreover, an SOE may not need to recoup its losses in engaging in predation in the same manner that a private enterprise would need to for successful predation.

Recommendations

1. Governments should consider abolishing price regulations that impose minimum rates. Alternatively, they should increase transparency around the mechanism used to calculate minimum rates for SPDS, including the full list of the services covered by such minimum rates. Minimum rates should be based on an independent regulatory assessment, including the sector's cost structure, rather than solely on an SOE's rates.
2. SOEs should be able to exercise their commercial discretion to pursue profitability through setting optimal rates for the services, such as SPDS, for which they are competing with private-sector operators.

4.6. SOEs and corporate rules

General principles

SOEs may have different legal forms to other companies, which could lead to different disclosure requirements, authority, power, composition and structure of the board, and the extent to which they grant consultation and decision-making rights to stakeholders.

An SOE's legal form should allow creditors to press their claims and to initiate insolvency procedures.

Source: (OECD, 2015, pp. 18, 20, 33-34, 47-48[5]).

4.6.1. Corporatisation of SOEs

It is increasingly common for governments to reorganise agencies carrying out economic activities and operating in competitive markets into separate legal entities, subject to ordinary company laws. In principle, this subjects them to the same regulatory framework as their private competitors, enhancing transparency and aligning economic incentives. It also limits the scope for anti-competitive practices, and ultimately serves to level the playing field by subjecting SOEs to similar fiscal and regulatory treatment as private-sector enterprises.

International comparison

Over the past four decades, most OECD countries have reformed the structure and governance of their incumbent postal operators, through corporatisation and often (partial) privatisation. New Zealand, for instance, corporatised its incumbent postal operator in 1987, Australia in 1989. Italy transformed the incumbent postal operator Poste Italiane into a limited liability company in 1998 and listed it on the Milan Stock Exchange in 2015. Such reforms have led to substantial improvements in profitability, service quality, productivity and efficiency (OECD, 1999, p. 7[66]).

Findings in ASEAN

Although in most ASEAN member states the incumbent postal operators have been corporatised, this is not the case for all member states. Those SOEs that have retained the form of ministerial departments are not subject to general corporate laws, but to the internal rules and procedures set out by the government. This situation is exacerbated where the relevant SOEs have ready access to increased government funding to make up for budget shortfalls.

In another instance, there is no general legislation on the legal form (and governance) of SOEs. Consequently, there is no obligation to structure them as corporate legal entities, subject to the laws and regulations generally applicable to other companies. The lack of a standard legal form creates confusion as to which laws and regulations apply to SOEs, and leaves the government to issue case-by-case notifications that define each SOE structure, duty and power, and create supervisory or administrative bodies. Finally, in another member state where the relevant SOE is corporatised, corporate laws only apply suppletorily to SOEs, insofar as they are consistent with the specific governance and other rules designed for SOEs. The sets of laws that concern the legal form of SOEs and provide the framework for their governance and operation remains complex.

Recommendations

1. Governments should consider transforming SOEs into corporatised legal entities subject to generally applicable corporate laws.
2. Governments should streamline the complex set of laws applicable to SOEs and standardise the legal forms under which SOEs operate to subject them to the same corporate norms as comparable private enterprises.

4.6.2. Transparency and audit requirements

To ensure SOE accountability to shareholders, reporting bodies and the wider public, it is important to adopt a coherent disclosure policy that identifies the information to be publicly disclosed, the appropriate channels for disclosure, and mechanisms for ensuring the quality of information. The OECD recommends that, "in the interest of the general public, SOEs should be as transparent as publicly traded corporations" and that they should report according to best practice accounting and auditing standards, regardless of their legal status (OECD, 2015, p. 65[5]). Specific state control procedures do not substitute for an independent external audit. In fact, state auditors often limit their monitoring exercise to the use of public funds and budget resources, rather than the operations of the SOE as a whole.

International comparison

In 2007, Sweden's Ministry of Enterprise, Energy and Communications issued *Guidelines for external reporting by state-owned companies*, which require SOEs to produce interim and annual reports on corporate governance, internal control and company sustainability. SOE reporting is required to be as transparent as that of listed companies.[72]

In Korea, all SOEs must disclose and report corporate information to the general public through the online ALIO (All Public Information in One) inventory system.[73] Required information includes executive and employee numbers, financial statements, audit reports, tax liabilities, and evaluation reports (Park, 2020, p. 7[67]).

In Australia, SOEs' financial statements must be externally audited and are made available to the public and parliament. SOEs also produce annual corporate plans outlining three- to five-year strategic, financial and non-financial objectives (OECD, 2012, p. 37[68]).

Findings in ASEAN

In ASEAN member states where relevant SOEs are not corporatised, accountability and transparency principles do not apply for the receipt and expenditure of public money to perform commercial activities, nor do any corporate governance principles established under generally applicable corporate laws. Moreover, SOEs' financial statements are often not easily accessible to the public.

Another issue that has arisen in several ASEAN member states is that the relevant SOEs' accounts are solely audited by state auditors, rather than independent external auditors. State auditors can lack sufficient resources or independence. Financial statements submitted for these audits are insufficient to determine the SOEs' financial position or performance, hampering decisions on allocating resources to SOEs, whether in the form of public or private investments.

Recommendations

1. Governments should develop consistent reporting on SOEs and publish annual aggregate reports on SOEs that provide information about financial performance and asset value, as well as non-financial indicators. These reports should be published online to improve accessibility.
2. Governments should develop disclosure policies regarding SOEs' performance to ensure high quality of information at each SOE level. Components of such a policy may include the development of guidance manuals and training seminars for SOEs, initiatives recognising SOEs for high-quality disclosure practices, and mechanisms to measure, assess and report on SOE implementation of disclosure requirements.
3. SOEs' financial statements should be subject to independent external audit, regardless of SOEs' legal status or any pre-existing specific state control and audit procedures.

4.6.3. Bankruptcy and insolvency rules

The majority of OECD countries subject SOEs to the same regulatory framework and lending conditions as private-sector companies for their commercial activities. This means that SOEs are subject to bankruptcy laws, insolvency procedures and hostile takeovers, as these are considered essential factors for policing companies' management. Exemptions to these rules can confer undue financial advantage to SOEs (see Section 4.8) and therefore disrupt the level playing field.

International comparison

Although not always the case, insolvency procedures in many OECD countries, including Korea, the Netherlands and Sweden, are the same for both privately owned and commercial state-owned companies (IMF, 2020[69]).

Findings in ASEAN

In a number of ASEAN member states, SOEs are not formally exempt from insolvency legislation, but are effectively shielded from insolvency procedures due to soft budget constraints. This allows SOEs to receive additional state funding when needed, to cover operational losses or overcome financial distress (see Section 4.8). Bankruptcy risks are also mitigated by other forms of support received by financially troubled SOEs, such as bail outs and debts being frozen, restructured, eliminated, or transferred to other SOEs. Similarly, when SOEs are liable for taxes, but unable to pay them, they are permitted to remain in arrears or enjoy debt reduction or even elimination. In another member state, legislation exempts SOEs from liability to execution, which means that their assets cannot be taken away, either by execution of a judgement, debt or insolvency.

