



OECD Competitive Neutrality Reviews

INDONESIA

SMALL-PACKAGE DELIVERY SERVICES



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

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Foreword

Southeast Asia, one of the fastest growing regions in the world, has benefited from a broad embrace of 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. Apart from 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.

The OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Indonesia, undertaken within the framework of the ASEAN Competition Action Plan, assesses the impact of state-owned enterprises on competition in Indonesia. 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 the OECD Competition Assessment Reviews: Logistics Sector in Indonesia.

The OECD assessment was conducted in consultation with the Indonesian authorities and with local stakeholders, with the support of the ASEAN Secretariat and the UK Foreign, Commonwealth & Development Office (UK Government). The assessment prioritises 68 pieces of legislation and identifies 19 regulatory barriers 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 is especially important for Indonesia, as in 2019, it had the largest and fastest growing e-commerce market in ASEAN.. This report offers policy recommendations that can help the Indonesian government address structural and regulatory shortcomings in the small-package delivery services sector.

These structural reforms have become even more pressing as the Indonesian economy is expected to shrink by approximately 2.4% in 2020 (compared to 5% growth in 2019) due to the COVID-19 pandemic. These policy recommendations contribute to reforms that can help the Indonesian 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 Indonesian government, 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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- Motor Transport Enterprise of the Republic of Indonesia (DAMRI)
- Indonesian Investment Coordinating Board (BKPM)
- Ministry of Communication and Information Technology – Directorate General of Post and Information Technology
- Ministry of Cooperation and Small and Medium Enterprises – E-Commerce Division
- Ministry of State-Owned Enterprises
- Ministry of Transportation – Directorate General of Rail Transportation
- Indonesian National Shipping (PELNI)
- Kai Logistik
- PT. Pos Indonesia

The following trade associations and private companies were interviewed:

- Association of Indonesian Express Delivery Service Companies (ASPERINDO)
- EuroCham Indonesia
- J&T Express
- JNE
- Land Transportation Association (ORGANDA)
- Lazada
- Pandu Logistik
- RPX
- TIKI

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The OECD project team consisted of Ruben Maximiano, Senior Competition Expert and ASEAN Project Co-ordinator; Wouter Meester, Competition Expert and Competitive Neutrality Project Leader; MatteoGiangaspero, Competition Expert; Federica Maiorano, Senior Competition Expert and Competition Assessment Project Leader; Sophie Flaherty, Competition Analyst; and Gaetano Lapenta, Competition Analyst, all from the OECD Competition Division. The report was drafted by Matteo Giangaspero and Wouter Meester, edited by Tom Ridgway and prepared for publication by Eleonore Morena and Claudia Gemmel.

Valuable comments throughout the process and on the final report were provided by Antonio Capobianco, Acting Head of the OECD Competition Division, Hans Christiansen, Senior Economist; Sara Sultan, Policy Analyst; and Chung-a Park, Policy Analyst, all three of the OECD Corporate Governance and Corporate Finance Division; Cristiana Vitale, Senior Economist; Andrea Goldstein, Senior Economist, both of the OECD Economics Department; and Massimo Geloso Grosso of the OECD Global Relations Secretariat.

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The information and figures in the report are updated as of December 2020, 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) Indonesian legislation, stakeholder interviews and desk research.

The formulation of this report and the field interviews to gather relevant data/information related to this study, were conducted in 2019, prior to the issuance of Law Number 11 Year 2020 (the Omnibus Law on Job Creation). The Omnibus Law 2020 has significantly changed the regulatory landscape in Indonesia with the objective to attract more investment and increase the ease of doing business. These changes have not been reflected in the report.

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 with assisting 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.

The current report on Indonesia is part of a series of 10 similar assessments (one for each ASEAN Member State).

Table of contents

Foreword	3
Acknowledgements	5
Abbreviations and acronyms	9
Executive summary	11
1 Introduction	15
1.1. Scope of the report	15
1.2. The impact of COVID-19 on e-commerce	15
1.3. Report structure	16
2 State-owned enterprises and competition	17
2.1. Introduction	17
2.2. Definition of SOEs	17
2.3. Benefits of competition	18
2.4. SOEs and competitive neutrality	19
3 SOEs' framework and the importance of SOEs in Indonesia	23
3.1. Indonesia	23
3.2. The scope and importance of SOEs in Indonesia	24
3.3. Competition law and SOEs	30
3.4. SOE-specific legislation	32
4 Small package delivery services in Indonesia	37
4.1. Economic overview of the logistics sector: a focus on small package delivery services (SPDS)	37
4.2. Competitive landscape of the SPDS sector	40
4.3. Sectoral regulation	43
5 SOEs and their impact on competition in SPDS	47
5.1. SOEs active in the SPDS sector and a focus on Pos Indonesia	47
5.2. Assessment of Pos Indonesia's advantages and disadvantages in the SPDS sector	51
References	61
Additional references	66
Notes	69
Annex A. List of reviewed legislation	79

FIGURES

Figure 3.1. Privatisation of SOEs in Indonesia, 1998-2014	25
Figure 3.2. Number of SOEs in Indonesia	26
Figure 3.3. The structure and content of the economy wide PMR indicator	27
Figure 3.4. State capital injection into SOEs in Indonesia, 2004-16	28
Figure 4.1. Overview of steps in a small-package delivery service	38
Figure 4.2. E-commerce market value in ASEAN, 2015-21	39

TABLES

Table 4.1. Brand awareness in SPDS market, percentage	41
Table 4.2. Market share in the Indonesian courier market, percentage, 2015	41
Table 4.3. Frequency of courier companies used, percentage	41
Table 5.1. Number of items delivered by Pos Indonesia, 2015-2019	50

BOXES

Box 3.1. A brief history of SOEs in Indonesia	24
Box 3.2. OECD Product Market Regulation Indicators in Indonesia	26
Box 3.3. Competition cases involving SOEs in Indonesia	31
Box 4.1. Digital evolution and the impact on the SPDS sector	42

Abbreviations and acronyms

3PL	Third-party logistics
ACAP	ASEAN Competition Action Plan
ADB	Asian Development Bank
AEC	ASEAN Economic Community
AEGC	ASEAN Experts Group on Competition
ALFI	Indonesian Logistics & Forwarders Association
APEC	Asia-Pacific Economic Cooperation
ASC	Authorised service contractor
ASEAN	Association of Southeast Asian Nations
B2B	Business-to-business commerce
B2C	Business-to-consumer commerce
GCG	Good corporate governance
GLM	Government-linked monopoly
GLC	Government-linked company
GNI	Gross National Income
ICC	Indonesia Competition Commission (or domestically known as KPPU)
ICT	Information and communications technology
IMF	International Monetary Fund
KAI	Indonesian Railway (Kereta Api Indonesia)
NCCG	National Committee on Corporate Governance
OSP	Outside service providers
PELNI	Indonesian National Shipping (Pelayaran Nasional Indonesia)
PMN	State capital injections
PSO	Public-service obligation
PUD	Pick-up and delivery
SOHC	Sector-based holding company
SOE	State-owned enterprise
SPDS	Small-package delivery services
UPU	Universal Postal Union

Executive summary

State-owned enterprises and competition

Assessing the impact of state-owned enterprises (SOEs) on competition is important because competitive neutrality – state-owned and private businesses competing on a level playing field – ensures that all enterprises, public or private, domestic or foreign, face the same sets of rules. In order to ensure optimal economic outcomes, SOEs should compete against private entities on fair terms, while recognising and taking into account their contribution to socio-economic and policy objectives.

SOEs may enjoy rights or privileges unavailable to private competitors, which give them undue competitive advantage over their rivals, including selective subsidies, explicit or implicit loan guarantees, preferential purchasing, preferential standards, support for unnecessary new capacity, and regulatory or tax favouritism. This may make market entry more difficult for private companies (both domestic and foreign) and can therefore also constitute a competitive obstacle. However, SOEs may also be subject to certain duties, such as a requirement to operate (underfinanced) public services or the need to comply with civil-service labour rules, which affect their ability to compete effectively with privately owned competitors.

A level playing field between public and private market participants leads to more choice, higher quality and lower prices for consumers and ultimately benefits economic growth and development. For example, research has shown that financially disadvantaged consumers often suffer disproportionately from the exercise of market power. A level playing field also benefits taxpayers as (often limited) public resources can be better allocated to other public services, including pensions, healthcare and social benefits. Finally, research has shown that including gender considerations in competition policy can improve gender equality.

Pos Indonesia and the small-package delivery services sector in Indonesia

Indonesia is an archipelago which stretches from the western end on Sumatra to the easternmost point in New Guinea (Papua) for more than 5 000 kilometres and is made up of 17 000 islands. It is one of the original member states of ASEAN; it joined the group on 8 August 1967. According to the World Bank, Indonesia achieved upper-middle-income status in 2019, with Gross National Income (GNI) per capita of USD 4 050 (as of 1 July 2020) (Serajuddin and Hamadeh, 2020^[1]). While Indonesia was on the path to becoming a high-income country, its progress has been halted by the COVID-19 crisis. The *OECD Economic Outlook*, published in December 2020, stated that “in a few months, the pandemic reversed some hard-won advances in well-being with poverty, malnutrition and even hunger rising fast” (OECD, 2020, p. 185^[2]).

Since Indonesia’s independence in 1945, SOEs – known as BUMN in Indonesia – have grown to play an important role in the country’s economy. This key role of the state in many economic sectors is linked to Indonesia’s 1945 constitution, which describes that important sectors of production 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. Although Indonesia has tried several times to decrease the size and importance of the state sector, there were 114 SOEs in 2019 with a combined value of their assets representing more than 50% of GDP. In 2016, Indonesia introduced sector-based holding companies with the objective to expand the SOE sector. Moreover, with SOEs in Indonesia are expected – under co-ordination of the sector-based holding companies (SOHCs) – to co-operate with one another in general business activities, financing, procurement, and capacity development.

A level playing field in the small-package delivery services (SPDS) sector is crucial to further increase competition and fulfil the sector's potential. Preventing the existence of a level playing field in the Indonesian SPDS sector are several obstacles that may harm competition, hinder the Indonesian economy, and stop consumers from benefiting fully of a rapidly developing e-commerce market, the latter of which has been further increased and accelerated by the COVID-19 pandemic. Some of these obstacles are linked to or affected by the dual role of the incumbent postal operator, Pos Indonesia, as a provider of public services and competitor in the highly competitive SPDS market. As has been observed in many countries around the world, in Indonesia electronic communications are leading to drastic falls in the volume of traditional letters and postcards, increasing the commercial importance of the SPDS market to Pos Indonesia.

This situation is similar to that of many OECD countries in the late 1990s, when postal services were provided by monopoly operators and technological developments began to erode incumbent postal operators' core businesses, potentially threatening their ability to continue financing their social obligations such as universal service. These monopoly operators were mostly state-owned, protected from competition, and enjoyed certain benefits over their privately owned competitors.

Since the 1990s, many OECD countries have addressed the issue of levelling the playing field between incumbent postal operators and private competitors also active in (contestable) commercial markets. In these countries, the postal sector has been gradually opened up to competition, leaving the postal sector either entirely or partly to the incumbent postal operator.

While different options exist to improve the level playing field in the SPDS sector, such as regulation and deregulation, liberalisation and privatisation, it is important to note that the rights, privileges and duties (or advantages and disadvantages) of Pos Indonesia are often interrelated. Consequently, addressing the obstacles to competition in the SPDS sector in Indonesia requires a holistic approach. For instance, reversing or decreasing the rights and privileges of Pos Indonesia should be accompanied by a clear reassessment of the impact of possible disadvantages that result from Pos Indonesia's public-service obligation (PSO), including the compensation mechanism. In other words, only when Pos Indonesia is adequately compensated for the fulfilment of its PSO can its viability be assured, while improving the competitiveness of the SPDS sector.

Key recommendations

This report identifies 19 recommendations that aim to improve the level playing field in the Indonesian SPDS sector. If fully implemented, these recommendations can be expected to generate significant benefits to the Indonesian economy, and more broadly to ASEAN. Full implementation of the recommendations set out in this report can be expected to deliver positive long-term effects on employment, productivity, growth and improve the ability of businesses to compete.

It is important to note that the number of recommendations in this report is neither indicative of the overall restrictiveness of logistics regulation in the country, nor a good basis for comparisons between countries. Firstly, some restrictions to competition identified by the OECD are more harmful than others, making comparison between countries difficult and often not very meaningful. Secondly, the number of recommendations depends on several factors including the number of pieces of legislation available and reviewed as well as the amount and depth of contributions and feedback received from domestic stakeholders.

The main recommendations are:

- Ensure that SOEs required to perform non-commercial activities for government agencies and other public authorities, such as Pos Indonesia, receive adequate compensation for these services.
- Ensure that SOEs with PSO, such as Pos Indonesia, comply with the accounting separation and reporting requirements to prevent commercial services being cross-subsidised by funds designated for public service obligations.
- Ensure that SOE public procurement follows a competitive process and limits the scope of preferential agreements. This can be achieved by (i) revoking and redesigning the SOE synergy policy for public procurement between SOEs to ensure procedures are competitive, non-discriminatory and safeguarded by appropriate standards of transparency; and (ii) developing guidelines through co-ordination between relevant ministries and other institutions, including the Indonesian Competition Commission.
- Consider to mandate Kominfo to organise a public consultation or call for expression of interest to inquire whether private companies have an interest in executing the PSO. This could be a first step for developing a tender for the PSO.
- Ensure that SOE boards are sufficient autonomous and competent and that direct appointments by the Minister are limited to certain circumstances. For this, (i) reinforce the “fit-and-proper” test to mitigate the risk of political appointees for commissioners and directors; and (ii) ensure that the assessment of this test is conducted by an independent entity.
- Ensure that the interaction between Kominfo and the Ministry of State-Owned Enterprises is limited to co-ordination necessary to the execution of the PSO, and does not influence any legislation that could give a SOE a competitive advantage for its commercial activities.
- Ensure that any external financing sought by SOEs, including Pos Indonesia, is taken out under commercial terms with both state-owned banks and other financial institutions. In particular, loans to SOEs should be subject to appropriate due diligence and to market-based interest rates.

1 Introduction

1.1. Scope of the report

State-owned enterprises (SOEs) play a significant role in Indonesia as in many other national economies around the world. In order to ensure optimal economic outcomes, SOEs should compete with private entities on a level playing field, while recognising their contribution to socio-economic and policy objectives.

This report assesses the impact of SOEs on competition in Indonesia, identifying their key advantages or disadvantages when competing with private companies. The analysis focuses on the logistics sector, and more specifically on small-package delivery services (SPDS). Efficient logistics can play a significant role in increasing a country's economic development by facilitating international trade and improving its competitiveness. SPDS are a fundamental part of the logistics sector due to their important role in the rapidly growing e-commerce sector.

1.2. The impact of COVID-19 on e-commerce

The COVID-19 pandemic is disrupting global supply chains in unprecedented ways and will have a significant economic impact with GDP contractions in most ASEAN member states in 2020. As in other countries, due to COVID-19 and the resulting restrictions to contain the pandemic, ASEAN member states are facing a decline in consumption, investment, and trade, with a severe impact on key sectors such as tourism. Nevertheless, COVID-19 should not affect the long-term progress of ASEAN, which is being driven by a middle-class boom. According to estimations of the Asian Development Bank (ADB) in September 2020 (ADB, 2020, p. 25^[3]), Southeast Asia's (which includes ASEAN member states and Timor-Leste) GDP is expected to contract 3.8% in 2020 and rebound to 5.5% in 2021. Indonesia's GDP growth rate in 2020 is expected to be -2.4% and it is expected to remain below previous trends in 2021 at 4%, but to rebound to 5.1% in 2022, according to the OECD.

The pandemic has provoked an abrupt and sharp increase in the use of e-commerce in ASEAN. In May 2020, data showed that the COVID-19 pandemic social restrictions had led to an increase in internet usage in Indonesia of 40%, according to the Ministry of Communication and Information Technology (KOMINFO), and while internet traffic used to be dominated by office areas, this is now increasing in residential areas.¹ According to a survey, 55% of the total population in Indonesia indicated that they purchased more online during the COVID-19 pandemic between February and May 2020.² Finally, in the week of 22 March 2020, weekly downloads for e-commerce applications in Thailand are estimated to have increased by 60%, while Indonesia, Singapore and Viet Nam each recorded a 10% increase (OECD, 2018, p. 99^[4]). E-commerce is likely to see sustained growth as consumers continue to shun physical stores in favour of online shopping (ASEAN, 2020^[5]).

The COVID-19 crisis will lead to long-term changes, likely expediting the shift to e-commerce, especially for consumers who were until recently more resistant to online retail channels. Brick-and-mortar businesses will also evolve, offering services beyond retail, including last-mile deliveries. Digital transformation is occurring rapidly in ASEAN. For instance, Cambodia, Lao PDR and Myanmar recorded year-on-year growth of approximately 20% in e-commerce users in April 2020. The value of online sales also saw high annual growth rates (above 15%) in Indonesia, Thailand, the Philippines and Malaysia.

Moreover, COVID-19 is expected to accelerate governments' and businesses' 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^[6]).

Notwithstanding these changes, barriers to logistics services continue to make e-commerce deliveries often expensive and unreliable, at least in some ASEAN member states. This affects the development of e-commerce, both domestically and internationally. Lifting such barriers would support its development and provide consumers with more choice and better prices.

In this context, regional co-operation is playing and will continue to play a key role. ASEAN has put in place a framework for COVID-19 response across multiple sectors (UN, 2020^[7]). Moreover, the ASEAN Expert Group on Competition (AEGC) released a joint statement in response to the COVID-19 pandemic.³ Regional economic forum Asia-Pacific Economic Cooperation (APEC) is also taking collective initiatives. In May 2020, ministers responsible for trade in APEC economies pledged to work together to mitigate the impact of COVID-19, committing, among other considerations, to facilitate the flow of goods across borders, as well as to strengthen e-commerce and related services (OECD, 2018, p. 99^[4]).

Finally, Indonesia adopted the Omnibus Law on Job Creation (Law 11/2020) in October 2020, which was enacted in November 2020. It sets out a far-reaching economic reform package, revising over 75 laws and covering various sectors. The law seeks to promote investment, improve Indonesia's ease of doing business rating, minimise overlapping policies of central and local governments, simplify regulations and licensing procedures, protect and facilitate the development of SMEs, and address unemployment. The impact of the law will depend significantly on the implementing regulations, which are yet to be finalised. Transparent and meaningful stakeholder consultation will be key to this success.⁴ This report does not yet take into account this law as details were unavailable at the time of drafting.

1.3. Report structure

The report contains five chapters. The executive summary outlines the content of the report and provides an overview of its key recommendations. Chapter 1 introduces the scope and structure of the report; Chapter 2 defines SOEs and their relationship to competition policy. Chapter 3 provides an overview of the economic importance and the legal framework of SOEs in Indonesia. Chapter 4 describes the competitive landscape and the regulation applicable to SPDS in Indonesia. Chapter 5 focuses on PT. Pos Indonesia, the main SOE providing SPDS in Indonesia and its advantages or disadvantages that can impact on competition, and offers recommendations to improve the level playing field.

2 State-owned enterprises and competition

2.1. Introduction

SOEs play a significant role in many national economies around the world. In 2016, approximately 22 of the world's largest 100 firms were estimated to be effectively under state control, with many of these operating key upstream and downstream activities in international supply chains, such as public utilities, manufacturing, metals and mining, and petroleum (OECD, 2016^[8]).

The role and importance of SOEs differ substantially between regions, countries and sectors. In Southeast Asia, they still represent a major part of many economies, measured by percentage of GDP, employment and fiscal revenues, and remain indispensable players in almost all key sectors, building, maintaining and operating critical infrastructure, delivering critical services, and providing public employment. Their characteristics as publicly owned enterprises allow them to play a critical role in most economies and to contribute to developmental goals that – in practice – often result from other (political or economic) objectives (OECD, 2015^[9]).

Nevertheless, in order to ensure optimal economic outcomes, SOEs should compete against private entities on level playing fields that still recognise – to an appropriate and relevant extent – their socio-economic and developmental roles and policy objectives.

Several ASEAN member states have begun considering SOE reform in view of improving economic outcomes, with varied results; these states could capitalise on the experiences of different OECD countries, including those cited in the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (OECD, 2015^[10]).⁵ In OECD countries (and beyond), the role of SOEs evolved significantly between 1990 and 2010, with large privatisation initiatives throughout the 1990s and early 2000s (OECD, 2018^[11]; 2009^[12]; 2019^[13]). 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.

