



# OECD Competitive Neutrality Reviews

## MALAYSIA

### SMALL-PACKAGE DELIVERY SERVICES



# **OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Malaysia**

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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 Malaysia, undertaken within the framework of the ASEAN Competition Action Plan, assesses the impact of state-owned enterprises on competition in Malaysia. 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 Malaysia.

The OECD assessment was conducted in consultation with the Malaysian authorities and with local stakeholders, with the support of the ASEAN Secretariat and the ASEAN Economic Reform Programme under the UK Foreign, Commonwealth & Development Office (UK Government). The assessment prioritises 20 pieces of legislation and identifies 15 regulatory barriers where changes could be made to foster competition in the small-package delivery services by levelling the playing field between public and private companies. This is especially important for Malaysia, where the government is undertaking ambitious policy initiatives to support the e-commerce growth. This report offers policy recommendations that can help the Malaysian government address structural and regulatory shortcomings in the small-package delivery services sector.

These structural reforms have become even more pressing as the Malaysian economy contracted by 5.6% in 2020 due to the COVID-19 pandemic, with weak external demand affecting Malaysia's exports and reduced private consumption in numerous sectors including retail, travel and leisure. These policy recommendations contribute to reforms that can help the Malaysian 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 Malaysian 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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- Khazanah Nasional Berhad (Khazanah)
- Malaysia Communications and Multimedia Commission (MCMC)
- Ministry of Communications and Multimedia (KKMM)
- Ministry of Economic Affairs
- Pos Malaysia (including Pos Logistics and Pos Laju).

The following stakeholders were also interviewed:

- EU-Malaysia Chamber of Commerce and Industry (EUMCCI)
- KTM Distribution
- Malay Chamber of Commerce Malaysia
- Malaysia Logistics Supply Chain Association
- Malaysia Productivity Corporation
- Nationwide Express
- Port Klang Authority
- Shopee
- SME Corporation.

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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; Matteo Giangaspero, Competition Expert; Michael Saller, 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, and Hans Christiansen, Senior Economist; Sara Sultan, Policy Analyst; and Chung-a Park, Policy Analyst, all three from the OECD Corporate Affairs Division.

The assessment process benefited greatly from the support of the Malaysia Competition Commission (MyCC).

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The information and figures in the report are updated as of January 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) Malaysian legislation, stakeholder interviews and desk research. The recommendations are the result of this analysis and are non-binding.

## Fostering competition in ASEAN

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

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

Against this background, the ASEAN Secretariat, with funding from the ASEAN Economic Reform Programme under the UK Foreign, Commonwealth & Development Office (UK Government), tasked the OECD to assist with the implementation of Initiatives 4.1 and 4.2 of the ACAP 2016-2025. These two initiatives require an assessment of the impact of competition law and policy on the markets of all ten 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 Malaysia is part of a series of ten similar assessments (one for each ASEAN member state).

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# Abbreviations and acronyms

<b>3PL</b>	Third-party logistics
<b>ACAP</b>	ASEAN Competition Action Plan
<b>AEC</b>	ASEAN Economic Community
<b>AEGC</b>	ASEAN Expert Group on Competition
<b>AMEC</b>	Association of Malaysian Express Carriers
<b>APAD</b>	Land Public Transport Agency
<b>APEC</b>	Asia-Pacific Economic Cooperation
<b>ASC</b>	Authorised service contractor
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>B2B</b>	Business-to-business commerce
<b>B2C</b>	Business-to-consumer commerce
<b>BNM</b>	Central Bank of Malaysia
<b>CPTPP</b>	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
<b>DFTZ</b>	Digital Free Trade Zone
<b>EUMCCI</b>	EU-Malaysia Chamber of Commerce and Industry
<b>FLC</b>	Federal Land Commission
<b>GLC</b>	Government-linked company
<b>GLM</b>	Government-linked monopoly
<b>ICT</b>	Information and communications technology
<b>KKMM</b>	Ministry of Communications and Multimedia
<b>KPI</b>	Key performance indicators
<b>MASB</b>	Malaysian Accounting Standards Board
<b>MAVCOM</b>	Malaysian Aviation Commission
<b>MCMC</b>	Malaysia Communications and Multimedia Commission
<b>MyCC</b>	Malaysia Competition Commission
<b>MyIPO</b>	Intellectual Property Corporation of Malaysia
<b>NeCC</b>	National eCommerce Council
<b>NeSR</b>	National eCommerce Strategic Roadmap
<b>OSP</b>	Outside service providers
<b>PLC</b>	Performance-linked compensation
<b>PSO</b>	Public-service obligation
<b>PUD</b>	Pick-up and delivery
<b>SC</b>	Securities Commission Malaysia
<b>SOE</b>	State-owned enterprise
<b>SPAN</b>	National Water Service Commission
<b>SPDS</b>	Small-package delivery services
<b>SSM</b>	Companies Commission of Malaysia
<b>ST</b>	Energy Commission
<b>UPU</b>	Universal Postal Union



# Executive summary

## State-owned enterprises and competition

Assessing the impact of 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 (OECD, 2015<sup>[1]</sup>).

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 (OECD, 2014<sup>[2]</sup>). 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.<sup>1</sup>

## Pos Malaysia and the small-package delivery services sector in Malaysia

Malaysia has been a member of ASEAN since the association's founding in 1967. Malaysia is one of ASEAN's richest and most globally integrated economies. Its success in developing its electronics and electronic-parts industry has facilitated the country's integration into regional and global value chains. In conjunction with its strong growth performance, Malaysia scores well on poverty reduction and human development indicators (OECD/ERIA, 2018<sup>[3]</sup>).

Notwithstanding partial divestment and privatisation initiatives, SOEs today continue to constitute a significant part of Malaysia's economic structure, remaining the main providers in key strategic utilities and services; this includes the SPDS sector where Pos Malaysia is in charge of universal service obligations. A level playing field in the SPDS sector is crucial for developing a competitive market, fulfilling the sector's potential and reaping full benefits from international developments.

The SPDS sector is regulated by the Postal Services Act 2012 and by a number of regulations adopted by the Malaysian Communications and Multimedia Commission (MCMC).

Preventing the existence of a level playing field in the Malaysian SPDS sector are several obstacles that may harm competition, hinder the Malaysian economy, and stop consumers from benefiting fully from a rapidly developing e-commerce market.

Some of these obstacles are linked to or affected by Pos Malaysia's dual role of fulfilling its public service obligation (PSO) or universal service obligations (USO) and competing in the highly competitive SPDS market. As has also been observed in many countries around the world, electronic communications are

leading to drastic falls in the volume of traditional letters and postcards in Malaysia, increasing the commercial importance of the SPDS market to the incumbent postal operator, Pos Malaysia.

This situation is similar to 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 (OECD, 1999<sup>[4]</sup>). 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 was gradually opened to competition.

While there are different options to improve the level playing field in the SPDS sector, it is important to note that the rights, privileges and duties (or advantages and disadvantages) of Pos Malaysia are often interrelated and should therefore be looked at as a whole. Consequently, addressing the obstacles to competition in the SPDS sector in Malaysia requires a holistic approach. For instance, reversing or decreasing the rights and privileges of Pos Malaysia should be accompanied by a clear reassessment of the impact of possible disadvantages that result from Pos Malaysia's PSO, including the compensation mechanism.

## Key recommendations

This report identifies 15 recommendations that aim to improve the level playing field in the Malaysian SPDS sector. If fully implemented, these recommendations can be expected to generate significant benefits for the Malaysian 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 and 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 regulation in the country, nor a good basis for comparisons between countries. First, certain restrictions to competition identified by the OECD are more harmful than others, making comparison between countries difficult and often not very meaningful. Second, the number of recommendations depends on several factors including the amount of legislation available and reviewed as well as the amount and depth of contributions and feedback from stakeholders.

The main recommendations are:

1. Ensure that regulated rates for universal service reflect Pos Malaysia's actual costs and take into account any other cross-subsidisation or other public funds, grants or subsidies accessible to Pos Malaysia. The establishment of a Universal Service Obligation Fund to which other licensees can partially contribute is a valid alternative, although measures should then be introduced to ensure proportionate contributions, to avoid such a compensation fund leading licensees to exit the market
2. Require revenue and costs related to the universal service obligations to be clearly separated in Pos Malaysia's accounts. Accounting separation is required to ensure that compensation is adequate irrespective of the mechanism adopted. This could be achieved through MCMC's specific guidelines.
3. Increase the independence of GLCs' boards and limit undue governmental intervention in SOE business activities. Although a certain oversight might be legitimate in companies with a "strategic" business such as Pos Malaysia, GLCs should continue to ensure that independent and qualified candidates are selected for their boards.

4. Clarify which activities “in the exercise of governmental authority” should be excluded from the scope of the Competition Act 2010 under Section 3(4). MyCC could clarify this through guidelines, or through amendments to the Competition Act 2010.
5. Clarify who has jurisdiction over competition-law issues in the SPDS sector.
  - a. Consider repealing Section 38 and following of the Postal Services Act 2012, conferring to MyCC sole jurisdiction over competition law in the SPDS sector. This regime would also mitigate risks of political influence over competition law in the sector, as well as ensure harmonised application of competition rules across sectors.
  - b. Alternatively, should Malaysia continue to opt for MyCC and MCMC having concurrent competition powers in the SPDS sector, make explicit reference in the Postal Services Act 2012 to the Competition Act 2010 as the relevant competition law applicable to the SPDS sector. Moreover, implementing regulation should be passed to address co-operation and any competence issues between MyCC and MCMC.
6. Except for land and facilities strictly related to Pos Malaysia’s universal service obligations, use competitive processes to assign the leasehold of government land and buildings with the aim of maximising their value. Rents should reflect market value.
7. Refrain from providing state guarantees to SOEs’ loans to prevent SOEs from accessing preferential interest rates.

# 1 Introduction

## 1.1. Scope of the report

State-owned enterprises (SOEs) play a significant role in Malaysia 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 state-owned enterprises on competition in Malaysia, identifying the key advantages or disadvantages of state-owned enterprises when competing with private companies. The analysis focuses on the logistics sector, and more specifically on small-package delivery services. Efficient logistics can play a significant role in increasing a country's economic development by facilitating international trade and improving its competitiveness. Small-package delivery services 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, driven by its middle-class boom. According to the Asian Development Bank (ADB) (2021<sup>[5]</sup>), Southeast Asia's (i.e. ASEAN member states + Timor-Leste) GDP contracted 4% in 2020 and is expected to rebound to 4.4% in 2021. For Malaysia, the ADB recorded a GDP contraction of 5.6% in 2020 and expects a rebound to 6% in 2021.

The pandemic has provoked an abrupt and sharp increase in the use of e-commerce. For instance, in the week of 22 March 2020, weekly downloads for shopping applications in Thailand are estimated to have increased by 60%, while Indonesia, Singapore and Viet Nam each recorded a 10% increase (OECD, 2020, p. 99<sup>[6]</sup>). E-commerce is likely to keep growing as consumers continue to shun physical stores in favour of online shopping solutions (ASEAN, 2020<sup>[7]</sup>).

The COVID-19 crisis will lead to long-term changes. It is likely to expedite the shift to e-commerce, especially for consumers that 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 an annual growth of approximately 20% in e-commerce users in April 2020 compared to the previous year. In terms of value of online sales, high annual growth rates (above 15%) were recorded 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<sup>[8]</sup>).

Notwithstanding the above, e-commerce deliveries often remain expensive and unreliable because of barriers to logistics services, at least in some ASEAN member states. This affects the development of

e-commerce, both domestically and internationally. Lifting such barriers would support the development of e-commerce and provide consumers with more choice and better prices.