Finally, SOEs with the form of ministerial departments are also exempted from takeover and bankruptcy rules.

Recommendation

1. SOEs should be subject to bankruptcy and insolvency rules. In case of operational losses from commercial activities, governments should refrain from transferring additional funds to SOEs, unless done so according market terms. Any considerations with regard to public-service obligations and their funding should be dealt with separately.

4.7. SOEs and public procurement

General principles

When SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be competitive, non-discriminatory and safeguarded by appropriate standards of transparency to ensure a level playing field.

When SOEs act as procurers, their activities can be divided into two parts: commercial activities and activities to fulfil a governmental purpose. In cases where an SOE is fulfilling a governmental purpose, or to the extent that a particular activity allows an SOE to fulfil such a purpose, the SOE should adopt government procurement guidelines that ensure a level playing field.

Source: (OECD, 2015, pp. 21, 50[5]).

SOEs should not be required to provide goods or services to the government for free or below-cost, nor should the government show a purchasing preference for SOEs. When participating in public procurement processes, SOEs should be subject to the same requirements as private-sector suppliers. In practice, SOEs may enjoy incumbency advantages compared to their privately owned competitors due to their established presence and information advantages, for instance, concerning costs and revenues generated by the tendered service.

International comparison

A number of OECD countries have undertaken a tightening or clarification of existent public procurement rules affecting, on the one hand, procurement by SOEs and on the other hand SOEs' role as suppliers to other public sector institutions. In France, public procurement laws were reformed in 2015. As a result, SOEs are now subject to the same public procurement rules as state and public authorities (OECD, 2020, p. 39[56]). In Australia, Commonwealth Procurement Rules (CPRs) articulate the policy and rules governing public procurement activities. Under these rules, potential suppliers must be treated equitably without discrimination on the basis of origin or ownership.[74] Moreover, according to *Australian Government Competitive Neutrality – Guidelines for Managers,* all agencies conducting a tendering process must include a requirement for public-sector bidders to declare that their tenders are compliant with competitive-neutrality principles (Australian Government, 2004, p. 43[58]).

Findings in ASEAN

The OECD identified both legal and non-legal barriers to equitable public procurement in ASEAN member states. In certain member states, there is no public-procurement framework in place, which means that if government entities (including other SOEs) contract SOEs, no tender process is held. This absence of the need to tender makes it more likely that government bodies will choose to contract SOEs, eliminating competition and discouraging the government from seeking potentially lower-cost and better quality offers from private-sector firms. In other member states, general regulations do provide that public contracts should be assigned to SOEs, yet in practice, criteria set for public tenders, such as experience requirements, often appear tailored to suit the relevant SOE.

In addition, procuring directly from an SOE is often faster and subject to less thorough scrutiny by state auditors. Government agencies also seem to source delivery services from the relevant SOE for other practical reasons, such as the fact that the SOE has an office within government agencies' premises, and that there is a "cultural preference" within governments to support national companies. In other words, SOEs are largely seen as part of the "public-sector family".

Finally, in one instance, it appears that the government and SOEs can enter into simplified “agency-to-agency” contracts to avoid the general requirements for public tenders, and a dedicated mediation process exists for disputes between SOEs or between SOEs and the government. These advantages may significantly reduce costs for SOEs and offer an incentive for government agencies to source services directly from SOEs.

Notwithstanding the above, across ASEAN, delivery-service contracts between SOEs and government agencies generally concern traditional mail, so the direct impact on SPDS appears to be limited.

Recommendations

1. Public-procurement rules should treat all potential suppliers equitably, without discrimination and irrespective of ownership, with SOEs subject to requirements comparable to those demanded from private bidders.
2. Strict conditions under which the government can enter into “simplified” contracts with SOEs should be clearly defined.
3. Governments should establish internal guidelines and provide training to officials to ensure that non-discriminatory public-procurement rules are followed and enforced and that SOEs are not granted preferential access to the provision of services to government agencies.

4.8. Direct and indirect financial state support to SOEs

General principles

SOEs’ economic activities should face market-consistent conditions for access to debt and equity finance.

SOEs’ relations with all financial institutions, as well as financial SOEs, should be based on purely commercial grounds.

SOEs undertaking economic activities should not be exempt from the application of tax codes and regulations.

SOEs’ economic activities should not receive inputs (such as energy, water or land) at prices or conditions more favourable than those available to private competitors.

Source: (OECD, 2015, pp. 20-21, 48-49[5]).

4.8.1. State loans and guarantees

In general, the state should not automatically guarantee SOEs’ liabilities as state guarantees may distort the market, artificially lowering SOEs’ costs compared to their competitors.

Information on state guarantees for SOEs’ liabilities should be properly disclosed. In general, both quantitative and qualitative information about government credit guarantees and their expected cost should be published to give a complete picture of a government’s total financial position, both as part of debt management reporting and budgetary documentation.

Finally, SOEs’ relations with all financial institutions – whether privately owned or state-owned – should be based on purely commercial grounds. In particular, SOEs’ reliance on state-owned financial institutions may distort their incentives and lead to excessive indebtedness and misused resources. Even when funding is obtained from private lenders and granted on commercial terms, creditors assuming an implicit state guarantee is in place on an SOE’s debts can lead to artificially low funding costs for SOEs and distort the competitive landscape.

International comparison

As the OECD has observed, SOEs in a majority of countries finance their debt through loans contracted on the open market (OECD, 2018, p. 55[49]). In certain countries, individual SOEs can also access debt financing from the state treasury, subject to certain conditions. In the United Kingdom, for example, SOEs' access to commercial loans is rare and most have access to state loans granted by the treasury, either through the National Loans Fund or from the relevant shareholding ministries on loan terms agreed with the treasury (OECD, 2018, p. 55[49]).

Several countries provide state guarantees on SOEs' commercial loans; this likely creates the perception that SOEs are low-risk borrowers and gives them access to favourable loan conditions. Under EU state-aid rules, it is recognised that guarantees given directly by the state and guarantees given through state resources can distort or threaten to distort competition by favouring certain firms. These guarantees are assessed using the so-called Market Economy Investor Principle, which takes into account the effective possibilities for a beneficiary firm to obtain equivalent financial resources on the market with conditions that would be acceptable for a private operator.

