FOSTERING COMPETITION IN ASEAN

OECD Competitive Neutrality Reviews

THAILAND

SMALL-PACKAGE DELIVERY SERVICES

OECD BETTER POLICIES FOR BETTER LIVES

UK Government

ASSOCIATION OF SOUTHEAST ASIAN NATIONS

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

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

The OECD assessment was conducted in consultation with the Thai authorities and with local stakeholders, with the support of the ASEAN Secretariat and the UK Prosperity Fund (UK Government). The assessment prioritises 33 pieces of legislation and identifies 31 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 Thailand, which is seen as a leading regional centre for e-commerce logistics and where the e-commerce sector is expected to grow at double-digit pace. This report offers policy recommendations that can help the Thai government address structural and regulatory shortcomings in the small package delivery services sector.

These structural reforms have become even more pressing as the Thai economy is expected to shrink by about 6.5% in 2020 due to the COVID-19 pandemic, with containment measures severely affecting economic activities such as exports and tourism. These policy recommendations contribute to reforms that can help the Thai 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 Thai government, as well as the ASEAN Secretariat and the UK Prosperity Fund (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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- Thailand Post
- State Enterprise Policy Office (SEPO)
- Ministry of Digital Economy and Society
- Ministry of Transport, Department of Land Transport.

The following trade associations and private companies were interviewed:

- European Association for Business and Commerce (EABC)
- Thai Federation on Logistics
- Thai National Shippers' Council (TNSC)
- Thai Retailers Association (TRA).

The ASEAN Secretariat and Ms Deunden Nikomborirak and Ms Urairat Jantarasiri, both from the Thailand Development Research Institute, and the European Association for Business and Commerce trade association provided valuable inputs.

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 Rebecca Lambert and Erica Agostinho.

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 of the OECD Corporate Affairs Division.

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The project was funded by the UK Prosperity Fund (UK Government).

The information and figures in the report are updated as of October 2019, 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) Thai 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 UK Prosperity Fund (UK Government), tasked the OECD to assist with the implementation of Initiatives 4.1 and 4.2 of the ACAP 2016-2025. These two initiatives require an assessment of the impact of competition law and policy on the markets of all 10 ASEAN Member States, both in general (4.1) and with a focus on state-owned enterprises (4.2).

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

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

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Abbreviations and acronyms

3PL	Third-party logistics
ACAP	ASEAN Competition Action Plan
AEC	ASEAN Economic Community
AEGC	ASEAN Expert Group on Competition
APEC	Asia-Pacific Economic Cooperation
ASC	Authorised service contractor
ASEAN	Association of Southeast Asian Nations
B2B	Business-to-business commerce
B2C	Business-to-consumer commerce
BOT	Bank of Thailand
CEO	Chief executive officer
CAAT	Civil Aviation Authority of Thailand
CCP	Office of the Central Committee on the Price of Goods and Services
EABC	European Association for Business and Commerce
ERC	Office of the Energy Regulatory Commission
EXAT	Expressway Authority of Thailand
GLM	Government-linked monopoly
GLC	Government-linked company
ICT	Information and communications technology
KTB	Krung Thai Bank
MCOT	Mass Communication Organization of Thailand
NBTC	Office of the National Broadcasting and Telecommunications Commission
NESDC	Office of the National Economic and Social Development Council
OIC	Office of the Issuance Commission
OPDC	Office of the Public Sector Development Commission
OSP	Outside service providers
OTCC	Office of Trade Competition Commission

PDMO	Public Debt Management Office
PSO	Public-service obligation
PTT	Petroleum Authority of Thailand
PUD	Pick-up and delivery
SEC	Securities and Exchange Commission
SEPA	State-enterprise performance appraisal
SEPC	State Enterprise Policy Committee
SEPO	State Enterprise Policy Office
SOE	State-owned enterprise
SPDS	Small-package delivery services
THB	Thai Baht (currency)
TOT	Telecom of Thailand
TDRI	Thailand Development Research Institute
UPU	Universal Postal Union

Executive summary

COVID-19 and its impact 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 (World Economic Forum, 2020). In June 2020, the Asian Development Bank (ADB) revised its estimates for GDP growth in Asia in 2020 and 2021. According to the ADB, Southeast Asia's (i.e. ASEAN member states + Timor-Leste) GDP is expected to contract 2.7% in 2020 and rebound to 5.2% in 2021 (ADB, 2020, p. 8).

As a result of the pandemic, the use of e-commerce increased abruptly and sharply. For instance, it has been reported that in the week of 22 March 2020, weekly downloads for shopping applications in Thailand increased by 60%, while Indonesia, Singapore and Viet Nam each recorded a 10% increase in weekly downloads (OECD, 2020). E-commerce is likely to keep growing as consumers continue to shun physical stores in favour of online shopping solutions (ASEAN, 2020). Thailand's e-commerce, excluding business-to-business engagement, is expected to grow 35% in 2020 to THB 220 billion (from THB 163 billion in 2019), driven by the COVID-19 outbreak, according to Priceza, a price comparison shopping website.[1]

The COVID-19 crisis will lead to long-term changes. It will likely 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 (World Economic Forum, 2020). 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).

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 (OECD, 2020).

Regional co-operation is playing and will continue to play a key role in this context. ASEAN has put in place a framework for COVID-19 response across multiple sectors (United Nations, 2020). Moreover, the ASEAN Expert Group on Competition (AEGC) released a joint statement in Response to the COVID-19 Pandemic.[2] 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).

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, 2015c).

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 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 the financially disadvantaged consumers often suffer disproportionately from the exercise of market power (OECD, 2014). 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 (OECD, 2018e).

Thailand Post and the small-package delivery services sector in Thailand

Thailand has been a member of ASEAN since the association's founding in 1967. Over the past 50 years, the country has experienced rapid economic growth and its GDP is today over USD 500 billion, making Thailand the second largest economy in ASEAN. The World Bank considers Thailand an upper-middle income economy, and with its central geographic location within the Greater Mekong sub-region and its well-developed infrastructure, it is currently emerging as a key logistics hub for the region.

SOEs play an important role in the Thai economy, including in the postal sector, where Thailand Post holds a legal monopoly in the segment of letters and postcards and competes with privately owned market participants for SPDS. A level playing field in the SPDS sector is crucial for developing a competitive market and fulfilling the sector's potential so as to reap full benefits from international developments.

The SPDS sector is regulated by a substantial body of legislation. The main piece is the Postal Service Act, B.E. 2477, first passed in 1934, which regulates the scope of Thailand Post's legal monopoly, its obligations and exemptions.

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

Some of these obstacles are linked to or affected by Thailand Post's joint role: it has both a legal monopoly in the letters and postcards segment *and* competes with privately owned businesses 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 the Thailand, increasing the commercial importance of the SPDS market to the incumbent postal operator, Thailand Post.

This situation is similar to that of many OECD countries in the late 1990s, when postal services were provided by monopoly operators and technological developments began to erode incumbent postal operators' core businesses, potentially threatening their ability to continue financing their social obligations such as universal service. These monopoly operators were mostly state-owned, protected from competition, and enjoyed certain benefits over their privately owned competitors (OECD, 1999).

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 up to competition, leaving the postal sector either entirely or partly to the incumbent postal operator.

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

Key recommendations

This report identifies 31 recommendations that aim to improve the level playing field in the Thai SPDS sector. If fully implemented, these recommendations can be expected to generate significant benefits to the Thai economy, and more broadly to ASEAN. Full implementation of the recommendations set out in this report can be expected to deliver positive long-term effects on employment, productivity, growth and improve the ability of businesses to compete.

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

The main recommendations are:

- Ensure that Thailand Post is adequately compensated for the execution of its PSO.
- Maintain price regulation if letter and postcard delivery remains a legal monopoly. These regulated prices should, however, reflect Thailand Post's actual costs, and be based on separate and transparent accounting criteria that take into account any cross-subsidisation or other public funds or subsidies accessible to Thailand Post.
- Separate the state's ownership function of Thailand Post (held by Ministry of Finance) and the state's regulatory functions (Postal Affairs Committee), so that the company and its private competitors can better operate and compete on a level playing field in the market.
- Transfer the regulatory functions of Thailand Post's legal monopoly to the sectoral regulator. Under the Postal Service Act and the Postal Directive, Thailand Post itself can establish rules (and impose fines on private companies) in relation to its own legal monopoly. These regulatory powers conflict with Thailand Post's role as commercial player and may impact upon the conditions in which Thailand Post and its private competitors operate and effectively compete in the market.

- Maintain a certain level of oversight. This is legitimate due to Thailand Post's public-policy objectives; nevertheless, the Ministry of Finance and the Ministry of Digital Economy and Society should refrain from electing an excessive number of directors from within state-run bodies. This is particularly relevant for Thailand Post because, as an SOE engaged in economic activities, limiting board membership by representatives of the ownership entity (namely, the Ministry of Finance) or by other state officials could increase professionalism and help prevent unwarranted government intervention.
- Adopt an implementing act (such as ministerial regulations or OTCC guidelines) that clarifies that SOEs are covered by the Trade Competition Act, and the scope of their "public-utility" exemption under Section 4(2) of the 2017 Trade Competition Act. Thailand Post's mail business should be considered a public-utility activity, while its other commercial activities (including SPDS) should be subject to the 2017 Trade Competition Act.
- Clarify the scope of Section 6 of the Postal Service Act to exclude express mail, parcels and small packages. Alternatively, the government might consider lifting the monopoly rights, which would have the effect of liberalising the mail business.
- Amend Treasury Department Order No. 683/2560 to reflect rental rates under current market conditions. Incorporated SOEs retain the right to use crown land and public property, subject to payments to the Ministry of Finance, but rents paid by Thailand Post appear to be substantially below market rates.
- Amend the Public Debt Management Act, B.E. 2548 (2015) and the State Enterprise Corporatisation Act, B.E. 2542 (1999) to ensure that the state only grants loans and guarantees to SOEs, including Thailand Post, at arm's length and at the same market conditions as are available to private investors.
- Repeal Section 8(7) of the Signboard Act, B.E. 2510 (1967) that exempts SOEs from the signboard tax. SOEs, and in particular Thailand Post, should be equally subject to the tax, which is imposed on any signs or billboards displaying a name, trademark or product.
- Amend the Postal Service Act to ensure that Thailand Post is subject to tolls on express highways managed by EXAT under the same conditions as its private competitors. All Thailand Post's vehicles are currently exempted from these tolls, lowering Thailand Post's costs compared to its private competitors.

Report structure

The report is structured as five chapters. Chapter 1 summarises the content of the report and provides an overview of its key recommendations; 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 Thailand; Chapter 4 describes the competitive landscape and the regulation applicable to small-package delivery services in Thailand; Chapter 5 focuses on Thailand Post, the state-owned enterprise providing SPDS in Thailand, and the advantages or disadvantages that can impact competition, and offers recommendations to improve the level playing field.

Notes

[1] See, Bangkok Post, “2020 online trade set to hit B220bn”, 21 May 2020. https://www.bangkokpost.com/business/1921656/2020-online-trade-set-to-hit-b220bn#:~:text=Thailand's%20e%2Dcommerce%2C%20excluding%20business,a%20price%20comparison%20shopping%20website.&text=In%202019%2C%20e%2Dcommerce%20retail,up%203%25%20of%20total%20retail.