Regional co-operation plays and will continue to play a key role in this context. ASEAN has put in place a framework for COVID-19 responses across multiple sectors (United Nations, 2020<sup>[9]</sup>). Moreover, the ASEAN Expert Group on Competition (AEGC) released a joint statement in Response to the COVID-19 Pandemic.<sup>2</sup> APEC is also taking collective initiatives. In May 2020, the 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, 2020, p. 99<sup>[6]</sup>)

### 1.3. Report structure

The report is structured as 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 state-owned enterprises and the relationship between state-owned enterprises and competition policy; Chapter 3 provides an overview of the economic importance and the legal framework of state-owned enterprises in Malaysia; Chapter 4 describes the competitive landscape and the regulation applicable to SPDS in Malaysia; Chapter 5 focuses on Pos Malaysia, the main GLC providing SPDS in Malaysia, advantages or disadvantages that can impact competition, and 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. Approximately 22% of the world's largest 100 firms are 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<sup>[10]</sup>).

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<sup>[1]</sup>).

In order to ensure optimal economic outcomes, however, SOEs should compete against private entities on level playing fields that nevertheless 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; this has seen differing 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<sup>[11]</sup>).<sup>3</sup> In OECD countries (and beyond), SOEs' roles evolved significantly between 1990 and 2010, with large privatisation initiatives throughout the 1990s and early 2000s (OECD, 2018<sup>[12]</sup>; 2009<sup>[13]</sup>; 2019<sup>[14]</sup>). 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 in different forms and serve a wide range of functions. Certain countries, including ASEAN member states, use different terms for these entities, 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 set out in the *OECD Guidelines on Corporate Governance of SOEs*, 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. 14-15<sup>[11]</sup>)*

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 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 appointment of senior management.<sup>4</sup> 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, innovate more, and be more productive. Consumers benefit from more choice, 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 improving market regulation to make competition work 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<sup>[2]</sup>). 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<sup>[15]</sup>).

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 naturally: 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.

At ASEAN level, the *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 the fundamental goal of competition policy and law.<sup>5</sup> 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."<sup>6</sup> This results 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<sub>[16]</sub>). 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. 41<sub>[17]</sub>).

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<sub>[18]</sub>).

### 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<sub>[18]</sub>; Capobianco and Christiansen, 2011<sub>[19]</sub>).



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 utilities 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 price – associated with a product or service may make the market outcome inefficient, justifying provision of the product or service through an SOE.<sup>7</sup>

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 PSO. Such services typically include: 1) communication services such as postal services and telecommunications; and 2) utilities such as electricity and water distribution. A PSO requires 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 the 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<sub>[20]</sub>).

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 several ways (Capobianco and Christiansen, 2011<sub>[19]</sub>).

## 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

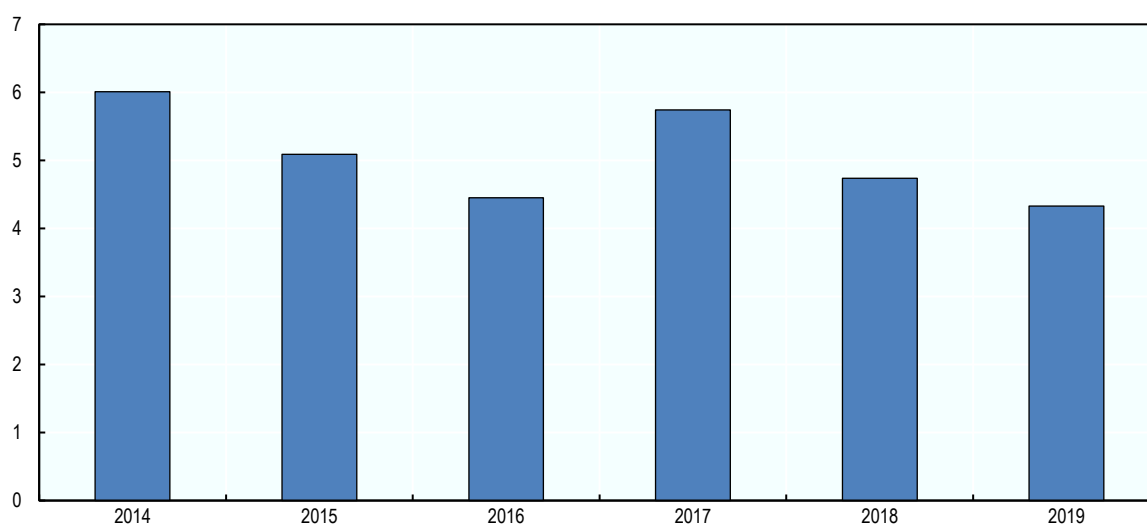
- a. **Lack of structural separation.** SOEs may be entrusted with both commercial and regulatory functions.
- b. **Captive equity.** SOEs' equity is generally "locked in", meaning control of an SOE cannot be transferred as easily as in privately owned firms. The absence of any risk of takeover and exemptions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

# 3 SOE framework and the importance of SOEs in Malaysia

## 3.1. Malaysia

Malaysia is a federal constitutional monarchy with a population in 2018 of 32.38 million. Malaysia is one of ASEAN's richest and most globally integrated economies. It is rich in timber, tin, copper, iron ore, bauxite, oil and natural gas. It has transformed from a mainly agricultural and mining-based economy to one based predominantly on industry and services. Its success in developing its electronics and electronic-parts industry has facilitated the country's integration into regional and global value chains (OECD/ERIA, 2018<sup>[3]</sup>). In conjunction with its strong growth performance, Malaysia scores well on poverty reduction and human development indicators. Malaysia had a GDP growth rate of 4.3% in 2019.<sup>8</sup> Due to COVID-19, its GDP contracted 5.6% in 2020 and is expected to rebound to 6% in 2021 (ADB, 2021, p. 35<sup>[5]</sup>).

Figure 3.1. Malaysia's real GDP growth rate, annual percentage



Source: Asia Regional Integration Center, Asian Development Bank, <https://aric.adb.org/malaysia>.

The World Bank considers Malaysia an upper middle-income economy and it is expected to achieve its transition from an upper middle-income economy to a high-income economy by 2024 (World Bank, n.d.<sup>[21]</sup>). The country was ranked 25 in the World Economic Forum's 2018 Global Competitiveness Index, one position higher than in 2017 (World Economic Forum, 2018<sup>[22]</sup>). Malaysia is a signatory to ASEAN, APEC and the World Trade Organization.

### 3.2. The scope and importance of SOEs in Malaysia

In Malaysia, SOEs can be divided into two main categories: government-linked investment companies (GLICs) and government-linked companies (GLCs). Both types are either directly or indirectly owned by the federal government or state governments.<sup>9</sup> GLICs are mostly holding companies and this report mainly focusses on their portfolio companies rather than the GLICs themselves. For the purpose of this report, the term SOEs is used solely for GLCs.

GLICs are often investment companies in which the Malaysian government exercises influence by appointing board members and senior management. Further, the Minister of Finance, the prime minister or other ministers usually sit on GLICs' boards. Malaysia has seven GLICs: Minister of Finance (Incorporated) (MOF Inc.); Khazanah Nasional Berhad (Khazanah); Employees Provident Fund (EPF or KWSP); Kumpulan Wang Persaraan (KWAP); Lembaga Tabung Haji (LTH); Armed Forces Fund Board (LTAT); and Permodalan Nasional Berhad (PNB).<sup>10</sup> Khazanah is Malaysia's sovereign wealth fund and is wholly owned by MOF Inc., a government investment special purpose vehicle. Khazanah's official role is to promote economic growth and to make strategic investments, "which would contribute towards nation-building" (OECD, 2013<sub>[23]</sub>). GLICs allocate some or all of their funds to investments in both listed and non-listed GLCs.<sup>11</sup>

GLCs (including subsidiaries and affiliates) are defined as companies that have a primary commercial objective and in which the Malaysian government has a controlling stake, giving it the ability to appoint board members and senior management and to make major decisions, either directly or through GLICs (OECD, 2013, p. 70<sub>[23]</sub>).<sup>12</sup>

In 2010, the government's *New Economic Model 2011-2020* (NEM) economic plan stated that "heavy government and government-linked company presence have discouraged private investment" and that "the government as both business owner and regulator of industries faces conflicts of interest that can [...] give GLCs an unfair advantage over private firms" (National Economic Advisory Council, 2010, p. 45; 135<sub>[24]</sub>). In the NEM, the government committed to divest "GLCs in industries where the private sector is operating effectively" and to operate GLCs "on a strict commercial basis free of government interference and without government preferential treatment" (National Economic Advisory Council, 2010, p. 133; 136<sub>[24]</sub>).

Between 2005 and 2015, a sub-set of 20 Malaysia's significant SOEs were involved in the GLC Transformation Programme (GLCT Programme), a government initiative – led by Khazanah – aimed at increasing GLCs' competitiveness and at reducing the state's holdings (through GLICs) in a number of businesses.<sup>13</sup> The GLCT Programme was targeted at publicly listed SOEs. Its goals were also to improve the selection of board members; establish key performance indicators (KPIs); and improve GLCs' performance.

Notwithstanding these partial divestment and privatisation initiatives, GLCs today still constitute a significant part of Malaysia's economic structure. They remain the main providers of key strategic utilities and services (OECD, 2013, p. 70<sub>[23]</sub>; Gomez, 2018<sub>[25]</sub>) and drive infrastructure and industrial projects. Although no official list of GLCs exists, MOF Inc., the most important GLIC, holds direct majority shareholding in 70 companies.<sup>14</sup> Moreover, based on publicly available information, as of July 2017, the Malaysian government owned 42% of the value of firms listed on the national stock exchange Bursa Malaysia, including majority stakes in a number of listed companies.<sup>15</sup>

Finally, the empowerment of *bumiputera* (Malay and indigenous people) is considered a key element of the country's development strategy and GLCs are considered instrumental in the execution of this policy (Putrajaya Committee on GLC High Performance, 2015<sub>[26]</sub>). The national investment policy prescribes affirmative action towards ethnic Malays in both staffing and procurement.<sup>16</sup>

The important role of GLCs in the national economy reinforces the need to maintain a level playing field in the markets in which they are active.

### 3.3. Competition law and SOEs

The Competition Act 2010 and Competition Commission Act 2010 entered into force on 1 January 2012. The Competition Act 2010 regulates anti-competitive agreements and abuse of dominant position, but does not envisage a merger control regime. The Malaysia Competition Commission (MyCC) was established on 1 April 2011 with the purpose of enforcing the Competition Act 2010.

Section 2 of the Competition Act 2010 states that the act applies to “any entity carrying out commercial activity” and Section 3(3) of the same act states that it applies to “any commercial activity”. The Competition Act 2010 does not distinguish as to the entities engaging in such activities; SOEs conducting commercial activities are not, in principle, exempted from the application of competition law. That said, it is worth noting two provisions. First, Section 3(3) of the Competition Act 2010 provides for an exemption applicable to commercial activities regulated by specific legislation listed in the First Schedule. The current list includes the Communications and Multimedia Act 1998, the Energy Commission Act 2001, the Petroleum Development Act 1974, the Petroleum Regulations 1974,<sup>17</sup> and the Aviation Commission Act 2015. These sectors are thus excluded from the application of the Competition Act 2010 (OECD, 2018<sup>[27]</sup>) and all competition-related matters in these sectors are governed by their respective sector regulators, in addition to MyCC. Second, Section 3(4) of the Competition Act 2010 limits the scope of “commercial activities”, excluding “any activity, directly or indirectly in the exercise of governmental authority”.