A few OECD countries have adopted measures to apply comparable market conditions to loans or guarantees from the state treasury. In Iceland, for example, a State Guarantee Fund was established in 1962 to process and grant state guarantees, only if these are authorised by law. Information collection from SOEs and other parties that enjoy state guarantees is standardised and systematic in order to monitor the development of individual factors and total sums, and to analyse risks on individual loans. Moreover, a "risk charge" is paid to the State Guarantee Fund by recipients for these state guarantees.[75] In Australia, a mechanism in place to neutralise preferential debt-financing terms requires SOEs to pay a debt neutrality charge to the national treasury if it is found that an SOE is paying below-market rates on its debt (OECD, 2018, p. 55[49]). *Australian Government's Competitive Neutrality – Guidelines for Managers* further clarifies how this charge should reflect the difference between an SOE's actual cost of borrowing and the cost it would have incurred if it had borrowed as a private entity. The guidelines provide indications on how to calculate this benchmark rate (Australian Government, 2004, pp. 23-26[58]).

Box 4.3. EU state aid and an unlimited implicit guarantee granted to La Poste in France

In 2010, the European Commission found that an unlimited guarantee by the French state for the debts of postal operator La Poste amounted to state aid not compatible with EU rules. The unlimited guarantee derived from La Poste having been – until becoming a public limited company in 2010 – an *établissement public à caractère industriel et commercial* (EPIC), a legal and commercial status that enjoyed specific status under French law. According to the European Commission, and as confirmed by the European courts, there was a presumption that the grant of such a guarantee conferred an undue advantage to La Poste by improving its financial position through more favourable debt-financing terms. It was found that the reduction of La Poste's operating costs distorted competition and affected trade, with an unfavourable impact on firms active in or wishing to develop similar activities in France.

Source: Commission Decision 2010/605/EU of 26 January 2010 on State aid C 56/07 (ex E 15/05) granted by France to La Poste (Official Journal of the European Union (2010), L 274, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:L:2010:274:TOC, p. 1); Case T-154/10, French Republic v European Commission, Judgement of 20 September 2012, ECLI:EU:T:2012:452; Case C-559/12 P, French Republic v European Commission, Judgment of 3 April 2014, ECLI:EU:C:2014:217; (Wellinger, 2012[70]).

Findings in ASEAN

In several ASEAN member states, SOEs benefit from below-market interest rates for loans granted by commercial banks or state-owned banks, with the state acting as loan guarantor or allocating SOEs extra budget (as capital injections or transfers) if they are unable to repay the loans. Moreover, these loans require little or no disclosure by the borrower, with stakeholders suggesting that SOEs may not be subject to due diligence before loans are granted as lenders heavily rely on state implicit or explicit guarantees. In addition, in one instance, SOEs can obtain loans directly from the state, in particular, from the finance ministry.

While charging fees to SOEs for state guarantees is not common in ASEAN member states, in one instance the OECD found legislation that prescribes interest rates and fees (and other conditions) for guarantee fees; these are significantly lower than those available on the market, however.

Even in member states where the state has not recently acted as guarantor for the relevant SOEs' liabilities, specific sectoral regulation or provisions generally applicable to all SOEs give a legal foundation for such initiatives. This may be sufficient to perceive an implicit state guarantee and so affect the level playing field.

Finally, there are issues with transparency in several member states; for instance, a lack of specific reporting requirements on financial assistance to SOEs, including on state guarantees and commitments made on behalf of SOEs. Moreover, interest rates applied to SOEs are not publicly disclosed.

Recommendations

1. Governments should ensure that SOEs' debt financing is obtained on commercial terms and under the same market conditions as SOEs' competitors. Any state loans and guarantees to SOEs or loans by state-owned financial institutions should be provided at arm's length; subject to appropriate due diligence, and reflective of market interest rates without the influence of an implicit or explicit state guarantee. Governments could consider implementing mechanisms, such as guarantee fees, that impose compensatory payments by SOEs to the state if their borrowing costs are artificially lower than those of comparable private companies. Where already in place, guarantee fees should be adjusted to reflect funding costs that private companies would face in comparable circumstances.
2. Governments should introduce clear reporting and transparency requirements for debt obligations and financial assistance to SOEs, including for state loans and guarantees.

4.8.2. Equity financing from state budget and dividend policy

An SOE, especially when corporatised, should aim to be profitable and pay a commercial level of return (or dividend) to the government. This is important for several key reasons. First, if the SOE is paying out less than a commercial return, there is an implicit government subsidy. Second, an inefficient SOE benefitting from undue financial advantages may discourage private investments and crowd out more efficient private businesses facing higher costs from the market.

In principle, the state should invest in an SOE on terms and conditions that would be acceptable to a private investor. If this is the case, the SOE receiving the state investment gains no particular benefit since it would have obtained the same financing in the open market. On the contrary, SOEs enjoy a competitive advantage when investments from state funds result in less pressure on their efficiency and risk management, even though, at least in some instances, this funding may aim to support public-policy goals.

International comparison

In many OECD countries, equity capital injections from the state budget are commonly used to finance SOEs; these are often subject to minimum expected rates of return on investment (OECD, 2018, p. 55[49]). Moreover, many countries – such as Estonia, the Netherlands and Switzerland – have established target rates of return on equity for SOEs, adopting, in some cases, mechanisms to align return targets with those achieved by competing private enterprises, using sector-specific benchmarks (OECD, 2018, p. 57[49]) (OECD, 2014, pp. 26-30[71]). Finally, some countries – such as Australia, New Zealand and Sweden – have established guidelines or targets to align dividend pay-out levels with private-sector practices (OECD, 2018, p. 57[49]; 2014, pp. 30-40[71]).

Findings in ASEAN

The OECD has found that criteria on rates of return do not seem to apply in certain ASEAN member states; relevant SOEs in these countries are not required to be profitable and operate at a loss, being subsidised each year by increases in their allocated budget from the overall national budget. This issue is even more apparent in member states where the relevant SOE is not corporatised, as being a ministerial department simplifies access to government funding through periodic budget allocations or increased government funding to make up for budget shortfalls. This soft budget constraint can effectively amount to a de facto subsidy.

Recommendations

1. Governments should adopt a more commercial approach to state ownership by applying harder budget constraints, with funds provided to SOEs through the state budget subject to a required minimum rate of return consistent with private companies in the same sector and in similar circumstances.
2. Governments should establish a dividend policy for commercial SOEs, including clearly set rates of return, in line with market practices to ensure competitive neutrality.

4.8.3. Tax treatment

Tax codes and regulations should not exempt SOEs or grant them more favourable treatment than their private-sector competitors. Any undue fiscal advantages conferred upon SOEs will offer them a clear financial advantage over the private sector. Tax exemptions or tax relief may be granted as indirect compensation for public-service objectives, but should be carefully crafted to ensure that they do not result in undue distortion of competition and affect competitive neutrality.