[2] See https://asean.org/asean-experts-group-competition-releases-statement-response-covid-19/.

1 State-owned enterprises and competition

1.1. 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, 2016a).

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, 2015f).

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 member states of ASEAN 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, 2015a).[1] In OECD countries (and beyond), SOEs' roles evolved significantly between 1990 and 2010, with large privatisation initiatives throughout the 1990s and early 2000s (OECD, 2018g, 2009, 2019a). 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.

1.2. 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 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 defined 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, 2015a: 14-16)*

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.

Ownership structure

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.

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.[2] 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.

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.

1.3. Benefits of competition

There is broad consensus that competition creates significant benefits for consumers. When consumers can choose between different providers of goods or services, firms are forced to compete with each other, innovate more, and be more productive. Consumers benefit from more choice, 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). 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).

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.

1.4. 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 with each other.

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.[3] These principles are also noted in the 2010 *ASEAN Regional Guidelines on Competition Policy*, in which the ASEAN Expert Group on Competition (AEGC) stated that: "Competition policy should be an instrument of general application, *i.e.*, applying to all economic sectors and to all businesses engaged in commercial economic activities (production and supply of goods and services), including State-owned enterprises. (ASEAN, 2010, p. Section 3.1.2)" 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, 2019c: Vol. 2, pp. 62-63). 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, 2019c: Vol. 3, pp. 39).

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).

1.4.1. *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; Capobianco and Christiansen, 2011).

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.[4]

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; 2) utilities such as electricity and water distribution; and 3) basic education. 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:

- protecting the viability of sectors that are viewed as being of systemic importance
- maintaining state ownership of strategic industries (for instance, national defence)
- supporting nascent or emerging industries that may be seen as strategically important in the future
- 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, 2017a).[5]

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.

1.4.2. *Key distortions of competition by SOEs*

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

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.

Notes

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

[2] 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), paragraphs 65-73.

[3] *AEC Blueprint 2025*, paragraphs 25-26. See also, *AEC 2025 Consolidated Strategic Action Plan*.

[4] 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.

[5] This number focuses on fully- and majority-owned enterprises. When the analysis is expanded to include minority-owned listed companies, employment share rises considerably in some countries. Moreover, this number is likely to be much higher outside the OECD area.

[6] For a more elaborate description, see Capobianco and Christiansen (2011), "Competitive Neutrality and State-Owned Enterprises: Challenges and Policy Options".

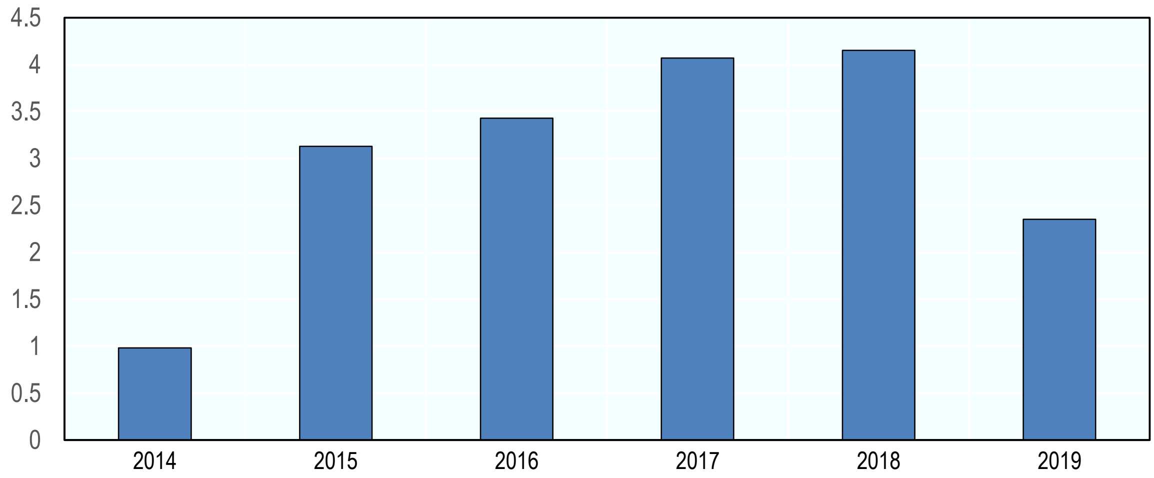
2 SOEs’ framework and the importance of SOEs in Thailand

2.1. Thailand

Thailand is a constitutional monarchy with a population in 2018 of 69.43 million.[1] It has a civil-law system in which all laws are embodied in statutes or codes. It is divided administratively into 76 districts. It is the only country in Southeast Asia never to have been colonised.[2]

ASEAN’s second largest economy after Indonesia, Thailand is “a free-enterprise economy” with a “generally pro-investment policy environment”.[3] It had a GDP growth rate before the COVID-19 pandemic of 4.1% in 2018. Slowing exports led GDP growth down to 2.4% in 2019. Due to COVID-19, its GDP is now expected to contract 6.5% in 2020 and rebound to 3.5% in 2021 (ADB, 2020).

Figure 2.1. Thailand’s real GDP growth rate, annual percentage



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

Since 2011, the World Bank has considered Thailand an upper-middle income economy.[4] The country was ranked 38 in the World Economic Forum’s 2018 Global Competitiveness Index, two positions higher than in 2017 (World Economic Forum, 2018). Thailand is a signatory to ASEAN, APEC, the World Trade Organization, and the East Asian Community Trading bloc.

Thailand is well positioned in the region with major transport “routes” linking it to other countries. These include: 1) the East-West Economic Corridor, crossing Myanmar, Thailand, Laos PDR, Cambodia and Viet Nam; 2) the North-South Economic Corridor, crossing China, Myanmar, Laos PDR and Thailand; and 3) the Southern Economic Corridor, crossing Myanmar, Thailand, Cambodia and Viet Nam. The development of the East-West Economic Corridor under Agenda 5 of the Thailand 4.0 economic model aims to position Thailand as a regional hub in ASEAN.[5]

2.2. The scope and importance of SOEs in Thailand

Section 53 of the Budget Procedures Act, B.E. 2561 (2018) defines SOEs as special agencies established by law for a particular purpose that are 100% owned by the government, or limited liability companies or public companies with government ownership of over 50%. There are two types of SOEs in Thailand: 1) government agencies (also called "statutory corporations"); and 2) incorporated SOEs. Entities in which the state owns less than 50% of the equity are not considered SOEs, even if in practice the state exercises control (Nikomborirak and Cheevasittiyanon, 2005).

In 2018, Thailand's 56 SOEs had total assets of USD 385 billion and a combined net income of USD 5.5 billion, and employed around 270 000 people, or 0.7% of the Thai labour force (US Department of State, 2018).

The Thai state-ownership model is, in OECD terminology, "dual ownership": two ministries exercising ownership rights in each SOE, with a degree of central-government co-ordination (OECD, 2018f). This involves the following stakeholders:

1. **The Ministry of Finance**, on behalf of the central government, owns shares in 56 SOEs active in different sectors (including public services, energy, agriculture, natural resources, financial sector), including 11 SOEs active in logistics.[6] The **State Enterprise Policy Office (SEPO)**, an agency of the Ministry of Finance, has a special role as a co-ordinating body responsible for the management, assessment and development of SOEs. It determines the (expected) level of revenue return for each SOE, as well as assessing and evaluating each one's performance. SEPO has no enforcement powers.
2. **Line ministry.** Each SOE is under the purview of, and reports to, a line ministry that ensures the fulfilment of its mandate and mission.
3. **The Council of Ministers** exercises control and oversight on a whole-of-government basis through the following subsidiary bodies:
    a. **The State Enterprise Policy Committee (SEPC)** was established in 2014 and sets policies and provides recommendations to the Council of Ministers. The prime minister chairs SEPC, while SEPO acts as its secretarial unit and reports to it on SOEs' performance evaluations.
    b. **The National Economic and Social Development Council (NESDC)** has the authority to approve an SOE's budget and sets out an SOE's overall investment framework. SOEs must submit planned investment projects to NESDC.[7] NESDC ensures that SOE development plans are aligned with the national development plan. Finally, it supports SOEs in developing their plans.[8]
    c. **The Office of the Public Sector Development Commission (OPDC)** has the power to formulate proposals and recommendations to the Council of Ministers.[9]

2.3. Competition law and SOEs

The Trade Competition Act, B.E. 2542 (1999) exempted SOEs from competition law. Section 4 prescribed that the act was "not applicable to the acts of […] state-owned enterprises under the law on budget procedures". A new competition law, the Trade Competition Act, B.E. 2560, was enacted in 2017 and reaffirmed this exemption for SOEs, while appearing to narrow its scope. Section 4 of that Act states that it "shall not apply to the operation of: […] state-owned enterprises, public organisations, or other government agencies, provided that they conduct their undertakings according to the law or resolutions of the Cabinet which are necessary for the benefit of maintaining national security, public interest, the interests of society, or the provision of public utilities; […] businesses that are specifically regulated under other sectoral laws having jurisdiction over competition matters."[10]

The 2017 Trade Competition Act currently neither defines nor clarifies the scope of "national security, public interest, the interests of society, or the provision of public utilities" and it confers to the Council of Ministers the power to assess whether a business shall be exempted under Section 4(2).

Moreover, under Section 4(4), many SOEs may be exempted from general competition law since they are active in regulated sectors. They may therefore be subject to specific competition provisions under the legislation of the regulated sector.

These provisions are further discussed with regard to Thailand Post in Section 4.2.3.

2.4. SOE-specific legislation

2.4.1. *Governance principles*

The Royal Decree on Criteria and Procedures for Good Governance, B.E. 2546 (2003) defines the general governance principles applicable to SOEs. Each one must then adopt and implement its own specific rules of governance within this framework.[11]

In 2008, the Committee on State Enterprise Evaluation approved the State Enterprise Performance Appraisal (SEPA), a quality system for SOEs based mainly on self-assessment reports.[12] The system follows several steps: 1) a performance agreement between the SOE and the Ministry of Finance defining the annual objectives; 2) an implementation of the agreement by an SOE's governing body; and 3) a performance evaluation taking into account different criteria (including policy implementation and management). Finally, the evaluation system is linked to an incentive scheme for the SOE's management and employees.[13]

On 26 March 2019, the Council of Ministers approved a new Corporate Governance Code for SOEs, which replaced the 2009 code (Corporate Governance Code for SOEs, B.E. 2552) and aligned SOEs with the governance rules of companies listed on the Thai stock market. To implement the new code, SEPC was to issue new corporate governance guidelines; as of December 2019, this had yet to be done.

In May 2019, the Development, Supervision and Management of State Enterprises Act, B.E. 2562 (2019) came into effect. It sets out new criteria for the development, supervision and management of SOEs, stipulating a five-year SOE development plan that sets goals and policy directions in line with the Constitution, the 20-year national strategy, the national social and economic development plan, and other national development plans (Section 22). It entrusts SEPC with the preparation of an SOE development plan for cabinet[14] submission, giving advice to the cabinet on supervision policies and guidelines, and determining the shareholding proportion of the Finance Ministry in SOEs with cabinet approval (Section 10).

2.4.2. *SOEs' governing bodies*

SOEs in Thailand typically adopt a two-tier board model that separates the supervisory and management functions (OECD, 2015a: 15).[15] They are typically governed by a chief executive officer (CEO) or president or managing director, and a board of directors not exceeding 11 members,[16] comprising representatives of the relevant ministries, industry experts and ex officio directors.