2.2. Definition of SOEs

An SOE is an enterprise entirely or partly owned by the state; it can be organised as different forms and serve a wide range of functions. Certain countries, including ASEAN member states, use different terms including state-owned companies, state-owned entities, state enterprises, publicly owned corporations, government-linked monopolies (GLMs), or government-linked companies (GLCs).

The OECD's definition of an SOE, as spelled out in the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (OECD, 2015^[10]), recognises such diversity and focuses on entities' corporate forms, commercial orientation, and degree of state ownership and control:

“any corporate entity recognised by national law as an enterprise, and in which the state exercises ownership, should be considered as an SOE. This includes joint stock companies, limited liability companies and partnerships limited by shares. Moreover statutory corporations, with their legal personality established through specific legislation, should be considered as SOEs if their purpose and activities, or parts of their activities, are of a largely economic nature.” (OECD, 2015, pp. 14-16^[10])

For the purpose of this report, the following factors are relevant in determining whether an entity is an SOE, and more broadly, in terms of competition policy.

1. Ownership structure

- a. **Enterprise wholly owned by the state.** An enterprise under a nation's laws over which the state exercises full ownership is more than likely to be an SOE. An enterprise's institutional form, such as a company limited by shares or partnership, is not generally determinative.
- 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, and may require case-by-case assessment. It would normally be established in cases where the state, by directly or indirectly holding a majority of the 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.⁶ In countries where the state invests in a wide range of companies through sovereign wealth funds or publicly owned holding companies, the state's control may be indirectly exercised; this may require an assessment. 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 for certain strategic decisions. Not all ownership 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 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 mostly take place in markets open to competition or where competition could occur, given existent laws and regulations.

2.3. Benefits of competition

There is broad consensus that competition creates significant benefits for consumers. When consumers can choose between different providers of goods or services, firms are forced to compete with each other, innovate more, and be more productive. Consumers benefit from more choice, more advanced products and services, higher quality and lower prices. Competition ultimately enhances productivity growth and consumer welfare.

On a macroeconomic level, this productivity growth leads to faster growth for the overall economy. Empirical evidence demonstrates that reshaping market regulation to improve competition increases productivity in affected markets and ultimately stimulates faster economic growth and job creation. Where binding and significant regulatory restrictions on competition are eliminated, prices may fall by as much as 20% (OECD, 2014^[14]). 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 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^[15]).

Given these benefits, 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, open trade, growth and competitiveness. Competition benefits are also the reason for governments' liberalisation and deregulation policies, notably in network industries.

That said, sound and effective competition does not always arise without continuing regulation: the temptation is strong for economic players to restrict competition to achieve greater profits.

2.4. SOEs and competitive neutrality

SOEs' anti-competitive behaviour can be as harmful as restrictions of competition by private competitors. Governments and competition authorities must recognise the fundamental role of competition law and policy in markets where publicly and privately owned entities are (or could be) competing.

The *ASEAN Economic Community Blueprint 2025* affirms that one of the elements necessary to increasing the region's productivity is to ensure "a level playing for all firms, regardless of ownership". This is also identified as a fundamental goal of competition policy and law (ASEAN, 2015^[16]).⁷ 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." (ASEAN, 2010, p. 6^[17]) This has resulted in no ASEAN competition law giving SOEs a general exemption.

The ultimate objective is to level the playing field between privately owned entities and entities owned by, or linked to, the state, so that no business entity has advantages or disadvantages that result solely from its ownership (OECD, 2019, pp. 62-63^[18]). This principle, broadly known as competitive neutrality, should address distortions of competition caused by the state playing an active role in commercial markets.

The rationale for pursuing competitive neutrality is both economic and political. The main economic rationale is that it enhances allocative efficiency throughout the economy. Where certain agents – 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 a suboptimal use of scarce resources relative to a baseline scenario, such as inefficient production methods or the non-adoption of new and better technologies (OECD, 2019, p. 39^[19]).

The political rationale is linked to governments' roles as universal regulators in ensuring that economic actors are on a level playing field (in terms of state-owned corporate assets and other market participants), while also ensuring that PSOs are being met. Although the political commitment to maintaining a level playing field is generally strong, state-led commercial activities may still damage the competition landscape due to deliberate or unintentional departures from neutral practices (OECD, 2012^[20]).

2.4.1. SOEs and departures from competitive neutrality

Governments may take deliberate decisions to depart from competitive neutrality in cases where SOEs may be necessary to correct market failures or to achieve other policy objectives. In other words, governments' choices for non-neutrality include both economic rationales (circumstances where the

economic outcome may be made more efficient through intervention), and broader policy rationales (in which case social objectives may justify exceptions to economic efficiency principles) (OECD, 2012^[20]; Capobianco and Christiansen, 2011^[21]).

A common economic rationale is the correction of market failures in specific markets. While the majority of markets may be best served by suppliers 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 most widely seen 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. 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.⁸

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 provider with a public-service obligation (PSO). Such services typically include: 1) communication services such as postal services and telecommunications; 2) utilities such as electricity and water distribution; and 3) basic education. A PSO requires the provision of a minimum service to all consumers, often including those in sparsely populated areas where provision is uneconomic; it does 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 the social objective 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 that are viewed as being of systemic importance
2. maintaining state ownership of strategic industries (for instance, 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 from an SOE to the national budget.

Finally, other political objectives may include the support of interest groups, such as public employees. For instance, SOEs remain a major source of employment and can provide better conditions than those in the private sector (OECD, 2017^[22]).⁹

When analysing the level playing field between public and private entities, the socio-economic and developmental role and policy objective of an SOE should be considered. A key aspect is to have full transparency around these objectives.

2.4.2. 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.¹⁰

1. Financial treatment

- a. **Outright subsidies.** SOEs may receive direct state subsidies – not equally accessible to others – or may benefit from other forms of public financial assistance to sustain their commercial operations, such as favourable tax regimes or exemptions, or in-kind benefits.
- b. **Concessionary financing and guarantees.** SOEs may enjoy credit provided directly by governments or through state-controlled financial institutions at below-market interest rates. Explicit or implicit state guarantees are also linked to this distortion.

2. Asymmetrical regulation

- a. **Monopolies and advantages as incumbents.** Governments may entrust SOEs with exclusive or monopoly rights over some activities. This may foreclose access to competitors, and enhance SOEs' competitiveness in other markets open to competition, for instance, through cross subsidisation.
- b. **Other preferential treatment by the government.** SOEs may not be subject to the same, often costly regulatory regimes as private firms. Examples include exemptions from compliance with disclosure requirements and antitrust enforcement or preference in accessing public procurement.

3. Corporate governance

- a. **Lack of structural separation.** SOEs may be entrusted with both commercial and regulatory functions.
- b. **Captive equity.** SOEs' equity is generally "locked in", meaning control of an SOE cannot be transferred as easily as in privately owned firms. The absence of any risk of takeover and exemptions from bankruptcy rules can result in distortions in SOE managements' incentives to operate efficiently.

3 SOEs' framework and the importance of SOEs in Indonesia

3.1. Indonesia

Indonesia is the largest economy in Southeast Asia and the world's 10th largest in terms of purchasing power parity (World Bank, 2020^[23]). In 2020, Indonesia's population was estimated at 270.2 million (World Bank, 2020^[23]), the largest ASEAN country by population. It is also the world's largest archipelago, made up of over 17 000 islands located between the Indian and Pacific Ocean (World Bank, 2014^[24]). It shares land borders with Malaysia, Papua New Guinea, and East Timor and its five main islands are Java, Kalimantan, Papua, Sulawesi and Sumatra. The majority of Indonesia's population is concentrated on the island of Java, which is also home to the capital, Jakarta.

Indonesia is a presidential republic with a civil-law legal system. In 2001, Indonesia initiated a project of decentralisation, which transferred certain responsibilities from the central government to local governments (Law No 22/1999).¹¹ There are now two levels of sub-national governments and in 2020 Indonesia counted 34 provinces and 514 local governments (regencies and cities).

Indonesia is currently following a 20-year economic development plan (2005-2025), which is split into four five-year medium term plans (Rencana Pembangunan Jangka Menengah Nasional, or RPJMN), with distinct development priorities (World Bank, 2020^[23]; Indonesia Investments, n.d.^[25]).¹² The main objectives of this long-term plan includes sustainable and self-sufficient food for every household, reducing the national poverty rate to 5%, and improving the performance of agricultural, mining, and manufacturing sectors (Indonesia Investments, n.d.^[25]). The government is currently implementing the third medium-term development plan (RPJMN for 2015-2020), which focuses on, among other priorities, infrastructure development.

Agriculture, manufacturing, and retail trade of vehicles make up the bulk of the country's GDP (Bank Indonesia, 2020^[26]). Indonesia's biggest exports are coal, palm oil, petroleum and rubber (OEC, 2018^[27]).

In 1967, Indonesia was regarded as one of the poorest nations in the world with a GDP per capita of USD 657 in 2010 prices (World Bank, 2019, p. 3^[28]). Through 50 years of development, Indonesia has sustained an average GDP growth rate of 5.6% and has seen one of the most rapid reductions of poverty in history (World Bank, 2019, p. 3^[28]). By 2018, Indonesia's GDP per capita was valued at USD 3 893 (World Bank, 2020^[29]).

In 2019, Indonesia reported a GDP of USD 1.12 trillion (World Bank, 2020^[30]) with a growth rate of 5% (OECD, 2020, p. 186^[2]).¹³ According to the OECD, Indonesia's economic growth will have slowed in 2020 due to the COVID-19 epidemic, and only a partial recovery is expected in 2021. The country's GDP growth rate in 2020 is expected to be -2.4% and it is expected to remain below previous trends in 2021 at 4%, but to rebound to 5.1% in 2022 (OECD, 2020, pp. 185-6^[2]).

In 2019, Indonesia ranked 50 out of 141 countries on the World Economic Forum's Global Competitiveness Index, dropping five spots compared to 2018 (World Economic Forum, 2019^[33]).

3.2. The scope and importance of SOEs in Indonesia

3.2.1. The definition of an SOE

The key role of the state in achieving the economic goals and objectives of the country is recognised in Article 33(1) and (2) of Indonesia's 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.¹⁴

An SOE is defined in Indonesia as “an entity, the capital of which is in part or in whole owned by the state through direct participation that is derived from the state's separated assets”.¹⁵ Indonesia currently distinguishes three types of SOEs:¹⁶

1. *Perusahaan perseroan*: a state-owned limited liability enterprise, of which at least 51% of the shares are owned by the state, and which has as its principal objective to seek profit.
2. *Perseroan terbuka*: a state-owned limited liability enterprise that has been listed (after an initial public offering or IPO), and therefore only partly held by the state.
3. *Perum*: a public enterprise (*perusahaan umum*) that is wholly owned by the state and serves the public interest in the form of providing goods and services of high quality, while also seeking to make a profit.

Since Indonesia's independence in 1945, SOEs – or known as BUMN in Indonesia¹⁷ – have grown to play an important role in the country's economy. Indeed, according to the 2019 OECD Services Trade Restrictiveness Index, the state has “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^[34]).

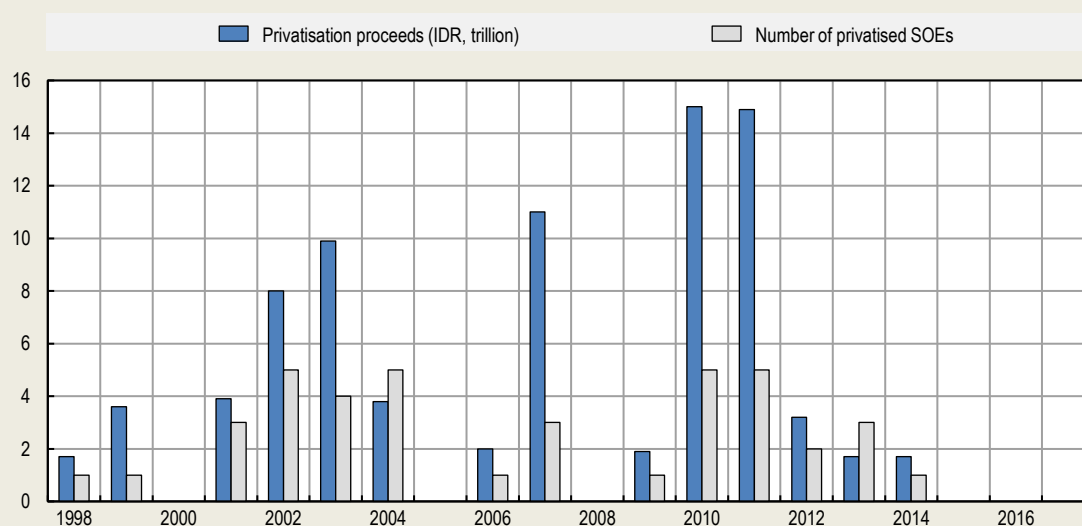
Yet, over the past 75 years, Indonesia has tried several times to decrease the size and importance of the state sector (see Box 3.1).

Box 3.1. A brief history of SOEs in Indonesia

Following independence, the 1945 Indonesian constitution provided a legal basis for nationalisation. The first post-independence administration, headed by the President Sukarno from 1945-1967, oversaw the growth of SOEs into a dominant force in the domestic economy, following a policy that saw them as a way to speed up economic development and allow companies to be pioneers in certain sectors. The second Indonesian administration under President Suharto (1968-1998), known as the New Order, was expected to reform the state sector and improve Indonesia's economic efficiency. However, this proved challenging in practice and any urgency for reform was diminished by the dramatic increase in oil prices in the early 1970s. Indeed, the widespread investment of commodity revenues in SOEs caused the state's proportion of ownership in the national economy actually to increase significantly. In the 1980s, Indonesia had over 200 SOEs, with ownership scattered among different ministries, including several large companies that dominated strategic sectors of the economy. However, many were poorly managed and poorly regulated meaning half of SOEs were significantly underperforming. Until the end of 1997, with total assets of IDR 461.6 trillion, SOEs were creating an average return on investment was 3.5% and return on equity of 9.6%, demonstrating a low level of asset utilisation and a high level of production costs.

This inefficiency, combined with the Asian financial crisis of 1997, led to some drastic reforms in the late-1990s. Firstly, in 1998, a Ministry of State-Owned Enterprises was established, which concentrated and centralised the management of SOEs into the hands of one minister. As such, Indonesia has chosen a centralised ownership structure. The objectives for the new ministry were to 1) partially privatise certain SOEs in order to generate revenues for the state budget, and 2) reform the SOE sector. As such, SOEs' primary objective became to help to repay foreign debt, partly through privatisation, and maximise dividends to help the national budget. Between 1998 and 2014, several Indonesian governments sold government stakes in SOEs (see graph below), but strong social and political opposition made privatisations often slow and difficult, resulting in the divestment of minority stakes in the majority of cases. Full privatisation, or privatisation of majority stakes, has been rare in Indonesia, and the government continues to be the dominant owner of most privatised SOEs.

Figure 3.1. Privatisation of SOEs in Indonesia, 1998-2014

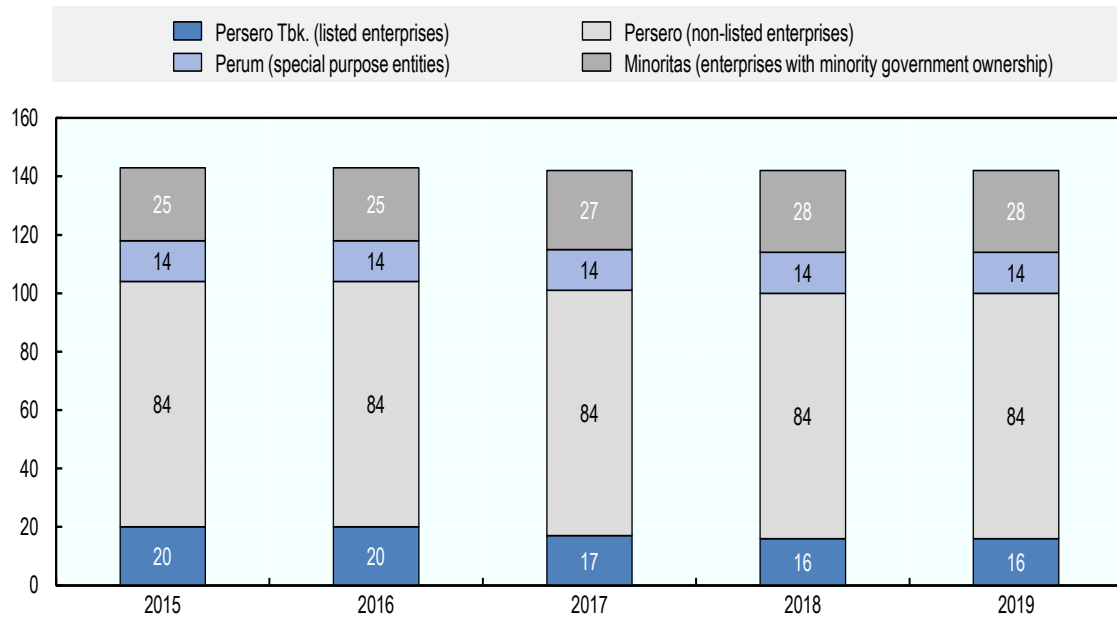


Note:

1. Data in US dollars for 2001 and 2002 were converted in IDR using annual average official exchange rate, and 2) rights issued carried out through the execution of pre-emptive rights using the addition of state capital injection are excluded as they did not lead to a change in the ownership share of the central government.

Source: (Kyunghoon, 2018^[35]).

As of 2019, the central government owned 114 SOEs (16 listed enterprises, 84 non-listed enterprises and 14 special purpose entities), while it has a minority share in an additional 28 companies (see Figure 3.2).¹⁸

Figure 3.2. Number of SOEs in Indonesia

Source: (Ministry of State-Owned Enterprises, 2019, p. 30_[36]).

SOEs continue to play a very important role in Indonesia's economy: in 2018, they employed 152 969 people (Ministry of State-Owned Enterprises, 2019_[37]) and the value of their assets represented 54.7% of GDP.¹⁹

The importance of SOE in the Indonesian economy is also identified in the OECD Product Market Regulation (PMR) indicators. The OECD PMR indicators measure a country's regulatory barriers to competition and allow reform progress to be tracked over time (see Box 3.2). The 2020 economy-wide PMR suggests that Indonesia's overall regulatory regime scores as fairly restrictive, even relative to other middle-income countries, which is mainly driven by distortions as a result of state involvement. SOEs are widely present across the economy, privatisation of SOEs is complicated, the government retains special voting rights in those SOEs that do get privatised and governance of SOEs insulates SOEs from market discipline and permits government involvement in their management.

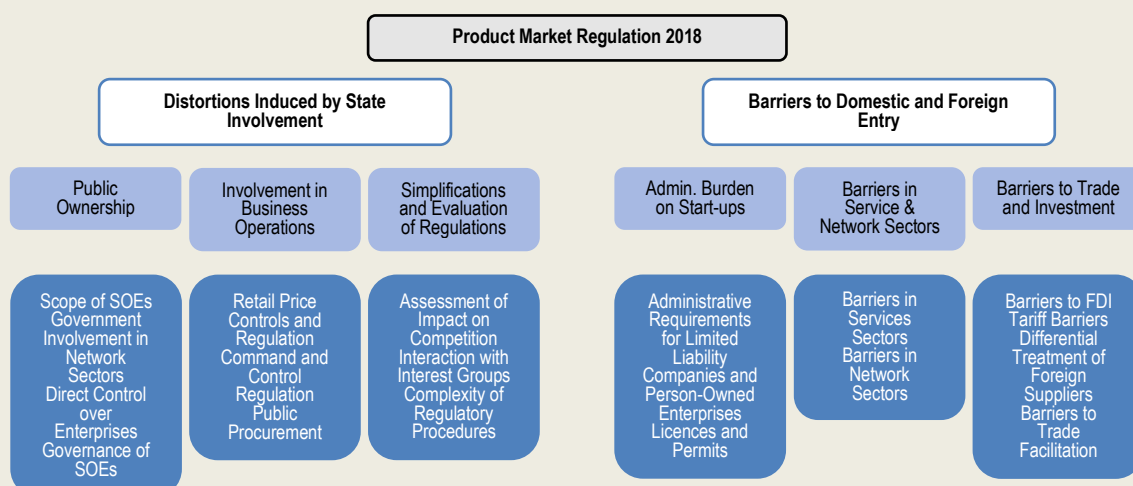
Box 3.2. OECD Product Market Regulation Indicators in Indonesia

Since 1998, both an 'economy-wide' PMR indicator as well as a group of PMR 'sector indicators' have been calculated every five years. The economy-wide indicator provides a general quantitative measure of a country's regulatory stance, while the sector indicators focus on regulation at the level of specific network and service industries.