International comparison

In general, SOEs in OECD countries are subject to the same or similar tax regimes as private-sector enterprises, especially where SOEs are incorporated entities. Limited exceptions apply to specific categories of SOEs that may be carrying out non-commercial objectives, such as USO, and which may be exempt from tax on income derived from such obligations or from VAT on such transactions (OECD, 2018, pp. 46-47[49]; 2019[72]). In 2018, for example, the European Commission investigated local tax relief worth a maximum of EUR 900 million granted to the French SOE La Poste to fund its public-service obligations, particularly in rural areas. The European Commission's assessment concluded that the relief did not exceed the amount needed to cover the net cost of the service and that the measure was in line with EU state aid rules.[76] In Australia and the United Kingdom, where differences in tax treatment exist, tax-neutral adjustments are made to compensate for differences between the tax treatment of SOEs and private-sector enterprises (OECD, 2018, pp. 46-47[49]).

Findings in ASEAN

SOEs' tax benefits may be aimed, in principle, at compensating them for public-service obligations or other non-economic activities, yet in certain ASEAN member states they are also exempted from commercial, local and billboard taxes and import duties that relate at least partially to their commercial activities. These tax exemptions affect the level playing field by giving SOEs a non-neutral advantage over their competitors.

Moreover, when SOEs are non-corporatised entities, their commercial activities are not subject to any taxation. In other instances, while SOEs are generally not exempted from taxes, in practice, however, the amount of the state budget allocated to them each year is adjusted for the amount of taxes that they are expected to pay. This effectively amounts to a tax exemption. Finally, in certain ASEAN member states, the OECD identified SOEs exempted from capital-gains taxes, although it concluded that this exemption may be justified by SOEs being required to remit a large portion of their annual earnings as dividends to the state.

Recommendations

1. Governments should ensure that tax regimes give equal treatment to the commercial activities of both SOEs and their private-sector competitors.
2. Tax exemptions for SOEs should be limited and strictly related to SOEs' public-service obligations, which should be accounted separately.
3. Governments should refrain from increasing SOEs' budget to offset taxes paid on their commercial activities.

4.8.4. Preferential access to public land and facilities

SOEs' access to public land and facilities at prices and conditions more favourable than those available to their private-sector competitors can hinder competitive neutrality by giving SOEs a form of indirect state support. Inputs such as land are even more important in sectors such as SPDS where having a wide network or facilities in premium locations confers clear competitive advantages by, for instance, reducing the costs of express delivery services.

Findings in ASEAN

The OECD found that relevant SOEs in many ASEAN member states have wide distribution networks with facilities in prime locations on state-owned land, assigned under long-term leases at nominal rates. In certain member states, SOEs' preferential access was established prior to sectoral liberalisation, but these nominal rates or at below-market rate have continued. In another instance, SOEs are able to lease state-owned land at preferential rates without having to undergo a public tender. The OECD understands that this preferential treatment is granted through procedures between government departments. In a few member states, there is no publicly available information on public land and facilities granted to SOEs.

Recommendations

1. Governments should revise rental agreements for public land and facilities assigned to SOEs to reflect market values; exceptions could be considered for land and facilities strictly related to the SOE's public-service obligations.
2. Governments should assign land rights through competitive procedures that aim to maximise their value and avoid any preferential treatment to SOEs.
3. Governments should increase transparency by disclosing all land and properties granted to each SOE and under which terms and conditions; SOEs' reports should contain clear information in this regard.

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Notes

[1] In this context, the OECD-Asia Network on Corporate Governance of State-Owned Enterprises provides a forum for the governments of Asian countries and corporate governance practitioners to share good practices and identify common priorities for strengthening SOE corporate governance.

[2] See, for instance, the notion of control in European Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008XC0416(08), paragraphs 65-73.

[3] See AEC Blueprint 2025, www.asean.org/storage/2016/03/AECBP_2025r_FINAL.pdf, paragraphs 25-26. See also AEC 2025 Consolidated Strategic Action Plan, https://asean.org/storage/2012/05/Updated-AEC-2025-CSAP-14-Aug-2018-final.pdf.

[4] Section 3.1.2, ASEAN Regional Guidelines on Competition Policy (2010), www.icao.int/sustainability/Documents/Compendium_FairCompetition/ASEAN/ASEAN-RegionalGudelinesonCompetitionPolicy.pdf, p. 6.

[5] The provision of education is a broadly accepted example of a service that has a positive externality beyond the immediate recipient. Basic research is also commonly mentioned as potentially being the subject of market failures leading to under-provision.

[6] For a more complete description, see (Capobianco and Christiansen, 2011[10]).

[7] The forecast refers to Southeast Asia, which includes Timor-Leste in addition to the ten ASEAN member states.

[8] ASEAN Expert Group on Competition (AEGC) released a "Joint Statement in Response to the Coronavirus Disease (COVID-19) Pandemic"; see https://asean.org/storage/2020/06/AEGC-Joint-Statement-in-Response-to-COVID-19-9June20-FINAL.pdf.

[9] ASEAN (12 November 2020, "ASEAN Comprehensive Recovery and Its Implementation Plan", https://asean.org/asean-comprehensive-recovery-framework-implementation-plan.

[10] European Commission Case M.6570 – UPS / TNT Express, https://ec.europa.eu/competition/mergers/cases/decisions/m6570_20130130_20610_4241141_EN.pdf, paragraphs 36-39; European Commission Case M.7630 – FEDEX / TNT Express, https://ec.europa.eu/competition/mergers/cases/decisions/m7630_4582_4.pdf, paragraphs 78-80.

[11] Established in 1874, the Universal Postal Union (UPU) is a specialised agency of the United Nations. With 192 member countries, the UPU is the primary forum for co-operation between postal-sector participants. The UPU helps to ensure a truly universal network of up-to-date products and services, sets the rules for international mail exchanges, and makes recommendations to stimulate growth in volumes and to improve quality of service for customers.

[12] For an analysis of the value chain of SPDS, see European Commission Case M.7630 – FEDEX / TNT Express, https://ec.europa.eu/competition/mergers/cases/decisions/m7630_4582_4.pdf, paragraph 28 and ff.

[13] A node is a connection point within a network. See, European Commission Case COMP/M.6570 – UPS/TNT Express, https://ec.europa.eu/competition/mergers/cases/decisions/m6570_20130130_20610_4241141_EN.pdf, paragraph 44.

[14] The European Commission defines integrators using five basic characteristics: 1) ownership of or full operational control over all transportation assets, including an air network with scheduled flights, through which a large proportion of the volumes handled by the company is carried; 2) sufficient global geographic coverage; 3) a hub-and-spoke operating model; 4) a proprietary IT network that allows all relevant data to run across one network; and 5) a reputation for reliably delivering parcels on time (so-called "end-to-end credibility").

[15] See European Commission Case M.7630 – FEDEX / TNT EXPRESS, https://ec.europa.eu/competition/mergers/cases/decisions/m7630_4582_4.pdf, paragraph 28 and ff. Several postal operators had changed their focus from the traditional mail business to small-package, e-commerce-based companies with cross-border presences. Examples include Deutsche Post, Royal Mail, PostNL, Swiss Post, Estonian Post, Correos, Bpost, Österreichische Post and PostNord, which are all upgrading or have upgraded their offer in order to meet new demands, especially in the B2C segment.