The Ministry of Finance has at least one representative in each SOE, who is formally appointed by SEPO on its behalf.[17] At least one-third of an SOE's board must be comprised of independent directors (US Department of State, 2018).

The Standard Qualifications of State Enterprise Directors and Officials Act, B.E. 2518 defines the requirements for SOE directors and SEPO is charged with ensuring compliance with these requirements.[18] The board determines directors' remuneration, subject to Ministry of Finance approval.

For the appointment process, SEPO provides a pool of director candidates, including candidates who would qualify as "independent", and the Council of Ministers or the line ministry (depending on the law establishing the SOE) then appoints SOE's directors from among these candidates.[19] Claims have been made that the pool system is not sufficiently strong to mitigate the risks of political influence as the government has in recent years bypassed the process by simply adding its candidates to the pool and then appointing them. This can result in the appointment of directors lacking sufficient expertise about an SOE's business.

The Standard Qualifications of State Enterprise Directors and Officials Act aims to prevent conflicts of interest, and while it does prevent directors from sitting on the boards of more than three SOEs,[20] directors can still be both directors of private-sector competitors and hold shares in such companies.[21]

The current Constitution of the Kingdom of Thailand prevents SOE officials from being: 1) privy councillors (advisors to the monarchy); 2) candidates in an election of members of the House of Representatives; or 3) president and judges of the Constitutional Court.[22] In addition, members of the House of Representatives and senators cannot hold any position in SOEs, and may not interfere or intervene with any concession or receive any benefit from SOEs.[23]

2.4.3. *Accountability and transparency*

Under Section 74 of the Constitution, SOE officials and employees must protect the public interest and comply with good public-governance principles. The Constitution also sets out that an SOE is a legal person liable for acts or omissions committed by its officials or employees. Individuals, companies and communities therefore have the right to sue SOEs[24] and to file complaints to the ombudsman.[25]

An SOE is also accountable to the Ministry of Finance for administrative and financial matters and to its line ministry for policy objectives. That said, its reporting obligations appear limited to the duty of the Ministry of Finance's board representative to report quarterly to SEPO about the implementation of the five-year development plan.

SOEs must comply with generally recognised accounting standards and submit an annual fiscal report to the State Audit Office and the Ministry of Finance, as well as an audit report to the State Audit Office, the Ministry of Finance, the Budget Bureau and the line ministry.[26] In addition, the Ministry of Finance prescribes the standards and rules for internal audit and risk management of SOEs;[27] nevertheless, it appears that (at least some) SOEs are not subject to external independent audit. Transparency requirements contained in Section 56 of the Constitution state that individuals shall be granted access to public information held by SOEs, unless the disclosure would affect public security, public safety, personal data or another person's protected interest. In addition, Chapter I of the Public Information Act, B.E. 2540 (1997) requires SOEs to make readily available all requested information, except when considered confidential or concerning national security. In practice, the OECD has been told that very few SOEs comply with these requirements (Nikomborirak and Cheevasittiyanon, 2005: 21).

2.4.4. *SOE personnel*

The State Enterprise Labour Relations Act, B.E. 2543 (2000) regulates the employment conditions of SOE staff. The Ministry of Labour is in charge of implementation (in co-operation with SEPO for financial matters), while the State Enterprise Labour Relations Committee determines the minimum standards and the conditions of employment.[28]

SEPO formulates standard compensation schemes for most SOEs on behalf of the Ministry of Finance. According to the applicable structure of SOE employee remuneration, rates are divided into three groups:

1. **Flexible remuneration.** SOEs can set their own remuneration rates upon approval from their board of directors; this is used mostly by listed companies.
2. **Semi-flexible remuneration.** State-owned financial institutions and large SOEs can set their own remuneration rate upon approval of the State Enterprise Labour Relations Committee and the Cabinet.
3. **Fixed remuneration.** Other SOEs must comply with remuneration levels determined by the State Enterprise Labour Relations Committee and the Cabinet.

As a result, many – often large – SOEs do not always appear to have the flexibility to offer competitive remuneration (Nikomborirak and Cheevasittiyanon, 2005: 11). The OECD understands from SEPO that Thailand Post falls into the third fixed-remuneration category, for which remuneration must comply with rates determined by the State Enterprise Labour Relations Committee and the Cabinet.

SOEs may also enrol in an incentive scheme for their directors and employees designed by the Ministry of Finance. Under this scheme, the annual bonus is linked to an SOE's profits and mainly based upon its financial performance. It has been observed that this incentive scheme may unfairly penalise those working for SOEs with public-service or universal-service obligations, which are often provided at a loss, and favour SOEs that are profitable as result of their monopoly power.[29]

2.4.5. *Access to public resources and public procurement*

In the Thai legal system, the state's financial benefits to SOEs are granted either by law or by cabinet resolution. The OECD understands that benefits granted by cabinet resolutions were recently terminated upon SEPO's recommendation. However, as reported in Section 4.2, a number of laws continue to grant financial benefits to SOEs; amendments of such laws would be required to revoke these benefits.

More generally, the State Fiscal and Financial Disciplines Act, B.E. 2561 (2018) states that SOEs' operations must be carried out based on the criteria of transparency and cost-effectiveness. SOEs must therefore put in place rules for the receipt and expenditure of public money in accordance with these principles, as well as good governance and accountability.[30]

Finally, until 2017, SOEs were subject to a separate public-procurement regulation issued by the Office of the Prime Minister; they must now, however, comply with the general framework set out in the Public Procurement and Supplies Administration Act, B.E. 2560 (2017).[31] Nevertheless, SOEs can put in place their own procurement rules for "flexibility and expediency of operations" – provided that these are in compliance with framework principles such as value for money, transparency, efficiency and effectiveness, and accountability.[32] The Public Procurement and Supplies Administration Commission (in which the Ministry of Finance is represented) must approve these rules.[33] Further, Section 7 of the Public Procurement and Supplies Administration Act excludes from public-procurement rules procurement by SOEs involved in commercial activities, subject to the adoption of a Royal Decree. The OECD understands that approximately 35 SOEs – including Thailand Post (and its subsidiary Thailand Post Distribution Company Limited)[34] – have been granted exemptions so far,[35] with the objective, according to SEPO, of improving the speed of services for such SOEs.

2.5. Transformation of SOEs

The *Twelfth National Economic and Social Development Plan (2017-2021)* acknowledges that many SOEs suffer "high losses"; there is a "lack of unity" about SOEs' supervision structures; and SOEs are "interfered with or controlled by other organisations". It also notes that certain SOEs "assume both the role of regulator and operator", resulting in unfair competition with the private sector to the detriment of consumers.[36]

The *Twelfth Plan* envisages an adjustment to the remuneration and benefits systems enjoyed by SOE executives, as well as to the enterprises' long-term development strategies (including restructuring and mergers), to realign them with their missions and objectives. Moreover, it states the importance of separating SOEs' roles of policymakers, regulators and operators by "enhancing the regulatory and supervisory framework for SOEs". [37]

The privatisation of SOEs has been on the policy agenda for the past two decades. In 1998, the government announced a privatisation strategy as part of a master plan. A year later, it passed the State Enterprise Corporatisation Act, B.E. 2534 (1999), which provides the framework for government agencies' conversion into incorporated SOEs, which was a first step towards privatisation.

Private investments in SOEs are regulated by the Private Investment in State Undertakings Act, B.E. 2556 (2013), which charges the Ministry of Finance with its implementation.[38] The act defines a framework for private investments, including: 1) the establishment of the Private Investment in State Undertakings Policy Committee and the role of SEPO (Chapter 2); 2) the need to approve a Strategic Plan (Chapter 3); and 3) the establishment of a fund promoting these investments (Chapter 8).

Protectionism and the strong resistance of labour unions have slowed this process of privatisation (Nikomborirak and Cheevasittiyanon, 2005), and so far, only five SOEs have been (partially) privatised: Petroleum Authority of Thailand (PTT), Krung Thai Bank (KTB), Telecom of Thailand (TOT), Mass Communication Organization of Thailand (MCOT), and Thai Airways.

Lastly, a major reform of the SOE sector has been under discussion since 2015.[39] The OECD understands that the original reform project, the draft Development on Governance and Management of State Enterprises bill, which was approved by SEPC in March 2015, envisaged a dual system that "assigned" to SEPO the SOE-government agencies and established a holding company, the National State Enterprise Corporation, for incorporated SOEs (including Thailand Post). SEPO told the OECD that the original reform was successfully opposed by labour unions, which saw the proposed holding structure as a first step towards privatisation; and line ministries, which do not always have an interest in the SOEs' financial performance.

The reform that eventually entered into force on 22 May 2019 encompasses five pillars:

1. SEPC becomes a "legal body", with SEPO acting as its secretariat unit. Contrary to the previous regime, SEPO's guidelines have a binding effect over SOEs, even if it continues to have no enforcement powers. Unlike the old regime, these guidelines do not require Cabinet approval.
2. A five-year SOE economic plan elaborated by SEPO is formally introduced, as previously agreed between the SOE and the relevant line ministry.
3. Guaranteed government compensation for expenses and revenue losses occurred as a result of public-service obligations in line with the five-year SOE economic plan.
4. A more concrete performance assessment, which is compared with the targets set out in the five-year SOE economic plan.
5. SEPO introduces centralised corporate-governance guidelines and will monitor corporate-governance standards, as well as increasing transparency in the nomination and appointment of SOE directors.

Notes

[1] World Bank, https://data.worldbank.org/indicator/SP.POP.TOTL?locations=TH.

[2] Thailand was only briefly occupied by Japan during the Second World War.

[3] See http://taxsummaries.pwc.com/ID/Thailand-Overview.

[4] See www.worldbank.org/en/news/press-release/2011/08/02/thailand-now-upper-middle-income-economy.

[5] "Thailand 4.0 is an economic model that aims to unlock the country from several economic challenges resulting from past economic development models which place emphasis on agriculture (Thailand 1.0), light industry (Thailand 2.0), and advanced industry (Thailand 3.0)." See, https://thaiembdc.org/thailand-4-0-2/.

[6] The full list of SOEs list is available on SEPO's website, www.sepo.go.th

[7] For an investment loan to non-incorporated SOEs, the plan must be submitted, together with its investment plan (comparing benefits and costs), to NESDC for approval first. If the investment amount exceeds THB 50 million, the Council of Ministers must also approve it. See Section 9(1) of Public Debt Management Act, B.E. 2548 (2005).

[8] National Economic and Social Development Act, B.E. 2561 (2018), Sections 7(5) and 20.

[9] Section 71(1) of State Administration Act, B.E. 2534 (1991).

[10] Section (4)(4) of Trade Competition Act (2017) applies, in practice, to the Central Bank of Thailand, the Stock Exchange, and to the energy, telecoms, insurance and aviation sectors. The Cabinet is also called the Council of Ministers.

[11] Section 53 of Criteria and Procedures for Good Governance, B.E. 2546 (2003). If an SOE is not compliant with the general principles or does not implement such rules, OPDC shall inform the Minister in charge of the SOE.

[12] A brief summary of SEPA is available at www.sepo.go.th/sepa/contents/1.

[13] See SEPO, "The system evaluates the performance of enterprises", www.sepo.go.th/pes/contents/1.

[14] The Cabinet is also called the Council of Ministers.