Over time, the OECD PMR indicators have become an essential element of the OECD's policy analysis toolkit. Although the database initially comprised OECD member countries it has expanded to include non-OECD countries. Indonesia was first included in 2013.

The economy-wide PMR indicator is constructed as the average of two high-level indicators capturing two major ways that the economy is regulated: (i) through state involvement and (ii) through barriers to entry and expansion faced by domestic and foreign firms. The two high-level indicators are composed of three mid-level indicators, which are in turn composed of 18 low-level indicators each focusing on a specific and detailed regulatory area.

Figure 3.3. The structure and content of the economy wide PMR indicator



Source: (Vitale, Moiso and Wanner, 2020^[38])

On several of the low-level indicators, Indonesia scores relatively high, compared to other middle-income countries, as well as the average for nine large (G20) middle-income countries.

Source: (OECD, Forthcoming^[39])

In 2018, 12 SOEs were loss-making,²⁰ fewer than in 2017 and 2016. Nevertheless, financial vulnerabilities were rising within some SOEs already before the COVID-19 pandemic. Rapid investment and higher leverage exposed SOEs involved with infrastructure projects to cash-flow difficulties, particularly if interest rates increase or projects are delayed. State-owned banks' exposures to SMEs and the construction sector had risen rapidly (adapted from OECD (2018, p. 33^[40])). The COVID-19 pandemic has exacerbated the financial vulnerability of SOEs as the pandemic has had a large impact on many SOEs.²¹

In May 2020, President Joko Widodo ("Jokowi") issued Presidential Decree (Keppres) No. 40/M/2020, which established the SOE Restructuring Acceleration Team.²² It authorised the Ministry of State-Owned Enterprises to merge and consolidate SOEs, reduce their capital and operational expenditures, and restructure their debt.²³ Under this decree, the number of SOEs will be cut drastically, ultimately to between 70 or 80,²⁴ while SOE sectoral clusters will also be reduced from 27 to 12.²⁵ In November 2020, the government announced to provide IDR 42.38 trillion in state capital injections (*penyertaan modal negara* or PMN) to SOEs to support Indonesia's economic recovery.

3.2.2. Sector-based holding companies

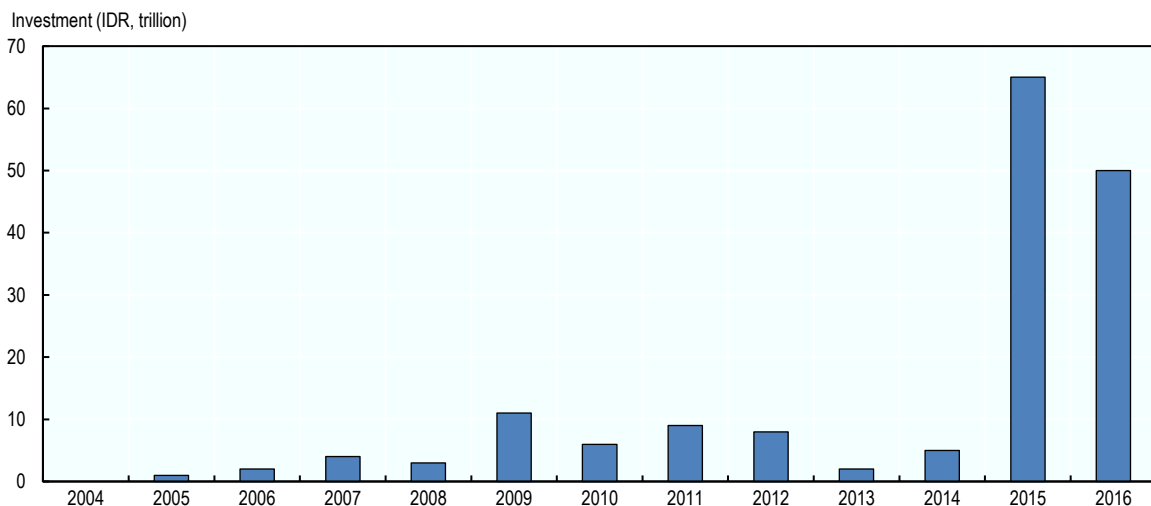
When current Indonesian president Joko Widodo entered office in 2014, he radically changed the government's SOE strategy. In his view, SOEs were no longer to be used as "cash cows" and for prioritising SOE profits and financial results over the enterprises' societal function. Instead, SOEs were again to take on a more active role in economic development and a renewed emphasis was given to SOEs' objectives, including contributing to national advancement.²⁶ These new goals included:

- making a contribution to the growth of the national economy in general and the state revenue in particular
- seeking profit

- organising public benefit in the form of providing goods and services of high quality to serve the needs of the general public
- performing those business activities that are not yet performed by the private sector and co-operatives actively partaking in providing guidance and advice to entrepreneurs and the general population
- working in accordance with national aims and objectives and not be in conflict with laws and regulations, public order and morality.

As a result, the government deprioritised the privatisation process, and the period of 2015-2016 was the first time since the Asian financial crisis that the government did not privatise an SOE for two consecutive years (Figure 3.1). In particular, SOEs became key to 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.²⁷ During his first two years in office, President Joko Widodo dramatically increased PMN into SOEs to support their expansion (Figure 3.4). While three SOEs received PMN in 2013/2014, this number increased to 43 in 2015-2016; during the same time period, the amount of PMN given to SOEs was 2.5 times larger than the aggregate amount of the previous decade (approximately IDR 65 trillion and IDR 50 trillion).

Figure 3.4. State capital injection into SOEs in Indonesia, 2004-16



Source: (Kyunghoon, 2018_[35])

In 2016, opposition to PMN, grounded on the implications for government budgets, led the government to propose a different – more sustainable – way to expand the SOE sector. It proposed to establish sector-based holding companies (SOHCs) across 16 sectors (Kyunghoon, 2018_[35]). This rapidly reduced PMN to IDR 9.2 trillion in 2017 and IDR 3.6 trillion in 2018, but it increased again in 2019 to IDR 20.3 trillion.²⁸ As mentioned in Section 3.2.2, the PMN will increase again significantly to over IDR 42 trillion in 2021 to boost SOEs' role in supporting the country's economic recovery. By 2019, seven SOHCs have been established, which are in cement, fertiliser, forestry, agriculture, mining, oil and gas and pharmaceuticals (Ministry of State-Owned Enterprises, 2019, p. 79_[36]).

After the establishment of SOHCs, SOEs were to become subsidiaries of such SOHCs. Moreover, with this change in organisational structure, SOEs were – under co-ordination of the SOHCs – supposed to co-operate with one another in general business activities, financing, procurement, and capacity development.

SOHCs were first introduced by Indonesian government as part of the SOE reforms that followed the Asian financial crisis in 1997 and were seen with a renewed interest around 2007 when they were tasked with achieving three main objectives²⁹: 1) strengthening SOEs' corporate performance by creating synergies and economies of scale and reducing inefficiencies in operations and financing; 2) professionalise the management system by distancing SOEs from political interference; and 3) relieve the government of its direct responsibility of overseeing all SOEs across various industries. In the longer term, the government envisages the creation of a "super-holding" company similar to Singapore's Temasek Holdings or Malaysia's Khazanah Nasional. These holdings are seen as a successful model of SOE management in which the government can adopt a more arm's-length approach to SOEs' operational decision-making.³⁰ So far, no legislation has been drafted to this effect, however.

3.2.3. Synergy programme

The plan to create synergies between SOEs extends to public procurement. Ministry of State-Owned Enterprises Regulation No. 15/MBU/2012 on General Guidelines for Implementation Procurement of Goods and Services of State-Owned Enterprises originally required procuring entities to prioritise synergy between SOEs, subsidiaries and affiliated companies in order to increase business or economy efficiency.

This expectation of SOEs prioritising co-operation with other SOEs, including in the area of procurement, is also included in Ministry of State-owned Enterprises Regulation PER-04/MBU/09/2017 on The Amendment to Ministry of State-Owned Enterprises Regulation PER-03/MBU/08/2017 on Guidelines For Businesses Cooperation By State-Owned Enterprises. In particular, they are permitted to assign a contract to another SOE without running a procurement tender, even though a tender would be necessary to award the contract to a private company. The Ministry of State-Owned Enterprises issued general guidelines for procurement rules for goods and services for SOEs in Regulation No. PER-08/MBU/12/2019.

In 2014, the Indonesian Competition Commission (ICC) sent a letter to the Ministry of State-Owned Enterprises, flagging the potential anticompetitive effects of the government's synergy programme.³¹ In the context of this advocacy initiative, the ICC acknowledged the importance of SOEs and their role for the Indonesian economy, as well as the need to improve their performance in order to prepare SOEs for international competition, but it highlighted the potential entry barriers for domestic private companies and economic inefficiencies that such synergies between SOEs can create. Moreover, the ICC questioned the legitimacy of the synergy policy, because of the lack of a legal basis, and reiterated that it is apt to carry out enforcement actions against SOEs. It recommended the government revoke the SOE synergy policy for SOE procurement of goods and services and replace with one that pursues fair competition.

Other stakeholders also expressed concerns about the expansion of SOEs in various sectors of the economy (New Mandala.org, 2016^[41]). The Indonesian Chamber of Commerce and Industry urged the current administration to involve more private companies in national projects "to curb the domination" of SOEs in the construction industry (Jakarta Post, 2016^[42]). In the shipping sector, the Indonesian National Shipowners' Association criticised the government's selection of an SOE as the single operator of government-owned ships, without conducting a tender process (Jakarta Post, 2016^[43]). The Indonesian Logistics and Forwarders Association has also urged the government to address "state-owned monopolies" in the logistics and transportation sectors (Jakarta Post, 2016^[44]).

Although Regulation No. 15/MBU/2012 was replaced in 2019 by Regulation No. 08/MBU/12/2019, the intention has not fundamentally changed. For instance, under the new regulation SOEs can still avoid a public procurement tender by directly appointing other SOEs as service providers or suppliers of goods (see Section 5.2.4).

3.3. Competition law and SOEs

3.3.1. Indonesian competition law

Indonesia's first comprehensive competition legislation, Law No. 5/1999 concerning the Ban on Monopolistic Practices and Unfair Business Competition, came into effect on 5 March 2000 (OECD/KPC, 2018, p. 73^[45]). Indonesia was the first ASEAN member state to adopt a competition law, well ahead of the 2007 ASEAN Charter and Regional Guidelines on Competition Policy and the 2015 target for the introduction of national competition laws in all ASEAN member states (ASEAN, n.d.^[46]).³² The major changes in Indonesia's economy brought about by globalisation, increasing foreign investment, and the 1997 Asian financial crisis were among the driving forces behind the enactment of the competition law (KPPU, n.d.^[47]).³³

The competition law has four declared purposes: 1) safeguard the public interest and improve the efficiency of the national economy as one of the efforts to improve people's welfare; 2) create a conducive business climate through the regulation of fair competition so as to ensure the certainty of equal business opportunity for big business actors, medium business actors, and small business actors; 3) prevent monopolistic practices and unfair business competition caused by business actors; and 4) create effectiveness and efficiency in business activities.³⁴

The competition law applies to all "business actors", which includes "any individual or business entity, either incorporated or not incorporated as legal entity, established and domiciled or conducting activities within the jurisdiction of the state of the Republic of Indonesia, either individually or jointly based on agreement, conducting various business activities in the field of economy".³⁵ With this definition, it can be inferred that the competition law also applies to both private and public actors, including SOEs (OECD/KPC, 2018, p. 73^[45]).

However, Indonesia's competition law also includes two provisions that may result in the exemption of SOEs. First, Article 50(a) states that "actions and/or agreements aimed at implementing applicable laws and regulations" are "excluded from the provisions of the [competition] law". This implies that SOEs can be exempted if there is another law or regulation that authorises a specific conduct by an SOE. This provision is comparable to the state action doctrine in the United States.³⁶ Indonesian Competition Commission (ICC) Regulation No. 5/2009 provides guidelines for the implementation of Article 50(a).

Second, Article 51 states that a monopoly and or concentration of activities "related to the production and or marketing of goods and or services affecting the livelihood of society at large as well as branches of production of strategic importance to the state shall be stipulated in a law and shall be implemented by State-Owned Enterprises and or institutions formed or appointed by the Government". The ICC has developed guidelines for the implementation of this article, which focus on the interpretation of the terms "monopoly and concentration of activities", "production and or marketing of goods and or services affecting the livelihood of society at large" and the "branches of production of strategic importance".

3.3.2. The ICC and its enforcement of the competition law

The ICC implements the competition law, Law No. 5/1999 and according to Article 30(3), the ICC is accountable to the president, and shall provide periodical reports to him or her and the House of Representatives. It is considered an independent institution.³⁷ The ICC has the power to impose administrative and criminal penalties against business entities and individuals that violate the competition law.³⁸

Moreover, the ICC has the power to review proposed and existing regulations for competition-related provisions.³⁹ In this context, the ICC has developed a competition review checklist "Guideline on Competition Policy Assessment Checklist", ICC Regulation No. 4/2016), which is reportedly based on the OECD's Competition Assessment Toolkit (OECD, 2019^[48]; OECD, 2019^[18]; OECD, 2019^[19]).⁴⁰ This

checklist can be employed by the technical ministries. In one instance, the ICC reportedly persuaded the Ministry of Transport to repeal a regulation granting airlines associations the right to set prices on economy class tickets (ISEAS, 2018, p. 61^[49]).

Since its creations, the ICC appears to have enforced competition law against SOEs. Cases decided by the ICC show that SOEs are considered as business actors capable of violating the law (see Box 3.3).

Box 3.3. Competition cases involving SOEs in Indonesia

- **Case No. 04/KPPU-L/2012.**⁴¹ ICC fined two SOEs active in the construction sector, Waskita Karya and Adhi Karya, for their involvement in a bid-rigging cartel that violated Article 22 of the competition law for a tender in Southeast Sulawesi in 2011. ICC qualified both SOEs as business actors in terms of Indonesian competition law and fined Waskita Karya IDR 3.17 billion and Adhi Karya IDR 4.48 billion.
- **Case No. 10/KPPU-L/2001.**⁴² Bank Negara Indonesia (BNI) is a state-owned bank that bundled loans with insurance products issued by Tri Jakarta Insurance, Asuransi Wahana Tata, and Maskapai Asuransi Indonesia, insurance companies that it indirectly owned. ICC described BNI as a business actor bound by the obligation to comply with Indonesian competition law and was ordered to allow insurance issued by other insurance companies.
- **Case No. 08/KPPU-I/2005.**⁴³ The two SOEs, Surveyor Indonesia and Superintending Company of Indonesia (a company established by the Indonesian government and Swiss company SGS), were assigned the contracts for the testing of imported raw sugar, refined sugar and white crystal sugar when that was made mandatory by the Indonesian government in 2004. It was revealed that they had co-operated to fix prices and eliminate competition. Moreover, the two companies appointed SGS to carry out verification and technical tracing of sugar imports in the country of origin, which foreclosed other companies. Both SOEs were ordered to terminate their co-operation, pay a fine of IDR 1.5 billion, and no longer appoint SGS for verification in the country of origin.
- **Case No. 8/KPPU-L/2016.**⁴⁴ Angkasa Pura Logistik, a subsidiary of Angkasa Pura I, an SOE, had obtained exclusive rights, through legislation, for the provision of terminal facilities at one airport for cargo and postal transport services, as well as inspection services and controlling cargo and postal security at several other airports in Indonesia. This SOE also managed business units that were competing with the private sector in aircraft flight expedition, which affected competition. ICC imposed a fine of IDR 6.5 billion on Angkasa Pura I. This case demonstrates that a legal monopoly held by an SOE can open up opportunities for abuse of this position in related business fields in which SOEs competes with the private sector.

Source: Siswanto, A. and M. Hutajulu (2019^[50]), "Government-Owned Enterprises (GOEs) in Indonesia's Competition Law and Practice", www.dx.doi.org/10.20961/yustisia.v0ixx.21740; Susetyo, H., P.R. Waagstein and A.B. Cahyono (eds.) (2020^[51]), *Advancing Rule of Law in a Global Context: Proceedings of the International Conference on Law and Governance in a Global Context*, CRC Press, Baton Rouge, FL, pp. 62-63.

3.4. SOE-specific legislation

Article 33 of the constitution tasks the government with the responsibility for “sectors of production which are important for the country and affect the life of the people”. As such, the state can directly participate in efforts to achieve the welfare of the people as one of its goals and the use of state assets can be liberally interpreted when oriented towards the goal of achieving prosperity.

3.4.1. Governance principles

In 1999, Indonesia established the National Committee on Corporate Governance (NCCG), supervised by the Co-ordinating Ministry for Economic Affairs. NCCG subsequently led to a national code of corporate governance in 2000, which was amended in 2001 and 2006. It builds upon OECD corporate governance best practices and, although not legally binding, has become a reference for all companies in Indonesia, including SOEs.

Corporate bodies in Indonesia, both public and private, are largely established as limited liability companies (LLCs), and consequently governed under Law No. 40/2007 regarding Limited Liability Companies, known as the company law.⁴⁵ All companies, including SOEs established as LLCs, in Indonesia, must comply with the company law and other laws and regulations that govern the specific industry of their business activities.⁴⁶ For instance, a company in the insurance business is subject to both the company law and Law No. 14/2014 concerning the Insurance Business. SOEs’ governance is also regulated under Law No. 19/2003 on State-Owned Enterprises, which governs SOEs and aims to “lay grounds or principles of good corporate governance”.⁴⁷ Ministry of State-Owned Enterprises Regulation No. 01/MBU/2011 on the Implementation of Good Corporate Governance by State-Owned Enterprises, which was amended in 2012 by Regulation No. 09/MBU/2012, further elaborates on good governance for SOEs.⁴⁸ In particular, Article 2 of Regulation No. 01/MBU/2011 dictates that each SOE is required to apply good corporate governance (GCG) consistently and sustainably, and that each SOE’s board of directors should prepare GCG manuals.

3.4.2. SOEs’ governing bodies

Indonesia has opted for a dual centralised ownership model for SOEs through which two ministries exercise ownership functions such as objectives setting and board nominations. The Ministry of State-Owned Enterprises is authorised to represent the government as shareholder in almost all LLC-status SOEs, following Law No. 19/2003 and Government Regulation No. 41/2003 on the Transfer of Position, Duties And Authority of the Ministry of Finance in State-Owned Enterprises to the Ministry of State-Owned Enterprises.⁴⁹ Only five SOEs remain under the ownership of the Ministry of Finance, as they are part of a special mission vehicle (SMV) programme⁵⁰ whose functions are to support state and private sector co-operation in infrastructure development and guarantee funding, insurance, and investment. SOEs’ projects under the SMV programme include highways, transportation, telecommunications, energy, housing, drinking water, and the provision of other public goods and services. The five SOEs owned by the Ministry of Finance are:

1. Sarana Multi Infrastruktur
2. Lembaga Pembiayaan Ekspor Indonesia
3. Sarana Multi Finance
4. Penjaminan Infrastruktur Indonesia
5. Geo Dipa Energi.

Pursuant to Law No. 19/2003, the Ministry of Finance provides guidance and oversight to SOEs⁵¹ and remains the “fiscal manager” of SOEs.⁵² Article 3 of Regulation No. 41/2003 also stipulates that the Ministry of Finance remains responsible for SOEs’ financial administration, proposing any participation of state

capital in SOEs and the establishment of, and legal changes in, SOEs. Both the Ministry of Finance and the Ministry of SOEs are mandated to have a communication and a hearing with the Parliament on a regular basis to discuss issues relevant to SOEs and their performance.

SOEs in Indonesia typically adopt a two-tier board model that separates management and supervisory functions.⁵³ Law No. 19/2003 identifies three bodies within SOEs: for *persero* SOEs, these are the general meeting of shareholders (GMS), board of directors and board of commissioners; in a *perum* SOE, these are the minister, directors and supervisory board.⁵⁴ Within a *persero*, the shareholder meeting holds the highest authority and holds any authority not delegated to the board of directors and board of commissioners. The board of directors is the body responsible for company management and is bound by a duty of loyalty toward the company. The board of commissioners is charged with supervising and advising the board of directors.

Article 14 of Law No. 19/2003 stipulates that the Ministry of State-Owned Enterprises shall act as the GMS in the event that all shares of the SOE are state-owned. The appointment and dismissal of directors and commissioners is carried out by the GMS, and in the event that the minister acts as the GMC, the appointment and dismissal of directors shall be determined by him or her.⁵⁵ If not all shares are owned by the state, the minister will act as a simple shareholder.