[16] Integrators or larger SPDS operators may outsource certain elements of the value chain to subcontractor outside service providers (OSP), which generally perform pick-up, delivery and certain sorting functions for small-package companies. This is often on a branded basis, so that the customers are unaware that the OSP is a subcontractor. An authorised service contractor (ASC) is typically a small-package company within a particular region – usually a single country – that enters into direct relationships with the customer of its own account in that country. An ASC may also be integrator branded, in which case the vans and drivers usually carry the brand of the integrator on their trucks, paperwork and uniforms, so customers may not realise that the ASC is an independent company.

[17] The definition of e-commerce used in this report is that in *OECD's Glossary of Statistical Terms*: "An e-commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments, and other public or private organisations" (https://stats.oecd.org/glossary/detail.asp?ID=4721).

[18] In 2018, the ASEAN e-commerce market accounted for approximately 1% of worldwide e-commerce revenue. See (OECD, 2018[24]).

[19] See https://cil.nus.edu.sg/wp-content/uploads/2019/02/2017-2025-ASEAN-WP-e-Commerce.pdf.

[20] See https://cil.nus.edu.sg/wp-content/uploads/2019/02/2017-2025-ASEAN-WP-e-Commerce.pdf.

[21] It has been observed that "while the concept of development goals being achieved through different combinations of policy actions, including state-owned assets, is conceptually sound, it is still difficult to apply in practice. Developmental goals might mean very little, simply forming the basis of political rhetoric and public relations" (OECD, 2015, p. 42[3]).

22 For further information, see www.da.com.bn.

23 See Section 16, Article XII, 1987 Constitution of the Republic of the Philippines, www.officialgazette.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-xii.

24 Examples of such sectors include the telecommunications sector, financial sector, construction sector, mining, and transportation infrastructure. See for, instance, (Kim, 2018[80]).

25 For a list of SOEs in DA's portfolio, see www.da.com.bn/portfolio/.

26 See (Ministry of State-Owned Enterprises, 2019, pp. 32, 84[83]) and World Bank 2018 GDP data.

27 See www.mof.gov.my/pdf/bahagian/gic/faq-en.pdf.

28 Section 7, www.state.gov/reports/2019-investment-climate-statements/malaysia.

29 This also allowed the government to separate regulatory functions from ownership, leaving Temasek to own and manage its assets commercially.

30 Several countries apply different ownership practices to SOEs tasked mostly with public-policy objectives.

31 SOE projects under the SMV programme include highway, transportation, telecommunication, energy, housing, drinking water and provision of other public goods and services. The five SOEs under the ownership of the Ministry of Finance are: Sarana Multi Infrastruktur; Lembaga Pembiayaan Ekspor Indonesia; Sarana Multi Finance; Penjaminan Infrastruktur Indonesia; and Geodipa Energi.

32 Temasek is 100%-owned by the Singapore Minister of Finance. Under the Singapore Minister for Finance (Incorporation) Act (Chapter 183), the Minister for Finance is a body corporate.

33 PMO may be contemplating partial privatisations with certain GOCCs' businesses being carved out prior to privatisation. So far, there has been no partial privatisation of GOCCs, but the scheme is currently under consideration by GCG.

34 *Twelfth National Economic and Social Development Plan (2017-2021)*, Section 2.8.6, www.nesdc.go.th/ewt_dl_link.php?nid=9640, p. 75.

35 Sections 3.1.4 and 3.1.5, *Twelfth National Economic and Social Development Plan (2017-2021)*, pp. 162-163.

36 See "Vietnam's Socio-Economic Development Strategy", http://pubdocs.worldbank.org/en/347151477448693952/pdf/Vietnam-SEDS-2011-2020.pdf, pp. 8-9.

37 Certain disclosure requirements depend not only upon an SOE being corporatised, but also upon whether it is listed on a national stock exchange and so subject to related listing requirements.

38 Article 15, Law No. 38/2009, https://jdih.kominfo.go.id/storage/files/1574058949-_JDIH_3_Law_No_38_of_2009_on_Post.pdf.

39 Sections 5(a) and (d) of the Postal Service Act, https://laws.chanrobles.com/republicacts/74_republicacts.php?id=7358.

[40] Article 10 (1-dd) of Vietnam Post Charter states that it is entitled to manage and use the public postal network owned and invested by the government, including the 63 provincial post offices listed in Annex I of the Charter.

[41] Information of the Brunei Department of Statistics (and based on BPSD data) shared with the OECD.

[42] Based on information shared with the OECD, revenues increased from approximately USD 282 000 (BND 386 755) in financial year 2015/16 to approximately USD 732 000 (BND 1.01 million) in financial year 2017/18.

[43] Pos Indonesia (2018), *Annual Report 2018 PT Pos Indonesia Persero*, https://upperline.id/uploads/annual_reports/file/file_annual_5e0dbbd43e6a8.pdf, p. 32.

[44] Singapore Post (2020), "28th Annual General Meeting, 16th July 2020", www.singpost.com/sites/default/files/28th%20AGM%20Presentation%20Slides.pdf, p. 5.

[45] Singapore Post (2018), "SingPost's Q1 FY18/19 Results Analyst Briefing, 3 August 2018", www.singpost.com/sites/default/files/SingPost%20Q1FY1819%20Q%26A%20transcript.pdf, p. 13.

[46] Information provided by a Thailand Post representative in a meeting with the OECD.

[47] See Thailand Post (2018), *Thailand Post 4.0: Power Driving Thailand Forward. Annual Report 2018*, https://file.thailandpost.com/upload/content/Annual%20Report%202018_5d8094d03d9fd.pdf, p. 24.

[48] See www.thailandpost.co.th/index.php?page=article_detail&addon=product&group_id=565&topic_id=9150&language=en.

[49] VN Post Express JSC is VN Post's express-mail subsidiary. VN Post owns 90% of the company, while the remaining 10% is owned by a subsidiary of VNPT and by its employees.

[50] Vietnam Post internal estimates provided to the OECD during interview on 21 March 2019.

[51] Information provided to the OECD during interview with Vietnam Post's representatives on 21 March 2019.

[52] See (ACCC, 2014[81]).

[53] In the European Union, state aid is defined as an advantage in any form conferred on a selective basis. It is generally prohibited by EU treaties unless it is justified by reasons of general economic development, as a company that receives government support gains a competitive advantage. To ensure that the rules are respected and any exemptions are applied equally across the European Union, the European Commission is in charge of ensuring that state aid complies with EU rules. Any aid measures can only be implemented after approval by the European Commission, which also has the power to recover incompatible state aid. See https://ec.europa.eu/competition/state_aid/overview/index_en.html.

[54] See European Commission (26 November 2015), "State aid: Commission approves financing of Polish Post's universal service obligation via a compensation fund", https://ec.europa.eu/commission/presscorner/detail/en/IP_15_6176.