The OECD understands that a Special Committee on Competition was formed in 2012 to discuss competition issues. The Committee is chaired by MyCC and comprises the following regulators: Malaysian Communications and Multimedia Commission (MCMC), Malaysian Aviation Commission (MAVCOM), Energy Commission (ST), National Water Service Commission (SPAN), Land Public Transport Agency (APAD), Central Bank of Malaysia (BNM), Securities Commission Malaysia (SC), Intellectual Property Corporation of Malaysia (MyIPO), and Companies Commission of Malaysia (SSM). In instances where no action could be or has been taken by the particular sector regulator about complaints received or directed to it, such issues can then be discussed at the Special Committee on Competition meeting. Besides this forum, no provision has been found that formally addresses any competence issues among regulators.

MyCC has taken only one competition enforcement action against SOEs since its creation. In 2014, it issued a final decision against Malaysia Airlines, which is 66.37% owned by Khazanah, and AirAsia for a collaboration agreement that had the objective of sharing markets within the Malaysian air-transport services sector. The case is currently pending before the Court of Appeal.

### 3.4. SOE-specific legislation

GLCs in Malaysia, as companies incorporated under the Companies Act, must in general comply with its provisions and are not exempt from the application of general laws and regulations. Likewise, if a GLC is listed on the Malaysian stock exchange, it must comply with the listing requirements, the Malaysian Code of Corporate Governance 2017, and observe all obligations of a listed company. In this regard, GLCs do not benefit from any preferential treatment by virtue of their legal form.<sup>18</sup>

In addition, GLCs are subject to their own respective memoranda and articles of association.

The SOE-specific legal and regulatory framework applicable to GLCs in Malaysia is fragmented.<sup>19</sup> Based on information publicly available on the Ministry of Finance’s website, the following legislation and guidelines apply:

1. Minister of Finance (Inc.) Act 1957,<sup>20</sup> which empowers MOF Inc. to enter into contracts and other commercial arrangements
2. Financial Procedures Act 1967, which provides for the control and management of the public finances of Malaysia and for financial and accounting procedures
3. Garis Panduan Ahli Lembaga Pengarah Lantikan Menteri Kewangan Diperbadankan 2014, which contains guidelines for government officers appointed as GLC board members representing the Ministry of Finance
4. Treasury Circular on Bumiputera Public Listed Companies, which provides for the conditions to obtain the status of Bumiputera Controlled Public Listed Company (BPLC)
5. Treasury Circular on Government Procurement.

### **3.4.1. Governance principles**

Malaysia has a predominantly decentralised state-ownership model, with no single state institution responsible for exercising ownership rights in SOEs, despite there being a Government Investment Companies Division (GIC) at the Ministry of Finance.

As noted in Section 3.2, the majority of GLCs are owned through GLICs (OECD, 2017<sup>[28]</sup>) and, in particular, Khazanah, which is the GLIC operating as a state-owned holding company and is sometimes referred to as a sovereign wealth fund; the prime minister is chairman of Khazanah's board of directors. Khazanah was created in 1993 and modelled on Singapore's state-owned holding company Temasek, although it is "commonly seen to be much more 'interventionist' toward individual SOEs than is Temasek" (OECD, 2015, p. 30<sup>[11]</sup>). For example, Khazanah is tasked with shaping selected strategic industries in Malaysia and nurturing their development in the nation's long-term economic interest.

As noted above, the GLCT Programme has contributed to an improvement in GLCs' governance standards, and listed GLCs are now subject to the Malaysian Code of Corporate Governance 2017. Nevertheless, to be able to benefit fully from its reforms, the government still needs to tackle a number of challenges.<sup>21</sup> SOEs maintain a close relationship with government officials, which may result in commercial decisions "directed to advance policy interests".<sup>22</sup> Further implementation is required to depoliticise GLCs, while the government should also continue its efforts to reform GLCs – including upgrading their transparency and disclosure requirements, and corporate governance – and reducing any possible crowding-out of private investment.

### **3.4.2. Accountability and transparency**

Performance management, involving KPIs and performance linked compensation (PLC) and performance contracts were among the key GLC measures launched by the GLCT Programme (OECD/KIPF, 2016<sup>[29]</sup>).

Reporting obligations have helped to increase SOEs' transparency, though practices vary greatly across SOEs, and depend upon the applicable legal and regulatory requirements. Listed SOEs must disclose their audited annual financial statements and changes in their management structure in line with Bursa Malaysia listing requirements, while non-listed SOEs must submit annual reports to the Companies Commission of Malaysia (SSM).<sup>23</sup> The Companies Act does not require reports to be publicly available, but annual reports can in principle be obtained through SSM.<sup>24</sup> The four GLICs with the form of statutory bodies are subject to the reporting provisions of the Statutory Bodies (Accounts and Annual Reports) Act 240.

SOEs are subject to accounting rules put in place by the Malaysian Accounting Standards Board (MASB), although requirements can vary depending on an SOE's legal form. Listed SOEs are required to establish an internal audit function and are also subject to external independent auditing, in accordance with listing requirements. Non-listed corporatized SOEs are required to keep accounts in accordance with national accounting standards, and to appoint an internal auditor. Statutory SOEs are required to keep accounts in

accordance with generally accepted accounting principles and to submit their financial statements to the Auditor General on an annual basis. There is no requirement for statutory SOEs to establish an internal audit function or to be audited by independent external auditors. Moreover, state audits may be undertaken by the Auditor General within any companies that receive loans or grants from the government (OECD, 2017<sup>[28]</sup>).

At federal level, the Treasury produces an aggregate annual report about its directly owned SOEs; it features a few financial indicators, but no information on individual SOEs. Khazanah publishes an annual review on its portfolio of SOEs (OECD, 2017<sup>[28]</sup>). Notwithstanding these requirements, at federal level, as noted in the *OECD Economic Surveys: Malaysia 2019*, reporting standards need to be strengthened to ensure that “large off-balance-sheet assets and other contingent liabilities associated with state-owned enterprises [...] are appropriately accounted for” (OECD, 2019, p. 31<sup>[30]</sup>).

### 3.4.3. Access to state support

The government may provide funds for GLICs’ operations or guarantee capital (or a certain level of income). The government is often designated as the guarantor for GLICs (Wisuttisak and May Fong, 2018, pp. 94-139<sup>[31]</sup>).

The *OECD Economic Surveys: Malaysia 2019* reported that “Malaysia’s contingent liabilities include loan guarantees to SOEs, which correspond to 18.1% of GDP at the end of June 2018” and that “some SOEs could not service their debt – their outstanding loan guarantees amounted to around 11% of GDP”. Moreover, the *OECD Economic Surveys: Malaysia 2019* flagged that “a lack of transparent approval processes and reporting requirements as well as insufficient risk sharing could amplify the risk of contingent liabilities materialising”. The OECD understands that the government is planning to establish one single oversight authority to consolidate information on assets and liabilities of SOEs, as well as publish a comprehensive financial report.<sup>25</sup>

The government has bailed out GLCs in the past decade, including car manufacturer Proton in 2016 and Malaysia Airlines in 2014 (Menon, 2017<sup>[32]</sup>). Moreover, GLCs in Malaysia are seen to have preferential access to government procurement (Menon, 2017<sup>[32]</sup>). Other forms of state support are described in Section 5.2.

## 3.5. Transformation of SOEs

The *Eleventh Malaysia Plan* is the five-year development plan for the country (Ministry of Economic Affairs, 2015<sup>[33]</sup>). As one of its strategies to enhance opportunities for the bumiputera economic community, the government aims to divest non-core GLC and GLIC assets. A *Mid-Term Review of the Eleventh Malaysia Plan 2016-2020* (the Mid-Term Review), released in October 2018, identified SOE policies as a strategy to improve market efficiency (Strategy A3) with the aim to strengthen sectoral growth and structural reforms (Priority Area A) (Ministry of Economic Affairs, 2018<sup>[34]</sup>). It states that “focus will be given [to] reviewing and streamlining the role of [SOEs] and monopoly entities to meet the objectives of enhancing market efficiency and fair competition” (Ministry of Economic Affairs, 2018, pp. 14, Chapter 15<sup>[34]</sup>) and to increase efficiency and transparency.

According to the Mid-Term Review, a “special ministerial committee” will be reviewing policies and concessions and a national policy and governance framework will be formulated “to align SOEs [...] with the broader national development agenda” (Ministry of Economic Affairs, 2018, pp. 14, Chapter 15<sup>[34]</sup>). The OECD understands that a review of holding company MOF Inc. is ongoing, but that SPDS does not fall within the scope of this exercise. Moreover, according to the Mid-Term Review (and as noted in Section 3.4.3), the government will undertake “a review of existing legislation governing the operation of SOEs” and “a single oversight authority will be established to consolidate information on assets and

liabilities of SOEs as well as produce and publish a comprehensive financial report” (Ministry of Economic Affairs, 2018, pp. 13, Chapter 10<sup>[34]</sup>). Finally, the Mid-Term Review recognised “issues with overlapping roles” and with the appointment of boards of directors and top management (Ministry of Economic Affairs, 2018, pp. 11, Chapter 8<sup>[34]</sup>).

Finally, it has been noted that further sector liberalisations would be accelerated by the ratification of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (OECD, 2019<sup>[30]</sup>). To date, it is unclear where the ratification process stands, and when these further sector liberalisations would materialise. Chapter 17 of the CPTPP, entitled “State-owned enterprises and designed monopolies”, introduces rules on non-discriminatory treatment, non-commercial assistance and transparency. However, certain GLCs and GLICs in Malaysia benefit from exemptions under the CPTPP. For instance, GLCs owned or controlled by Khazanah would not be subject to the CPTPP dispute settlement regime for a period of two years and an *ad hoc* mechanism applies to Malaysia for the requirement to provide or make publicly available a list of SOEs. Other Malaysian GLICs are also exempted from the applicability of Chapter 17 of the CPTPP.



# 4 Small-package delivery services in Malaysia

## 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 and 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<sup>[4]</sup>).

In many countries, an incumbent postal operator benefits or has benefited in the past from a monopoly over the handling of certain classes of mail, usually defined as mail items below a certain weight or size, or both. The primary reason for this protection of certain areas from competition is the need to preserve the internal cross-subsidisation used to finance public-service obligations. 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<sup>[4]</sup>).

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 that need to be maintained. A variety of competitively neutral methods exist for financing non-commercial obligations, which do not threaten competition (OECD, 1999<sup>[4]</sup>).

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 SPDS for incumbent postal operators in many countries.<sup>26</sup> 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 “small package”

There are various definitions of “small package” in the logistics industry. One method is its weight, with the upper limit determined by how much a single person can handle without using any specific equipment. Different market participants use different weight limits,<sup>27</sup> 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).<sup>28</sup>

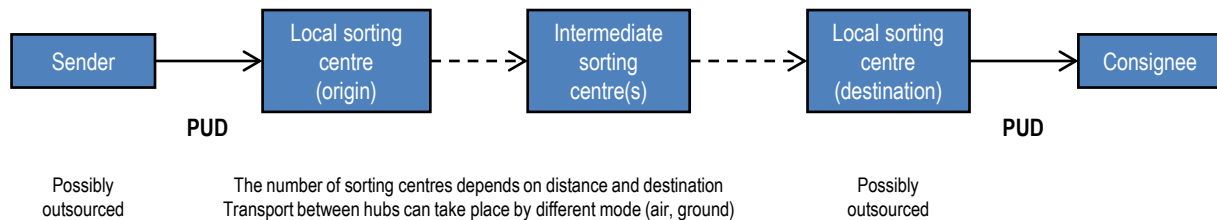
In Malaysia, the Postal Services Act 2012 defines a “postal article” as “a letter, a package, a parcel, a wrapper or a container that can be collected, transmitted and delivered through the postal network of a licensee”.<sup>29</sup> The Postal Services (Postage Rates) Rules 2010 define a parcel as “any postal article weighing not more than 30 kg and not exceeding 2000 mm in the combined measurement of its length, width and height, of which the length shall not exceed 1050 mm”; and a small packet as “any postal article which is not enveloped, weighs not more than 2 kg and does not exceed 250 mm in length, 200 mm in width and 100 mm in thickness”.<sup>30</sup> Market participants consider “small packages” (also called “parcels”) packages with a weight of up to 30 kilogrammes.