The process of and requirements for the appointment and dismissal of executives is further outlined in the Ministry of State-Owned Enterprises Regulation No. PER-03/MBU/02/2015 on Requirements and Guidelines of Appointments and Dismissals of Members of Board of Directors of State-Owned Enterprises and Regulation No. 02/MBU/02/2015 regarding Procedure on Appointment and Dismissal of State-Owned Enterprises' Board of Commissioners and Supervisory Board.

Candidates for an SOE directorship are eligible if they are:⁵⁶

1. standing directors of other SOEs
2. a member of the board of commissioners or supervisory board of an SOE
3. employees from the SOE with special achievements or are one level below the board of directors or directors of an SOE's subsidiaries or joint-ventures
4. employees of the Ministry of State-Owned Enterprises
5. other SOE officials
6. external sources.

Candidates for directors are generally screened and proposed to the Minister of State-Owned Enterprises by an SOE's board of commissioners for *persero* or the supervisory board for *perum*. For unlisted SOEs, eligible candidates – those from the talent pool of employees in an SOE with special achievements or one level below the board of directors or directors of SOE subsidiaries or joint-ventures – or potential candidates from the Ministry of State-Owned Enterprises can be nominated directly by the Ministry of State-Owned Enterprises without recommendation from the board of commissioners or supervisory board.⁵⁷

The assessment of candidates' competence is conducted by the Ministry of State-Owned Enterprises either through an external "professional" institution, appointed by the ministry, or by a team within the ministry formed by the minister. For the assessment, the "fit-and-proper" test is used, which evaluates the integrity, capacity, and soft and hard skills of all candidates for SOE directors. Consequently, the external institution or team chosen by the minister will determine the elected board.⁵⁸ Former directors can be reappointed to this position without this test if their integrity and the quality of their performance is deemed satisfactory.⁵⁹ For urgent needs, the Minister of State-Owned Enterprises can appoint a temporary member to an SOE's board of directors without subjecting them to the "fit-and-proper" test.⁶⁰

Potential commissioners for *persero* or supervisors for *perum* cannot be members of a political party and are chosen from several different sources:⁶¹

1. former SOE director
2. member of a board of commissioners or board of trustees of an SOE
3. structural officers and government functional officers
4. other sources.

The process is similar to that used for the board of directors, with a “fit-and-proper” test, and assessment by a team or external institution formed or appointed by the Minister of State-Owned Enterprises.

3.4.3. Transparency

SOEs’ capital is derived from the state budget, according to Article 4 of Law No. 19/2003. Indonesia’s 1945 constitution stipulates that the state budget shall be implemented in an open and accountable manner.⁶² Moreover, Law No. 14/2008 on Public Information Disclosure guarantees citizens’ the right to information and promotes transparent, accountable, effective and efficient governance. It prescribes the type of information that SOEs need to make publicly available.⁶³

The requirements for periodic disclosure are based on Law No. 19/2003, Law. No. 40/2007 regarding Limited Liability Companies, Ministry of SOEs Regulation No. PER-11/MBU/10/2014 on Good Corporate Governance (GCG) Implementation for SOEs and the Ministry of SOEs Regulation No. PER-18/MBU/10/2014 on Electronic Presentation of Data, Report and Document of SOEs. There are specific disclosure obligations only for listed SOEs. Indonesian Financial Services Authority (*OJK-Otoritas Jasa Keuangan*) provides an annual report on listed companies. The regulation POJK No. 29/POJK.04/2016 on listed companies defines areas for mandatory disclosure that should be covered by the annual report on public companies. The disclosure items include key financial information; board of directors; board of commissioners; profile of listed and public companies; management analysis and discussion; corporate governance; corporate social responsibility; and audited financial statements (OECD, 2020, p. 15_[52]).

Articles 23 and 51 of Law No. 19/2003 stipulate that every *persero* and *perum* SOE must submit an annual report for approval to both the general meeting of shareholders and the minister. These annual reports must consequently be made publicly available in a timely manner in compliance with Article 28 of Ministry of State-Owned Enterprises Regulation No. Kep-117/M-MBU/2002.

An internal audit function is mandated in SOEs. The internal auditor reports to the CEO and has co-ordination lines to the Audit Committee. In addition, an Audit Committee is also mandated in SOEs. Under the Law No. 19/2003 on SOEs and the Law. No. 40/2007 on Limited Corporations, SOEs are obliged to assign independent external auditors to audit their financial statements. SOEs are also audited by Indonesian Supreme Audit Agency (*BPK-Badan Pemeriksa Keuangan*), which produces an annual report available to the general public. However, the quality of accounting and auditing standards for unlisted or small SOEs varies due to a lack of IT-related infrastructure in them (OECD, 2020, p. 22_[52]).

SOEs are subject to the same accounting and auditing standards as listed companies. Financial disclosure requirements are subject to an accounting standard in line with IFRS. However, there is no unified standard set by the government for governing non-financial disclosure (OECD, 2020, p. 24_[52]).

The Ministry of State-Owned Enterprises publishes an annual report entitled *Highlights of SOEs Financial Statements*.⁶⁴ The annual report includes complete financial information for each SOE, such as value of assets, net profit and financial ratios, although information on board remuneration is not included in this report. It also includes non-financial reporting, including information on boards of directors and on the implementation of good corporate governance practices. This annual report is publicly available in Indonesian only.⁶⁵

3.4.4. Performance and accountability

The institutional basis for the performance evaluation of SOEs is found in a guide entitled *Assessment Criteria for Performance Excellence in SOEs – Ministry of State-Owned Enterprises (KPKU-BUMN)*,⁶⁶ developed by the ministry. The use of *KPKU-BUMN* is mandatory for SOEs,⁶⁷ and provides a framework and assessment method to reveal SOEs' strengths and opportunities for performance improvement, as well as to guide the development and effective implementation of corporate plans (OECD, 2016, p. 44^[53]). While the final performance evaluation concerns the fiscal year, SOEs' performances are also evaluated on a quarterly basis (OECD, 2016, p. 44^[53]). *KPKU-BUMN* is also used as a tool for conducting SOE self-assessments and providing feedback to SOE strategies.

The performance evaluation is carried out by the board of directors, guided by the *KPKU-BUMN* framework. In conducting the evaluation, the assessors (from the board of directors) visit SOEs to interview management and examine documents. The performance of an SOE is evaluated in seven areas: 1) leadership; 2) strategic plans; 3) customer focus; 4) measurement and analysis of managerial knowledge; 5) labour practices; 6) process; and 7) business performance.⁶⁸

KPKU-BUMN applies a “balanced scorecard performance measurement” approach.⁶⁹ *KPKU-BUMN* can be used to monitor and strengthen performance at the level of individual staff members, units and the overall organisation. The findings of an assessment can also serve as a starting point for a “continuous improvement cycle” within each SOE.

After the assessment has been carried out by the board of directors by means of the quantitative indicators mentioned above, SOEs are also evaluated by the board of commissioners, which subsequently makes a report to the Ministry of State-Owned Enterprises. After the evaluation process is completed, the assessor assigns a score and develops a feedback report, including recommendations, which gives an overview of the perceived strengths and weaknesses of each assessed SOE, as well as any opportunities and threats. These assessments are seen as helping to improve SOEs' performance and so benefit stakeholders.

SOEs' performance results from the most recent fiscal year have an impact upon the following year's remuneration levels and incentives for CEOs, as well as the salaries, honorarium or other facilities given to members of the board of directors, as laid out in the Ministry of State-Owned Enterprises Regulation No. PER-04/MBU/2014 on the Guidelines for the Remuneration of Boards of Directors and Boards of Commissioners in State-Owned Enterprises.

No information is provided on whether low performance evaluations result in dismissals or other sanctions for directors or other SOE executives.

3.4.5. Access to public resources

The primary objective of Law No. 17/2003 on State Finances is to ensure that public finances are managed in an efficient, effective, transparent and accountable manner. The law states that the government may provide loans, grants and capital contributions to SOEs, as well as receive loans and grants from them.⁷⁰

The government can financially intervene in SOEs through state capital participation, known as *penyertaan modal negara* (PMN), as regulated by Government Regulation No. 44/2005 on Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies. These state capital participations aim to “improve the capital structure” or “increase the business capacity” of a concerned SOE.⁷¹ With regards to reporting requirements on financial assistance for SOEs, the information on total amount of PMN for SOEs are disclosed in an annual report by the Ministry of SOEs.⁷² Financial assistance is decided by the President and House of Representatives (*DPR-Dewan Perwakilan Rakyat*), and a decision takes place on an annual basis.

The government also has the possibility to provide SOEs with a government guarantee. However, as these come from the Guarantee Reserve fund (regulated through Ministry of Finance Regulation No. 30/PMK.08/2012), their scope is limited; they can be used only for specific objectives, such as the development of coal power plants, drinking-water supply or infrastructure projects.⁷³

4 Small package delivery services in Indonesia

4.1. Economic overview of the logistics sector: a focus on small package delivery services (SPDS)

4.1.1. Competition in the postal sector

Postal services are a form of transportation or communication service for delivering goods and information from one point to another. Postal operators compete with firms offering a variety of delivery or communications services. Postal services differ from other physical delivery services due to the volume and nature of letters and other goods delivered through the post, which allows them to take significant advantage of economies of scale and scope in delivery (OECD, 1999^[52]).

In many countries, an incumbent postal operator benefits or has in the past benefited from a monopoly over the handling of certain classes of mail, usually defined as mail items below a certain weight and price. The primary reason for this protection of certain areas from competition is the need to preserve the internal cross-subsidisation that finances non-commercial public-service obligations (PSOs). This allows the operator to maintain service quality on unprofitable high-cost or low-volume delivery routes when other concerns, such as the obligation to maintain geographically uniform prices, limit its ability to raise prices (OECD, 1999^[54]).

This type of cross-subsidisation – using revenues from commercial activities for the non-commercial and non-profitable activities – is threatened by increasing competition. When introducing or increasing competition, countries must consider other mechanisms for the provision of any non-commercial services. A variety of competitively neutral methods exist for financing non-commercial obligations (OECD, 1999^[54]).⁷⁴

For many incumbent postal operators, the often non-regulated or less regulated and commercially attractive activity of delivering small packages to consumers has been one of the main means through which non-commercial activities have been cross-subsidised. Moreover, the drastic decline in the volume of traditional letters and postcards due to electronic communications, as has been observed in many countries around the world, continues to increase the commercial importance of small-package delivery services for incumbent postal operators.⁷⁵ However, combining commercial and non-commercial activities should not provide the incumbent postal operator a competitive advantage in relation to its competitors in an openly competitive market.

4.1.2. Definition of a small package

There are various definitions of “small package” in the logistics industry. One is based upon 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,⁷⁶ 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).⁷⁷

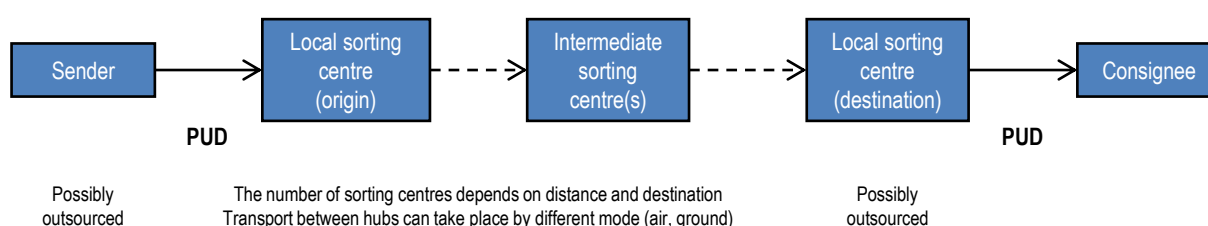
In Indonesia, there is no legal definition for “small packages”. Law No. 38/2009 on Post refers to package delivery services as “transportation of goods”, without further specifying a weight or type of goods. An elucidation document for Law No. 38/2009 does state that universal postal services in Indonesia carry parcels of up to 20 kilogrammes.⁷⁸ Incumbent postal operator Pos Indonesia’s standard service for package deliveries allows items of up to 20 kilogrammes. Packages weighing up to 30 kilogrammes are delivered under the company’s “Economic Jumbo Post” service (Pos Indonesia, n.d.^[55]; n.d.^[56]; n.d.^[57]).

4.1.3. 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 an origin and delivered to destination. Known as pick-up 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.⁷⁹ Small-package delivery is inherently multimodal, using small trucks, cars or messengers for pickup and delivery and other modes of transport such as truck, rail or air for longer distances (Dennis, 2011^[58]).

Figure 4.1. Overview of steps in a small-package delivery service



Source: OECD analysis based on EC merger case COMP/M.6570 – UPS/ TNT Express, 30/1/2013 and (Dennis, 2011^[58]).

Different actors are active in the SPDS value chain, roughly split between integrators and non-integrators.⁸⁰

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 main global integrators are FedEx/TNT, DHL and UPS.

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

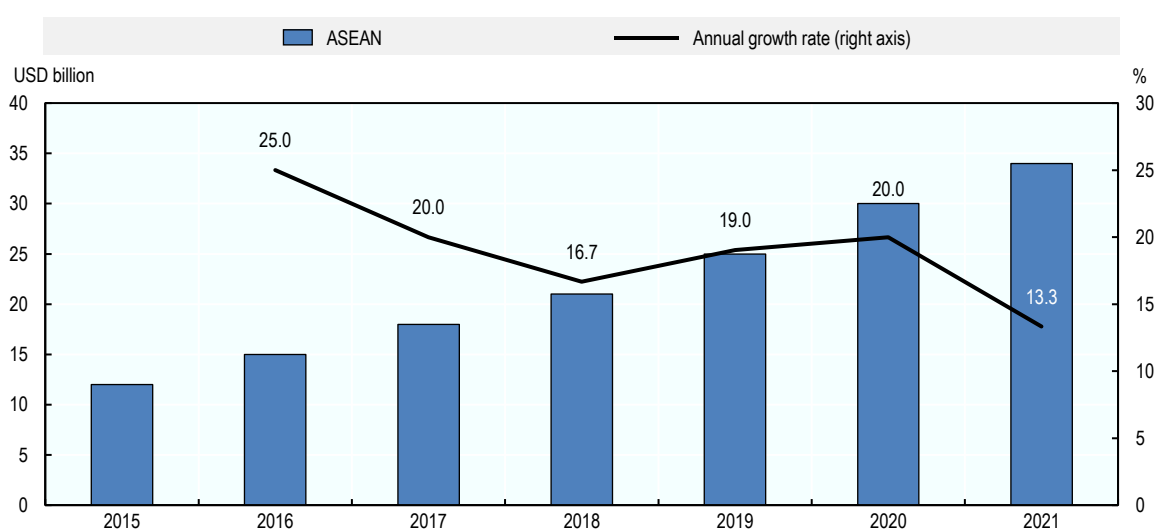
1. **Incumbent postal operators.** In many countries, the incumbent domestic postal operator is active in domestic and international small-package delivery. Generally, declining mail volumes have forced these operators to develop new business areas such as logistics, and in particular, SPDS.⁸¹
2. **Regional, 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 Europe and ASEAN member states, offer ancillary services as a way of diversification, including warehousing and value-added services, such as quality-control service, packaging, labelling and tagging.⁸²

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

The advent and rapid growth of e-commerce has contributed to the rapid growth in demand for postal and courier services, which are responsible for the transportation and delivery of the package and some (or all) of the fulfilment activities.⁸³ The e-commerce market in ASEAN remains relatively small compared to other regions of the world;⁸⁴ nevertheless, OECD figures predict that by 2021 it will have grown at a double-digit pace with a compound annual growth rate of 19% since 2015 (see Figure 4.2). 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 Vietnam) reported that the e-commerce market in these six countries was worth USD 39 billion in 2015 and predicted that it would grow to USD 153 billion by 2025, at a compound annual growth rate of 39% between 2015 and 2025 (Google, Temasek, Bain & Company, 2019^[59]). (These predictions may be have been affected by the COVID-19 pandemic.)

Figure 4.2. E-commerce market value in ASEAN, 2015-21



Source: (OECD, 2018^[4]).

Globally, cross-border e-commerce transactions between businesses (B2B), as well as between businesses and consumers (B2C), have introduced new dynamics to international trade, transforming value chains and requiring logistics companies to change their business models.

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) transportation infrastructure and logistics capabilities; 4) the use of e-commerce payment systems; and 5) the legal and regulatory environment (OECD, 2018^[4]). Ensuring a level playing field and stimulating competition plays a crucial role in the optimisation of that legal and regulatory environment.

ASEAN adopted the Work Programme on Electronic Commerce 2017-2025⁸⁵ on 7 September 2017 and ASEAN Economic Ministers signed the ASEAN Agreement on Electronic Commerce on 12 November 2018.⁸⁶ Both are proof 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.

Indonesia's e-commerce market has grown significantly in the recent years. In 2015, the e-commerce market was valued at USD 1.7 billion (Google, Temasek, Bain & Company, 2019, p. 21_[59]), corresponding to less than 4% of all retail sales in the country (CCCS, 2017, p. 4_[60]). At that time, among the ASEAN-6 countries,⁸⁷ Indonesia had the lowest e-commerce market size per capita (USD 5.05) despite having the highest number of internet users (56.6 million) (CCCS, 2017, p. 22_[60]). A lack of cybersecurity and product reliability had been cited as the greatest factors that initially prevented the growth of e-commerce in Indonesia (CCCS, 2017, p. 23_[60]).

By 2019, Indonesia reportedly had the largest and fastest growing internet economy in the ASEAN region. From 2015 to 2019, Indonesia's e-commerce market grew by 88% a year and was then valued at USD 21 billion. Indonesia's e-commerce market is expected to reach USD 82 billion by 2025 (Google, Temasek, Bain & Company, 2019, p. 21_[59]). A more conservative estimate by Pos Indonesia forecasts the e-commerce market to reach USD 37-41 billion by that date (PT. Pos Indonesia, 2019_[61]).

In 2017, Presidential Regulation No. 74/2017 on the E-commerce Roadmap for the Years 2017-2019 acknowledged that e-commerce has high economic potential for Indonesia and will be one of the backbones of the national economy.⁸⁸ For this reason, the integrated e-commerce roadmap provides guidance for supporting business development, acceleration of start-ups, and logistics improvements.⁸⁹ In 2019 and 2020, the Indonesian government issued further regulations specific to the e-commerce sector.⁹⁰

Growing e-commerce in Indonesia contributed around 30% of all income from overall delivery services in 2019 (Jakarta Post, 2019_[62]). From 2013-2017, Indonesia's express and SPDS market registered a compound annual growth rate (CAGR) of 21.7%, higher than the CAGR of other logistics industries, such as land transportation, warehousing, and marine freight, for the same period of time (Indonesian Logistics/Forwarders Association, 2015_[63]).

4.2. Competitive landscape of the SPDS sector

The SPDS sector in Indonesia underwent a large change with the entering into effect of Law No. 38/2009 on Post, which replaced Law No. 6/1984 on Post. Under the 1984 law, private companies were only permitted to deliver documents and packages weighing more than two kilogrammes, with Pos Indonesia having a monopoly on documents and packages below two kilogrammes. Law No. 38/2009 removed Pos Indonesia's monopoly and enabled a variety of business entities to enter the postal sector. As defined in Law No. 38/2009, these include SOEs, regional-owned enterprises, private entities or co-operatives.⁹¹ Under Law No. 38/2009, any operator may provide written communication and electronic-mail services, parcel services, logistics services, financial transaction services, and postal agency services.⁹²

According to the Ministry of Communication and Information Technology (Kominfo), 633 companies were licensed postal services operators in Indonesia in October 2019. However, the sector has a handful of better-known brands, according to a recent brand survey.

Recent market-share information in the SPDS sector is not publicly available, but market shares in 2015 can be seen in Table 4.2.

Table 4.1. Brand awareness in SPDS market, percentage

Year	JNE	TIKI	J&T Express	Pos Indonesia	DHL
2015	43.5	36.2	-	6.7	2.1
2016	47.6	35.7	-	9.6	1.3
2017	49.4	34.7	-	8.4	1.3
2018	45	13.9	13.6	11.6	3.5
2019	26.4	12.6	20.3	5.4	3.8
2020	27.3	10.8	21.3	7.7	4.1

Note: The source does not provide a clear definition of the courier market.

Source: www.topbrand-award.com/top-brand-index/?tj_find=pos.

Table 4.2. Market share in the Indonesian courier market, percentage, 2015

Company	Market share (%)
JNE	27
TIKI	24
Pos Indonesia	15
DHL	6
FedEx	9
Lainnya	15

Note: The source does not provide a clear definition of the courier market.