[55] In 2017, the Norwegian Ministry of Transport and Communication commissioned Copenhagen Economics to conduct a study that aimed to provide a solid knowledge base and understanding of potential

and suitable alternatives for the future postal USO in Norway and the associated impact on users and on public procurement of postal services.

[56] See https://www.cnmc.es/en/ambitos-de-actuacion/postal/contabilidad-analitica-spu and www.cnmc.es/en/node/379846.

[57] See www.accc.gov.au/publications/assessing-cross-subsidy-in-australia-post. From 2006 to 2016, the ACCC issued an annual report of its analysis of Australia Post's regulatory accounts for the preceding year, to determine whether Australia Post has used revenue from its reserved services to cross-subsidise its non-reserved services.

[58] The term “regulatory capture” is used to refer to situations in which a regulators’ decisions are consistently or repeatedly directed away from the public interest towards a specific interest that dominate in the sector it is charged with regulating.

[59] Directive 2008/6/EC of the European Parliament and the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008L0006.

[60] For further information, see, “The European Regulators Group for Postal Services”, https://ec.europa.eu/growth/sectors/postal-services/ergp_en.

[61] “Government Resolution on State-Ownership Policy, 13.5.2016”, https://valtioneuvosto.fi/documents/10616/1221497/Periaatep_2016_korjENG.pdf/b5c9155f-c559-4c5b-b449-9eb8f5d54f30/Periaatep_2016_korjENG.pdf, pp. 9 and 16.

[62] Government Business Enterprises (GBEs) (RMG 126) Guide, Section 2.8(c), www.finance.gov.au/publications/resource-management-guides/government-business-enterprises-gbes-rmg-126.

[63] United States Postal Service v. Flamingo Industries (USA) Ltd, 540 U.S. 736 (2004), https://www.law.cornell.edu/supremecourt/text/02-1290.

[64] Postal Accountability and Enhancement Act, Pub. L. 109-435, 120 Stat. 3189 (Dec. 20, 2006), codified at 39 U.S.C. §§ 101 et seq, www.congress.gov/109/plaws/publ435/PLAW-109publ435.pdf.

[65] Under the state action doctrine, first set forth by the US Supreme Court in *Parker v. Brown* (317 U.S. 341, 1943), US federal antitrust laws do not apply to “anticompetitive restraints imposed by the States ‘as an act of government’” (*City of Columbia v. Omni Outdoor Advertising*, 499 U.S. 365, 370 (1991)).

[66] In general and not limited to postal services, this was the case in 11 out of the 55 countries that were part of the OECD Database on General Competition Statistics (OECD CompStats) in 2019. See also (OECD, 2020[82]), Figure 1.2. In 2019, OECD CompStats covered data from competition agencies in 55 jurisdictions, of which 37 were OECD countries (36 OECD countries and the European Union), 14 were participants in the OECD Competition Committee, and 1 jurisdiction was an associate to the OECD Competition Committee.

[67] For further information, see www.accc.gov.au/regulated-infrastructure/postal-services.

[68] The ACM enforces compliance with the Dutch Postal Act 2009. This act imposes, among other things, requirements on postal operator PostNL. Each year, the ACM assesses whether PostNL meets these requirements. An additional objective of the Dutch Postal Act is to promote competition in the postal

services market. The ACM analyses the market to see whether there is sufficient competition. For further information, see https://www.acm.nl/en/about-acm/mission-vision-strategy/our-tasks.

[69] For further information, see www.cnmc.es/en/ambitos-de-actuacion/postal.

[70] For further information, see www.fca.org.uk/about/promoting-competition.

[71] Under a predatory pricing theory, a “predator” is an already dominant company that sets its prices so low for a sufficient period of time that its competitors leave the market and others are deterred from entering. This is with the expectation that its foregone profits will be made up by future gains, once exploitable market power is gained.

[72] See Swedish Ministry of Enterprise, Energy and Communications, “Guidelines for external reporting by state-owned companies”, www.government.se/contentassets/b7ba2a84d9a1419caf2bb605cf90488e/guidelines-for-external-reporting-by-state-owned-companies.

[73] For further information, see www.alio.go.kr.

[74] See Australian Government, Department of Finance, “Commonwealth Procurement Rules, 20 April 2019, “Achieving Value for Money”, www.finance.gov.au/sites/default/files/2019-11/CPRs-20-April-2019_1.pdf.

[75] See www.lanamal.is/EN/about-us/state-guarantee-fund.

[76] See European Commission (6 April 2018), “State aid: Commission approves compensation granted by France to the French post office for its territorial coverage”, https://ec.europa.eu/commission/presscorner/detail/en/IP_18_2843.

Annex A. Quantifying the benefits of competitive neutrality

Competitive neutrality ensures that all enterprises, public or private, domestic or foreign, face the same set of rules. The rationale for pursuing competitive neutrality can be twofold: economic and political. The main economic rationale is that it enhances allocative efficiency throughout the economy; the political reason is linked to a government's role as a regulator ensuring that economic actors are on a level playing field.

Where certain agents – whether state-owned or private – are put at an undue advantage or disadvantage, goods and services are no longer produced by those who can do this most efficiently. This leads to lower real income (income after accounting for inflation) and suboptimal use of scarce resources, such as inefficient production methods or reduced innovation, compared to a baseline scenario in which there is a level playing field. Levelling the playing field lowers entry barriers and allows for new, possibly more efficient or innovative, firms to enter the market. This in turn lowers prices, increases quality and increases innovation.[1] Some of these benefits can be quantified, depending on the available data.

A1. The SPDS market

In most ASEAN member states, liberalisation reforms have made the SPDS market increasingly competitive, with a significant number of national and international players. SOEs – generally, the former incumbent postal operators – compete to a certain degree with a variety of domestic and international private-sector enterprises.

Despite this increased competition, in many ASEAN member states the SPDS market remains fairly concentrated, with three to four market participants accounting for the majority of the market. The competitive landscape can differ in various market segments, such as B2B and B2C services or domestic and international deliveries. For instance, in most member states, SOEs are more active in B2C delivery services, which represent approximately 71% of the total market, rather than B2B delivery services (Mordor Intelligence, 2020[26]). Moreover, many SOEs focus on domestic deliveries rather than international deliveries: the domestic segment accounts for approximately 60% of the total ASEAN SPDS market (Mordor Intelligence, 2020[26]). International players can and have entered the ASEAN SPDS market, despite certain member states requiring them to enter into a joint venture with a local partner to obtain an operating licence.

Finally, customers in several ASEAN member states have expressed concern about the quality of SPDS as a result of problems such as non-transparent prices and slow delivery (Mordor Intelligence, 2020[26]).

Achieving competitive neutrality in the SPDS market can lower existing barriers to entry or expansion for more efficient or innovative providers; this could lower prices and increase quality in the SPDS sector. Moreover, subjecting SOEs to the same regulation and market conditions as their private competitors provides them with incentives to be more efficient; this in turn may increase the quality of their services and profitability, decreasing the financial burden on the state.