#### 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.<sup>31</sup> SPDS are 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<sup>[35]</sup>).

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, W.T. (2011<sup>[35]</sup>), *Parcel and Small Package Delivery Industry*, CreateSpace, North Charleston, NC.

Different actors are active in the SPDS value chain, roughly split between integrators and non-integrators.<sup>32</sup>

An integrator has operational control over the SPDS logistical chain from origin to destination (including air transport), so that it can ensure delivery to meet a time commitment. The global integrators are FedEx/TNT, DHL and UPS.

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

1. **Incumbent postal operators.** In many countries, the incumbent domestic postal operator is active in domestic and international small-package delivery. Generally, declining mail volumes have forced these operators to develop new business areas such as logistics, and in particular, SPDS.<sup>33</sup>
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.

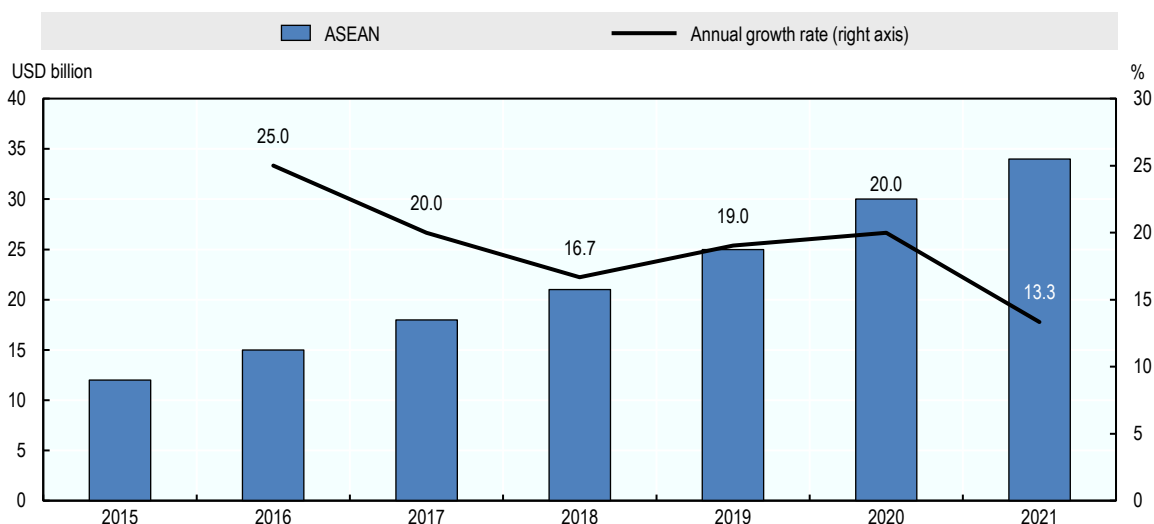
3. **Smaller companies** with a domestic PUD ground service in one or more countries.

Many SPDS operators offer ancillary services as a way of diversification, including warehousing and value-added services, such as quality-control service, packaging, labelling and tagging.<sup>34</sup>

#### 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.<sup>35</sup> The e-commerce market in ASEAN remains relatively small compared to other regions of the world,<sup>36</sup> but by 2021 it is expected to 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 recent study reported that in 2019 Southeast Asian e-commerce market was worth USD 38.2 billion, and predicted that it would grow to USD 153 billion by 2024, at a compound annual growth rate of 39% between 2015 and 2024 (Google, Temasek and Bain & Company, n.d.<sup>[36]</sup>). In Malaysia, e-commerce revenue was estimated at USD 3.3 billion in 2019, and projected to grow at around 29% in 2020.<sup>37</sup>

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



Source: OECD (2018<sup>[37]</sup>).

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<sup>[37]</sup>). Ensuring a level playing field and stimulating competition plays a crucial role when optimising the legal and regulatory environment.

ASEAN adopted the *Work Programme on Electronic Commerce 2017-2025*<sup>38</sup> on 7 September 2017 and ASEAN Economic Ministers signed the ASEAN Agreement on Electronic Commerce on 12 November 2018.<sup>39</sup> Both show that ASEAN has recognised the potential of the digital economy, and the need to

develop the region's e-commerce industry by creating a conducive environment for its growth through advancing trade rules and building up greater digital connectivity in the region.

In October 2016, the Malaysian government launched a National eCommerce Strategic Roadmap (NeSR), which established the National eCommerce Council (NeCC) – comprised of 25 agencies and ministries – to oversee the strategies and initiatives related to the e-commerce sector. Through the NeSR, Malaysia aims to double its e-commerce growth rate and reach a GDP contribution of MYR 211 billion by 2020 (OECD/ERIA, 2018<sup>[3]</sup>).

According to the Competition Commission of Singapore's *Handbook on E-Commerce and Competition in ASEAN* (2017<sup>[38]</sup>), the largest sectors within e-commerce in Malaysia are travel, entertainment media, consumer electronics and fashion. It seems that there are three main factors driving this growth: 1) favourable demographics, with a large segment of Malaysia's population well-versed in technology; 2) ready infrastructure and ecosystem; and 3) government interventions with well-developed regulations, including the Electronic Commerce Act 2006,<sup>40</sup> the Payment Systems Act 2003 (regulations on e-payment), and the Consumer Protection (Electronic Trade Transactions) Regulations 2012 (consumer protection).

B2B transactions (in particular between manufacturing businesses) still represent a large portion of e-commerce in Malaysia. Although half of Malaysians already were shopping online in 2017 with user penetration expected to increase to 63% by 2022 (World Bank Group, 2018, p. 37<sup>[39]</sup>), the NeSR identified several barriers for the growth of the B2C segment, including a poor fulfilment experience. It also identified several areas in which intervention might drive e-commerce growth, and in particular the B2C segment, such as improving the last-mile segment.<sup>41</sup> Other areas include 1) lifting non-tariff barriers in key parts of the e-commerce value chain; 2) increasing the level of maturity in the domestic fulfilment sector; and 3) facilitating cross-border movement of e-commerce goods. MCMC leads the implementation of this plan with the collaboration of the Association of Malaysian Express Carriers (AMEC).

In 2018, the World Bank observed that domestic e-commerce transactions far exceed international e-commerce transactions in volume as almost 90% of all e-commerce income derives from domestic customers (World Bank Group, 2018, p. 42<sup>[39]</sup>). There are continuing problems with cross-border trade; for example, stakeholders observed trans-shipments between Malaysia and Singapore remain expensive and lengthy.

Finally, in 2017, the government launched a Digital Free Trade Zone (DFTZ). Currently managed by Pos Malaysia, the DFTZ provides an e-fulfilment hub, including warehousing, order processing and delivery, to help SMEs export their goods and an e-service platform that offers SMEs market access to global customers and suppliers (OECD/ERIA, 2018<sup>[3]</sup>).

## 4.2. Competitive landscape of the SPDS sector

As observed by MCMC (2018, p. 154<sup>[40]</sup>), with the rise of e-commerce, speedy delivery has become a major competitive advantage with consumers willing to pay a premium for same-day or faster deliveries.

In Malaysia, the SPDS sector “comprises an integrated network of door-to-door delivery. [...] Various categories of users utilize express delivery services, including both companies and private individuals. Courier services suppliers may own branches or have other service points through franchisees and associates” (ASEAN-Japan Centre, 2018, p. 5<sup>[41]</sup>).

A number of third-party logistics (3PL) companies, including local and regional players, are active in the SPDS market, mainly in the B2C segment. MCMC (2018, pp. 150-151<sup>[40]</sup>) reported that the volume of items (“parcels”) has increased by 23.51% to 49.59 million in 2018, with domestic deliveries accounting for 43.56 million and international deliveries accounting for 6.03 million. Domestic SPDS are mainly performed by

road (90%), except for Sabah and Sarawak (East Malaysia), while international SPDS are mainly performed by air (80%), although there are no official statistics in this regard.

Competition for last-mile delivery is intense with over 100 providers (Pos Malaysia, 2019, p. 28<sub>[42]</sub>).<sup>42</sup> Latest MCMC data show an annual increase by 38% of the number of employees in the industry in 2018 (MCMC, 2018, p. 153<sub>[40]</sub>). Start-ups have also recently entered the market, focussing their services on the Klang Valley area, which includes Kuala Lumpur. Furthermore, e-commerce companies such as Lazada and Shopee, which generally rely on outsourced delivery services (particularly, multi-sourcing), have begun to establish their own delivery services.<sup>43</sup>

For B2C deliveries in Malaysia, stakeholders' internal estimates suggest that Pos Malaysia accounts for approximately 40% for small packages only and for 80% for both mail and courier services. Its main competitors in the domestic market are GDex (with market share of 10-30%); Citylink (15%); Nationwide (8%, although this market share takes into account both courier services and other logistics services such as freight forwarding); KTMD (with a market share of 2-5%); DHL eCommerce; and Ninja Van. In the B2B segment, the leading providers are TNT and Pos Malaysia.

### 4.3. Sector regulation

Pursuant to the Malaysian Communications and Multimedia Commission Act (1998),<sup>44</sup> MCMC was established as regulator for the communications and multimedia industry in Malaysia. On 1 November 2001, MCMC assumed the functions of sector regulator for postal and courier services. MCMC is currently responsible for the application and implementation of the Postal Services Act 2012,<sup>45</sup> governing postal and courier services, including SPDS, in Malaysia. Its competences and powers include the following.

1. Sections 38 to 48 of the Postal Services Act 2012 assign competition-related competences to MCMC. In particular, under Section 42 of the Postal Services Act 2012, MCMC can determine whether a licensee holds a “dominant position”; the consequences of such a determination are not stated, however. Moreover, Section 45 of the Postal Services Act 2012 confers to MCMC the power to “authorise” conducts for reasons of “national interest”. Despite these provisions and MCMC’s co-operation with MyCC on competition enforcement, it seems that MCMC has not undertaken any competition enforcement actions in the sector so far.
2. Under Sections 60-61 of the Postal Services Act 2012, MCMC has investigative powers, for instance against SPDS providers operating without a licence. MCMC’s decisions can be appealed.<sup>46</sup> In July 2003, MCMC issued “Guidelines for Dispute Resolution”.<sup>47</sup>
3. MCMC determines which “basic postal services” are part of the universal service obligations, as well as applicable performance standards.
4. Section 98 of the Postal Service Act 2012 envisages a Postal Service Fund to subsidise universal service obligations, “facilitate the expansion and improvement of the postal network”, and “improve and respond to the need of consumers through the use of technology”. MCMC would control and operate the Postal Service Fund, but this provision has not been implemented so far.

Moreover, the OECD understands that there is an ongoing legislative initiative to introduce a sector-specific merger control regime by amending the Malaysian Communications and Multimedia Commission Act (1998).