[15] An alternative model is the one-tier board, which may or may not include executive (managing) directors. In the context of this report, "board" refers to the corporate body charged with the functions of governing the enterprise and monitoring management.

[16] Section 6 of Standard Qualifications of State Enterprise Directors and Officials Act, B.E. 2518. The number can increase up to 15, subject to cabinet approval.

[17] Section 17, Standard Qualifications of State Enterprise Directors and Officials Act, B.E. 2518.

[18] See SEPO, "Criteria for Nomination", www.sepo.go.th/mof/contents/28.

[19] See, in particular, Sections 5 and 8 *quarter*, Standard Qualifications of State Enterprise Directors and Officials Act, B.E. 2518 (1975), as amended B.E. 2558. The candidate pool is publicly available at www.sepo.go.th/directorpool/contents/1.

[20] Section 7 of Standard Qualifications of State Enterprise Directors and Officials Act, B.E. 2518.

[21] See, Nikomborirak and Cheevasittiyanon (2005), "Corporate Governance among State-Owned Enterprises in Thailand", p. 19. On the contrary, such restrictions are applicable to SOEs' executives.

[22] Sections 14, 102(11) and 207 of the Constitution.

[23] Section 265 of the Constitution. See also Standard Qualifications of State Enterprise Directors and Officials Act (Section 5) and Nikomborirak and Cheevasittiyanon (2005), "Corporate Governance among State-Owned Enterprises in Thailand", p. 7.

[24] Sections 60 and 67 of the Constitution. Administrative Courts have competence over these disputes (Section 223).

[25] Section 244 of the Constitution.

[26] Sections 68, 70 and 72, State Fiscal and Financial Disciplines Act. See also State Audit Act, B.E. 2561 (2018).

[27] Section 79, State Fiscal and Financial Disciplines Act.

[28] Sections 8 and 13 of State Enterprise Labour Relations Act. See also Section 40 allowing the establishment of a single labour union for each SOE.

[29] See Nikomborirak and Cheevasittiyanon (2005), "Corporate Governance among State-Owned Enterprises in Thailand". See also, SEPO's website, "The system evaluates the performance of enterprises", www.sepo.go.th/pes/contents/1. Thailand Post opted for the Ministry of Finance's incentive scheme.

[30] Sections 37 and 42 of State Fiscal and Financial Disciplines Act.

[31] Section 6(1) and Section 4 (definition of "state agency"), Public Procurement and Supplies Administration Act, B.E. 2560 (2017).

[32] Section 8, Public Procurement and Supplies Administration Act, B.E. 2560 (2017).

[33] Section 20, Public Procurement and Supplies Administration Act, B.E. 2560 (2017).

[34] For the purchasing and procurement of items relating to the provision of delivery services and ancillary businesses.

[35] Bylaws on Public Procurement, B.E. 2560 (2017), p. 5, and Article 3 (defining commercial activities as activities related to production, distribution or service to seek income or is an activity that requires competition with the private sector). In relation to Thailand Post, see also, announcement of the Public Procurement Policy Committee of 13 December, B.E. 2561 (2018).

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

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

[38] Section 5, Private Investments in State Undertakings Act, B.E. 2556 (2013).

[39] See also Wisuttisak and Fong (2018), p. 107.

3 Small-package delivery services in Thailand

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

3.1.1. *Competition in the postal sector*

Postal services are a form of transportation or communication service for delivering goods and information from one point to another. Postal operators compete with firms offering a variety of delivery or communications services, including, most importantly, telecommunications 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.

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 price, 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 non-commercial PSOs. This allows the operator to maintain service quality on unprofitable high-cost or low-volume delivery routes when other concerns, such as the obligation to maintain geographically uniform prices, limit its ability to raise prices (OECD, 1999).

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).[1]

For many incumbent postal operators, the often non-regulated or less regulated and commercially attractive activity of delivering small packages to consumers has been one of the main means through which non-commercial activities have been cross-subsidised. Moreover, the drastic decline in the volume of traditional letters and postcards due to electronic communications, as has been observed in many countries around the world, continues to increase the commercial importance of small-package delivery services for incumbent postal operators in many countries.[2] 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.

3.1.2. *Definition of a small package*

There are various definitions of “small package” in the logistics industry. One method is its weight, with the upper limit determined by how much a single person can handle without using any specific equipment. Different market participants use different weight limits,[3] 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 two kilogrammes within the framework of the Universal Postal Union (UPU).[4]

In Thailand, no definition of small packages appears in any legislation. Thailand Post distinguishes between small packages (with a weight of up to 2 kilogrammes) and parcels (with a weight of up to 20 kilogrammes). Thailand Post also uses different weight limits depending on specific agreements with other SPDS providers.

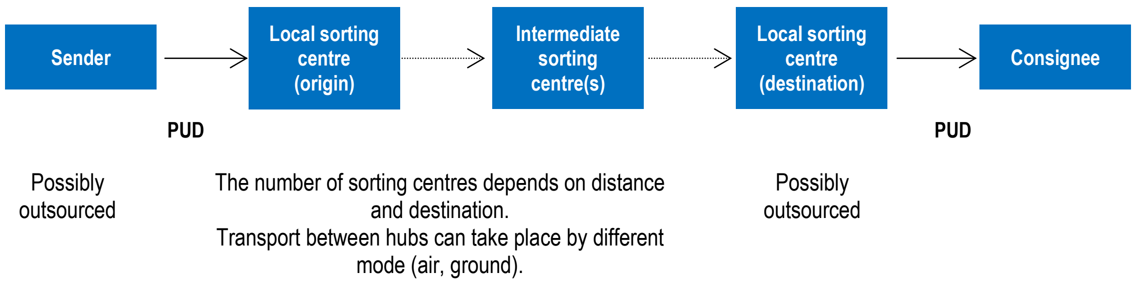
Small-package delivery services (SPDS or courier services) refer to the delivery of small packages from a pick-up location to a drop-off (delivery) location.[5] These services are mainly segmented into: 1) express and deferred (or non-express); 2) domestic and international; 3) business-to-business (B2B) and business-to-customer (B2C); or 4) transport by air, transport by land and transport by sea. In the Philippines, to date, courier services are not defined by weight upper limit, but based solely on delivery method.

3.1.3. ***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.[6] Small-package delivery is inherently multimodal, using small trucks, cars or messengers for pickup and delivery and other modes of transport such as truck, rail or air for longer distances.[7]

Figure 3.1. 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 William T. Dennis (2011), *Parcel and Small Package Delivery Industry*.

Different actors are active in the SPDS value chain, roughly split between integrators and non-integrators.[8]

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.[9]

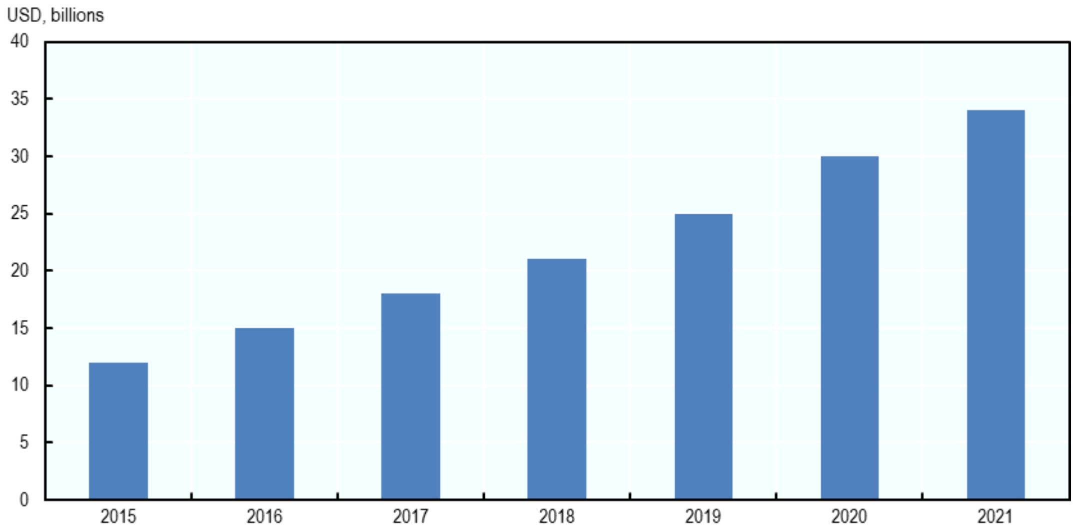
2. **Regional, national or local SPDS companies and partner networks.** These are often concentrated in the domestic small-package market. They may form alliances and partner networks to offer wider-ranging SPDS and expand into neighbouring countries.
3. **Smaller companies** with a domestic PUD ground service in one or more countries.

Many SPDS operators, both in Europe and ASEAN, offer ancillary services as a way of diversification, including warehousing and value-added services, such as quality-control service, packaging, labelling and tagging.[10]

3.1.4. *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.[11] The e-commerce market in ASEAN remains relatively small compared to other regions of the world,[12] 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 3.2). 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.[13] In Thailand, e-commerce revenue was estimated at USD 4.3 billion in 2019, and projected to grow at around 10% per year between 2017 and 2024.[14]

Figure 3.2. E-commerce market value in ASEAN, 2015-21



Source: OECD (2018), *Economic Outlook for Southeast Asia, China and India 2018 – Update: Promoting Opportunities in E-commerce*, OECD Publishing, Paris, www.dx.doi.org/10.1787/9789264302990-en.

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, 2018b). 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*[15] on 7 September 2017 and ASEAN Economic Ministers signed the ASEAN Agreement on Electronic Commerce on 12 November 2018.[16] 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 Thailand, the *Twelfth National Economic and Social Development Plan (2017-2021)* identifies e-commerce as one of the key areas that would benefit from the development of trade and investment sectors and from support to communications technology systems.[17] The amendment and enforcement of the competition law is also cited by the *Twelfth Plan* as one of the pillars that will facilitate trade and investments, in particular on e-commerce. The government is investing in its "Thailand 4.0" policy to attract foreign investments and to incentivise the creation of e-commerce platforms' logistics hubs in Thailand.

The Thai Retailers Association told the OECD that it estimates that while e-commerce currently accounts for only 3% of overall retail business in Thailand, it has the potential to grow by up to 20% over the next decade.

3.2. Competitive landscape of the SPDS sector

Competition in the SPDS sector has increased in recent years, as Thailand's e-commerce market has seen rapid growth. Thailand is now seen as a leading regional centre for e-commerce logistics.[18]

A number of third-party logistics (3PL) companies, including both local and regional players, are active in the SPDS market in Thailand. These include Kerry, DHL, CJ Express, SK Logistics, and FedEx/TNT; they account for an estimated 80% of the market (Ken Research, 2018).

Brick-and-mortar retailers tend to outsource to 3PLs, in particular for last-mile deliveries, which are those from the retailers' distribution centres to the drop-off locations.[19] On the contrary, the main online businesses have their own logistics services, including e-commerce platforms based outside Thailand such as Alibaba (China), Shopee (Singapore), and Lazada (Korea). Most of these deliveries are intra-city (70%) where large players compete with several smaller players, including Ninja Van, Lalamove and SCG Express, which are active only in specific areas (Ken Research, 2018).

National 3PLs have their own warehouses, while specialised warehousing companies also offer space for lease.