A2. Estimated benefits of improving competitive neutrality

The OECD recommendations address specific restrictions identified in the legislation across ASEAN member states; their impact is directly linked to removing those restrictions and any subsequent positive effects on competition in the SPDS sector. The expected benefits from implementing the recommendations include increasing consumer welfare (for instance, through lower prices) and attracting more foreign direct investment (FDI) into the sector. In addition to these benefits, full implementation of the OECD recommendations is expected to deliver positive long-term effects for SMEs and employment in the SPDS sector. Moreover, given the increasing importance of e-commerce, improving the level playing field in the sector could have a significant economic impact across the economy, for instance, by facilitating cross-border trade.

The recommendations in this report draw from the recommendations in the country reports on each ASEAN member state. The recommendations aim to address legislative acts and other provisions that were found to have the potential to affect competitive neutrality in SPDS. In developing the recommendations, the OECD relied on international practices and has proposed alternatives that in principle are less restrictive to competitive neutrality, while still – where appropriate – achieving the policymaker's objective. Although individual recommendations may address specific issues, their overarching objective is to achieve competitive neutrality. As a result, this report does not estimate the impact of single recommendations, but rather estimates the total impact of an improved level playing field in the SPDS market.

A.2.1 Increasing consumer welfare

To quantify the overall consumer benefit from the implementation of the recommendations, the OECD gathered revenue data for the SPDS market in ASEAN. Information on revenues in this logistics sub-sector and any expected impact on prices can be used to estimate the likely impact on users. More specifically, benefits for SPDS users from lower prices can be calculated as follows:

$$Benefit = \left(\rho + \frac{1}{2}|\varepsilon|\rho^2\right) * R$$

Where ρ is the percentage change in average prices, $|\varepsilon|$ is the absolute value of the elasticity of demand, and R is the revenue from road freight transport.

Two data sources were mainly used: the Universal Postal Union (UPU)[2] and Mordor Intelligence (2020[26]). Based on such revenue data and a subsequent calculation of the market size, the OECD made a conservative assessment of impact on prices. Finally, the consumer benefit was then calculated using the methodology set out in Box A A.1.

In 2019, the total revenue in all ASEAN member states from the provision of SPDS was estimated at EUR 6.54 billion and is expected to rise to EUR 9.29 billion in 2021 (Mordor Intelligence, 2020[26]). Based on a conservative estimate, the implementation of the recommendations detailed in this report could be expected to bring a benefit for the ASEAN economy of around EUR 93 million a year for each 1% price decrease of the price of delivery of a small package. As the SPDS market is expected to grow at a compound annual growth rate (CAGR) of 12% between 2020 and 2025 (Mordor Intelligence, 2020[26]), this benefit could increase to EUR 141 million a year for each 1% price decrease by 2025. An average price decrease of delivering a small package of 5% would lead to a benefit of between EUR 464 and EUR 699 million a year.

These figures are likely to underestimate the actual impact of fully implementing the OECD recommendations for a variety of reasons. First, it was not possible to quantify the effects of all recommendations in all ASEAN member states, due to insufficient data or because of the nature of the proposed reforms. Second, the Competitive Neutrality Project focuses on laws and regulations in the SPDS sector; its focus is legislation, not enforcement. However, changes in regulation can only have an impact if regulation is enforced. This is not always the case, which limits the direct benefits of improving competitive neutrality. Third, the estimates do not account for the benefits to the business environment arising from improving the quality of legislation, for instance, by implementing recommendations to streamline legal frameworks and to provide more guidance and clarity to businesses. Fourth, the estimation framework focuses on the impact on consumer welfare, which is the standard approach followed by most competition authorities and which is embedded in the OECD Competition Assessment Toolkit (OECD, 2019[8]). Other benefits, such as increases in employment and improved cross-border trade are not included in this estimate.

A.2.2 Benefits for SMEs and start-ups, and the impact on employment

The implementation of the OECD recommendations is expected to benefit SMEs. Such benefits are expected to arise by ensuring a level playing field for all enterprises, with equal access to markets and dynamic competition.

Although the OECD was not able to quantify these benefits, SMEs, including micro-enterprises are key to the economic development and growth of ASEAN member states. They constitute the largest number of establishments and contribute significantly to the labour force of member states. According to ASEAN data, SMEs account for between 88.8% and 99.9% of total establishments in member states and between 51.7% and 97.2% of total employment. The contribution of these enterprises to each member state's GDP is between 30% and 53% and the contribution of SMEs to exports is between 10% and 29.9%.[3] These enterprises are vital in terms of income and employment generation, making SME development fundamental to any attempt to achieve long-term, sustainable economic growth and a narrowing of the development gap. This is particularly true in the SPDS sector where SMEs are involved in different parts of the value chain.

In addition, start-ups have emerged as key drivers of economic growth and job creation globally, and are often a catalyst for radical innovation. Young firms accounted for about 20% of employment, but created almost half of new jobs on average across OECD countries in 2016 (Calvino, Criscuolo and Menon, 2016[73]), while innovation by young firms contributes significantly to aggregate productivity growth, accounting for half in the United States (Klenow and Li, 2020[74]). Although the OECD has no specific estimates for ASEAN member states, the average impact across OECD economies illustrates that the impact of start-ups on an economy is not to be underestimated.

Establishing competitive neutrality is expected to contribute to unlocking the potential of SMEs and start-ups to generate economic growth in ASEAN member states.

A.2.3 Benefits in cross-border trade

The OECD recommendations aim at making markets more competitive, reducing non-tariff barriers to trade and, when applicable, harmonising regulations across countries to facilitate trade.

Although the OECD has not been able to quantify in monetary terms the anticipated benefits in cross-border trade due to data limitations, OECD work on the cost of regulatory barriers can provide an indication of the potential benefits in terms of reducing barriers in trade for transport services (Benz and Jaax, 2020[75]).[4] The study, which covers 46 countries, including Malaysia and Thailand, shows that transport barriers, as measured by the OECD Services Trade Restrictiveness Index (STRI), are significantly associated with lower service trade. The results show that trade costs in general are still high. Expressed as percentages of total trade value or ad valorem equivalents (AVE), average costs of regulatory barriers to cross-border trade stand at around 60% for transport services. In ASEAN, the costs of regulatory barriers to cross-border transport trade for Malaysia stand at 79.1% and at 151.7% for Thailand. AVEs must be interpreted as the percentage-point reduction of trade costs corresponding to a reduction of the OECD STRI from its current level to zero (Benz and Jaax, 2020[75]).[5]