The Ministry of Communications and Multimedia is the relevant policy maker, with the power to set rules and regulations for the SPDS sector.<sup>48</sup> It developed a National Postal Strategy for the 2010-2014 period; there is no current strategy plan. The Minister of Communications and Multimedia appoints (and can remove) the members of MCMC.<sup>49</sup> Moreover, the “Minister may, from time to time, issue directions to the Commission on the exercise of Commission’s powers and the performance of the Commission’s functions”.<sup>50</sup>

### 4.3.1. Licencing

In 2013, a licencing system by classes was introduced for SPDS, with no limit to the number of licences that can be issued. As of March 2020, there were a total of 116 licensees.<sup>51</sup> MCMC reviews the licence applications, with the Minister of Communications and Multimedia holding the ultimate power to grant a licence.<sup>52</sup> Pursuant to Postal Services (Licencing) Regulations 2015, the current system encompasses three classes of licensees for non-universal services:

1. Class A licensees can provide international inbound and outbound, and domestic SPDS
2. Class B licensees can provide international inbound and domestic SPDS
3. Class C licensees can provide intra-state SPDS within a specific state in Malaysia.

It has been observed that the move towards licencing by class “has resulted in an upgrading of the industry” as it required “additional capital investment” and each licence class has its own technical specifications.<sup>53</sup>

In addition to these three classes, there is a universal service licence (currently held by Pos Malaysia), which also allows the licensee to provide non-universal services such as express delivery services (in other words, services that can be provided by a Class A licensee). Pursuant to Postal Services (Universal Service) Regulations 2015, this universal service licence is subject to specific requirements and service standards, including a “reasonable frequency” of deliveries and a minimum number of post offices.

Licensees shall be incorporated in Malaysia<sup>54</sup> and “shall maintain at least fifty percent local shareholding”.<sup>55</sup> Furthermore, applicants shall meet minimum paid-up capital requirements, which differ depending on each licence class: MYR 1 million for a Class A licence; MYR 500 000 for a Class B licence; and MYR 100 000 for a Class C licence. For a universal service licence, the minimum paid-up capital requirement is MYR 100 million.<sup>56</sup>

The OECD understands that Class A, B and C licences are valid for 3 years and renewable,<sup>57</sup> while the universal service licence is valid for 20 years.<sup>58</sup> Fees of MYR 100 are charged for application and renewal of non-universal service licences and MYR 500 for universal service licences. In addition, annual fees between MYR 500 and MYR 30 000 are charged to non-universal service licensees.<sup>59</sup> The annual fee for the universal service licence corresponds to 0.5% of the company’s annual turnover or MYR 1.5 million (whichever is higher).

A licence is not transferrable without prior approval of the Minister of Communications and Multimedia.<sup>60</sup> Providers operating without a licence may be imposed a fine not exceeding MYR 500 000 and imprisonment up to 5 years.<sup>61</sup>

Lastly, pursuant to Section 32(3) of the Postal Services Act 2012, MCMC approves the terms and conditions applicable to universal services. The universal service licensee submits to MCMC yearly reports on the performance of its basic services.<sup>62</sup> Other licensees are not subject to any service-quality requirements, but are subject to reporting obligations to MCMC. Finally, Section 6(3) of the Postal Services Act 2012 provides for MCMC to prepare periodic reports; these reports are not publicly available, however.

### 4.3.2. Price regulation

Under Section 37 of the Postal Services Act 2012, the Minister of Communications and Multimedia may set minimum or maximum rates applicable to universal services or non-universal services, on the recommendation of MCMC. In 2014, MCMC set a minimum price for letters up to 500 grammes, while in February 2020 MCMC revised the fixed rates for items up to 2 kilogrammes applicable by the universal service licensee.<sup>63</sup>

Prices at wholesale level and access to networks are not regulated, and are left to negotiations between SPDS providers. According to stakeholders, there are no formal (outsourcing) agreements between SPDS providers, while there are formal agreements in place for international deliveries.

# 5 SOEs and their impact on competition in SPDS

## 5.1. GLCs active in the SPDS sector and the focus on Pos Malaysia

Pos Malaysia was one of Khazanah's portfolio companies. It was corporatized in 1985, listed in 2001 and then "divested" in 2011. Khazanah divested its entire stake of 32.31% to DRB-HICOM, a Malaysian large conglomerate with activities in numerous sectors including automotive manufacturing, assembly and distribution industries. DRB-HICOM now owns 53.5% of Pos Malaysia. Based upon its *Annual Report 2019*, covering the financial year 1 April 2018 to 31 March 2019, two GLICs maintain investments in Pos Malaysia: Employees Provident Fund (EPF or KWSP) holds an 8.18% stake<sup>64</sup> and Kumpulan Wang Persaraan (KWP) holds a 7.49% stake.<sup>65</sup> EPF is the Malaysian pension fund and the country's largest fund management company.<sup>66</sup> KWP manages the investments of the Retirement Fund, the pension fund for public-sector employees. Based on information provided by stakeholders, EPF and KWP do not act in co-ordination.

While Pos Malaysia does not consider itself a GLC and despite Khazanah's divestment to DRB-HICOM, it can be viewed as a GLC for the purposes of this report. This is as result of the government holding a special rights redeemable preference share in the company through MOF Inc.<sup>67</sup> This "special share" confers neither the right to vote in general meetings nor to dividends,<sup>68</sup> but does give the government the right to appoint up to two board directors. Moreover, it gives the government powers of consent (resulting in veto rights) over certain corporate decisions, such as take-overs or acquisitions, appointment of directors, and the creation or issue of any shares with voting rights. Currently, MOF Inc. is represented on the board by the Undersecretary of the Public Asset Management Division at the Ministry of Finance.

Pos Malaysia's articles of association also exclude the possibility of foreigners acquiring control. Article 3 states that Pos Malaysia "shall not enter into any combination, amalgamation or other arrangement which will have the effect of transferring the management or control of the Company to any foreigner or any foreign corporation or any corporation under foreign control".

Taken together, these provisions seem to reflect the strategic importance of Pos Malaysia's services for the country.

Like all listed companies registered in Malaysia – whether privately owned or SOEs – Pos Malaysia is subject to the Companies Act 2016, Bursa Malaysia Main Market Listing Requirements, Malaysian Financial Reporting Standards, and International Financial Reporting Standards. The Pos Malaysia's board of directors consists of eight members with a majority of five being independent non-executive directors and it is led by a non-executive chairperson. The roles of chairperson and CEO are separate. Pos Malaysia's accounts are audited by independent external auditors.

In line with other countries, Pos Malaysia's mail business is declining: total mail volume dropped from 1 026 million items in 2014 to 655 million items in 2019; it declined by 11% in the past year. Nevertheless, in the 2018-2019 financial year, postal services still accounted for 30% (MYR 698 million), while courier

services accounted for 35% (MYR 824 million) of Pos Malaysia's revenue. The remaining revenue is generated through: 1) logistics services (container haulage services, freight forwarding, shipping agency, chartering, warehousing and distribution); 2) aviation services (flight-related services, such as air-cargo handling, in-flight catering, aircraft maintenance and engineering, and facilities equipment); and 3) international services (cross-border solutions in which customers ship e-commerce items from, generally, China to various destinations around the world using the global postal network). In the 2018-2019 financial year, Pos Malaysia's total revenue amounted to MYR 2 355 billion with a consolidated annual loss of MYR 158.4 million (Pos Malaysia, 2019, p. 31<sup>[42]</sup>).

Pos Malaysia has a large fleet of 10 327 vehicles (including 3 020 delivery vehicles, 6 606 motorcycles and 344 trucks) and it has the largest network in the country with over 3 500 "touchpoints" and 250 "self-service terminals", reaching rural areas and islands (Pos Malaysia, 2019, p. 6; 14<sup>[42]</sup>). It also owns three freight aircraft<sup>69</sup> used for shipments to East Malaysia and two bulk-carrier ships; it has its own warehouses; and it manages a "district park"<sup>70</sup> within the Westports terminal, Port Klang, where it performs packing and unpacking services for cargo, as well as value-added services.

In addition to Pos Malaysia, at least one other SOE is active in SPDS in Malaysia. KTM Distribution (KTMD), a subsidiary of KTM, the national passenger and cargo railway operator, which is wholly owned by the Ministry of Finance. KTMD has approximately 300 employees, a fleet of 51 vehicles (trucks, vans and motorbikes), an annual turnover of approximately MYR 25 million, and holds a "Class B" licence (see Section 4.3.1). It is active in the whole country and also delivers to Singapore, outsourcing in some cases its last-mile delivery services.<sup>71</sup> The Ministry of Finance appoints KTMD directors, and its board includes representatives of the Ministry of Transport, Ministry of Finance, and the Economic Planning Unit (EPU).

### **5.1.1. Mandate**

Pos Malaysia is the Universal Postal Union's "designated operator" and the only provider holding a universal service licence, which allows it to perform commercial services as well. The current licence became effective on 1 October 2017 and is scheduled to expire on 30 September 2036. The universal licence gives Pos Malaysia a monopoly over letters with a weight of up to 500 grams.<sup>72</sup> Nevertheless, in practice, other providers, such as Nationwide, offer similar services by simply using a different name, such as "documents".

In 2010, Pos Malaysia – in partnership with MCMC – launched the Postal Transformation Plan for Sabah & Sarawak (PTPSS) initiative "to expand mail delivery coverage in rural areas" and "to create jobs and catalyse economic development for the rural communities" (Pos Malaysia, 2019, p. 92<sup>[42]</sup>).

### **5.1.2. SPDS business**

The decline of the mail business and the liberalisation of the SPDS sector has led Pos Malaysia to transform and diversify its business. For example, it operates in the B2C segment through its subsidiary Pos Laju, which is "the nation's leading courier provider with the largest courier fleet in Malaysia and the widest delivery network coverage" (Pos Malaysia, 2019, p. 36<sup>[42]</sup>). The B2B segment is mainly covered by Pos Logistics' supply-chain solutions. In addition, Pos Logistics provides warehousing, long-distance and freight-forwarding services to Pos Laju, which then focuses on last-mile delivery services.

Pos Laju operates 99 branches and 39 "kiosks" throughout the country, and handled approximately 100 million items in 2018-2019 (Pos Malaysia, 2019, p. 17<sup>[42]</sup>), while in remote areas it relies on Pos Malaysia's mail network. As noted above, in 2018-2019 Pos Laju's revenue of MYR 824 million was 35% of Pos Malaysia's total revenue, a rise of 6% compared to the previous year (Pos Malaysia, 2019, p. 36<sup>[42]</sup>). Major e-commerce platforms, such as Lazada, Shopee and EasyParcel, use Pos Laju for SPDS (Pos Malaysia, 2019, p. 92<sup>[42]</sup>). To expand its nationwide handling capacity of e-commerce items, Pos Malaysia plans to set up two new integrated parcel centres (MCMC, 2018, p. 151<sup>[40]</sup>). Moreover, Pos Laju recently introduced



new services such as EziFulfilment – which provides SMEs with end-to-end services, ranging from warehouse inventory management to last-mile delivery – and a Pos Rider Mobile app that “enables customers to determine where and when they receive their deliveries with better visibility” (Pos Malaysia, 2019, p. 37<sup>[42]</sup>).

For international SPDS, Pos Malaysia provides “cross-border solutions in which customers ship e-commerce items from mainly China to various destinations around the world via the global postal network” (Pos Malaysia, 2019, p. 7<sup>[42]</sup>). These services are provided through Pos Malaysia’s hub at Kuala Lumpur International Airport (as most items are shipped by air), as well as through the global postal network. In the 2018-2019 financial year, international business revenue decreased by MYR 13.2 million (8%). According to Pos Malaysia, this decrease was primarily caused by the impact of regulated pricing and a rise in terminal dues. Pos Malaysia recently entered into co-operation agreements with DHL and TNT and it envisages establishing “bilateral arrangements with relevant postal administrations, as well as liaising with high-value aggregators and regional marketplace platforms” and to strengthen “its collaborations through the Universal Postal Union (UPU), Asian-Pacific Postal Union, ASEAN and other forums, thus forging closer alliances with other postal administrations” (Pos Malaysia, 2019, p. 40<sup>[42]</sup>).