Although no official statistics are available for B2C domestic delivery services, the OECD understands that Thailand Post is the largest player with a market share of approximately 60%,[20] largely thanks to its wide network in rural areas, including both post offices and franchisees. International players are also active in the domestic market (often by outsourcing deliveries to local companies to reduce costs); local players do not yet have sufficient resources to establish a competitive network and so specialise in last-mile deliveries. In the B2B segment, DHL and DB Schenker are large-scale operators, and Thailand Post is also active through its subsidiary Thailand Post Distribution.

For international deliveries, Thailand Post benefits from the UPU network and enhanced co-operation with other postal national operators such as Lao Post. It has also entered into a co-operation agreement with DHL Express. Nevertheless, large e-commerce customers appear to prefer using global integrators for cross-border air shipments.

The express courier services market – deliveries within 24-72 hours within Thailand – has been growing alongside the rise of e-commerce and increasing demand in the B2C and C2C segments. Deliveries are mostly domestic, and mainly operated by air and by road (Ken Research, 2018). The express courier services sector remains highly concentrated in Thailand, the majority in the hands of four main players: Thailand Post (market leader in domestic deliveries), Kerry Express, DHL Express, CJ Logistics.

Discussions with the industry suggest that Thailand Post's rates are generally used as a benchmark, with new entrants (especially those focusing on limited areas) pricing below Thailand Post's rates.

3.3. Sectoral regulation

The logistics business, and in particular the SPDS business, is neither defined nor covered by the Postal Service Act, B.E. 2477 (1934) or any other implementing regulation. The Ministry of Digital Economy and Society exercises certain regulatory functions over SPDS.

3.3.1. ***Licensing***

In general, SOEs are not exempt from licensing requirements. The Licensing Facilitation Act, B.E. 2558 (2015) aims at simplifying and reducing the licensing requirements in all areas, with Section 6 requiring each authority within five years to review relevant laws and assess whether they should be amended or repealed in a report to the Council of Ministers.

To operate in Thailand, SPDS providers are not subject to any licensing requirements, except for import-export activities that require authorisation by the Customs Department (under the aegis of the Ministry of Finance). Domestic SPDS providers are only required to register with the Land Transport Department. Similarly, no license is needed to operate a warehouse or to open a branch or outlet.

3.3.2. ***Price regulation***

There is no price regulation for SPDS. Nevertheless, the OECD understands that postal rates for domestic mail are subject to ministerial regulation. The latest adjustment of these postal rates occurred in 2006 with the implementation of a "service rate" for a domestic letter of THB 2.75.

Also, under the Price of Goods and Services Act, B.E. 2542,[21] the Office of the Central Committee on the Price of Goods and Services, which is part of the Department of Internal Trade within the Ministry of Commerce, may intervene and regulate ex post delivery rates, if found to be excessive.

Notes

[1] One option is raising funds for universal service through charges, such as taxation or a levy, on all postal operators.

[2] See, for example, European Commission (2018), *Main Developments in the Postal Sector (2013-2016): Study for the European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs*, https://op.europa.eu/en/publication-detail/-/publication/d22799b5-bbb7-11e8-99ee-01aa75ed71a1/language-en.

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

[4] 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.

[5] For an analysis of the value chain of SPDS, see European Commission Case M.7630 – FEDEX / TNT EXPRESS, para 28 and ff.

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

[7] William T. Dennis, (2011), *Parcel and Small Package Delivery Industry*, CreateSpace, North Charleston, NC.

[8] 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”).

[9] See EC merger case COMP/M.7630 – Fedex / TNT Express, 08/01/2016, recital 28 and further. Several postal operators had changed their focus from the traditional mail business to small-package, e-commerce-based companies with cross-border presences. Examples include Deutsche Post, Royal Mail, PostNL, Swiss Post, Estonian Post, Correos, Bpost, Österreichische Post and PostNord, which are upgrading or have upgraded their offer in order to meet new demands, especially in the B2C segment.

[10] 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.

[11] 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)

[12] In 2018, the ASEAN e-commerce market accounted for approximately 1% of worldwide e-commerce revenue. See, OECD (2018), *Economic Outlook for Southeast Asia, China and India 2018 – Update: Promoting Opportunities in E-commerce*, OECD Publishing, Paris, www.dx.doi.org/10.1787/9789264302990-en.

[13] Google, Temasek and Bain & Company, *e-Conomy SEA 2019: Swipe up and to the right – Southeast Asia's $100 billion Internet economy*, www.blog.google/documents/47/SEA_Internet_Economy_Report_2019.pdf.

[14] See www.statista.com/outlook/243/126/ecommerce/thailand.

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

[16] See http://agreement.asean.org/media/download/20190306035048.pdf.

[17] *Twelfth National Economic and Social Development Plan (2017-2021)*, pp. 118-119 and 189.

[18] See https://asia.nikkei.com/Business/Business-Deals/Thailand-Post-teams-up-with-bank-to-grab-rural-e-commerce-customers.

[19] "Second-tier" brick-and-mortar retailers also use luggage space on coaches to deliver small packages.

[20] Thailand Post's market share appears to have dropped significantly over the past decade.

[21] Sections 16 and 25, Price of Goods and Services Act, B.E. 2542 (1999).

4 Thailand Post and its impact on competition in SPDS

4.1. SOEs active in the SPDS sector: Thailand Post

Thailand Post is a limited liability company providing postal, including small-package, delivery services in Thailand. Its share capital is wholly owned by the state with the Ministry of Finance exercising ownership rights, with the Ministry of Digital Economy and Society charged with supervising its management and implementing its mandate.

Established in 1883 as the Department of Mail, Thailand Post's postal business was initially – together with telecommunications services – part of the Ministry of Transport.

In 2003, following the State Enterprise Corporatisation Act, B.E: 2542 (1999),[1] Thailand Post was incorporated under Royal Decree Dissolving Post and Telegraph Department, Ministry of Communications, B.E. 2545 (2002), and Royal Decree Determining the Authorities, Rights and Benefits of Thailand Post, B.E. 2546 (2003). The Ministry of Finance wrote off Thailand Post's outstanding debt at this time.

Despite its incorporation, Thailand Post remains governed by the Postal Service Act, which entered into force in 1934 and has never been amended. In addition, a Postal Directive was adopted to implement UPU rules for international deliveries, which is amended every four years to comply with UPU requirements. The current version, Postal Directive, B.E. 2561, entered into force on 1 July 2018, and repealed Postal Directive, B.E. 2557 (2014).

4.1.1. *Mandate*

Under Section 5 and 6 of the Postal Service Act, Thailand Post enjoys a legal monopoly in the segment of letter and postcard delivery. It must deliver everywhere in the country, which qualifies as a de facto universal service obligation limited to letters and postcards up to two kilograms.

4.1.2. *Management*

The Ministry of Finance appoints Thailand Post's board of directors, after consultation with the Ministry of Digital Economy and Society.

In accordance with Section 12 of the Standard Qualifications of State Enterprise Directors and Officials Act, the number of directors for Thailand Post can range between 3 and 11.

As of 31 December 2018, Thailand Post has ten directors, who include officials from the Ministry of Finance (two representatives), the Ministry of Digital Economy and Society (one representative) and the Royal Thai Police, as well as representatives of the business community. The board of directors appoints Thailand Post's CEO. SEPO is not involved in day-to-day management of Thailand Post.

Table 4.1. Thailand Post board of directors

	Director	Function	Other positions
1	Mr. Rathapol Bhakdibhumi	Chairman	Chairman of the Executive Committee and CEO, General Electronic Commerce Services Co. Director, CAT Telecom Public Company Director, Thai Airways International Public Company Director, Nok Airlines Public Company
2	Pol. Maj. Gen. Sompong Chingduang	Vice Chairman	Deputy Commissioner of the Metropolitan Police, Metropolitan Police, Royal Thai Police.
3	Dr. Pornchai Thiraveja	Vice Chairman	Financial Policy Advisor, The Fiscal Policy Office, Ministry of Finance Director, Islamic Bank of Thailand Director, PTT Regional Treasury Center Pte., Singapore
4	Mrs. Vunnaporn Devahastin na Ayutthaya	Director	Deputy Permanent Secretary, Ministry of Digital Economy and Society
5	Mr. Sorasak Meenatoree	Director	Deputy Director, Customs Department (under the Ministry of Finance)
6	Professor Dr. Parichart Sthapitanonda	Director	Dean, Faculty of Communication Arts, Chulalongkorn University Director, MCOT Public Company
7	Dr. Seree Nonthasoot	Director	Governor, Stock Exchange of Thailand Director and Chairman of Audit Committee, Small and Medium Enterprise Development Bank of Thailand (SME Bank) Director and Chairman of Audit Committee, KTB Law Company Vice President, Institute of Research and Development for Public Enterprises
8	Dr. Thitipong Nandhabiwat	Director	Director and Audit Committee, Port Authority of Thailand Director and Audit Committee, Thailand Post Distribution Company Independent Director and Audit Committee, Grande Asset Hotels and Property Public Company Associate Judge, Central Intellectual Property and International Trade Court Independent Director and Audit Committee, Bliss-Tel Public Company
9	Mrs. Pratana Mongkolkul	Director	Director, Thai Airways International Public Company Director, Port Authority of Thailand Associate Judge of the Central Intellectual Property and International Trade Court Director, Aisance Company Director, FN Factory Outlet Public Company Independent Director and Audit Committee, T.K.S Technologies Public Company Director, Secretary and Treasurer of Dr. Kamchad–Pranee Mongkolkul Foundation Chairman, Boutique Consulting Group Member of university council, Dhurakij Pundit University
10	Mrs. Smorn Terdthampiboon	Director	President, Thailand Post Company Director, Thailand Post Company Director, Thailand Post Distribution Company

Note: As of 31 December 2018
Source: Thailand Post Annual Report 2018

In addition, Section 5 of Royal Decree Determining the Authorities, Rights and Benefits of Thailand Post, B.E. 2546 (2003) establishes a Postal Affairs Committee, consisting of the permanent secretary for the Ministry of Finance, the secretary-general of the Council of State[2] and the permanent secretary for the Ministry of Digital Economy and Society, as well as industry experts and representatives of the business community. The State Enterprise Capital Act, B.E. 2477 (1934) and the Postal Directive, B.E. 2561 (2018) refer to the Postal Affairs Committee as a regulatory body.[3]

In principle, incorporated SOEs such as Thailand Post enjoy a higher degree of independence than non-incorporated SOEs. For instance, they can enter into commercial agreements and secure loans (that do not benefit from explicit state guarantees) without prior approval from the Ministry of Finance (Nikomborirak and Cheevasittiyanon, 2005: p. 5, fn. 3).

Nevertheless, even though Thailand Post is incorporated, its management and board of directors cannot take independent decisions about the annual budget and how it is allocated. In fact, each SOE's annual budget is part of the Annual Appropriations Act. Similarly, Thailand Post must submit its annual investment plan to the Budget Bureau; it is then subjected to approval by a Special Committee (including representatives of the Budget Bureau).[4]

4.1.3. *SPDS business*

Thailand Post's vision to be an "internationally standardized postal service provider and full service end-to-end for e-Commerce Logistics service"[5] clearly goes beyond its traditional postal activities.