A.2.4 Benefits on gender equality

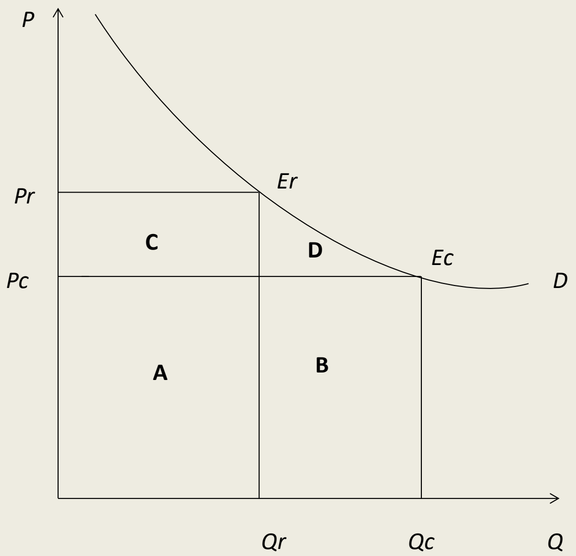
While female labour participation is high in ASEAN compared to the OECD average, women in ASEAN member states tend to hold low value-added and informal jobs and earn significantly less than males. Female labour participation in the region tends to be driven by economic necessity rather than opportunity (OECD, 2017, p. 16[76]). Similarly, female entrepreneurship in ASEAN tends to be concentrated in less profitable sectors, such as agriculture, and specialised services including beauty and catering. The OECD has highlighted the difference in the nature of businesses owned by females and males, in terms of size, productivity and profit. Customs and social norms that reinforce gender stereotypes are major limiting factors for female entrepreneurship in the region (OECD, 2017, pp. 17. 116-167[76]).

Although the Competitive Neutrality Project has not identified examples of regulatory restrictions to women's economic activity in SPDS, improving competition policy in general, and improving competitive neutrality in particular, can be a way to address gender equality.[6] For example, removing entry barriers as a result of establishing a level playing field and improving the business environment will benefit entrepreneurship, including women's entrepreneurship. In addition to its social benefits, improvements in women's entrepreneurship and participation in the labour force increase economic growth, income equality and productivity. Studies have shown that the gender gap causes an average 15% loss to GDP across the world (Cuberes and Teignier, 2016[77]). In East and Southeast Asia (excluding China), gains would be particularly significant and the removal of gender bias could increase GDP by 30% compared to a business-as-usual scenario (McKinsey Global Institute, 2015[78]).

Box A A.1. Measuring changes in consumer surplus

The effects of changing regulations can be examined as movements from one point on the demand curve to another. For regulations that have the effect of limiting supply or raising price, an estimate of consumer benefit or harm from the change from one equilibrium to another can be calculated. Graphically, the change is illustrated for a constant elasticity demand curve. E_r shows the equilibrium with the restrictive regulation, E_c shows the equilibrium point with the competitive regulation. The competitive equilibrium is different from the restrictive regulation equilibrium in two important ways: lower price and higher quantity. These properties are a well-known result from many models of competition.

Figure A A.1. Changes in consumer surplus



Under the assumption of constant elasticity of demand the equation for consumer benefit is:

$$CB = C + D \approx (P_r - P_c)Q_r + \frac{1}{2}(P_r - P_c)(Q_c - Q_r)$$

Where price changes are expected, a basic formula for a standard measure of consumer benefit from eliminating the restriction is:

$$CB = \left(\rho + \frac{1}{2}\epsilon\rho^2\right)R_r$$

Where *CB*: standard measure of consumer harm, ρ: percentage change in price related to restriction, *R*: sector revenue and ϵ: demand elasticity. When elasticity is not known, a relatively standard assumption is that $|\epsilon|=2$. This value corresponds to more elastic demand than in a monopoly market, but less than the perfectly elastic demand in a competitive market. Under this assumption, the expression above simplifies to:

$$CB = (\rho + \rho^2)R_r$$

Several economic assumptions were made.

- Any taxes are assumed away, i.e., any implication resulting from the taxation regime on consumer surplus.

- A regular, linear (or near linear), demand function, with no random term, is assumed.
- The set of services within each sector is assumed to constitute a “composite service” with “volume” Q, for which a “composite price” P is charged in the market.
- The balance among the different services within each “composite service” is assumed not to change, or changes only negligibly, following the price changes that may result from the implementation of the issued recommendations.
- No interdependence is factored in between price and quality levels (although changes in any one may affect the other). This is equivalent to assuming that the “quality” of the different services remains constant or experiences a non-significant change. “Quality” means a term that can involve a distribution of quality levels depending on who provides the service. The quality mean could remain unchanged as a result of implementing a certain recommendation, but the distribution of such quality over the different service providers could change (mean-preserving spread). In the latter case, even with an unchanged mean, there would be welfare effects just due to the change in the mean-preserving distribution of quality levels.
- No distinction is made here between Marshallian (relation between prices and income) and Hicksian (relation between prices and utility) demand functions. In any case, since certain values for the demand elasticities ($\epsilon = 2$) are assumed, these values could be assumed for any of these two types of demand functions.

Source: OECD (2017[79]).

Notes

[1] For general benefits on competition, see (OECD, 2014[6]).

[2] Universal Postal Union, “Global or regional estimates”, http://pls.upu.int/pls/ap/ssp_report.main2020?p_language=AN&p_choice=BROWSE.

[3] See https://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/micro-small-and-medium-enterprises/overview.

[4] The study relies on information from the OECD Services Trade Restrictiveness Index (STRI) to estimate ad valorem equivalents of service trade barriers for 46 countries using a structural gravity model.

[5] AVEs quantify the impact of the STRI on the relative attractiveness of imported services versus domestically sources services. Being based on observed trade values rather than prices, it would be incorrect to say that the ad valorem for cross-border trade costs actually have to be paid for a cross-border service transaction. Consequently, the analysis does not reveal whether services trade liberalisation contributed to a reduction of the prices of imported goods.

[6] See https://oecdonthelevel.com/2018/03/02/whats-gender-got-to-do-with-competition-policy.

OECD COMPETITIVE NEUTRALITY REVIEWS: SMALL-PACKAGE DELIVERY SERVICES IN ASEAN

Efficient logistics can play a significant role in increasing a country's economic development by facilitating international trade and improving its competitiveness. This report focuses on small-package delivery services in the logistics sector and identifies the advantages or disadvantages of state-owned enterprises in this sector when competing with private companies.

This report and the accompanying "OECD Competition Assessment Reviews: Logistics Sector in ASEAN" are contributions to an ASEAN-wide project that implements part of the ASEAN Competition Action Plan 2016-2025 and is funded by the ASEAN Economic Reform Programme under the UK Foreign, Commonwealth & Development Office (UK Government). Designed to foster competition in ASEAN, the project involves conducting assessments of regulatory constraints on competition in the logistics services sector in all 10 ASEAN countries to identify regulations that hinder the efficient functioning of markets and create an unlevel playing field for business.

Access all reports and read more about the project at **oe.cd/comp-asean**.

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