## 5.2. Assessment of Pos Malaysia’s advantages and disadvantages in the SPDS sector

This Section identifies and assesses Pos Malaysia’s advantages and disadvantages in the SPDS sector, and offers recommendations to address these issues. Each sub-section commences by setting out the general principles guiding the assessment; these are mainly based on the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (2015<sup>[11]</sup>).

### 5.2.1. Public-service obligation (PSO)

#### General principles

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.

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.

As the sole universal service licensee, Pos Malaysia collects, transmits and delivers the following “basic postal services”: 1) domestic letters and postcards with a weight of less than 2 kilogrammes sent using ordinary post; 2) domestic parcels with a weight of less than 20 kilogrammes sent using ordinary post; 3) letters, postcards and parcels sent outside Malaysia; and 4) letters and parcels sent by registered post.<sup>73</sup> The “reserved area” (which refers to the area where the universal service provider enjoys exclusive rights to provide these services) covers the whole country. As noted in Section 4.3.2 above, on the recommendation of MCMC, the Minister of Communications and Multimedia regulates rates applicable to universal services.

Section 8(1) of the Postal Services (Universal Service) Regulations 2015 sets the duration of the universal service licence at 20 years; Pos Malaysia's current licence is valid until 2036. According to MCMC, this length is a legacy of the previous 35-year universal service licence that was granted to Pos Malaysia before Khazanah's divestment in 2011 and the SPDS market liberalisation; there were 20 years left on that licence when the Postal Services (Universal Service) Regulations 2015 were adopted.<sup>74</sup> In its *Annual Report 2019*, Pos Malaysia states that it paid an "operating licence fee" of approximately MYR 9.33 million.

Notwithstanding this substantial licence fee<sup>75</sup> and a minimum capital requirement of MYR 100 million, the OECD understands that MCMC received other applications – currently under evaluation – for the universal service licence.

With regard to compensation, Pos Malaysia does not receive any direct funding for its universal service obligations. Pos Malaysia noted that Pos Laju's commercial services revenue cross-subsidise Pos Malaysia's universal service obligations. It is worth noting that the *National Postal Strategy 2010-2014* envisaged a study to determine a cost-based pricing regime for universal services and to create a "USO Fund" (MCMC, 2010, p. 18<sup>[43]</sup>). In *Annual Report 2019*, Pos Malaysia reported a "deferred government grant" of MYR 11.82 million (Pos Malaysia, 2019, p. 184<sup>[42]</sup>).<sup>76</sup> Moreover, as noted in Section 5.1.1, since 2010 Pos Malaysia – in partnership with MCMC – manages the PTPSS initiative "to expand mail delivery coverage in rural areas" and "to create jobs and catalyse economic development for the rural communities". The OECD understands that, within this framework, Pos Malaysia receives contributions from MCMC for 500 "community postmen". In addition, MCMC assigned to Pos Malaysia "transformation projects" for Sabah and Sarawak. All these funds appear to (indirectly) compensate for Pos Malaysia's universal service obligations.

Finally, although MCMC encourages Pos Malaysia to implement accounting separation, the company is not required to (and does not) separate universal service and commercial activities in its accounts.<sup>77</sup>

To maintain a level playing field with private competitors, SOEs need to be adequately compensated for the fulfilment of public policy objectives. Governments should avoid both overcompensation and under-compensation. If SOEs are overcompensated for their public policy activities, this would result in a subsidy for their competitive activities, distorting the level playing field, while under-compensation can jeopardise SOEs' viability. Adequate compensation can be achieved through different mechanisms including specific legal or contractual provisions. Moreover, to assess whether the compensation is adequate, it is crucial to ensure any costs related to the fulfilment of public policy objectives be clearly identified and disclosed (OECD, 2015, p. 47<sup>[11]</sup>).

In other countries, adequate compensation of public policy objectives takes different forms. In the past, the European Commission considered compensation schemes legitimate subject to accounting separation and the application of a so-called "overcompensation test". For instance, the European Commission authorised: 1) the UK to grant a network subsidy to Post Office to keep open and modernise non-commercially viable offices, such as those in rural areas; 2) Italy to grant compensation to Poste Italiane for the universal postal service and for reduced postal tariffs offered to publishers, not-for-profit organisations and electoral candidates; and 3) France to grant compensation to La Poste to finance the public service of delivering press items to citizens and the provision of postal services in remote areas.

The OECD has three recommendations.

1. Ensure that regulated rates for universal service reflect Pos Malaysia's actual costs and take into account any other cross-subsidisation or other public funds, grants or subsidies accessible to Pos Malaysia. The establishment of a "USO Fund" to which other licensees can partially contribute is a valid alternative, although measures should then be introduced to ensure proportionate contributions, to avoid such a compensation fund leading licensees to exit the market.
2. Strictly link and condition government grants to Pos Malaysia to the company's universal service obligations to avoid any cross-subsidisation with Pos Malaysia's commercial activities.

Overcompensation should be avoided, so any other form of support for Pos Malaysia's universal service should take into account these grants and funds.

3. Require revenue and costs related to the universal service obligations to be clearly separated in Pos Malaysia's accounts. Accounting separation is required to ensure that compensation is adequate irrespective of the mechanism adopted. This could be achieved through MCMC's specific guidelines.

### 5.2.2. SOEs governed and managed as an arm of government

#### General principle

Transparency and accountability of the management of SOEs is important; SOE boards should be equipped with the necessary autonomy and independence to achieve clearly defined performance objectives, absent political interference.

Even though the GLCT Programme contributed to raising some GLCs' governance standards, as reported in *OECD Economic Surveys: Malaysia 2019*, "the government is still involved in the appointment of GLCs' board members and senior management, where this arrangement may involve the risk of cronyism and patronage to vested interests if not properly managed" (OECD, 2019, p. 42<sub>[30]</sub>).

As mentioned in Section 5.1, even after Khazanah's full divestment of its stake in Pos Malaysia, the government – through MOF Inc. – continues to hold a special share carrying the following rights (Pos Malaysia, 2019<sub>[42]</sub>):

1. The government can appoint up to two directors.<sup>78</sup>
2. Certain decisions affecting the operation of Pos Malaysia must be consistent with government policy. In particular, the government must give prior consent for: a) the alteration of the articles of association relating to the rights of the special share; b) the dissolution of Pos Malaysia, any substantial acquisitions and disposal of assets, amalgamation, merger and takeover; c) the appointment of foreign directors; and d) the creation or issuance of any shares carrying (when aggregated with existing ones) 10% of total voting rights.
3. The priority repayment of paid-up capital in the case of shareholder repayment of capital in case of a distribution of capital or a winding-up of Pos Malaysia.

In addition, the government maintains an indirect interest in Pos Malaysia through two GLICs, EPF and KWAP.

Based on publicly available information, three current Pos Malaysia's directors retain (or have served in) key positions in the government. These include a current Undersecretary of the Ministry of Finance (who sits on the board as representative of MOF Inc.) and two former deputy secretaries general of the Ministry of Finance.<sup>79</sup> Other directors include individuals holding similar positions in other GLCs and a former member of MCMC.

The OECD has one recommendation.

1. Increase the independence of GLCs' boards and limit undue governmental intervention in SOE business activities. Although a certain oversight might be legitimate in companies with a "strategic" business such as Pos Malaysia, GLCs should continue to ensure that independent and qualified candidates are selected for their boards.

### 5.2.3. Different regulatory treatment

#### General principle

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*

In principle the Competition Act 2010 applies to “any commercial activity”, without any distinction as to the nature of the entities engaged in such activities. Two limitations to this overall regulation are worth considering, however. First, Section 3(4), which excludes from its scope “any activity, directly or indirectly in the exercise of governmental authority”; and second, Section 3(3) providing an exemption applicable to commercial activities regulated by specific legislation listed in the First Schedule of the Competition Act 2010.

According to some commentators, Section 3(4) – by excluding from the scope of the competition law any activity “indirectly in the exercise of governmental authority” – results in a broad exemption to activities performed by GLCs as their activities are often instrumental to policy objectives (Wisuttisak and May Fong, 2018<sup>[31]</sup>). MyCC has observed that in general this provision is narrowly interpreted.<sup>80</sup> The investigation into Malaysia Airlines is also a positive indication of MyCC’s willingness to pursue enforcement cases against GLCs (see Section 3.3).

The First Schedule of the Competition Act 2010 includes regulated sectors in which GLCs are active in Malaysia such as aviation, communications and energy. Furthermore, as noted in Section 4.3, Section 38 and following of the Postal Services Act 2012 assigns competition powers to MCMC. Although MCMC has not pursued any competition enforcement case, the OECD understands that MCMC does co-operate with MyCC on competition enforcement. Such co-operation formally occurs within the Special Committee on Competition, which does not meet regularly, however. Besides this Special Committee, there is no provision addressing any issues of competence among the regulators. Nevertheless, MyCC submitted that it engages with other regulators on a case-by-case basis if co-ordination is needed to address competition concerns

Countries typically provide for competition law issues in regulated sectors in three ways: 1) the competition agency has jurisdiction over competition law matters in regulated sectors; 2) the competition agency and the sector regulator have concurrent authority to enforce a single competition law standard and arrangements are put in place for co-operation; or 3) only the sector regulator has the competence to enforce competition-related provisions.

Section 3(3) of the Competition Act 2010 seems to adopt the third approach. This may create actual (or perceived) conflicts of interest when line ministries responsible for sectoral regulation also have representatives on SOEs’ boards operating in the same sectors. This situation should be avoided as it could discourage private competitors from investing (OECD, 2015, pp. 34-35; 45-46<sup>[11]</sup>).

For SPDS specifically, Malaysia seems to adopt the second approach with MyCC and MCMC having concurrent authority. This is because the SPDS sector is not included under Section 3(3) of the Competition Act 2010, which provides for an exemption applicable to commercial activities regulated by specific legislation listed in the First Schedule. Moreover, the Postal Services Act 2012 assigns sector-specific competition powers to MCMC and contains its own competition-law provisions that do not necessarily mirror the Competition Act 2010 (even though it could be argued that the standards are comparable). At the same time, there is no specific provision addressing any competence issues among these regulators.

Issues might also arise as to MCMC's independence when enforcing competition provisions. Independence means that the authority is free from external influence and relies on evidence and competition reasoning for its decisions about investigations or applying and interpreting competition rules.<sup>81</sup> Such independence ultimately makes for a more sound and effective competition policy regime that helps foster investment. However, in this case, the members of MCMC can be dismissed by the Minister of Communications and Multimedia and, under Section 7 of the Postal Services Act 2012, the "Minister may, from time to time, issue directions to the Commission on the exercise of the Commission's powers and the performance of the Commission's functions".

The OECD has three recommendations.

1. Clarify which activities "in the exercise of governmental authority" should be excluded from the scope of the Competition Act 2010 under Section 3(4). MyCC could clarify this through guidelines, or through amendments to the Competition Act 2010.
2. Clarify which body has jurisdiction over competition law in the SPDS sector.
3. Consider repealing Section 38 and following of the Postal Services Act 2012, conferring to MyCC sole jurisdiction over competition law in the SPDS sector. This regime would also mitigate risks of political influence over competition law in the sector, as well as ensure harmonised application of competition rules across sectors.

Alternatively, should Malaysia continue to opt for MyCC and MCMC having concurrent competition powers in the SPDS sector, make explicit reference in the Postal Services Act 2012 to the Competition Act 2010 as the relevant competition law applicable to the SPDS sector. Moreover, implementing regulation should be passed to address co-operation and any competence issues between MyCC and MCMC.