Source: <https://media.neliti.com/media/publications/251772-peran-kepuasan-pelanggan-dalam-memediasi-7bf84762.pdf>.

These outdated market shares exclude J&T Express, which was founded in 2015 and expanded rapidly after its foundation. More recent information that provides indirect information regarding market shares is the frequency that a courier company was used at least once by consumers for online purchases in 2018:

Table 4.3. Frequency of courier companies used, percentage

Company	Share (%)
JNE	86.76
J&T Express	44.99
Pos Indonesia	31.69
TIKI	27.75
GoSend	16.27
Wahana	11.05
SiCepat	6.44
Other option	5.46
EMS	0.67

Note: More than one answer was possible.

Source: www.liputan6.com/news/read/3544866/jampt-express-malaysia-dan-vietnam-bakal-mulai-operasional-juli-2018.

In 2019, JNE reported a jump in sales due to the growth of e-commerce, which made up 60-70% of the company's total deliveries at the time (Global Business Guide, 2017^[64]). Other delivery companies, including 21 Express, ESL Express, J&T Express and TIKI) also reported similar rapid sales growth due to increased e-commerce in Indonesia.

Market participants have noted that Indonesia is among the most competitive SPDS markets in the region. Prices charged to end customers are considered among the lowest in ASEAN countries, with some e-commerce platforms even offering free deliveries. The growth of the e-commerce in Indonesia has attracted other companies to enter the SPDS market. Transportation companies Gojek and Grab, originally ride-hailing companies, are now providing express delivery services (Global Business Guide, 2017^[64]). Many international and domestic app-based companies, such as Ninja Express, Etobee, Deliveree, PopBox, JET Express, have also entered the SPDS market (Global Business Guide, 2017^[64]).

Notwithstanding the apparent fierce competition in the SPDS market, restrictions appear to remain for foreign investment in the SPDS sector. Law No. 38/2009 on Post outlines restrictions for foreign postal operators, including SPDS.⁹³ Article 12 of the law stipulates that foreign players can enter the SPDS market, but can only operate in co-operation with a local partner as part of a joint venture. The foreign share in a joint venture cannot exceed 49%.⁹⁴ Moreover, these joint ventures can only operate within the provincial capitals and to and from international airports and seaports. Inter-city deliveries can only be performed by the domestic operators. This has been confirmed by Kominfo.

However, while Law No. 38/2009 seems to prevent foreign SPDS providers from operating in the Indonesian market without a local counterpart, Law No. 25/2007 on Investment seems to exclude the SPDS market from this requirement. Article 12(1) defines three categories for investments: 1) areas or "business fields" closed for investment, such as armament production⁹⁵; 2) areas open for investment but only under certain conditions, such as limited foreign ownership;⁹⁶ and 3) areas open for investment, which are those that do not fall in the first two fields. The first two categories are regulated in Presidential Regulation No. 44/2016 on the List of Business Fields that are Closed to and Open with Conditions to Investment, which provides a negative list of investments. While the provision of mail is an area in which foreign ownership is restricted to 49%, small packages do not appear to be included in this definition.⁹⁷ Moreover, under the Omnibus Law on Job Creation, it is expected that the negative investment list will be replaced with a "priority or positive list", but it is not yet clear what this will mean in practice.

Box 4.1. Digital evolution and the impact on the SPDS sector

In recent years, the SPDS sector has seen a rapid change from fairly traditional business models to a sophisticated consumer experience-based industry. These changes are largely driven by technological developments. A four-phase value chain in the recent past – i.e. pick-up, warehousing, transportation and delivery – has expanded to become more consumer-centric by including elements such as marketing, demand generation by e-commerce platforms, payment, just-in-time delivery, shorter distance fulfilment and real-time track and trace options. Many improvements aim at developing next-generation supply chain capabilities building on digital technologies and advanced analytics. Efforts are predominantly focused around improving the last-mile delivery experience – the final phase in the delivery process when the parcel reaches the end-customer – which is often the most expensive and time-consuming step of the fulfilment process. Some trends to improve the last-mile delivery are:

- **Faster fulfilment.** Many SPDS providers offer same-day or on-demand delivery services.
- **Increased visibility.** SPDS providers increasingly provide real-time tracking and tracing, allowing customers to select and modify delivery windows and to communicate directly with drivers.

- **Optimised warehousing.** To reduce costs and delivery time, processes in warehouses such as parcel scanning and sortation systems are optimised by employing artificial intelligence and robotics.
- **New means of transport.** A few market players have introduced new means of transport, such as delivery drones. Other largely employed or future solutions are, for instance, networks of agents (crowdsourcing last-mile delivery), bike/scooter couriers, semiautonomous or autonomous ground vehicles, and droids.

New technologies and digitisation have substantially increased competition in the SPDS sector. E-commerce platforms have increased consumers' expectations and demands, and their exponential growth is continuing to drive fundamental changes in the market. Other players (including start-ups) are emerging, often focussing on specific value chain segments.

Incumbent postal operators have been adapting to these fast changes with varying degrees of success. The adoption of new technologies will be crucial to improve their customer experience. Moreover, the introduction of innovative means of transport for last-mile deliveries may have effects on postal operators' existing models, including implications as to how their physical networks (often representing a strong competitive advantage) will be employed in the future.

Source: (Accenture, 2015^[65]); (Accenture, 2019^[66]); (McKinsey&Company, 2016^[67]).

4.3. Sectoral regulation

While Kominfo exercises regulatory powers for the SPDS sector, there is no independent regulator. Kominfo typically conducts public consultations (consulting, among others, the Association of Courier Service Companies, ASPERINDO) when formulating new regulations. Moreover, in some instances such as tariffs for the PSO, Kominfo consults with the Ministry of State-Owned Enterprises before issuing any new regulation.

More general data from the OECD indicates that sectoral regulation, including in the courier services sector, has a negative impact on effective trade. The OECD Services Trade Restrictiveness Index (STRI)⁹⁸ is an effective tool to identify to what extent national trade and regulatory policies form an obstacle for effective trade in services.⁹⁹ Indonesia scores above average in all sectors covered by the STRI, with higher scores indicating a more restrictive trade environment.¹⁰⁰ In SPDS services, Indonesia scores 0.469, compared to an OECD average of 0.259 and an overall average of 0.302.

4.3.1. Licensing

In order to be able to operate as a postal operator, a company requires to obtain a business licence as well as a postal operator licence.¹⁰¹

Business licence

Government Regulation No. 24/2018 on the Electronically Integrated Business Licensing Services governs the issuance of business licences in Indonesia and aims to increase the flexibility and speed of the process for obtaining business licenses in order to "accelerate and increase investment".¹⁰² Regulation No. 24/2018 is divided into five parts: the Online Single Submission (OSS) system; licence reform; business identity numbers (NIBs); business licences; and commercial and operational licences.

There are two types of business licences in Indonesia: 1) a business licence and 2) a commercial or operational licence.¹⁰³ A business licence is a licence required to start a business, and must be obtained before undertaking commercial or operational activities.¹⁰⁴ A commercial or operational licence is issued after a business licence has been obtained and enables commercial or operational activities.¹⁰⁵

The OSS is the system that facilitates the processing of all sorts of business licences. Operational since July 2018, it may be used by business entities of all types including partnerships, sole proprietorships, limited liability companies and SOEs.¹⁰⁶ The OSS can process business licences, NIBs, commercial and operational licences, and Foreign Worker Recruitment Plans (RPTKA). According to market participants, the process to obtain a business licence is quick with approximately 14 working days needed for a business licence to be processed, approved, and issued.¹⁰⁷

Business licences are valid until a business is no longer trading unless any specific laws or regulations state otherwise.¹⁰⁸ Commercial and operational licences are related to the products to be marketed or procured; the standardisation, certification, and licensing of business activities; and the registration of goods and services required for the carrying out of business activities. They are valid for as long as the validity period specified in the licence.¹⁰⁹

Postal licence

Licensing for postal-services operators and the obligations of a postal operator are regulated by Law No. 38/2009 on Post; the Implementing Regulation No. 15/2013 on the Implementation of Law No. 38/2009; Kominfo Regulation No. 20/PER/M.KOMINFO/10/2005 on Courier Licensing Fees; Kominfo Regulation No. 07/2017 on the Requirements and Procedures for Granting Permission for Post Operations and Kominfo Regulation No. 07/2018 on Electronically Integrated Business Licensing Service in the Field of Communications. These regulations prescribe the requirements and procedures for granting a postal operating licence, including for instance the types of licences available to postal operators and the licensing fees.

Postal operations must be conducted by business enterprises established under Indonesian laws, including SOEs, regional government-owned enterprises, private enterprises, and co-operatives.¹¹⁰ However, to operate as a postal operator, a business enterprise must obtain a postal operations licence.¹¹¹ It is important to note that the law does not provide separate rules for SOEs and that the different legislation are uniformly applicable on all types of business undertakings.

Postal operators can obtain a licence for the following types of activities:¹¹²

1. written communication and/or electronic mail (letters, postcards, printed matter, documents and small packages up to 2 kilogrammes and/or items for the blind and visually impaired of up to 7 kilogrammes)
2. packages (goods that are packaged together and sent as a time-sensitive entity)
3. logistics services
4. financial transactions (such as money, deposits, and money orders)
5. postal agency (the provision of facilities and infrastructure of postal services carried out through a co-operation agreement agreed by the postal operator and other parties).

Moreover, three types of geographical postal licences exist:¹¹³

1. national postal operation licence
2. provincial postal operation licence
3. regency or city postal operation licence.

A business undertaking is required to furnish the following documents for an application to obtain any type of postal operating licence:¹¹⁴

1. proof of establishment of the business entity created under Indonesian laws, active in postal operations and certified by the competent authority
2. capital structure, board of directors or management, and board of commissioners or supervisors
3. tax identification number
4. business plan
5. recommendation from the concerned governor, regent or mayor.

A postal-services licence is subject to minimum capital requirements.¹¹⁵ These need to be met at the time of the application and equally apply to private companies, SOEs, regional SOEs and co-operatives.

The postal operator licence is granted only after payment of the licence fee;¹¹⁶ licensees are then also obligated to contribute to universal postal services (USP).¹¹⁷

A postal licence is granted for an unlimited period, as long as the licensee remains active and fulfils its obligations,¹¹⁸ including an annual report of its activities¹¹⁹. A postal operator is subject to an annual review by Kominfo's Postal Directorate and a comprehensive evaluation every five years.¹²⁰ If a company is found inactive, its license can be revoked, which, according to information provided by Kominfo, has occurred in the past.

All successful applicants must make a contribution to the USP to avoid any administrative sanctions. Similarly, failure to provide services as set out in the granted postal licence and failure to submit an annual report to the government for evaluation will also be sanctioned.

Kominfo Regulation No. 20/PER/M.KOMINFO/10/2005 has set the fee for obtaining a courier licence in the SPDS market at IDR 1 million.¹²¹

4.3.2. Price regulation

For price-regulation purposes, postal-delivery services are divided in two categories: 1) commercial postal-service activities, and 2) universal postal service (also called "non-commercial") activities. Universal postal-service rates are regulated through Kominfo Regulation No. 29/2013. For commercial services, including SPDS, Law No. 38/2009 stipulates that "postal operators shall have the rights to determine their tariff",¹²² which "shall be based on a cost-based calculation formula".¹²³ Further guidance for this formula is provided in Ministerial Regulation No. 01/PER/M.KOMINFO/01/2012 on Commercial Post Service Rate Formula. This regulation is also meant to avoid "unfair business practices".¹²⁴

5 SOEs and their impact on competition in SPDS

5.1. SOEs active in the SPDS sector and a focus on Pos Indonesia

The development of the logistics sector in Indonesia has historically been “government-led” to some extent with many SOEs present in the sector. Since private-sector participation has been allowed around 2007, and for the postal sector in 2009, the role of SOEs has declined, but they still largely dominate the logistics sector (Anas and Panjaitan, 2017^[68]).¹²⁵

In Indonesia, the SOEs active in SPDS include:

- 1. Pos Indonesia** The incumbent postal operator, Pos Indonesia has the largest network in the country, which it has leveraged by launching a number of subsidiaries, including a retail and property business. According to the Ministry of State-Owned Enterprises, Pos Indonesia could become the aggregator of other SOEs engaging in logistics. Indeed, a *SOE Roadmap 2015-2019* included the plan to create a sectoral holding company for logistics that would include Pos Indonesia, Banda Ghara Reksa, Varuna Tirta Prakasya and Perusahaan Perdagangan Indonesia.¹²⁶ However, the OECD is not aware of any developments in this regard, and the *SOE Roadmap 2020-2024* does not include any mention of the creation of such a sectoral holding company.¹²⁷
- 2. Pelayaran Nasional Indonesia (PELNI)** Mainly active in sea transportation for passengers, it has a small logistics business and an SPDS subsidiary (Sarana Bandar Nasional). In the next five years, PELNI expects to have more business in SPDS, warehousing, trading and other aspects of logistics.
- 3. Djawatan Angkoetan Motor Repoeblik Indonesia (DAMRI)** Active both in terrestrial passenger transportation and delivery of small- and medium-sized packages, its logistics business is mainly B2B.
- 4. Kereta Api Indonesia (KAI)** The operator of Indonesian public railways, it has a monopoly of both passenger and freight rail transportation.
- 5. Garuda Indonesia** Indonesia’s flag carrier, the airline has, based on interviews with market participants, has the “ecosystem and intention to build an express delivery service”.

This report will focus on Pos Indonesia due to its dominant share in the SPDS market, its status as the incumbent postal operator, and the fact that the government is planning to make it the “backbone of e-commerce”.

Pos Indonesia’s origins can be traced back to 1746, when the Dutch colonial government first set-up a post office in Jakarta (then called Batavia) to “guarantee the security of residents’ letters”. From a government bureau handling postal services and later phone services – in 1906, as the Post Telegraph and Telephone Bureau, and in 1961, the State Post and Telecommunications Company – it evolved into the State Company of Post and Giro (PN Pos dan Giro) in 1965. In 1978, it was transformed into a public

corporation named Perum Pos and Giro. In 1995, it was reorganised into the current limited liability company, PT Pos Indonesia (Persero) or Pos Indonesia (Pos Indonesia, n.d.^[69])

Pos Indonesia is wholly owned by the government (Pos Indonesia, n.d.^[69]). Its vision is to be “the best choice for national logistics and financial services” (Pos Indonesia, n.d.^[70]). Pos Indonesia has a network of 24 000 service points, which reach 100% of Indonesia’s cities and districts, almost 100% of sub districts, and 42% of villages and remote locations in Indonesia (Pos Indonesia, n.d.^[69]). It currently has 22 560 employees.

In 2019, Pos Indonesia reported a net operating revenue of IDR 4.97 trillion, an increase of 1.95% compared to the previous year. Pos Indonesia has three core business segments: mail and package delivery services (accounting for 59% of its total revenue in 2019); financial services (18%); and logistics (12%), with smaller business units including retail property services (10%) and IT services (1%) (PT. Pos Indonesia, 2019, pp. 101-103^[61]). Within the mail and package delivery services, 37% of the revenue is generated by mail delivery and 63% by package delivery (PT. Pos Indonesia, 2019, p. 101^[61]).

In 2019, Pos Indonesia reported a net profit of IDR 123.46 billion, a decline compared to 2018 of 3%. The annual report in 2018 claims that Pos Indonesia is “on the brink of extinction”, partly due to the decline of mail-delivery business and the underfunding of the PSO (see also Section 5.2.1) (PT. Pos Indonesia, 2018, p. 31^[71]). According to Pos Indonesia: “It is not impossible that, without collective effort and support from all related stakeholders, the attempt of PT. Pos Indonesia (Persero) to avoid bankruptcy will fail” (PT. Pos Indonesia, 2018, p. 36^[71]).

In 2019, Pos Indonesia recorded a net profit of IDR 123 billion, a further decline of 3% compared to 2018. The commercial importance of package delivery for Pos Indonesia once again increased, with revenue from SPDS increasing by 4.5%, while revenue from mail delivery decreased by 13.5% (PT. Pos Indonesia, 2019, p. 25^[61]).

5.1.1. Mandate

Public-service obligation

As noted in Section 4.2, Pos Indonesia’s monopoly on the delivery of documents and packages below two kilogrammes was lifted in 2009. Law No. 38/2009 prescribes the responsibility of the government to guarantee a universal postal service: access to certain postal services “in all territories of the Unitary State of the Republic of Indonesia that enable the people to send and/or receive postal items from one point to another worldwide”.¹²⁸ Pursuant to Government Regulation No. 15/2013 on Implementation of Law No. 38/2009, the public service obligation applies to:¹²⁹

1. letters, postcards, printed documents, and small packages, up to 2 kilogrammes
2. items for the blind (*sekogram*), up to 7 kilogrammes
3. printed documents delivered in special bags addressed to the recipients with the same address, up to 30 kilogrammes
4. packages, up to 20 kilogrammes.

In principle, pursuant to Article 15(3) of Law No. 38/2009, the government is supposed to tender this universal postal service by giving “equal opportunity to all Postal Operators that meet the requirements to operate Universal Postal Service”. Moreover, Article 30(1) of Government Regulation No. 15/2013 stipulates that the government “shall designate a Postal Operator that meets the requirements to operate Universal Postal Service”, while Article 30(2) states that the “Postal Operator which meets the requirements as referred to in paragraph (2) may submit the application of Postal Operations for Universal Postal Service to the Minister”. Indeed, Article 30(3) of Regulation No. 15/2013 stipulates that a postal

operator that meets the requirements may apply to Kominfo to execute the universal postal service, and according to Article 30(4), Kominfo will form a selection committee to choose the operator for the universal postal services.

In practice, however, Pos Indonesia has been the designated PSO operator ever since Law No. 38/2009 came into force in 2009. This started with a transition clause in the law that was meant to give the government a period of maximum five years to organise a tender, during which Pos Indonesia would operate as the designated operator: “to guarantee the sustainability of Universal Postal Service, the designation of the Universal Postal Service Operator shall be conducted by a state-owned enterprise designated by the current Government for a maximum of 5 years.”¹³⁰ A tender has still to be organised, despite the five-year maximum period expiring in 2014. Consequently, in 2016, Ministerial Decree No. 1670/2016 directly assigned the status of “designated postal operator” to Pos Indonesia, which therefore remains the sole provider of universal services in Indonesia.

Notwithstanding the designation of a PSO operator, competition remains possible under Law No. 38/2009, as noted in Section 4.2.

Other postal delivery functions for Pos Indonesia

Kominfo Regulation No. 07/2017 identifies four types of postal services: 1) commercial postal services; 2) universal postal services; 3) non-commercial military postal services; and 4) other government-related postal services requiring confidentiality.¹³¹ For “non-commercial military services” (nr. 3) and other government-related postal services requiring confidentiality (nr. 4), the Minister of Kominfo directly assigns a postal operator.¹³²

Kominfo has indicated that there is no regulation in the postal sector that has assigned these services to Pos Indonesia as the sole provider for these services. Although no specific regulation grants Pos Indonesia exclusive rights and duties for these services, in practice it is their sole provider. The OECD understands that both services are conducted by Pos Indonesia based on exclusive bilateral service-level agreements with various government agencies. As a result, Pos Indonesia is granted exclusive access to certain state-operated facilities such as jails, mining sites and military bases. Examples of agreements between Pos Indonesia and government agencies are agreements with the State Personnel Agency,¹³³ National Police,¹³⁴ Indonesian military,¹³⁵ and West Java Government for Provincial Cash Aid Distribution.¹³⁶

Other government-related postal services requiring confidentiality are defined in Regulation No. 07/2017 as “activities of postal operations by government agencies or regional governments that need to be guaranteed in the interests of the state”.¹³⁷ Article 28(2) of Regulation No. 07/2017 dictates that these services may be assigned to any postal operator that meets certain requirements, including having “its own service network in each district/city throughout the territory of the Unitary Republic of Indonesia”. Article 28(3) stipulates that when no provider meets these requirements, the Ministry of State-Owned Enterprises may assign these services to an SOE.

Besides military postal services and other official postal services, the government has planned to make Pos Indonesia “the backbone of e-commerce”, according to the Ministry of State-Owned Enterprises.¹³⁸ As part of Presidential Decree No. 74/2017, Pos Indonesia was to be “revitalised, restructured and modernised” by the end of 2017.¹³⁹ As a result, Pos Indonesia launched a mobile-phone application (MyPos) and partnerships with e-commerce companies to create an online payment system.¹⁴⁰ According to Kominfo, it does not provide Pos Indonesia with any additional/dedicated funding for the development of the MyPos application.