Thailand Post is organised into three business lines: 1) mail and retail (37% of 2018 turnover); 2) express and logistics (48% of 2018 turnover); and 3) international, financial and other services (15% of 2018 turnover).[6] Over the past five years, Thailand Post has improved its network by increasing the number of outlets from 1 169 to 1 198.[7] In 2018, it handled 13.7 million parcels (up 7% from the previous year), which accounted for nearly half of its revenue,[8] and generated approximately THB 3.8 billion net in profit, down 10% from 2017.[9]

Thailand Post mainly uses its own trucks for its SPDS[10] and owns no airplanes or ships, instead leasing cargo space on commercial flights for both domestic and international deliveries. It deals with Thai Airways at arm's length (according to market participants), meaning that both act independently and without one party influencing the other. It also leases cargo space from commercial shipping liners for international deliveries.

In addition, it owns 18 warehouses, known as "mail centres". Thailand Post – similar to some of its competitors – also offers a "pick-and-pack" service, for which customers stock goods in Thailand Post's warehouses and Thailand Post takes care of the packaging and shipping of each order.

Thailand Post competes with other players for large customers. These large customers typically award contracts to multiple providers. Thailand Post and Lazada recently entered into a memorandum of understanding (MoU) facilitated by the Thai government, which consolidated its relationship with Alibaba Group, which owns Lazada. Under this MoU, Lazada mainly uses Thailand Post for deliveries to rural areas, with Thailand Post applying the same rates nationwide.

Finally, for its international services, Thailand Post has entered into a co-operation deal with DHL Express International (Thailand), allowing its over-the-counter customers to send both documents and packages through DHL's global delivery network.[11]

4.2. Assessment of Thailand Post's advantages and disadvantages in the SPDS sector

This section identifies and assesses Thailand Post'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 taken from the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (OECD 2015: 20).

4.2.1. *Thailand's Post's public-service obligation (PSO)*

As mentioned in Section 4.1.1, Section 6 and 7 of the Postal Service Act grants Thailand Post a legal monopoly in the segment of letters and postcards with a weight up to two kilogrammes. In a number of OECD countries, monopolies granted to postal operators have been lifted or their scope reduced to promote competition. Some countries have completely liberalised their postal sector and others retain a relatively small reserved area. In France and Germany, for instance, the markets are fully open to competition for all postal items (although with different schemes applicable to meet PSOs). Similarly, in Sweden, the postal market was liberalised in 1993 and in 2007 the sector regulator conducted a study showing that the service quality of Posten AB, the incumbent operator, had improved because of growing competition.

4.2.1.1. Thailand Post's PSO compensation

> *General principles*
>
> *Costs related to public-policy objectives should be funded by the state and 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.*
>
> *SOEs' economic activities should be required to earn rates of return that are, taking into account their operational conditions, consistent with those obtained by competing private enterprises.*

Section 28 of the State Fiscal and Financial Disciplines Act, B.E. 2561 (2018) states that the government shall compensate SOEs for expenses or loss of revenue for activities performed for the purposes of "conducting economic rehabilitation or stimulation or enhancing professional capacity or elevating the quality of life of the people". The level of compensation must take into account the impact of such activities, as well as the financial burden they place upon the state. Section 29 imposes reporting obligations and accounting separation for such activities. The OECD understands that most SOEs avoid this method of relatively burdensome compensation. Instead, they prefer to cover PSO-related costs by requesting an adequate annual budget as part of the Annual Appropriations Act (see Section 4.1.2 on Thailand Post).

Moreover, regulations of the Office of the Prime Minister define the criteria under which "public-service enterprises" can access subsidies. An SOE submits a proposal to the Public Service Commission, which makes recommendations to the Ministry of Finance and the Council of Ministers. The Council must then approve the subsidy request for inclusion in the annual budget, subject to a memorandum between the SOE and the government.

SEPO issued guidelines about SOE and subsidies – which appear to be in line with *OECD Guidelines on Corporate Governance of State-Owned Enterprises*. These recommend: 1) a separation of "public accounts" and "commercial accounts", with specific requirements for the revenue derived from public services and the allocation of direct and indirect costs); 2) clear conditions and procedures for the payment of the subsidies; and 3) reporting requirements.[12]

Although Thailand Post is mandated to deliver to all parts of the country, it nevertheless receives no direct compensation or subsidy as these services do not qualify as PSO. In addition, even though SEPO establishes performance targets upon which Thailand Post employees' bonuses are conditioned, there is no legal requirement for Thailand Post to be profitable.[13]

Funding essentially comes through the annual budget.[14] For example, Thailand Post's overall business must be operated on a profit-making basis and must pay a commercial level of return (dividends) to the government on the employed equity funds. This is important for several key reasons: if the entity is making less than a commercial return, the government is therefore making an implicit subsidy, allowing an inefficient SOE-business to displace perhaps more efficient private businesses from the market. Further, if the entity cannot generate a "normal" commercial return, the state's scarce public funds are not being used to their fullest potential and the community suffers.

The OECD has two recommendations:

1. Ensure that equity funds provided to Thailand Post through the state budget are subject to a required minimum expected rate of return consistent with private companies in the same sector and in similar circumstances (OECD, 2015a: 49).
2. Ensure that Thailand Post complies with SEPO guidelines on accounting separation and reporting requirements to ensure that state subsidies and funds are not used to cross-subsidise SPDS that are in competition with private players.

4.2.1.2 Thailand Post's rates

> *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 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.*

Section 10 of the Postal Service Act sets out that "postal rates" (also called "service rates") are subject to Ministerial Regulations. This provision only applies to delivery prices for letters and postcards, which are monopoly services. According to the Postal Service Act, B.E. 2477, the Postal Affairs Committee has the power to set postage rates for letters and postcards.

Thailand Post considers its PSO to be unprofitable. The OECD understands that the last service-rate adjustment occurred in 2006 when it was set at THB 2.75. Data obtained from the Thailand Development Research Institute (TDRI) state that in 2012 the average cost of mail was THB 3.28, already exceeding the service rate.[15] The OECD understands that Thailand Post has not proposed revising these rates as it continues to cross-subsidise regulated services with profitable business activities.

The OECD has three recommendations:

1. Ensure that Thailand Post is adequately compensated for its PSO.
2. Introduce more transparency for PSO costs, such as in the annual report.
3. Maintain price regulation if letter and postcard delivery remains a legal monopoly. These regulated prices should, however, reflect Thailand Post's actual costs and be based on separate and transparent accounting criteria, that take into account any cross-subsidisation or other public funds or subsidies accessible to Thailand Post.

4.2.1.3 The scope of Thailand Post's legal monopoly

Although SPDS do not appear to fall under the scope of the legal monopoly, the formulation in the Postal Service Act might raise uncertainty. In fact, under Section 1(10), "parcels containing goods" seem to fall under the monopoly.

Under Section 63 of the Postal Service Act, competitors that offer these monopoly services are subject to a fine of up to THB 20 for every such letter or postcard they deliver. This provision is enforced by the Customs Department. The OECD understands that – notwithstanding the fines – competitors such as DHL offer express mail delivery services by using parcels. Part 2 of the Postal Directive, B.E. 2561 seems to address this behaviour, reaffirming that it is prohibited and punishable to group letters or postcards together in one envelope or package.

The restriction has an impact on the ability and costs of Thailand Post's competitors not only for letters, but also for the delivery of small e-commerce items. Further, EABC believes that should this restriction be lifted, large competitors, especially those already having an established network would likely enter the market.

In cases where customers require deliveries of both letters and postcards and SPDS, Thailand Post appears to extract a commercial benefit from its monopoly. It is the only player that can bundle these two services, allowing it to offer competitive discounts, which, the OECD understands it does.

The OECD has one recommendation:

1. Clarify the scope of Section 6 of the Postal Service Act to exclude express mail, parcels and small packages. Alternatively, the government might consider lifting the monopoly rights, which would have the effect of liberalising the mail business.

4.2.2. *An SOE governed and managed as an arm of government*

4.2.2.1 Influence over Thailand Post's governing bodies

> *General principle*
>
> *The boards of SOEs should have the necessary authority, competencies and objectivity to carry out their functions of strategic guidance and management monitoring. They should act with integrity and be held accountable for their actions.*

The OECD understands that SOEs are often used as a source of political patronage in Thailand; as noted in Section 2.4.2, the selection and appointment of SOE directors are not immune from political influence (Nikomborirak and Cheevasittiyanon, 2005). For instance, the OECD understands that SEPO screening has been bypassed in recent years, with the government unilaterally adding candidates to SEPO's pool and then appointing them.

Moreover, the rules preventing conflicts of interest mentioned in Section 3.4.2 are not exhaustive. Good governance rules adopted by many SOEs, including Thailand Post, as an implementation of the Royal Decree on Criteria and Procedures for Good Governance, B.E. 2546 (2003), do not mitigate these risks.

To date, Thailand Post's board includes officers of other public organisations, such as the Customs Department, as well as directors of other SOEs, including entities active in the logistics sector such as Thai Airways and the Port Authority of Thailand. This has a potential impact on the effective management of the SOE as, besides bringing relevant experience or background, other – potentially conflicting – positions of Thailand Post board members may affect their independence or objectivity when carrying out their functions.

The OECD has three recommendations:

1. Maintain a certain level of oversight. This is legitimate due to Thailand Post's public-policy objectives; nevertheless, the Ministry of Finance and the Ministry of Digital Economy and Society should refrain from electing an excessive number of directors from within state-run bodies. This is particularly relevant for Thailand Post because, as an SOE engaged in economic activities, limiting board membership by representatives of the ownership entity (namely, the Ministry of Finance) or by other state officials could increase professionalism and help prevent unwarranted government intervention (OECD, 2015a :35).
2. To enhance the objectivity of the Thailand Post board, a minimum number of independent board members is required. Non-independent board seats should be appointed based upon objective criteria, such as experience and qualifications, by applying, for instance, similar rules for independent board members as those applied to listed public companies.16 This would also minimise possible conflict of interests within the state that may result from electing directors from the state or state-run bodies for political reasons (OECD, 2015a: 35).
3. Implement measures to address conflicts of interest within Thailand Post's board of directors. For instance, all directors should disclose any conflicts to the board, which must decide how they should be managed (OECD, 2015a: 72).

4.2.2.2 Thailand Post's arrangement with the Customs Department

> *General principle*
>
> *Mechanisms should be implemented to avoid conflicts of interest preventing board members from objectively carrying out their board duties and to limit political interference in board processes.*

Thailand Post appears to have an exclusive arrangement with the Customs Department about the presence of customs officers at the SEO's premises and warehouses. Discussions with stakeholders suggest that this arrangement might allow Thailand Post to speed up the customs-clearance process, which would benefit its international delivery business as speed of customs clearance (and fulfilment) is an important factor for customers.

Such co-operation between Thailand Post and the Customs Department, which are both under the Ministry of Finance, may actually have strengthened since 2017 when a deputy director of the Customs Department was elected a board member of Thailand Post.

The OECD has two recommendations:

1. Ensure that the Customs Department provides the same level of service and commitment to all market players, irrespective of whether they are SOEs or privately owned companies; this may be achieved through a Ministry of Finance circular or the adoption of internal guidelines.
2. Implement rules against conflicts of interest to prevent the appointment of high-ranking Customs Department officers as directors of Thailand Post's board.