#### *Exemption from liability*

Under Section 31 of the Postal Services Act 2012, Pos Malaysia is exempted from liability for loss or damage of "postal articles", which include "letters, packages and parcels". It is unclear whether this exemption is in line with the UPU rules, and if it only applies to "basic services", such as non-express services. The OECD understands that, in practice and in line with the business practice of other competitors, Pos Malaysia provides compensation for lost trackable items derogating from Section 31 through contractual provisions (such possibility is contemplated under Section 33(3) of the Postal Services Act 2012).

Being exempted from any legal action and, in particular, from liability for losses or damages to shipments, may result in a competitive advantage for Pos Malaysia compared to its private competitors.

The OECD has one recommendation.

1. Amend the Postal Service Act 2012 to fully reflect the UPU standards and international conventions on liability. For instance, exemptions should be strictly limited to universal service as it already appears to be the case in practice.

#### *Downstream access*

As noted in Section 5.1, Pos Malaysia has the largest network in the country with over 3 500 "touchpoints" and 250 "self-service terminals"; it reaches across Malaysia including rural areas and islands. The large network gives Pos Malaysia a strong competitive advantage, which is largely a legacy of the state's direct investments before Khazanah divested its stake.

Access to this network is not regulated. Access is generally left to one-to-one negotiations between SPDS providers; according to stakeholders, Pos Malaysia refuses access to its network in Sabah and Sarawak. SPDS providers are also able to purchase Pos Laju's services over-the-counter at standard rates.

Discussions with stakeholders have shown that no SPDS providers appears “willing” to open a business account with Pos Laju as they are concerned of being refused services. The OECD has no further evidence of such conduct by Pos Malaysia.

The OECD has one recommendation.

1. Consider adopting MCMC rules conferring SPDS providers the right to access Pos Malaysia’s network, even if limited to certain areas and under specific conditions, and including regulated rates.

#### **5.2.4. Privileged access to 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.

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

Public procurement carried out by the government and SOEs accounts for 15-20% of Malaysia’s GDP (OECD, 2019, pp. 39-40<sup>[30]</sup>). Public procurement in Malaysia is mainly governed by the Financial Procedures Act 1957 and the Government Contract Act 1949. The Government Procurement Division of the Ministry of Finance formulates further policies and regulations. The legal framework applies to procurement by all federal and state ministries and departments, local authorities within the states, and federal and state statutory bodies. Although it does not officially apply to GLCs, they appear generally to follow it (EU-Malaysia Chamber of Commerce and Industry, 2018<sup>[44]</sup>). Procurement of works, supplies and services above the value of MYR 500 000 must use tender processes.<sup>82</sup> Furthermore, the OECD understands that “the government is to implement a set of comprehensive reform measures to ensure transparency and accountability of public procurement. The proposed measures include a comprehensive and effective legal framework, enforcement of open tenders, promoting transparency by enlarging the scope of disclosure via websites, capacity building, the breaking of the monopoly of SOEs in selected procurement procedures (such as imported rice and medicines), and the alignment of procurement procedure with international best practices” (OECD, 2019, pp. 39-40<sup>[30]</sup>). Finally, enhancing competition in public procurement is expected to be enhanced with the implementation of the CPTPP.

According to stakeholders, GLCs such as Pos Malaysia and KTMD do not get any preferential treatment in the assignment of public contracts. Pos Laju is said to have been awarded a government contract for courier services through a public tender, but the OECD was unable to identify the exact contract. In fact, while announcements of public tenders are published online,<sup>83</sup> there is no database of awarded tenders.

The OECD has one recommendation.

1. Ensure that GLCs comply with public procurement rules for activities that fulfil a governmental purpose. Public procurements rules should be amended to reflect this obligation.

### 5.2.5. Financial advantages

#### *Usage of land*

##### General principle

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

According to stakeholders, Pos Malaysia still has distribution hubs in each state, a legacy of the time during which was controlled by Khazanah. These assets and their location give the company a competitive advantage. Moreover, most of Pos Malaysia's facilities are located on land owned by the Federal Land Commission (FLC), and, the OECD understands, on 60-year leases at nominal rates.

In *Annual Report 2019*, Pos Malaysia reported "costs for leasehold of government land and buildings" of MYR 208.44 million, an amount that has not changed in the past three years. The *Annual Report 2019* clarifies that these costs correspond to a lease period of 60 years from 1 January 1992, and that "the cost in respect of the remaining thirty (30) years lease period has not been agreed. However, this cost will be agreed upon finalisation of the agreement with the authorities, no later than 31 December 2021". Finally, Pos Malaysia is "in the process of finalising lease agreements with the authorities for additional Government leasehold land and buildings currently used by the Company, which are at present carried at nil values in the statements of financial position" (Pos Malaysia, 2019, p. 154<sup>[42]</sup>).

The OECD has two recommendations.

1. Except for land and facilities strictly related to Pos Malaysia's universal service obligations, use competitive processes to assign the leasehold of government land and buildings with the aim of maximising their value. Rents should reflect market value.
2. Disclose a list of properties granted to each GLC to increase transparency.

#### *Access to finance*

##### General principles

SOEs' economic activities should face market-consistent conditions regarding 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. SOEs' reliance on state-owned financial institutions may distort their incentive structure and lead to excessive indebtedness and wasted resources.

Even when funding is obtained from private lenders and granted on commercial terms, if the 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.

As mentioned in Section 3.4.3, the government may provide funds for GLICs' operations or to guarantee capital (and certain level of income). The government is often designed as the guarantor for GLICs (Wisuttisak and May Fong, 2018<sup>[31]</sup>). As noted in *OECD Economic Surveys: Malaysia 2019*, Malaysia's

contingent liabilities comprise loan guarantees to SOEs and made up 18.1% of GDP at the end of June 2018 (OECD, 2019<sub>[30]</sub>).

In general, both quantitative and qualitative information should be disclosed on government credit guarantees based on their expected cost and in such a way as to give a complete picture of the government's total financial position, both as part of debt management reporting and budgetary documentation. However, it appears that there are no specific reporting requirements on financial assistance to SOEs, including on guarantees received from the state and commitments made on behalf of the SOE.

The government has started to review and streamline SOEs' activities. This could reduce the scope of government debt guarantees that potentially distort the market (OECD, 2019<sub>[30]</sub>).

The OECD has no evidence of Pos Malaysia receiving any state loans or guarantees. Another GLC active in the SPDS sector, KTMD, contracted loans with Affin Bank, a financial GLC. However, KTMD submitted that these loans are under commercial terms.

The OECD has three recommendations.

1. Refrain from providing state guarantees to SOEs' loans to prevent SOEs from accessing preferential interest rates.
2. Subject loans granted to SOEs by state-owned banks and other financial institutions to appropriate due diligence and to market interest rates.
3. Disclose both quantitative and qualitative information on state guarantees to give a complete picture of the government's total financial position.



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# Notes

<sup>1</sup> See, for example, [https://one.oecd.org/document/DAF/COMP/GF\(2018\)4/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2018)4/en/pdf) and <https://oecdonthellevel.com/2018/03/02/whats-gender-got-to-do-with-competition-policy>.

<sup>2</sup> See <https://asean.org/asean-experts-group-competition-releases-statement-response-covid-19>.

<sup>3</sup> 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 SOEC corporate governance.

<sup>4</sup> 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.

<sup>5</sup> *AEC Blueprint 2025*, paragraphs 25-26. See also *AEC 2025 Consolidated Strategic Action Plan*.

<sup>6</sup> *ASEAN Regional Guidelines on Competition Policy* (2010), Section 3.1.2, [www.icao.int/sustainability/Documents/Compendium\\_FairCompetition/ASEAN/ASEAN-RegionalGuidelinesonCompetitionPolicy.pdf](http://www.icao.int/sustainability/Documents/Compendium_FairCompetition/ASEAN/ASEAN-RegionalGuidelinesonCompetitionPolicy.pdf).

<sup>7</sup> The provision of education is a broadly accepted example of a service that has a positive externality beyond the immediate recipient of the education. The provision of basic research is also commonly mentioned as potentially being the subject of market failures leading to under-provision.

<sup>8</sup> See <https://aric.adb.org/malaysia>.

<sup>9</sup> SOEs in Malaysia can be statutory bodies, which are incorporated companies that have their functions spelled out in specific legislation; companies, which are established under the Companies Act; and *yayasans* or foundations.

<sup>10</sup> See <https://www.mof.gov.my/pdf/bahagian/gic/faq-en.pdf>. Some GLICs are statutory bodies, while Khazanah and PNB are companies.

<sup>11</sup> See also UNCTAD (2014<sub>[49]</sub>).

<sup>12</sup> “G20” is a selection of large GLCs controlled by GLICs under the GLCT Programme and is used as a proxy for performance of the GLCs; see Putrajaya Committee on GLC High Performance (2015<sub>[48]</sub>).

<sup>13</sup> See, for instance, Khazanah’s total or partial divestments of its stakes in Proton (cars), Time Engineering (telecommunications), and Tenaga Nasional (utilities). For a critical view on the programme, see Menon (2017<sub>[32]</sub>).

<sup>14</sup> See [www.mof.gov.my/pdf/bahagian/gic/faq-en.pdf](https://www.mof.gov.my/pdf/bahagian/gic/faq-en.pdf).

<sup>15</sup> See Section 7, [www.state.gov/reports/2019-investment-climate-statements/malaysia](http://www.state.gov/reports/2019-investment-climate-statements/malaysia).



<sup>16</sup> The policy “may have social merits, but, at least in the near term, is unlikely to contribute to macroeconomic performance” (OECD, 2015, p. 30<sup>[1]</sup>).

<sup>17</sup> “Production activities which include exploration, exploitation, extraction and procurement of petroleum either onshore or offshore Malaysia” are classified as upstream activities and are exempt from the application of the Competition Act 2010. Downstream activities such as refining, trading and marketing of crude oil and petroleum products, manufacturing and marketing of petrochemical products, gas and transport processing, renewal, utility marketing and power generation are still subject to the Competition Act 2010.

<sup>18</sup> “Companies held by Khazanah, are governed by their respective Memorandum & Articles of Association, the Companies Act, and (if listed) the Listing Requirements of Bursa Malaysia and the Securities Commission Act.” (OECD, 2013, p. 177 and following<sup>[23]</sup>)

<sup>19</sup> See [www.treasury.gov.my/index.php/en/ministryprofile/divisions-units/gic.html](http://www.treasury.gov.my/index.php/en/ministryprofile/divisions-units/gic.html). The OECD understands that a draft SOEs/GLCs Act was pending approval in 2016.

<sup>20</sup> The act was revised in 1989.

<sup>21</sup> For further information, see OECD (2013, p. 160 and following<sup>[23]</sup>).

<sup>22</sup> See section 7, [www.state.gov/reports/2019-investment-climate-statements/malaysia](http://www.state.gov/reports/2019-investment-climate-statements/malaysia).

<sup>23</sup> See section 6, [www.state.gov/reports/2019-investment-climate-statements/malaysia](http://www.state.gov/reports/2019-investment-climate-statements/malaysia). SSM is a statutory body serving as an agency to incorporate companies and register businesses, as well as to provide company and business information to the public. “Disclosure requirements and practices at the enterprise level Disclosure requirements applicable to SOEs in Malaysia vary depending on their legal form. GLCs with shares listed on the national stock exchange are subject to periodic financial and non-financial reporting requirements outlined in Chapter 9 of the Bursa Malaysia Listing Requirements. Non-listed GLCs are subject to the reporting requirements of the Companies Act 125, which calls for an annual report on returns to be presented first to the AGM and then (no later than two months following the AGM) to the Registrar of Companies.” (OECD, 2017, p. 32<sup>[28]</sup>)

<sup>24</sup> “The Act notably requires that statutory SOEs submit an audited statement of accounts, an activities statement and the Auditor General’s report (if undertaken) each year to the responsible minister, who then submits those documents to the Parliament” (OECD, 2017, p. 32<sup>[28]</sup>). SOEs with the form of statutory bodies (four GLICs) are subject to the reporting provisions of the Statutory Bodies (Accounts and Annual Reports) Act 1980 (Act 240).