Lastly, according to Pos Indonesia’s 2019 Annual Report, the status of PSO operator has allowed Pos Indonesia to successfully submit a proposal to become the “*designated government courier service*” (PT. Pos Indonesia, 2019, p. 31_[61]), which it considered a “break through development” (PT. Pos Indonesia,

2019, p. 33^[61]). In absence of legislation that pertains exclusively to government courier services, it is unclear what the status of “*designated government courier service*” entails. In Pos Indonesia’s 2019 Annual Report it is linked to the responsibility as PSO operator and seems therefore an extension of this responsibility. However, it is unclear whether all government courier services are now exclusively or favourably granted to Pos Indonesia, and if so, how this agreement has been granted by the government and what legislation or contract(s) govern this agreement.

5.1.2. Management

The number of directors and commissioners are regulated in Government Regulation No. 45/2005 on the Establishment, Management, Monitoring, and Liquidation of State-Owned Enterprises. The number of directors (Article 18) and commissioners (Article 51) is determined by the GMS for *persero* SOEs and by the Ministry of State-Owned Enterprises for *perum* SOEs.

On 24 September 2020, through Ministry of State-Owned Enterprises Decree No. SK-301/MBU/09/2020 on the Termination of the Transfer of Tasks and Appointment of Members of the Board of Directors of PT Pos Indonesia (Persero), the ministry appointed a new board of directors for the company. As a result, Pos Indonesia currently has six directors. One director is “internal” (a former employee of Pos Indonesia), while the five others held positions in the logistics sector or other SOEs. The board has no Ministry of State-Owned Enterprises representative.

Pos Indonesia currently has six commissioners. According to the Ministry of State-Owned Enterprises, it is represented in the board of commissioners, together with other government agencies and trade unions.

5.1.3. SPDS business

In its 2018 Annual Report, Pos Indonesia estimates its market share of courier services at 15% (PT. Pos Indonesia, 2018, p. 131^[71]). SPDS is becoming an important market for Pos Indonesia, despite its current relatively low market share. Almost 37% of Pos Indonesia’s revenue came from its parcel business in 2019, up from approximately 31% in 2018. According to Pos Indonesia’s Annual Report 2019, the mail delivery business declined in 2019 by 13.5%, while the parcel delivery business increased by 4.5%. The parcel business is likely to further increase in the future.

This growth in parcel items in Indonesia and decline in traditional letters is also illustrated in statistics from the Universal Postal Union (UPU). Letter mail levels seem to fluctuate significantly each year, but a clear downward trend is visible.

Table 5.1. Number of items delivered by Pos Indonesia, 2015-2019

	2015	2016	2017	2018	2019
Number of letter-post items, domestic service	21 900 792	42 043 229	127 199 434	20 297 712	13 392 813
Number of parcels, domestic service	6 355 578	4 185 000	12 498 095	20 696 632	10 390 124

Note: Parcels are defined by the UPU as packages up to 20 kilogrammes, and thereby distinguished from small parcels (or small packets) that come under letter-post items and are packages up to 2 kilogrammes; see www.upu.int/UPU/media/upu/files/UPU/activities/researchAndPublications/descriptionPostalStatisticsTechnicalNotesEn.pdf.

Source: http://pls.upu.int/pls/ap/ssp_report.main?p_language=AN&p_choice=BROWSE.

Moreover, according to Pos Indonesia, some private competitors are using Pos Indonesia’s services to deliver their own packages due to the SOE’s large network. However, these transactions are often carried out over the counter, without any B2B special negotiations and partnerships.

5.2. Assessment of Pos Indonesia's advantages and disadvantages in the SPDS sector

This section identifies and assesses Pos Indonesia's advantages and disadvantages in the SPDS sector, and offers recommendations to address these issues. Each sub-section begins by setting out the general principles guiding the assessment; these are mainly based on the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (OECD, 2015, p. 20^[10]).

5.2.1. Public service obligation

General principles

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.

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.

Costs related to public-policy objectives can be funded by the state and should be disclosed.

As noted in Section 5.1.1, the government assigned Pos Indonesia the PSO related to: 1) letters, postcards, printed matter, and small packages (letters containing goods) up to 2 kilogrammes; 2) items for the blind up to 7 kilogrammes; 3) printed goods sent in special bags intended for recipients with the same address, with a weight of up to 30 kilogrammes; and 4) packages weighing up to 20 kilogrammes.

Pos Indonesia has no monopoly rights over the provision of these services; Law No. 38/2009 liberalised the postal sector, as is the case in a number of OECD countries, where monopolies granted to postal operators have been lifted or their scope reduced to promote competition. Some OECD countries have completely liberalised their postal sector and others retain a relatively small reserved area. In France and Germany, for instance, the markets are fully open to competition for all postal items, with different schemes applicable to meet PSOs. Similarly, in Sweden, the postal market was liberalised in 1993 and in 2007 the sector regulator conducted a study showing that the service quality of Posten AB, the incumbent operator, had improved because of growing competition.

Although, as described in Section 5.1.1, the PSO was set to be assigned through a public tender, one has yet to be launched. According to ASPERINDO, certain commercial providers might be interested in operating the PSO, although this would ultimately depend on the tender design.

At this stage, Pos Indonesia is the only operator to meet the current requirements for executing the PSO under Article 30(2) of Regulation No. 15/2013.¹⁴¹ Most notably, only Pos Indonesia has a sufficiently large network to service the entire archipelago.

As part of the PSO compensation, Kominfo has stated that Pos Indonesia receives government subsidies for the operational costs of 2 470 of its 4 594 post offices. Kominfo selects the offices under this compensation scheme, subject to the following conditions: 1) a maximum number of two employees; 2) unprofitable; 3) in rural areas outside of a provincial capital and a capital of regencies or cities.¹⁴² Ministry of Finance Regulation No 155/PMK.02/2010 on Procedures for Provision, Disbursement, and Accountability of Funds for Carrying Out Public-Service Obligations governs transfers of funds to cover

unprofitable post offices. It should be noted that Pos Indonesia performs both universal and commercial services in these offices.

The government is supposed to cover the costs of the PSO, which is known as Universal Postal Service Operational Assistance.¹⁴³ The level of this government compensation in a certain year is determined (or forecasted), based on previous year's actual revenue and costs and depending on the available funding.¹⁴⁴ In practice, however, it appears that these funds are insufficient and Pos Indonesia's commercial revenues are used to complement the governmental funds. According to Pos Indonesia, the government covers operational costs of IDR 345 billion per year, while annual costs for the PSO amount to IDR 500-600 billion a year. According to Pos Indonesia's Annual Report 2019, the compensation for in 2018 and 2019 have been IDR 346 billion and IDR 370 billion, respectively.¹⁴⁵

Pos Indonesia's 2018 Annual Report states that, as direct compensation for the execution of the PSO was only provided since 2003, the PSO led to financial losses during the period 1995-2003.¹⁴⁶ From 2003 to 2009, Pos Indonesia received IDR 898.1 billion in PSO compensation from the government. However, according to Pos Indonesia, the total costs for executing the PSO were IDR 1 261.1 billion, leaving a funding gap of IDR 363 billion.¹⁴⁷ Data from the Ministry of State-Owned Enterprises show that between 2016 and 2018, the funding gap further increased by IDR 1 456 billion.¹⁴⁸

Three reasons for the under-compensation of Pos Indonesia's PSO can be identified:

- 1. A lack of separate financial accounts for commercial and non-commercial activities.** Article 65(6) of Government Regulation No. 45/2005 requires SOEs with PSO duties to keep separate accounting for its PSO and non-PSO businesses. Pos Indonesia does not appear to comply with this requirement. The Supreme Audit Agency of the Republic of Indonesia's 2019 report states that Pos Indonesia's data on the PSO are opaque.¹⁴⁹

This lack of separation directly affects the PSO compensation: the compensation for executing the PSO is defined *ex ante* as the difference between the total revenue (including both the commercial and non-commercial activities) and the cost of executing the PSO.¹⁵⁰ The difference, which is regarded as the 'net cost' of executing the PSO, is reimbursed by the state. However, since the revenue includes those from the commercial activities of Pos Indonesia's (and not just the revenues from the PSO), the revenues are kept artificially high and the PSO ends up being undercompensated.

- 2. A deficiency in PSO budget cannot legally be reimbursed *ex post* by the state.** Both Article 2(5) of Kominfo Regulation No. 22/2013 and Article 14 of Kominfo Regulation No. 155/PMK.02/2010 read: "In the occurrence that there is a difference between the amount that has been paid to the Postal Operator for the Universal Postal Obligation and the audit results for one fiscal year, the underpayment cannot be requested to the State."¹⁵¹
- 3. PSO rates have not been updated since 2013.** Kominfo Regulation No. 29/2013 on the Universal Postal Service stipulates that the rates for the PSO obligation for domestic and foreign mail delivery, domestic parcel shipments within 11 region, and overseas parcel delivery for each route. The regulation has not been updated since 2013 and so the rates it sets out do not reflect Pos Indonesia's current costs. For instance, as an indication, inflation in Indonesia between 2013 and 2019 has averaged 4.7% a year (CAGR) or cumulatively 37%,¹⁵² so rates need to be adjusted.

According to Article 15(4) of Law No. 38/2009, all postal operators should contribute to financing the PSO. Article 32 of Government Regulation No. 15/2013 stipulates that this contribution is to be determined "by considering the costs needed for Universal Postal Service operation and by adhering to the principle of fairness for the people and business players". Kominfo has indicated that the contribution fee that shall be paid by all postal operators is 0.25% of the net profit after tax per year. This contribution is audited annually by the Supreme Audit Agency. However, in its 2018 report, the Audit Board stated that after-tax revenue from the contribution to universal postal services has not been optimally collected from liable postal

operators, which seems to imply that this contribution is being sporadically paid.¹⁵³ Kominfo has indicated that this is largely due to the fact that many postal operators have reported after-tax losses, which means that they are not charged a contribution fee.

The OECD understands from Kominfo that it intends to adjust the PSO tariff.

The OECD has five recommendations.

1. Ensure that SOEs required to perform non-commercial activities for government agencies and other public authorities, such as Pos Indonesia, receive adequate compensation for these services.
2. Enforce the payment of PSO contributions by all postal operators, including the sanctioning of non-compliant operators as mandated by Article 37 of Government Regulation No. 15/2013.
3. Ensure that SOEs with PSO, such as Pos Indonesia, comply with the accounting separation and reporting requirements to prevent commercial services being cross-subsidised by funds designated for public service obligations.
4. Ensure that regulated rates for public services reflect Pos Indonesia's actual costs and take into account any other public funds and subsidies accessible to Pos Indonesia.
5. Consider to mandate Kominfo to organise a public consultation or call for expression of interest to inquire whether private companies have an interest in executing the PSO. This could be a first step for developing a tender for the PSO.

5.2.2. SOE governed and managed as an arm of government

General principle

A clear separation between state ownership rights in SOEs and state regulatory functions in a sector is a fundamental prerequisite for ensuring a level-playing field and for avoiding competitive distortions.

Influence over Pos Indonesia's governing bodies

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.

As discussed in Section 3.4.2, the appointment and dismissal of directors and commissioners is carried out by the GMS, which is the minister for a wholly-owned SOE, as is the case for Pos Indonesia. Moreover, as an unlisted SOE, Pos Indonesia's directors can be nominated by the Minister of State-Owned Enterprises, its Secretary, Technical Deputy or Deputy without the board of commissioners' recommendation. The minister also appoints a professional institution or team to conduct the "fit-and-proper" test used to assess candidates for the elected board. Finally, for urgent requirements, the Minister of State-Owned Enterprises can appoint a temporary member to an SOE's board of directors without subjecting him or her to the "fit-and-proper" test.

These arrangements all provide the Ministry of State-Owned Enterprises, and in particular its minister, the possibility of exerting undue influence over SOEs. In its *Indonesia Corporate Governance Manual* (2018^[72]), the International Finance Corporation (IFC) mentioned that the state indeed “exercises its control via the GMS and by retaining the right to appoint commissioners and/or directors”.¹⁵⁴

In practice, the appointment of directors and commissioners is indeed an issue in Indonesia. Political connections and disagreements seem to play a role, while nominations and appointments are not transparent.¹⁵⁵

The OECD has one recommendation.

1. Ensure that SOE boards are sufficiently autonomous and competent and that direct appointments by the Minister are limited to certain circumstances. For this, (i) reinforce the “fit-and-proper” test to mitigate the risk of political appointees for commissioners and directors; and (ii) ensure that the assessment of this test is conducted by an independent entity.

Influence over Pos Indonesia’s commercial activities in e-commerce

As discussed in Section 5.1.1, the government has assigned an important role to Pos Indonesia in the development of e-commerce in Indonesia. Developing e-commerce in Indonesia, and allowing an SOE to play a central role in this, is a legitimate government policy objective. However, the process of support for the e-commerce sector needs to be transparent and support equal for all market participants without any unfair competitive advantages. By publicly assigning a crucial role to Pos Indonesia, the company risks being regarded and treated as a representative or extension of the government in postal markets, above and beyond its role as the provider of the PSO. For instance, in its 2019 Annual Report, Pos Indonesia sets out its plans to become a designated courier service for the government (PT. Pos Indonesia, 2019, p. 32^[61]); access to such commercial services should be available on equal terms to all SPDS operators.

The OECD has one recommendation.

1. Should the government envisage awarding contracts for commercial activities, it should ensure that these contracts are awarded through public procurement procedures granting equal opportunities for all SPDS providers.

5.2.3. Different regulatory treatment

General principles

Consistent with the rationale for state ownership, the legal and regulatory framework for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs undertake economic activities.

Competition laws

As explained in Section 3.3, Indonesian competition law appears ambiguous in terms of its applicability to SOEs. Even though the ICC has published guidelines related to Articles 50(a) and 51 of Law No. 5/1999 on Competition, the OECD understands that both articles are still being used by SOEs as a legal basis for their exemption from competition law. Their argument being that because they are not bound by the law as they are tasked with a government mandate.

Moreover, the OECD understands that in practice the competition review checklist developed by the ICC (ICC Regulation No. 4/2016, discussed in Section 3.3.2) is widely used neither by ministries nor sectoral regulators.

The OECD has two recommendations.

1. The ICC should consider providing clearer guidance on the extent to which, and in what matters, SOEs may be exempted from the application of competition law.
2. Ensure a wider use by the different ministries of the competition review checklist (ICC Regulation No. 4/2016); for instance, by making it mandatory for new regulations.

Undue influence over regulation

General principle

There should be a clear separation between the state's ownership function and other state functions that may influence the conditions for state-owned enterprises, particularly with regard to market regulation.

As discussed in Section 4.3, it seems that Kominfo, before issuing regulation, consults with the Ministry of State-Owned Enterprises. This can lead to a potential conflict of interest as the state is acting both as regulator (Kominfo) and as owner (Ministry of State-Owned Enterprises); this could – at least in theory – alter legislation to the advantage of an SOE, giving it a competitive advantage. Where this pertains to the compensation of the PSO, any information regarding Pos Indonesia should be directly obtained from the them as the regulated company instead of from the Ministry of State-Owned Enterprises.

The OECD has one recommendation.

1. Ensure that the interaction between Kominfo and the Ministry of State-Owned Enterprises is limited to co-ordination, necessary to the execution of the PSO, and does not influence any legislation that could give an SOE a competitive advantage for its commercial activities.

Licensing requirements

As described in Section 4.3.1, postal operators need to obtain both a postal licence and a business licence. Even though Pos Indonesia is the designated operator for the PSO, it is still mandated to obtain a license in consonance with the existing law. Moreover, according to both Pos Indonesia and the Ministry of State-Owned Enterprises, it is subject to the same reporting obligations as other private service providers, including an annual review process that is required of its competitors.

The OECD has no recommendation.

5.2.4. Privileged access to public procurement markets

Indonesia's SOE synergy programme and Pos Indonesia's advantages in public procurement

General principle

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.

The Ministry of State-Owned Enterprises issued general guidelines for procurement rules for goods and services for SOEs in Regulation No. PER-08/MBU/12/2019 (as already mentioned in Section 3.2.3).¹⁵⁶

Article 4(1) of Regulation No. PER-08/MBU/12/ 2019 stipulates the practices that need to be followed by SOEs when procuring goods and services, including efficient, effective, competitive, transparent and open procurement.¹⁵⁷ In practice, however, as also described in Section 3.2.3, Indonesian SOEs are expected to prioritise co-operation and procurement with each other. This SOE synergy programme could constitute an entry barrier for private companies. For instance, Article 4(4) of Regulation PER-08/MBU/12/2019 specifies that users of goods and services can create synergies between SOEs and their subsidiaries or affiliated companies. Article 5 states that SOEs must provide opportunities for subsidiaries and search for synergy between SOEs and their subsidiaries or affiliated companies. Finally, Article 13(j) stipulates that direct appointments (appointing directly one provider for certain goods or services) can be made when they concern SOEs and its subsidiaries or affiliated companies. The ICC had already recommended that the Ministry of State-Owned Enterprises revokes this synergy programme.

Section 3.2.3 already noted that this SOE programme is practised in different sectors of Indonesia's economy. According to participants in the SPDS market, synergies between SOEs – including Pos Indonesia – are pursued and transactions between SOEs do not (always) seem to occur on commercial terms. Pos Indonesia has contracts with Garuda, Indonesia's national airline and SOE, for air deliveries.¹⁵⁸ Although Pos Indonesia is not guaranteed any reserved space on Garuda's aircraft, according to the company, and can have its cargo offloaded if space is restricted, Garuda does provide Pos Indonesia with "special prices" on these services to maximise synergies between the two SOEs. Moreover, PELNI also mentioned that it provides Pos Indonesia with improved prices for island-to-island deliveries as a result of the synergy policy.¹⁵⁹ SOEs appear to have also made agreements with other parts of the government. For instance, Pos Indonesia has an agreement with the Association of Indonesian Municipalities (APEKSI) for management of letters and small package delivery for APEKSI members throughout Indonesia. Pos Indonesia's Annual Report 2019 mentions that becoming the government's designated courier service is one of the company's plans.

The OECD has four recommendations.

1. Revoke and redesign the SOE synergy policy for public procurement between SOEs. Instead,
 - a. 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 and
 - b. the government should reconsider the practice of direct awards from one SOE to another, or from government entities to SOEs, and encourage open tenders.

2. Ensure that any commercial contract between the government and Pos Indonesia, such as appointing it as designated government provider of courier services, is awarded through an open tender on fair and non-discriminatory terms.
3. Develop guidelines, through coordination between relevant ministries and state institutions, including the ICC, that ensure SOE public procurement follows a competitive process and limits the scope of preferential agreements.
4. 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.

Indonesia Post as operator for military services and other official postal services

As discussed in Section 5.1.1, “non-commercial military services” and “other government-related postal services requiring confidentiality” are assigned to a postal operator by the Minister of State-Owned Enterprises. Applicants for these official postal services must meet certain criteria, which includes having their own network that covers the entire territory of Indonesia. This condition – the same as that for the PSO – excludes other operators from applying for this service as Pos Indonesia is the only postal operator with such a network. Hence, although no specific regulation grants Pos Indonesia exclusive rights and duties for these services, in practice it is the sole provider. It is unclear how service-level agreements between Pos Indonesia and government agencies are established and how they are renewed.

The OECD has one recommendation.

1. Consider whether the contracts with governmental agencies for military postal services and other official postal services should a) be explicitly added to the PSO (as other activities that require a guarantee in the interests of the state), or b) transparent tenders should be introduced that allow other postal operators to compete for these contracts (subject to the necessary security, regulation and stringent confidentiality requirements).

5.2.5. Financial advantages

Protection from debt claims and bankruptcy procedures

General principle

As a guiding principle, SOEs undertaking economic activities should not be exempt from the application of general laws, tax codes and regulations. Laws and regulations should not unduly discriminate between SOEs and their market competitors. SOEs’ legal forms should allow creditors to press their claims and to initiate insolvency procedures.