4.2.3. ***Different regulatory treatment***

4.2.3.1 Competition laws

> *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.*

As indicated in Section 2.3, the Trade Competition Act, B.E. 2560 (2017) reaffirms the exemption granted to SOEs, even as it appears to narrow its scope slightly compared to Trade Competition Act, B.E. 2542 (1999).[17]

The OECD understands from OTCC that Thailand Post's mail business is considered a "public-interest" activity.[18] Indeed, the Postal Act, B.E. 2477 (1934) grants the absolute right to Thailand Post to operate the mail business for the benefit of maintaining national security and public interest in Thailand. As a result, the mail business is exempted from the application of the 2017 Trade Competition Act. However, Thailand Post's SPDS should not be exempted under Section 4(2) of the 2017 Trade Competition Act, as it is not a public-interest activity.

Avoiding exemptions for SOEs competing with private entities is important as SOEs may have an incentive to engage in anticompetitive behaviour that can be as harmful as restrictions of competition by private competitors. Exemptions from competition rules may hamper economic efficiency in sectors where competition may currently be unfeasible, but where new entrants could materialise in the longer run (OECD, 2012).

SOEs in regulated sectors are exempted under Section 4(4) of the 2017 Trade Competition Act. According to the OTCC, Thailand has six regulated sectors, each with its own regulator. These are:

1. Bank of Thailand (BOT)
2. Office of the National Broadcasting and Telecommunications Commission (NBTC)
3. Office of the Energy Regulatory Commission (ERC)
4. Office of the Insurance Commission (OIC)
5. Civil Aviation Authority of Thailand (CAAT)
6. Office of the Securities and Exchange Commission (SEC)

The scope of these exemptions differs slightly depending on specific competition powers of relevant sectoral regulators. Section 4(4) does not currently apply to Thailand Post's SPDS activities because it falls outside the sectoral regulation.[19] Under this provision, Thailand Post's activities might appear to be exempted from the Trade Competition Act even if the SPDS sector were to be regulated in the future (see Section 4.2.2.2).

In regulated sectors, countries typically deal with issues of competition law in one of three ways: 1) a competition agency has jurisdiction over competition law in regulated sectors; 2) a competition agency and sectoral regulator have concurrent authority to enforce a single competition-law standard, with arrangements in place between them; or 3) only the sector regulator has competence to enforce competition-related provisions.

Section 4(4) of the 2017 Trade Competition Act seems to adopt the third approach. This may raise actual (or perceived) conflicts of interest when line ministries responsible for sectoral regulation also have representatives on the boards of SOEs operating in the same sectors. Such actual or perceived conflicts of interest should be avoided as they can discourage private competitors from investing.

The OECD has three recommendations:

1. Adopt an implementing act (such as ministerial regulations or OTCC guidelines) that clarifies that SOEs are covered by the Trade Competition Act, and the scope of their "public-utility" exemption under Section 4(2) of the 2017 Trade Competition Act. Thailand Post's mail business should be considered a public-utility activity, while its other commercial activities (including SPDS) should be subject to the 2017 Trade Competition Act.
2. Put in place arrangements to harmonise the substantive competition requirements between the 2017 Trade Competition Act and other sectoral regulations, and "direct traffic" in relation to which agency is to undertake investigations.
3. The legislator could consider amending or ultimately repealing Section 4(4) of the 2017 Trade Competition Act (exempting certain regulated sectors from the 2017 Trade Competition Act) and competition-law provisions in sector-specific regulation, so to apply the 2017 Trade Competition Act progressively to regulated markets.

4.2.3.2 Thailand Post's role as sectoral regulator

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

The State Enterprise Capital Act and the Postal Directive both refer to the Postal Affairs Committee as a "regulatory body". This committee includes representatives of the Ministry of Finance and the Ministry of Digital Economy and Society, which are the government bodies also involved in the appointment of Thailand Post's directors (see Section 4.1.2).

Even though it appears that the Postal Affairs Committee's regulatory powers are limited to Thailand Post's monopoly letter and postcard business (to date there is no independent regulator of the SPDS sector), regulation applicable to letters and postcards may have an impact on SPDS as it could encourage or facilitate cross-subsidisation practices.

Moreover, the OECD has been informed that a draft law under discussion would give the Postal Affairs Committee regulatory powers over the postal sector. Should the committee effectively become a sector regulator, there should be a clear separation between its regulatory functions and Thailand Post's commercial activities, and it should not discriminate in its regulatory approach between Thailand Post and private entities (OECD, 2016d).

Furthermore, Thailand Post itself has the power to establish rules and impose fines on private companies that do not comply with the Postal Service Act and the Postal Directive setting Thailand Post's legal monopoly in letter and postcard delivery. In addition, under Section 13 of Royal Decree, B.E. 2546 (2003) Determining the Authorities, Rights and Benefits of Thailand Post, the Minister of Digital Economy and Society can appoint a Thailand Post employee as an official to prevent or halt any violation of the Postal Service Act such as, for instance, the performance of services reserved for Thailand Post.

This regulatory power conferred to Thailand Post conflicts with its role as commercial player competing with other suppliers as it cannot execute both roles without conflicts of interest (OECD, 2015a: 45).

The OECD has four recommendations:

1. Separate the state's ownership function of Thailand Post (Ministry of Finance) and the state's regulatory functions (Postal Affairs Committee), so that the company and its private competitors can better operate and compete on a level playing field in the market.
2. Separate the regulatory functions and commercial activities of Thailand Post by transferring the regulatory functions of Thailand Post's legal monopoly to the sectoral regulator.
3. Implement a new framework giving broader regulatory powers to the Postal Affairs Committee (or a new sector regulator) so that it can act objectively, impartially and consistently, without conflicts of interest.
4. Should SPDS become a regulated sector, make Thailand Post subject to the 2017 Competition Trade Act (see Section 4.3.2.1, recommendation 3).

4.2.3.3 Thailand Post's legal framework as SOE

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

The Civil and Commercial Code regulating business activities in Thailand applies to Thailand Post and other SOEs pursuant to Section 22 of the State Enterprise Corporatisation Act, BE 2542 (1999), except for provisions on shareholder meetings as Thailand Post is wholly owned by the state (Section 23). Therefore, Thailand Post's agreements and commercial relationships with third parties are subject to standard commercial rules.

Section 26 of the Corporatisation Act states as general principle that SOEs retain their privileges even after being incorporated and that while a Royal Decree can restrict or withdraw such privileges, it can only do so by limiting them to the extent necessary to contribute to the public interest, while taking into account "fairness in business competition".

Section 4 of the Royal Decree, B.E. 2546, however, reaffirms that Thailand Post retains the benefits and privileges granted before its incorporation. In other words, Section 26 of the State Enterprise Corporatisation Act has never been (fully) implemented for Thailand Post.

The OECD has two recommendations:

1. Implement Section 26 of the State Enterprise Corporatisation Act in full and reassess Thailand Post's privileges according to the prescribed legal standard, namely, only to the extent necessary to contribute to the public interest and taking into account "fairness in business competition".
2. When reassessing Thailand Post's privileges, seek advice from the OTCC about how to ensure a balance between the public interest and "fairness" of competition. Unless there are compelling public-interest reasons to disregard the OTCC's conclusions, its advice should be followed.

4.2.3.4 Obligation on shipmasters

> *General principle*
>
> *SOEs' economic activities should not benefit from any indirect financial support that confers an advantage over private competitors, such as preferential financing, tax arrears or preferential trade credits from other SOEs. 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.*

Section 38 of the Postal Service Act states that every ship departing from Thailand has a duty to take on board Thailand Post items and, in Section 43, that they should be delivered without delay in exchange for a "gratuity" to be determined by Ministerial Regulations. In addition, Section 68 prescribes penalties in case of refusal.

These provisions result in a clear advantage for Thailand Post compared to its competitors. Even though it appears that they are not enforced (and no Ministerial Regulations have been issued) as small packages are not delivered by sea in Thailand, such provisions affect legal certainty in the SPDS sector as they have not been repealed. Furthermore, these provisions could trigger a request for an extensive interpretation so to be applicable to other means of transport (for instance, air transport).

The OECD has one recommendation:

1. Repeal Sections 38, 43 and 68 of the Postal Service Act.

4.2.4. *Privileged access to public-procurement markets*

4.2.4.1 Access to public tenders

> *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.*

SOEs should neither be required to provide goods or services to the government for free or below cost, nor should the government show a purchasing preference for SOEs. When participating in procurement processes, SOEs should also be subject to the same requirements as private suppliers (OECD, 2012: 28 and Chapter 8).

The Public Procurement and Supplies Administration Act, B.E. 2560 (2017) states that contracts must be assigned through public tenders ("general solicitation method"), except in specific cases.[20]

Notwithstanding public procurement rules, it appears that tender criteria – such as experience requirements – are often tailored to suit Thailand Post and that procurement directly from an SOE is faster and subject to less thorough scrutiny by the State Audit Office (Nikomborirak, 2017: 132). In addition, government agencies seem to use Thailand Post in most cases because it often has an office within government agencies' premises, and the "cultural preference" is to support Thai companies.

These all represent non-legal barriers to fair public procurement. Thailand Post seems to enjoy incumbency advantages compared to its private competitors due to its established presence and information advantages concerning costs and revenues generated by the tendered service.

The OECD has one recommendation:

1. Introduce a system of more effective government procurement that encourages competition and improves public-service delivery. This can include internal guidelines and training to personnel to ensure that the public procurement rules are fully enforced and that Thailand Post is no longer granted any type of advantage.

4.2.5. *Financial advantages*

4.2.5.1 Protection from debt claims and bankruptcy procedures

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

Section 12 of Royal Decree Determining the Authorities, Rights and Benefits of Thailand Post, B.E. 2546 (2003) exempts Thailand Post from liability to execution. This means that its assets cannot be taken away, either by execution for a judgement debt or insolvency.[21] This provision gives Thailand Post a clear regulatory advantage.

The majority of OECD countries subject SOEs to the same regulatory framework and lending conditions as private-sector companies for their commercial activities. This means, for example, they are not exempt from bankruptcy laws (OECD, 2012: 92), as the possibility of bankruptcy is considered an essential factor for policing companies' management (OECD 2015a: 12).

The OECD has two recommendations:

1. Withdraw the exemption from liability to execution of Thailand Post's assets for its commercial activities.
2. Ensure that Thailand Post's commercial activities are subject to bankruptcy rules.

4.2.5.2 Tax treatment

> *General principle*
>
> *As a guiding principle, SOEs undertaking economic activities should not be exempt from the application of general laws, tax codes and regulations. Laws and regulations should not unduly discriminate between SOEs and their market competitors.*

In line with other incorporated SOEs,[22] Thailand Post does not enjoy exemption from tax. As a result of its incorporation, it is now subject to corporate, income, and real-estate taxes (on warehouses), as well as VAT and local taxes.[23] Yet, under Section 8(7) of the Signboard Tax Act, B.E. 2510 (1967), SOEs (including Thailand Post) are exempt from the signboard tax, which is imposed on any company using signs or billboards to display a name, trademark or product for the purpose of advertising or providing information on businesses.

Although tax benefits may be aimed at compensating for public-service or other non-economic activities, the exemption from the signboard tax clearly relates to Thailand Post's commercial activities and gives it a non-neutral advantage that none of its competitors enjoys.

The OECD has one recommendation:

1. Repeal Section 8(7) of the Signboard Act, B.E. 2510 (1967) that exempts SOEs from the signboard tax. SOEs, and in particular Thailand Post, should be equally subject to the tax, which is imposed on any signs or billboards displaying a name, trademark or product.