<sup>25</sup> “Contingent liabilities totalling 31% of GDP is high considering that the federal government’s debt was 51.2% at end-2018.” (OECD, 2019, pp. 41-42<sup>[30]</sup>)

<sup>26</sup> See, for example, Copenhagen Economics (2018<sup>[47]</sup>).

<sup>27</sup> European Commission Case M.6570 – UPS/ TNT Express, paragraphs 36-39, and European Commission Case M.7630 – FEDEX / TNT EXPRESS, paragraphs 78-80.

<sup>28</sup> 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.

<sup>29</sup> See section 2, “Interpretation”, Postal Services Act 2012, [www.skmm.gov.my/en/legal/acts/postal-services-act-2012-act-741](http://www.skmm.gov.my/en/legal/acts/postal-services-act-2012-act-741).

<sup>30</sup> Rule 2, “Interpretation”, Postal Services Act 1991 (Act 465), P.U.(A) 225/2010, Postal Services (Postage Rates) Rules 2010, [www.skmm.gov.my/skmmgovmy/media/General/pdf/Postal\\_Services\\_\(Postage-Rates\)\\_Rules\\_2013\\_PU\(A\)118\\_2013.pdf](http://www.skmm.gov.my/skmmgovmy/media/General/pdf/Postal_Services_(Postage-Rates)_Rules_2013_PU(A)118_2013.pdf).

<sup>31</sup> A node is a connection point within a network. See, European Commission Case COMP/M.6570 – UPS/TNT Express, paragraph 44.

<sup>32</sup> 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”).

<sup>33</sup> See European Commission Case COMP/M.7630 – Fedex / TNT Express, paragraph 28 and following. 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 upgrading or have upgraded their offer in order to meet new demands, especially in the B2C segment.

<sup>34</sup> 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.

<sup>35</sup> The definition of e-commerce used in this report is that in *OECD’s Glossary of Statistical Terms*: “An e-commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments, and other public or private organisations” (<https://stats.oecd.org/glossary/detail.asp?ID=4721>).

<sup>36</sup> In 2018, the ASEAN e-commerce market accounted for approximately 1% of worldwide e-commerce revenue. See OECD (2018<sup>[37]</sup>).

<sup>37</sup> See <https://www.statista.com/outlook/243/122/ecommerce/malaysia>.

<sup>38</sup> See <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2017-2025-ASEAN-WP-e-Commerce.pdf>.

<sup>39</sup> See <http://agreement.asean.org/media/download/20190306035048.pdf>.

<sup>40</sup> The Electronic Commerce Act 2006 (Act 658) serves as the legal framework for e-commerce.

<sup>41</sup> In the logistics sector, the last mile is the final stage of the process when a product travels from a transportation or storage hub to the end consumer.

<sup>42</sup> See also, [www.thestar.com.my/business/business-news/2019/02/20/price-war-weighs-on-gdex](http://www.thestar.com.my/business/business-news/2019/02/20/price-war-weighs-on-gdex).

<sup>43</sup> Shopee launched Shopee Xpress in October 2018.

<sup>44</sup> Malaysian Communications and Multimedia Commission Act 1998 (Act 589), incorporating latest amendment – Act A1231/2004, [www.mcmc.gov.my/en/legal/acts/malaysian-communications-and-multimedia-commission](http://www.mcmc.gov.my/en/legal/acts/malaysian-communications-and-multimedia-commission).

<sup>45</sup> The Postal Services Act 2012 ([www.mcmc.gov.my/en/sectors/postal-courier/postal-services-act-2012](http://www.mcmc.gov.my/en/sectors/postal-courier/postal-services-act-2012)) repeals the Postal Services Act 1991. For a list of MCMC's functions, see in particular Section 4. See also Section 16 of the Malaysian Communications and Multimedia Commission Act (1998).

<sup>46</sup> Part III, Communications and Multimedia Act 1998 (Act 588).

<sup>47</sup> See [www.skmm.gov.my/skmmgovmy/files/attachments/Guidelines\\_Dispute\\_Resolution\\_.pdf](http://www.skmm.gov.my/skmmgovmy/files/attachments/Guidelines_Dispute_Resolution_.pdf).

<sup>48</sup> Within MCMC, there is a postal and courier services unit. The broader logistics sector is under the Ministry of Transport.

<sup>49</sup> Sections 6 and 12 of the Malaysian Communications and Multimedia Commission Act (1998).

<sup>50</sup> Section 7(1) of Postal Services Act 2012. See also Section 18 of the Malaysian Communications and Multimedia Commission Act (1998).

<sup>51</sup> See [www.mcmc.gov.my/en/sectors/postal-courier/licensing](http://www.mcmc.gov.my/en/sectors/postal-courier/licensing).

<sup>52</sup> Section 10 of the Postal Services Act 2012.

<sup>53</sup> Promoting Services Trade in ASEAN Trade in Courier Services.

<sup>54</sup> Section 2 of the Postal Services Act 2012.

<sup>55</sup> Section 9 of the Postal Services (Licensing) Regulations 2015.

<sup>56</sup> Second Schedule of the Postal Services (Licensing) Regulations 2015.

<sup>57</sup> The same form is used for applications for new licences or a renewal of existing ones.

<sup>58</sup> Section 8 of the Postal Services (Licensing) Regulations 2015.

<sup>59</sup> Third Schedule of the Postal Services (Licensing) Regulations 2015.

<sup>60</sup> Section 16 of the Postal Services Act 2012 and Sections 7 of the Postal Services (Licensing) Regulations 2015.

<sup>61</sup> Section 11(5) of the Postal Services Act 2012.

<sup>62</sup> Section 6 of the Postal Services Act 2012 and Section 12 of the Postal Services (Universal Service) Regulations 2015.

<sup>63</sup> Postal Services (Postage Rates) Regulations 2020. See also <https://www.malaymail.com/news/malaysia/2020/01/28/pos-malaysia-revises-commercial-postage-rates-rakyat-not-affected/1832229>; [www.nst.com.my/business/2020/01/560483/pos-malaysia-revises-commercial-postage-rates](http://www.nst.com.my/business/2020/01/560483/pos-malaysia-revises-commercial-postage-rates).

<sup>64</sup> In April 2020, EPF reduced its stake in Pos Malaysia to 4.41%. See <https://www.thestar.com.my/business/business-news/2020/04/16/epf-reduces-stake-in-pos-malaysia>.

<sup>65</sup> It seems that none of the directors are appointed by EPF and KWAP.

<sup>66</sup> Every employee and their employer in Malaysia are required to make prescribed monthly contributions to EPF. For further information, see EPF Act 1991 and EPF Act 2001. Its investment decisions are made by the Board and the Investment Panel whose members are appointed by the Ministry of Finance and include professionals from the private sector in the Investment Panel. According to the World Bank, "EPF

has developed a strong governance structure that discourages external political meddling and encourages transparency and accountability.” (World Bank Group, 2018, p. 7<sup>[50]</sup>).

<sup>67</sup> MOF (Inc.) holds a “golden share” in 32 companies. For a full list see: <https://www.mof.gov.my/pdf/bahagian/gic/faq-en.pdf>.

<sup>68</sup> Article 7(3)-(4) of Pos Malaysia’s Articles of Association.

<sup>69</sup> Owned through a subsidiary, Pos Aviation. Domestic airfreight is a duopoly of two GLCS: Pos Aviation and Malaysia Airlines.

<sup>70</sup> Through its subsidiary Pos Logistics. Pos Logistics became a subsidiary of Pos Malaysia through the acquisition of Consortium Logistics.

<sup>71</sup> Before 2015, KTMD was using rail transport for SPDS.

<sup>72</sup> Section 9(2)(l) of the Postal Services (Licensing) Regulations 2015.

<sup>73</sup> Section 3 of the Postal Services (Universal Service) Regulations 2015.

<sup>74</sup> The universal service licence was granted to Pos Malaysia under the old Postal Service Act 1991 (Act 465) before Khazanah’s divestment and the SPDS market liberalisation. In 2014, the licence was “migrated” under the Postal Services Act 2012 framework.

<sup>75</sup> As indicated in Section 3.1.1, the annual fee for the universal service licence corresponds to 0.5% of the company’s annual turnover or MYR 1.5 million (whichever is higher).

<sup>76</sup> On the same page, it also reported income in relation to prepaid mail of MYR 21.39 million.

<sup>77</sup> Pos Laju’s accounts are consolidated into Pos Malaysia’s accounts. The OECD understands that – following a Public Inquiry in 2012 – MCMC has already implemented and adopted guidelines for accounting separation for dominant operators in the telecommunications industry; see MCMC (2012<sup>[45]</sup>).

<sup>78</sup> Unless otherwise determined in the general meeting, Pos Malaysia’s directors shall be no fewer than 2 and no more than 12; see Article 107(A) of Pos Malaysia’s Articles of Association.

<sup>79</sup> One of these two directors also served in various capacities in the Economic Planning Unit, Prime Minister’s Department, Implementation and Coordination Unit, Prime Minister’s Department and the Ministry of Finance.

<sup>80</sup> OECD interview with MyCC representative, 13 March 2019.

<sup>81</sup> Some of the main factors generally considered to influence the independence of agencies are factors including 1) who appoints the head of the agency or agencies – whether it be the parliament or the head of government; 2) whether the agencies are integrated into the government structure or are placed outside that structure (e.g. not part of a ministry); and 3) budget autonomy.

<sup>82</sup> OECD Services Trade Restrictiveness Index Regulatory Database.

<sup>83</sup> See [www.malaysia.gov.my/portal/category/2](http://www.malaysia.gov.my/portal/category/2).

## Annex A. List of reviewed legislation

Federal Constitution

Competition Act 2010 (Act 712)

Courts of Judicature Act 1964 (Act 91)

Customs Act 1967 (Act 235)

Electronic Commerce Act 2006 (Act 658)

Employees Provident Fund Act 1991 (Act 452)

Malaysian Communications and Multimedia Commission Act 1998 (Act 589)

Postal Services Act 2012 (Act 741)

Postal Services (Licensing) Regulations 2015 (14 April 2015, P.U. (A) 78)

Postal Services (Universal Service) Regulations 2015 (14 April 2015, P.U. (A) 77)

Postal Services (Postage Rates) Rules 2013 (P.U. (A) 18/2013)

Postal Services (Postage Rates) Regulations 2020 (31 January 2020, P.U. (A) 44)

MCMC Guidelines for Dispute Resolution (July 2003)

MCMC List of Courier Services Licenses as of January 2019

MCMC List of Courier Services Licenses as at March 2020

MCMC Universal Service Licence

Non-Universal Service Licence Application Form

MCMC Performance Standards for Postal Services (Domestic Parcel and Letter Service)

Memorandum and Articles of Associations of Pos Malaysia Berhad, as amended on 9 August 2012

Royal Malaysian Customs, Goods and Services Tax: Guide on Postal & Courier, 7 December 2015

Comprehensive and Progressive Trans-Pacific Partnership Agreement

## OECD COMPETITIVE NEUTRALITY REVIEWS: SMALL-PACKAGE DELIVERY SERVICES IN MALAYSIA

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.

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Access all reports and read more about the project at [oe.cd/comp-asean](https://www.oecd.org/comp-asean).

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