SOEs enjoy procedural protection in bankruptcy proceedings. Law No. 37/2004 on Bankruptcy and Postponement of Debt Payment Obligations stipulates that if the debtor is an SOE engaged in the field of public interest, then the request for bankruptcy can only be submitted by the Ministry of Finance.¹⁶⁰ Article 2(5) explains that an SOE is “engaged in public interest” if it meets two requirements: its capital is wholly owned by the state and not equitised. These two requirements are the same as those used in Article 1(4) of Law No. 19/2003 that suggests only *perum* SOEs – and not *persero* SOEs – are protected from bankruptcy. In a 2007 decision about the bankruptcy of *persero* SOE Dirgantara Indonesia, Indonesia’s Supreme Court confirmed No. 37/2004’s provisions that SOEs wholly owned by the government, including *persero* SOEs, cannot file for bankruptcy using normal legal instruments, and only

through the Ministry of Finance. Referring to Article 50 of Law No. 1/2014 on State Treasury, the Supreme Court stated that while seizure of assets in the case of bankruptcy is common, Dirgantara Indonesia's assets were state assets and so could not be seized, preventing any bankruptcy proceedings.¹⁶¹

Based on this jurisprudence, only the Ministry of Finance can file for bankruptcy for SOEs wholly owned by the state, such as Pos Indonesia, even though they are limited-liability companies.

Mergers, acquisitions and takeovers are regulated by Government Regulation No. 43/2005 on Mergers, Consolidation, Acquisition and Transformation of Legal Entities of State-Owned Enterprises. An SOE (both *persero* and *perum*) can only be acquired by or merged with another SOE, and these actions can only be proposed to the Indonesian president by the Ministry of State-Owned Enterprises.¹⁶² Moreover, the government must pass corresponding regulations.¹⁶³

In the private sector, the possibility of a takeover or bankruptcy are essential for policing corporate management. Pos Indonesia's protection from both may negatively influence its management and strategic decisions and therefore disrupt the level playing field (OECD, 2015, p. 12_[10]).

The OECD has one recommendation.

1. SOEs operating commercial activities, including Pos Indonesia, should be subject to bankruptcy rules and the possibility of a takeover (OECD, 2015, pp. 47-48_[10]). Any considerations with regard to PSO and its funding should be dealt with separately (see Section 5.2.1).

Land usage

General principle

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

Pos Indonesia has told the OECD that while it owns most of its buildings, certain of its offices are rented from, for instance, educational institutions, the state, including from schools, regional governments or other SOEs, or from private individuals. In these cases, Pos Indonesia claims that the rental fee is determined by the leaser and reflects market prices.

The OECD has no recommendation.

Access to finance

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 non-financial SOEs, should be based on purely commercial grounds.

A reliance on state-owned financial institutions may distort SOEs' incentive structures and lead to excessive indebtedness and wasted resources. Even when funding is obtained from private lenders and granted on commercial terms, if creditors assume there is an implicit state guarantee on SOEs' debts, this situation can lead to artificially low funding costs for SOEs and distort the competitive landscape.

State's direct investments

As discussed in Section 3.2.2, an SOE in financial distress can ask the government to intervene with state capital participation (PMN), as set out in Government Regulation No. 44/2005. PMN aim to “improve the capital structure” or “increase the business capacity” of an SOE.¹⁶⁴

Pos Indonesia last received state capital participation in 2012, under Government Regulation No. 67/2012 on the Increase of State Capital Participation of the Republic of Indonesia in the Capital of Pos Indonesia. This regulation stipulates the amount of added state capital, as well as the form in which this capital was added (for example, post office buildings, office equipment, trucks and vans). Although the then Minister of State-Owned Enterprises, Dahlan Iskan, stated that this would be the last state capital participation in Pos Indonesia,¹⁶⁵ no formal restrictions on future PMN were put in place. In 2019, at least seven other SOEs received PMN.¹⁶⁶

The OECD has one recommendation.

1. The government should base decisions on PMN on “market economy investor principles”, taking into account the effective possibilities to obtain equivalent financial resources on the market with conditions that would be acceptable for a private operator.

Dividend policy

If the state foregoes to receive dividend payments from a profitable SOE, this can have the effect equivalent to a subsidy to the SOE (OECD, 2015, p. 47_[10]).

The national budget sets an overall target for all SOEs dividends, with the Ministry of State-Owned Enterprises – rather than each SOE’s management – deciding which SOEs will pay dividends.

Articles 70 and 71 of Law No. 40/2007 detail the dividend policy, stipulating that when SOEs make a net profit they must set aside a certain amount each financial year as a reserve. This amount is determined by the GMS, and will continue until the reserve is equal to at least 20% of the total subscribed and paid-up capital.

Pos Indonesia publishes the dividend paid out to its shareholder – the state – in its annual reports. In financial year 2017, the dividend was IDR 17.7 billion, amounting to a dividend pay-out ratio of almost 14%. The 2019 annual report indicates that no dividend was paid as a result of a decision by the GMS.

The OECD has one recommendation.

1. For each SOE, establish an appropriate dividend policy that is in line with market practices and is based on a clearly set rate of return.

State loans and State-guaranteed loans

State guarantees for SOEs’ loans are only provided to support strategic projects, such as construction of infrastructure projects, as discussed in Section 3.4.5. According to the Ministry of State-Owned Enterprises, state-owned banks sometimes apply lower interest rates to commercial SOEs. However, since the OECD has not found any information on this subject in relation to Pos Indonesia, this issue seems to have limited relevance to Pos Indonesia and the SPDS market.

The OECD has one recommendation.

1. Ensure that any external finance sought by SOEs, including Pos Indonesia, is taken out under commercial terms with both state-owned banks and other financial institutions. In particular, loans to SOEs should be subject to appropriate due diligence and market-based interest rates.

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Notes

¹ See also <https://en.tempo.co/read/1347321/kominfo-announces-internet-usage-soared-amidst-pandemic> (accessed 14 August 2020).

² See www.statista.com/statistics/1127876/indonesia-impact-on-online-purchase-behavior-covid-19.

³ See “Joint Statement by the ASEAN Experts Group on Competition (AEGC) in Response to the Coronavirus Disease (Covid-19) Pandemic”, <https://asean.org/storage/2020/06/AEGC-Joint-Statement-in-Response-to-COVID-19-9June20-FINAL.pdf>.

⁴ The *OECD Investment Policy Reviews: Indonesia 2020* noted criticism from environmental and social groups on the Omnibus law on Job Creation and recommended the implementing regulations include “due consideration of environmental and social impacts of business operations and that streamlining of administrative procedures does not come at the expense of labour and environmental protection and an inclusive and sustainable development pathway” (OECD, 2020^[73]).

⁵ 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.

⁶ EU Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (“Merger Regulation”), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008XC0416\(08\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008XC0416(08)), paragraphs 65-73.

⁷ See also *AEC 2025 Consolidated Strategic Action Plan*, <https://asean.org/wp-content/uploads/2012/05/Updated-AEC-2025-CSAP-14-Aug-2018-final.pdf>.

⁸ 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.

⁹ This number focuses on fully and majority-owned enterprises. When the analysis is expanded to include minority-owned listed companies, employment share rises considerably in certain countries.

¹⁰ For a more elaborate description, see Capobianco and Christiansen (2011^[21]).

¹¹ Several regulations have succeeded Law No. 22/1999. Currently, Law No. 23/2014, amended by a number of regulations, regulates local government.

¹² The ILO’s national legislation database states that Indonesia’s National Long Term Development Plan 2005-2025 was adopted on 7 February 2007 as Law No. 17/2007, www.ilo.org/dyn/natlex/natlex4.detail?p_isn=77046.

¹³ Current prices, current exchange rates.

¹⁴ Examples of such sectors include the telecommunications sector, financial sector, construction sector, mining, and transportation infrastructure. See for, instance, Kyunghoon (2018^[35]), pp. 313-330.

¹⁵ Article 1(1), Law No. 19/2003.

¹⁶ Article 1, Law No. 19/2003.

¹⁷ In Indonesia, the term “state-owned enterprise” can refer to an enterprise owned by the central government (*badan usaha milik negara*, BUMN) or local government enterprises (LGEs), known as *badan usaha milik daerah* (BUMD). State-owned enterprises are governed by various pieces of legislation including by Law No. 19/2003 for BUMN and Law No. 23/2014 on Local Government for BUMD. This report will focus on those BUMN enterprises owned by the central government, referred to here as SOEs.

¹⁸ These SOEs have in turn hundreds of subsidiaries with in turn their subsidiaries. These figures do not include enterprises owned by provincial or local governments (BUMD), of which there are many as well.

¹⁹ See Ministry of State-Owned Enterprises (2019^[37]), p.32, and World Bank GDP figure 2018.

²⁰ See Databoks (2019), “12 BUMNs that recorded losses in 2018”, <https://databoks.katadata.co.id/datapublish/2019/12/16/inilah-12-bumn-yang-mencatat-kerugian-pada-2018> (accessed 12 September 2020).

²¹ See for instance: <https://www.bloomberg.com/news/articles/2020-04-08/indonesia-s-new-worry-is-its-debt-saddled-state-owned-businesses>, <https://www.thejakartapost.com/news/2020/06/03/soes-in-dark-over-fundraising-despite-government-guarantees.html> and <https://www.thejakartapost.com/news/2020/11/09/soes-to-receive-rp-40t-injection-in-2021-support-economic-recovery.html>.

²² See www.hukumonline.com/pusatdata/downloadfile/lt5f478cfa68f09/parent/lt5f474d521bd74 (accessed 3 September 2020).

²³ See JawaPos.com (2020), “Erick Sebut Keppres Merger dan Tutup BUMN Sudah Diteken Jokowi”, 21 May 2020, www.jawapos.com/ekonomi/21/05/2020/erick-sebut-keppres-merger-dan-tutup-bumn-sudah-diteken-jokowi/ (accessed 15 September 2020).

²⁴ See CNBC Indonesia (2020), “Dapat Restu Jokowi, Erick Restrukturisasi Besar-besaran BUMN”, 9 June 2020, www.cnbcindonesia.com/market/20200609154707-17-164166/dapat-restu-jokowi-erick-restrukturisasi-besar-besaran-bumn (accessed 13 September 2020).

²⁵ The 12 clusters are: 1) oil, gas, and energy; 2) mineral and coal; 3) forestry plantations; 4) fertilisers and food; 5) pharmacy and health; 6) defence; 7) manufacturing and other industries; 8) financial services; 9) insurance services and pension funds; 10) telecommunications and media, infrastructure development and tourism, logistics and others; 11) transportation infrastructure; 12) infrastructure.

²⁶ Article 2, Law No. 19/2003.

²⁷ See Kyunghoon (2018^[35]).

²⁸ See Kompas.com (2019), “Daftar 7 BUMN yang Tetap Rugi Meski Sudah Disuntik PMN”, 21 December 2019, <https://money.kompas.com/read/2019/12/21/142657926/daftar-7-bumn-yang-tetap-rugi-meski-sudah-disuntik-pmn?page=all> (accessed 17 August 2020)

²⁹ See Kyunghoon (2018^[35]).

³⁰ See Kyunghoon (2018^[35]).

³¹ See No. 63/K/V/2014 on ICC’s Suggestions and Considerations related to SOE Synergy Policy on SOE’s Goods and Services Procurement.

³² Indonesia’s 1999 competition was the first in ASEAN; Thailand followed later the same year.

³³ Support for the enactment of Indonesia’s competition law gained traction after such a law was required as part of the International Monetary Fund’s rescue plan for Indonesia following the Asian financial crisis in 1997; see Sm Parabu, M. (2016), “Challenges of Indonesian Competition Law and Some Suggestions for Improvement”, *ERIA Discussion Paper Series*, www.eria.org/ERIA-DP-2016-04.pdf.

³⁴ Article 2, Chapter II, Law No. 5/1999 concerning the Ban on Monopolistic Practices and Unfair Business Competition.

³⁵ Article 1(5), Law No. 5/1999.

³⁶ 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)). The state action doctrine immunises acts of the highest levels of the state government itself; acts of subordinate state instrumentalities, such as SOEs, are only exempted pursuant to an authorisation by law. The state action defence can be used by SOEs to avoid liability for anti-competitive conduct only if it was imposed or authorised by law. See, for instance, OECD (2018), “Global Forum on Competition: Competition Law and State-Owned Enterprises, Background Note by the Secretariat”, DAF/COMP/GF(2018)10, [https://one.oecd.org/document/DAF/COMP/GF\(2018\)10/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2018)10/en/pdf), and OECD (2009), “Roundtable on the application of antitrust law to state-owned enterprises discussion on corporate governance and the principle of competitive neutrality for state-owned enterprises: United States”, Working Party No. 3 on Co-operation and Enforcement, DAF/COMP/WP3/WD(2009)40, www.ftc.gov/system/files/attachments/us-submissions-oecd-2000-2009/antitrustlawroundtable.pdf.

³⁷ See Sm Parabu, M. (2016), “Challenges of Indonesian Competition Law and Some Suggestions for Improvement”, p. 3.

³⁸ Articles 47-48, Law No. 5/1999.

³⁹ Article 35, Law No. 5/1999.

⁴⁰ See OECD/KPC (2018, p. 74_[45]).

⁴¹ See https://www.kppu.go.id/docs/Putusan/2012/Putusan_04_KPPU_L_2012.pdf.

⁴² See https://www.kppu.go.id/docs/Putusan/putusan_bni.pdf.

⁴³ See https://www.kppu.go.id/docs/Putusan/putusan_sucofindo.pdf.

⁴⁴ See https://www.kppu.go.id/id/wp-content/uploads/2017/06/Putusan-AP-Log-Perkara-No.-8-Tahun-2016_2.pdf.

⁴⁵ This replaced Law No. 1/1995.

⁴⁶ See IFC (2018_[72]), p. 46.

⁴⁷ See Article IV, Law No. 19/2003.

⁴⁸ Regulation No. 01/MBU/2011 replaced Ministry of State-Owned Enterprises Decree No. Kep-117/MBU/2002 regarding the Application of Good Corporate Governance in SOEs and Circular No. SE-14/MBU/2010.

⁴⁹ See Article 2, Regulation No. 41/2003.

⁵⁰ See www.kemenkeu.go.id/publikasi/infografik/special-mission-vehicles/.

⁵¹ Article 24(3), Law No. 17/2003.

⁵² Article 6(2), Law No. 17/2003.

⁵³ See OECD (2015_[10]), p. 15. An alternative model is the one-tier board, which may or may not include executive (managing) directors. For the purposes of this report, “board” refers to the corporate body charged with the functions of governing the enterprise and monitoring management.

⁵⁴ See Article 13, Law No. 19/2003. Article 37 stipulates the three organs of a *perum* SOE: the ministry, directors and supervisory board. This report focuses on *persero* SOEs as this is Pos Indonesia's status. See OECD (2016), "A Synthesis of SOE Performance Evaluation and Management in Asia", in *State-Owned Enterprises in Asia: National Practices for Performance Evaluation and Management*, OECD Publishing, Paris, www.oecd.org/corporate/SOEs-Asia-Performance-Evaluation-Management.pdf, pp. 30-59.

⁵⁵ Article 15, Law No. 19/2003.

⁵⁶ See Chapter III(A), Ministry of State-Owned Enterprises Regulation No. PER-03/MBU/02/2015.

⁵⁷ See Chapter III(B), Ministry of State-Owned Enterprises Regulation No. PER-03/MBU/02/2015; the board of commissioners must propose candidates for listed SOEs.

⁵⁸ The elements of the UKK and requirements of directors is outlined in Ministry of State-Owned Enterprises Regulation No. PER-03/MBU/02/2015 (respectively Appendix 1 and Chapter II).

⁵⁹ Chapter III, Procedure for Appointment, C. Ukk Point 13, Ministry of State-Owned Enterprises Regulation No. PER-03/MBU/02/2015.

⁶⁰ Chapter V-C1, Ministry of State-Owned Enterprises Regulation No. PER-03/MBU/02/2015.

⁶¹ Chapter II (requirements) and III (procedure for appointment), Ministry of State-Owned Enterprises Regulation No. PER-02/MBU/02/2015.

⁶² Article 23(1), Constitution of Indonesia, 1945.

⁶³ Article 14, Law No. 14/2008.

⁶⁴ Entitled *Ikhtisar Laporan Keuangan Perusahaan Negara (BUMN)* in Indonesian.

⁶⁵ See www.kemenkeu.go.id/media/15858/lkpp-2019.pdf, p. L.156.

⁶⁶ *KPKU-BUMN or Kriteria Penilaian Kinerja Unggul – Kementerian Badan Usaha Milik Negara* in Indonesian.

⁶⁷ See Article 44 of Regulation No. 01/MBU/2011 and a letter from the Ministry of State-Owned Enterprises Regulation No. S-281/S.MBU/2014 on Implementation of Assessment Criteria for Performance Excellence (*KPKU-BUMN*).

⁶⁸ See Letter of the Secretary of the Ministry of State-Owned Enterprises No. S-08/S.MBU/2013 dated 16 January 2013 on Submission of Guidelines for Determining Key Performance Indicators (KPI) and Criteria for Superior Performance Assessment (*KPKU-BUMN*), Attachment II, page 1.

⁶⁹ For further details, see (OECD, 2010^[74]).

⁷⁰ Article 24(1), Law No. 17/2003.

⁷¹ Article 7, Law No. 45/2005.

⁷² See, for instance, the Performance report 2019, Ministry of State Owned Enterprises, <https://bumn.go.id/storage/report/milqz1io0eeidM26o8ymbv58z4uznahWZYFK3cJv.pdf>.

⁷³ See, Article 2, Ministry of Finance Regulation No. 30/PMK.08/2012.

⁷⁴ One option is raising funds for universal service is through charges, such as taxation or levies, on all postal operators.

⁷⁵ See, for example, Copenhagen Economics/European Commission (2018), *Main Developments in the Postal Sector (2013-2016)*, Study for the European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, <https://op.europa.eu/s/nBpK>.

⁷⁶ European Commission Case M.6570 – UPS/TNT Express, paragraphs 36-39, and European Commission Case M.7630 – FEDEX/TNT EXPRESS, paragraphs 78-80.

⁷⁷ 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 mail, parcel and financial services volumes, and improve quality of service for customers.

⁷⁸ Article 29, Law No. 38/2009.

⁷⁹ A node is a connection point within a network. See, EC merger case COMP/M.6570 – UPS/TNT Express, 30/1/2013, recital 44.

⁸⁰ 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; 5) a reputation for reliably delivering parcels on time (so-called “end-to-end credibility”).

⁸¹ See EC merger case COMP/M.7630 – FedEx/TNT Express, 08/01/2016, recital 28 and further. 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, particularly in the B2C segment.

⁸² 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 not aware 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.

⁸³ The definition of e-commerce used in this report is that used in the OECD 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”. See <https://stats.oecd.org/glossary/detail.asp?ID=4721>.

⁸⁴ In 2018, the ASEAN e-commerce market accounted for approximately 1% of worldwide e-commerce revenue (OECD, 2018, p. 19₍₄₎).

⁸⁵ See “2017-2025 Work Programme on Electronic Commerce”, <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2017-2025-ASEAN-WP-e-Commerce.pdf>.

⁸⁶ See “ASEAN Agreement on Electronic Commerce”, <http://agreement.asean.org/media/download/20190306035048.pdf>.

⁸⁷ The ASEAN-6 countries are Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand.

⁸⁸ See Preamble, Presidential Decree No. 74/2017.

⁸⁹ The roadmap comprised of eight pillars, including funding, taxation, consumer protection, education and human resources, logistics, communication infrastructure, cyber security, and the creation of an implementing agency.

⁹⁰ In 2019, the government issued Government Regulation No. 80/2019 on Trade through Electronic Systems, which is implemented by Ministry of Trade Regulation No. 50/2020 on Trade through Electronic Systems.

⁹¹ Article 4(2), Law 38/2009.

⁹² Article 5, Law 38/2009.

⁹³ A postal operator is defined in the 2009 postal law as “a business enterprise that operates postal services”. In turn, post is defined as “written communication and/or electronic mail services, parcel services, logistics services, financial transaction services, and postal agency services for public interests”. Hence, a foreign postal operator is a business enterprise that delivers written communication and/or electronic mail services, including parcel services.

⁹⁴ See Article 12(2), Law No. 38/2009 on Post.

⁹⁵ See Article 12(2), Law No. 25/2007.

⁹⁶ Business fields open under certain conditions are reserved for an SME, a partnership with an SME, or a co-operative, and characterised by 1) limited foreign capital ownership, 2) specific locations; 3) specific licences or permits; 4) 100% domestic capital; and 5) limited-capital ownership in the context of the ASEAN co-operation. See Article 2(2), Presidential Regulation No. 44/2016.

⁹⁷ See Appendix III, Presidential Regulation No. 44/2016 (under “K. Communication and Informatic Sector”) for the full list. Mail providers do have a limitation in terms of foreign ownership, but according to the regulation, this relates to Indonesian Standard Industrial Classification codes 53101, 53102 and 53202, and excludes code 53201 for package delivery.