4.2.5.3 Use of crown 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.*

Under Section 24 of the State Enterprise Corporatisation Act, incorporated SOEs retain the right to use crown land and public property that they previously enjoyed, subject to payments to the Ministry of Finance. According to its *Annual Report 2017*, Thailand Post will transfer back land (and any building located on such land) to the Treasury Department upon expiration of any lease.[24]

Rental rates paid by Thailand Post, including for post offices located in prime areas, amount to 90% of the general rates[25] applied for the use of crown land and public property under Schedule 18 of the Treasury Department Order No. 683/2560.[26] The OECD understands that these general rates are at least 20-25% lower than market prices.

The OECD has one recommendation: Amend Treasury Department Order No. 683/2560 to reflect rental rates under current market conditions.

4.2.5.4 Exemption for vehicles

> *General principle*
>
> *SOEs' economic activities should not benefit from any indirect financial support that confers an advantage over private competitors, such as preferential financing, tax arrears or preferential trade credits from other SOEs. 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.*

Thailand Post operates a large fleet of trucks, mainly used for long-haul transport and intercity deliveries.

Section 9 of Vehicle Act, B.E. 2522 (1979) exempts SOEs' vehicles from paying all fees, such as road tax, except the registration fee. That said, this exemption for SOEs is limited to "vehicles other than those employed in trade or for profit" and is therefore not relevant for Thailand Post.[27]

Under the Postal Service Act, all Thailand Post's vehicles are exempted from tolls on express highways managed by Expressway Authority of Thailand (EXAT), an SOE under the Ministry of Transport. EXAT currently manages seven expressways and four expressway links serving the Greater Bangkok area and nearby provinces. Tolls may represent a significant cost for SPDS providers. Therefore, this exemption may have a significant impact because it lowers Thailand Post's costs compared to its private competitors.

The OECD has one recommendation:

1. Amend the Postal Service Act to ensure that Thailand Post is subject to tolls on express highways managed by EXAT under the same conditions as its private competitors.

4.2.5.5 Other financial advantages

> *General principle*
>
> *SOEs' economic activities should face market consistent conditions regarding access to debt and equity finance.*

The OECD understands that even though SOEs do not receive any general subsidies, the government can provide ex post funding for projects that relate to "public-service infrastructure", including the postal network. Moreover, SOEs entrusted with Cabinet-initiated projects can request funding. Access to these funds is limited to SOEs and government agencies. This means that if an SOE incurs losses in pursue the goals of Cabinet projects, Cabinet can refund the losses.

Section 27 of the Public Debt Management Act confers to the Ministry of Finance the power to guarantee in whole or in part commercial loans raised by SOEs.[28] Part IV of the State Fiscal and Financial Discipline Act, B.E. 2561 (2018) defines the principles for SOEs' creation and administration of debt, and subject to these criteria, Section 52 of the Act states that the government can guarantee SOEs' debts. The OECD understands that the Ministry of Finance typically guarantees loans taken by SOEs.

SOEs can also request loans directly from the Ministry of Finance (Wisuttisak and Fong, 2018: 110). The OECD understands that this mechanism mainly concerns underperforming SOEs.

Section 24 of the State Enterprise Corporatisation Act creates the possibility of SOEs' obligations being guaranteed by the Ministry of Finance and a guarantee fee being collected. Ministry of Finance Regulations, B.E. 2551 (2008) prescribe rates and conditions for the guarantee fee, which are significantly lower than those on the commercial market, ranging between 0.01% and 0.50%, depending on the SOE's credit rating and the duration of the loan. These rates can be even lower for loans linked to a project in accordance with government policy, such as the implementation of government development plans, or for a non-commercially viable basic utility beneficial to the public (Clause 1).[29]

The Ministry of Finance may also repay an SOE's debt. Section 15 of the Public Debt Management Act states that an SOE then owes the full amount to the Ministry of Finance, including any expenses incurred.

Based on the Public Debt Management Office (PDMO) online database, Thailand Post hold no debt or obligations guaranteed by the Ministry of Finance for the period of February 2005 to March 2019.[30] SEPO has submitted that Thailand Post's debt would not in any case be guaranteed because its activities – beyond its PSO – do not qualify as public service. Even though Thailand Post does not hold any debt or obligation guaranteed by the Ministry of Finance, Thailand Post may be perceived by the market, including its competitors, as enjoying government support in light of the above legal provisions.

The OECD has three recommendations:

1. Amend the Public Debt Management Act, B.E. 2548 (2015) and the State Enterprise Corporatisation Act, B.E. 2542 (1999) to ensure that the state only grants loans and guarantees to SOEs, including Thailand Post, at arm's length and at the same market conditions as are available to private investors.
2. For purely commercial projects, the rates applied to guarantee fees should be adjusted to reflect funding costs that private companies would face in comparable circumstances (OECD 2015a: 49).
3. Ensure that repayment of an SOE's debt is subject to market conditions.

4.2.5.6 Access to finance

> *General principle*
>
> *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.*

Although SOEs have no recognised preferential access to finance, the Public Debt Management Act, B.E. 2548 (2005) gives the criteria for an SOE to incur debt, stating that the Public Management Office (under the Ministry of Finance), which oversees public debt, can assist SOEs.[31]

Under Article 13 and 14 of the Ministry of Finance's Regulation on State Enterprises' Financial and Accounting Standard, B.E. 2548 (2008), SOEs must have deposits only with state-owned banks or private banks approved by the Ministry of Finance and can make investments only in state-run financial instruments, state-owned banks or private banks approved by the Ministry of Finance, or SOE securities. This may result in SOEs receiving better conditions as even when funding is obtained from private lenders and granted on commercial terms, the fact that creditors may assume an implicit state guarantee on an SOE's debts might lead to artificially low funding costs for Thailand Post (Wisuttisak and Fong, 2018: 110). This could disrupt the competitive landscape.

Should SOEs need to raise loans and make purchases in a foreign currency for economic and social development projects, the Ministry of Finance has the power to raise such loans if more efficient from a public-debt management perspective.[32]

Reliance on state-owned financial institutions may also distort their incentive structure and lead to excessive indebtedness and wasted resources (OECD 2015a: 48).

According to information provided to the OECD, Thailand Post currently has no loans from financial institutions, neither public nor private.

The OECD has one recommendation:

1. Ensure that SOEs, including Thailand Post, that require external finance, should be free to engage under commercial terms with any reputable financial institution and bank and that SOEs' investments should not be limited to government-linked securities or other financial instruments.

Notes

[1] The State Enterprise Corporatisation Act allowed the incorporation of SOEs without the need to amend the relevant laws.

[2] The Council of State is a department under the prime minister, which gives advice to state entities and produces codified versions of laws and regulations.

[3] Section 26, State Enterprise Capital Act, B.E. 2477; Part 1, Postal Directive, B.E. 2561.

[4] A practical consequence of these restrictions is that Thailand Post avoids entering into multi-year commercial contracts as it needs to comply strictly with its annual budget and market price fluctuations can have a negative impact.

[5] See Thailand Post's "Vision and Mission" statement, https://www.thailandpost.co.th/index.php?page=article_list_with_detail&addon=aboutus&group_id=86&language=en.

[6] See *Thailand Post Annual Report 2017*, p. 122.

[7] Information provided by Thailand Post's representative in a meeting with the OECD.

[8] See *Thailand Post Annual Report 2018*, p. 132.

[9] According to news reports, net profits are expected to increase by 14% in 2019 as a result of the e-commerce market growth. (www.bangkokpost.com/business/1559938/thailand-post-anticipates-b5bn-profit-in-2019).

[10] Thailand Post's staff often use their own motorbikes for last-mile deliveries.

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

[12] SEPO, "The contributions of public service enterprises".

[13] Bonuses usually amount to the equivalent of one month's salary.

[14] The OECD notes that, according to the recently approved SOE reform, the government should ensure compensation for expenses and revenue losses occurred as result of a PSO in line with the five-year SOE economic plan.

[15] The Thailand Development Research Institute (TDRI) is a public-policy research institute providing technical analysis (mostly in economic areas) to various public agencies to help them formulate policies to support long-term economic and social development in Thailand.

[16] "What is understood by 'independence' varies significantly across countries. Independent board members should be free of any material interests or relationships with the enterprise, its management or its ownership that could jeopardise the exercise of objective judgement. In SOEs engaged in economic activities it is advisable that they be recruited from the private sector, which can help make boards more business-oriented. Their expertise could also include qualifications

related to the SOE's specific obligations and policy objectives." OECD (2015), *OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition,* pp. 35 and 72.

[17] Section 4, Trade Competition Act, B.E. 2560 (2017): "This Act shall not apply to […] the operation of: state-owned enterprises, public organizations, or other government agencies, provided that they conduct their undertakings according to the law or resolutions of the Cabinet which are necessary for the benefit of maintaining national security, public interest, the interests of society, or the provision of public utilities"; www.asean-competition.org/file/pdf_file/Thailand%20Trade%20Competition%20Act%202017.pdf. See also Section 4, Trade Competition Act, B.E. 2542 (1999), http://web.krisdika.go.th/data/outsitedata/outsite21/file/TRADE_COMPETITION_ACT_B.E._2542.pdf.

[18] The 2017 Trade Competition Act or any other provision does not, however, define the exact nature of "public interest" activities.

[19] Section 4(4), Trade Competition Act, B.E. 2560 (2017): "This Act shall not apply to […] businesses that are specifically regulated under other sectoral laws having jurisdiction over competition matters."

[20] Section 56 of Public Procurement and Supplies Administration Act, B.E. 2560 (2017).

[21] A similar provision applies in general to "public organisations" pursuant to Section 15 of the State Organisation Act, B.E. 2542 (1999).

[22] Under Section 36 of the State Fiscal and Financial Discipline Act, B.E. 2561 (2018), an SOE not required to pay corporate tax shall "allocate annual net profits for remittance to the Treasury at the rate not lower than the corporate income tax rate".

[23] Unincorporated SOEs are treated as departments of state and so do not pay income tax; they are, however, required to transfer a percentage of their profits to the state.

[24] See *Thailand Post Annual Report 2017*, p. 109.

[25] These depend on the facility's size and location.

[26] Treasury Department Order No. 683/2560, "Rules for determining rental rates, compensation, and fees for the procurement of benefits of state property", B.E. 237 (2018), www.ratchakitcha.soc.go.th/DATA/PDF/2561/E/022/48.PDF.

[27] It also applies to SOEs' road rollers and tractors.

[28] Section 29 of the same act excludes guaranteed loans to SOEs that do not provide services of public utility, operate at a loss for three consecutive years and have been dissolved.

[29] In the case of Clause 1, the difference is recorded as part of the governmental subsidy.

[30] See, www.pdmo.go.th/en/public-debt/non-financial-guranteed-debt/domestic-external.

[31] Section 36, Public Debt Management Act, B.E. 2548 (2005).

[32] Section 9, Public Debt Management Act, B.E. 2548 (2005).

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Annex A. List of reviewed legislation

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

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

This report and the accompanying "OECD Competition Assessment Reviews: Logistics Sector in Thailand" are contributions to an ASEAN-wide competition assessment project funded by the UK Prosperity Fund. Designed to foster competition in ASEAN, the project involves conducting assessments of regulatory constraints on competition in the logistics services sector in all 10 ASEAN countries to identify regulations that hinder the efficient functioning of markets and create an unlevel playing field for business.

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