⁹⁸ The OECD Services Trade Restrictiveness Index (STRI) includes data from 45 countries, looking at 22 sectors (one is the most restrictive and zero the least): accounting services; air transport; architecture services; broadcasting; cargo handling; commercial banking; computer services; construction; courier services; customs brokerage; distribution services; engineering services; freight-forwarding; insurance; legal services; maritime transport; motion pictures; rail freight transport; road freight transport; sound recording; storage and warehouse; and telecommunications. See www.oecd.org/trade/topics/services-trade/.

⁹⁹ Obstacles to trade include: restrictions on foreign entry; restrictions to movement of people; barriers to competition; and regulatory transparency.

¹⁰⁰ See Indonesia’s 2019 STRI country note, www.oecd.org/trade/topics/services-trade/documents/oecd-stri-country-note-indonesia.pdf.

¹⁰¹ Pursuant to Article 10, Law No. 38/2009 on Post.

- ¹⁰² Preamble, Government Regulation No. 24/2018.
- ¹⁰³ Article 5, Government Regulation No. 24/2018/24/2018.
- ¹⁰⁴ Article 1(8), Government Regulation No. 4/2018.
- ¹⁰⁵ Article 1(9), Government Regulation No. 24/2018.
- ¹⁰⁶ Article 6, Government Regulation No. 24/2018.
- ¹⁰⁷ See, for example, Paul Hype Page & Co (2019), “Business Licenses in Indonesia”, 5 November 2019, www.paulhypepage.co.id/business-licenses-in-indonesia (accessed 19 August 2020).
- ¹⁰⁸ Article 79, Government Regulation No. 24/2018.
- ¹⁰⁹ Article 79, Government Regulation No. 24/2018.
- ¹¹⁰ Article 4, Law No. 38/2009.
- ¹¹¹ Article 10, Law No. 38/2009.
- ¹¹² Article 6, Kominfo Regulation No. 07/2017.
- ¹¹³ Article 5, Kominfo Regulation No. 07/2017.
- ¹¹⁴ Article 19, Government Regulation No. 15/2013.
- ¹¹⁵ Article 7, Kominfo Regulation No. 07/2017.
- ¹¹⁶ Article 11, Kominfo Regulation No. 07/2018.
- ¹¹⁷ Article 12, Kominfo Regulation No. 07/2018.
- ¹¹⁸ Articles 17 and 19, Kominfo Regulation No. 07/2017.
- ¹¹⁹ Articles 88(2), Kominfo Regulation No. 07/2018.
- ¹²⁰ Articles 33 and 34, Kominfo Regulation No. 07/2017.
- ¹²¹ Article 2, Kominfo Regulation No. 20/PER/M.KOMINFO/10/2005.
- ¹²² See Article 18(1), Law No. 38/2009. Moreover, postal operators shall provide an exemption on tariff for items for the blind (Article 20) and to or from prisoners of war (Article 21).
- ¹²³ See Article 18(2), Law No. 38/2009.
- ¹²⁴ See Preamble, Kominfo Regulation No. 01/PER/M.KOMINFO/01/2012. Also, Article 5(3), for instance, stipulates that rates cannot be lower than production costs.
- ¹²⁵ A number of legislations have been amended to allow private participation. These include among others, law on rail transport (2007), shipping (2008), air transport (2009), road transport (2009) and postal (2009).
- ¹²⁶ See the Roadmap for Energy, Logistics, Regions, and Tourism 2015 -2019 ([https://web.kominfo.go.id/sites/default/files/Rencana%20Strategis%20\(Renstra\)%20Kedeputan%20Energi,%20Logistik,%20Kawasan%20dan%20Pariwisata%20Kementerian%20BUMN%202015-2019.PDF](https://web.kominfo.go.id/sites/default/files/Rencana%20Strategis%20(Renstra)%20Kedeputan%20Energi,%20Logistik,%20Kawasan%20dan%20Pariwisata%20Kementerian%20BUMN%202015-2019.PDF)). Page 50 elaborates on the potential to achieve synergies by establishing a SOHC in the logistics sector. The entire SOE roadmap 2015-2019 can be found in “Buku II RPJMN 2015-2019”: <https://www.bappenas.go.id/id/data-dan-informasi-utama/dokumen-perencanaan-dan-pelaksanaan/dokumen-rencana-pembangunan-nasional/rpjp-2005-2025/rpjm-2015-2019/>.

¹²⁷ See Ministry of SOE Regulation PER-8/MBU/08/2020, <http://jdih.bumn.go.id/baca/PER-08/MBU/08/2020.pdf>.

¹²⁸ Article 15, Law No. 38/2009.

¹²⁹ See Article 29, Implementing Regulation No. 15/2013. In Indonesia, the PSO is also called the “universal service obligation”.

¹³⁰ See Article 50, Law No. 38/2009.

¹³¹ See Article 2, Kominfo Regulation No. 07/2017. Indeed, two articles of Law No. 38/2009 also separately identify postal operations for military services – Article 8(1) – and postal operations for other services – Article 8(2).

¹³² See Article 27 and 28, Kominfo Regulation No. 07/2017.

¹³³ See www.bkn.go.id/wp-content/uploads/2019/09/29.-PKS-KANTOR-POS-INDONESIA.pdf.

¹³⁴ See http://portal.divkum.polri.go.id/Documents/PEDOMAN%20KERJA_10_01062016_143024.pdf.

¹³⁵ See <https://adoc.tips/rahasia-posmil-bab-i-pendahuluan.html> and <https://tniad.mil.id/direktur-ajudan-jenderal-tni-ad-tandatangan-kerja-sama-dengan-pt-pos-indonesia/>.

¹³⁶ See Pos Indonesia (2020), “COVID-19: Pos Indonesia Regional 5 Menyalurkan Bantuan Tunai dan Pangan”, 4 April 2020, www.posindonesia.co.id/id/news-detail/327 (accessed 13 August 2020).

¹³⁷ These other official postal services are further defined in Article 14 of Government Regulation No. 15/2013 and may include: 1) money and securities which constitute proofs in a legal case; 2) smallpox medicine, vaccine, and the likes, sent by designated agency or on its behalf in accordance with the prevailing provisions; 3) infectious disease materials addressed to official laboratory or to officials tasked with eradicating infectious diseases, on the condition that its packaging shall be done in accordance with the prevailing provisions; 4) live animals allowed to be sent through the post; 5) radioactive materials sent by designated agency, on the condition that its packaging shall be done in accordance with the prevailing provisions; 6) narcotics materials and similar substances, as well as illicit drugs sent by authorised agency in accordance with the prevailing provisions; 7) used or unused infectious disease-wrapping materials sent between official laboratories in accordance with the prevailing provisions; and 8) diplomatic dispatches.

¹³⁸ See Digation.id (2018), “Pos Indonesia Perluas Jaringan Logistik E-commerce”, 13 February 2018, www.digation.id/read/01894/pos-indonesia-perluas-jaringan-logistik-e-commerce (accessed 14 August 2020) and Global Business Guide (2017^[64]).

¹³⁹ Presidential Decree No. 74/2017 on E-Commerce Roadmap (Annex), p. 23.

¹⁴⁰ See Global Business Guide (2017^[64]).

¹⁴¹ The requirements for a postal operator as specified in Article 30(2) of Government Regulation No. 15/2013 include: 1) owning and/or controlling postal networks in Universal Postal Service operational areas and/or in the entire territory of the Unitary State of the Republic of Indonesia; 2) having competent personnel in the postal-operations field; 3) having at least a five-year work plan and budget for postal operations for Universal Postal Service; 4) confirmation of the capability to meet Universal Postal Service standards; and 5) confirmation of the capability to implement the acts of the Universal Postal Union as ratified by the government.

¹⁴² See Article 4(1), Kominfo Regulation No. 22/2013.

¹⁴³ See Articles 1(2) and 2(2), Kominfo Regulation No. 22/2013.

¹⁴⁴ See Articles 2(3), 2(4) and 9 of Kominfo Regulation No. 22/2013.

¹⁴⁵ See Pos Indonesia (2019_[61]), pp. 283-284, 300.

¹⁴⁶ Pos Indonesia (2018_[71]), pp. 34-35.

¹⁴⁷ Pos Indonesia (2018_[71]), pp. 35.

¹⁴⁸ See internal presentation by PT. Pos Indonesia that was provided by the Ministry of State-Owned Enterprises during its interview with the OECD.

¹⁴⁹ See Supreme Audit Agency of the Republic of Indonesia (2019), *Audit Report Summary, Semester 1, 2019*, www.bpk.go.id/ihps/2019/i/#, p. 72. The Supreme Audit Agency is responsible for the evaluation of management and accountability of state finances as conducted by the Indonesian central government, local governments, the Bank of Indonesia, SOEs, Public Service Board, and institutions or other entities that manage state finances.

¹⁵⁰ See Kominfo Regulation No 22/2013; for instance, Article 2, and Articles 9(2) and 9(3), Chapter IV, and Section II, Appendix II.

¹⁵¹ Yet, according to Article 14(2) of Ministry of Finance Regulation No. 155/PMK.02/2010, any excess must be deposited with the State Treasury.

¹⁵² See OECD.stat.

¹⁵³ See House of Representatives Supervisory Agency (2018), *Report on the Results of the BPK RI Examination on the Financial Reports of Ministries, Institutions & Other Agencies, Financial Year 2017*, <https://berkas.dpr.go.id/puskajakn/ringkasan-telaahan/public-file/ringkasan-telaahan-public-61.pdf>, p. 16.

¹⁵⁴ See IFC (2018_[72]), p. 44.

¹⁵⁵ See, for instance, Tempo (2020), “The Chairman’s Gift”, <https://magz.tempo.co/read/36883/the-chairmans-gift> and “The Brother’s Footprints in South Merdeka”, both 20 July 2020, <https://magz.tempo.co/read/36882/the-brothers-footprints-in-south-merdeka> (accessed 18 August 2020). The first article describes how the Minister of State-Owned Enterprises has appointed political allies as commissioners in SOEs; the second article describes a public disagreement between a politician and the Minister of State-Owned Enterprises about nominations for SOE commissioners.

¹⁵⁶ This replaced Ministry of State-Owned Enterprises Regulation No. PER-05/MBU/2008, as amended by Regulation No. PER-15/MBU/2012.

¹⁵⁷ Article 4, Regulation No. PER-08/MBU/12/2019.

¹⁵⁸ Pos Indonesia signed a partnership agreement with Garuda Indonesia to sell tickets and take reservations in post offices in 2011, when the air-cargo partnership for mail and parcel shipments was already in place; see, for instance, <https://utiket.com/en/weblog/16/pos-indonesia-to-sell-garuda-tickets-at-post-offices.html>. In 2016, the two decided to collaborate on special cargo delivery, referring to the synergy between SOEs that would benefit the state revenue; see, www.posindonesia.co.id/en/news-detail/110. In 2017, the two SOEs decided to use each other’s networks; see <https://indocargotimes.com/2017/pos-indonesia-synergies-distribution-network-with-garuda-cargo>.

¹⁵⁹ See also Indonesian Logistics & Forwarders Association (2017), “PELNI Gandeng Sier & Pos Garap Angkutan Logistik Di Jalur Tol Laut”, 3 October 2017, www.alfijakarta.com/wp/pelni-gandeng-sier-pos-garap-angkutan-logistik-di-jalur-tol-laut (accessed 18 August 2020); this explicitly refers to the search for synergies between SOEs, in this case, PELNI and Pos Indonesia.

¹⁶⁰ Article 2(5), Law No. 37/2004.

¹⁶¹ Article 50, Regulation No. 1/2004 stipulates that any party is prohibited from seizing: 1) money, securities belonging to the state or region both in government agencies and in third parties; 2) money that must be deposited by a third party to the country or region; 3) movable property belonging to the state or region both within a government institution and a third party; 4) immovable property and other property rights belonging to the state or region; 5) third-party property controlled by the state or region that is needed to carry out government duties.

¹⁶² Articles 5 and 9, Government Regulation No. 43/2005.

¹⁶³ Articles 5 and 9, Government Regulation No. 43/2005.

¹⁶⁴ Article 7, Law No. 45/2005.

¹⁶⁵ See Tempo (2013), "Dahlan Pastikan PT Pos Tidak Dapat Suntikan Modal" 29 January 2013, <https://bisnis.tempo.co/read/457627/dahlan-pastikan-pt-pos-tidak-dapat-suntikan-modal> (accessed 18 August 2020).

¹⁶⁶ See Kompas.com (2019), "Daftar 7 BUMN yang Tetap Rugi Meski Sudah Disuntik PMN".

Annex A. List of reviewed legislation

The Constitution of the Republic of Indonesia (1945)

Law No. 08/1995 on The Capital Market

Law No. 5/1999 on The Prohibition of Monopolistic Practices and Unfair Business Competition

Act No. 13/2003 on Labour

Law No. 17/2003 on State Finances

Law No. 19/2003 on State-Owned Entities

Law No. 1/2004 on State Treasury

Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations

Law No. 25/2007 on Investment

Law No. 40/2007 on Limited Liability Companies

Law No.14/2008 on Public Information Disclosure

Law No. 38/2009 on Post

Law No. 1/2014 on State Treasury

Law No. 07/2014 on Trade

Law No. 14/2014 concerning the Insurance Business

Law 23/2014 on Local Government

Law No. 17/2017 on Long-Term National Development Plan (2005-2025)

Law No. 11/2020 (“Omnibus Law”) on Job Creation

Ministry of Communication and Informatics Regulation No. 20/PER/M.KOMINFO/10/2005 on Instructions for Implementing Rates for Non-Tax State Revenue from Licence Fees of Courier Services

Ministry of Communication and Information Technology Regulation No. 01/PER/M.KOMINFO/01/2012 on Formula for Commercial Postal Service Rates

Ministry of Communication and Information Technology Regulation No. 29/2013 on Rates Universal Pos Services

Ministry of Communication and Information Technology Regulation No. 22/2013 about the Organisation of Universal Postal Services

Ministry of Communication and Information Technology Regulation No. 07/2017 on the Requirements and Procedures for Granting Permission for Post Operations

Ministry of Communication and Information Technology Regulation No. 7/2018 on Electronically Integrated Business Licensing Service in the Field of Communications and Informatics

Ministry of Communication and Information Technology Regulation No. 1670/2016 regarding the assignment of designated postal operator to Pos Indonesia

Ministry of Transport’s Regulation No. KM 5 of 2005 on the Operation of Courier Services

Ministry of Trade Regulation No. 36/M-DAG/PER/9/2007 on the Issuance of Trade Business Licenses

Ministry of State-Owned Enterprises Regulation No. PER-05/MBU/2008 on General Guidelines for Implementation of Procurement of Goods and Business Services of State-Owned Enterprises

Ministry of State-Owned Enterprises Regulation No. PER-01/MBU/2011 on Application of Good Corporate Governance in State-Owned Enterprises

Ministry of State-Owned Enterprises Regulation No. PER-09/MBU/2012 on Implementation of Corporate Governance Good (Good Corporate Governance) in State-Owned Enterprises State Minister of Business, State Ownership

Ministry of State-Owned Enterprises Regulation No. PER-15/MBU/2012 on the Amendment of the Regulation of the State Minister of State Own Enterprises No. PER-05/MBU/2008 on General Guidelines for Implementation of Procurement of Goods and Business Services of State-Owned Enterprises.

Ministry of State-Owned Enterprises Regulation No. PER-04/MBU/02/2014 on Guidelines for Income of Board of Directors, Board of Commissioners, and Supervisory Board of State-Owned Enterprises

Ministry of State-Owned Enterprises Regulation No. PER-11/MBU/10/2014 on Good Corporate Governance (GCG) Implementation for SOEs

Ministry of State-Owned Enterprises Regulation No. PER-18/MBU/10/2014 on Electronic Presentation of Data, Report and Document of SOEs

Ministry of State-Owned Enterprises Regulation No. PER-20/MBU/10/2014 on The Fourth Change Regulation of the Minister of State Ministries, Ownership No. PER-01/1VIBU/2012 Concerning Requirements and Procedures Appointment and Termination of the Board of Directors State-Owned Enterprises

Ministry of State-Owned Enterprises Regulation No. PER-02/MBU/02/2015 on Requirements and Procedures for the Appointment and Termination of Members of the Board of Commissioners and the Board of Supervisors of State-Owned Enterprises

Ministry of State-Owned Enterprises Regulation No. PER-03/MBU/02/2015 on Requirements and Procedures for Appointment and Termination of Members of the Board of Directors of State-Owned Enterprises

Ministry of State-Owned Enterprises Regulation No. PER-04/MBU/09/2017 on The Amendment to Ministry Of State-Owned Enterprises Regulation PER-03/MBU/08/2017 on Guidelines For Businesses Cooperation By State-Owned Enterprises

Ministry of State-Owned Enterprises Regulation No. PER-08/MBU/12/2019 on General Guidelines for Implementation of Procurement of Goods and Services of State-Owned Enterprises

Ministry of State-Owned Enterprises Decree No. SK-301/MBU/09/2020 on the Termination of the Transfer of Tasks and Appointment of Members of the Board of Directors of PT Pos Indonesia (Persero)

Ministry of Finance Regulation No. 176/PMK.011/2009 on The Exemption from Import Duty on the Imports of Machines, Goods, and Materials for the Establishment or Development of industry in the Frame of investment

Ministry of Finance Regulation No 155/PMK.02/2010 on Procedures for Provision and Disbursement of Funds for the Provision of Postal General Service Obligations

Ministry of Finance Regulation No. 30/PMK.08/2012 on The Procedures Of Assurance Reserve Fund Management In The Implementation Of The Government Assurance Obligation Budget

Government Regulation No. 64/2001 on Transfer of Status, Duties and Authority of the Minister of Finance in Companies (Persero), General Companies (Perum) and its Service (Agreement) to State Minister of State Businesses

Government Regulation 41/2003 on The Transfer of Position, Duties and Authority of the Minister of Finance in State-Owned Limited Liability Companies (Persero), Public Service Companies (Perum) and Ministerial Companies (Perjan) to the State Minister of State-Owned Enterprises

Government Regulation No. 43/2005 on Mergers, Consolidation, Acquisition and Transformation of Legal Entities of State-Owned Enterprises

Government Regulation 44/2005 on Procedures for Investments and Management of State Capital in State-Owned Enterprises and Limited Liability Companies

Government Regulation No. 45/2005 on The Establishment, Management, Supervision and Liquidation of State-Owned Enterprises

Government Regulation No. 15/2013 on Implementation of Law No. 38/2009 on Post

Government Regulation 44/2016 on Lists Of Business Fields That Are Closed To And Business Fields that Are Open With Conditions To Investment (“negative investment list”)

Government Regulation 72/2016 on the Amendment to Government Regulation No. 44/2005 Concerning Administration and Administration of State Capital in State and Company Limited Enterprises

Government Regulation No. 24/2018 on the Electronically Integrated Business Licensing Services

Presidential Regulation No. 26/2012 on Blue Print of National Logistics System Development

Presidential Regulation No. 44/2016 on Lists of Business Fields that are Closed to and Business Fields that are open with Conditions to Investment

Presidential Regulation No. 74/2017 on Road Map of the National Trade System Electronic Based (e-commerce Roadmap) (2017-2019)

Presidential Regulation No. 16/2018 on Government Procurement

Presidential Decree No. 40/M/2020 on the SOE Restructuring Acceleration Team

ICC Regulation 04/2016 on Guideline on Competition Policy Assessment Checklist

Financial Services Authority Regulation No. 33/POJK.04/2014 on The Board of Directors and the Board of Commissioners of Public Companies.

Financial Services Authority Regulation No. 34/POJK.04/2014 on Nomination and Remuneration Committees of Issuing Companies or Public Companies

Financial Services Authority Regulation No. 21/POJK.04/2015 on Implementation of Corporate Governance Guidelines

Financial Services Authority Regulation No. 32/SEOJK.04/2015 on Corporate Governance Guideline for Public Company

Financial Services Authority Regulation POJK No. 29/POJK.04/2016 on listed companies

Financial Services Authority Regulation No. 10/POJK.04/2017 on Changes to the Regulation of Financial Services Authority number 32/POJK.04/2014 on Planning And Implementing General Meetings Of Shareholders Of Public Companies

Commission for the Supervision of Business Regulation No. 5/2009 on Guidelines for Implementation of Provisions Article 50(a) of Law No. 5/1999 on Prohibitions Monopoly Practice and Competitive Business Competition Commission for the Supervision of Business Competition

Good Corporate Governance framework Pos Indonesia

Indonesia Corporate Governance Manual, Second Edition (2018)

Indonesia’s Code of Good Governance (2006)

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

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 Indonesia" 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.

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