



## OECD Competitive Neutrality Reviews

# BRUNEI DARUSSALAM

## SMALL-PACKAGE DELIVERY SERVICES





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

**Please cite this publication as:**

OECD (2021), OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Brunei Darussalam, [oe.cd/comp-asean](https://oe.cd/comp-asean)

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the OECD or of the governments of its member countries or those of the European Union.

This document and any map included herein are without prejudice to the status or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city, or area.

The OECD has two official languages: English and French. The English version of this report is the only official one.

© OECD 2021

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

The OECD assessment was conducted in consultation with the Brunei Darussalam authorities and with local stakeholders, with the support of the ASEAN Secretariat and the UK Prosperity Fund (UK Government). The assessment prioritises 6 pieces of legislation and identifies 19 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 could benefit Brunei Darussalam significantly as in the recent past e-commerce has grown less rapidly than other countries in Asia, but this trend seems to be changing. This report offers policy recommendations that can help the Brunei Darussalam government address structural and regulatory shortcomings in the small package delivery services sector.

These structural reforms have become even more pressing as the growth of the Brunei Darussalam economy is expected to slow down to 1.4% in 2020 due to the COVID-19 pandemic. These policy recommendations contribute to reforms that can help the Brunei Darussalam 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 Brunei Darussalam 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

# Acknowledgements

The assessment was prepared in close collaboration with the following authorities and public companies who participated in the meetings and provided information, advice and feedback throughout the project:

- Permanent Secretary of the Ministry of Transport and Infocommunications (MTIC)
- Brunei Postal Services Department, MTIC
- Land Transport Department (LTD), MTIC
- Registry of Companies and Business Names, Ministry of Finance and Economy (MOFE)
- Maritime and Port Authority (MPA)
- Darussalam Assets
- FDI Action and Support Centre (FAST).

The following trade associations and private companies were interviewed:

- Brunei Darussalam International Chamber of Commerce & Industry
- Brunei Malay Chamber of Commerce and Industry
- DHL Express
- MOC Sdn Bhd
- Muara Port Company (MPC)
- Archipelago Group
- Bollorè Logistics
- Brunei Delivery Service
- Brunei International Air Cargo Centre (BIACC)
- kadairuncit.com and naindah.com
- SDV Logistics.

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

Valuable comments throughout the process and on the final report were provided by Antonio Capobianco, Acting Head of the OECD Competition Division, and Hans Christiansen, Senior Economist; Sara Sultan, Policy Analyst; and Chung-a Park, Policy Analyst, all three of the OECD Corporate Affairs Division.

The assessment process benefited greatly from the support of the Department of Competition and Consumer Affairs (DCCA) in the Department of Economic Planning and Statistics under the Ministry of Finance and Economy.

*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) Brunei Darussalam legislation, stakeholder interviews and desk research.

## 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 Brunei Darussalam is part of a series of 10 similar assessments (one for each ASEAN Member State).

# Table of contents

Abbreviations and acronyms	7
Executive summary	9
<b>1 Introduction</b>	<b>12</b>
1.1. Scope of the report	12
1.2. COVID-19 and its impact on e-commerce	12
1.3. Report structure	13
<b>2 State-owned enterprises and competition</b>	<b>14</b>
2.1. Introduction	14
2.2. Definition of SOEs	14
2.3. Benefits of competition	15
2.4. SOEs and competitive neutrality	16
<b>3 SOEs' framework and the importance of SOEs in Brunei Darussalam</b>	<b>19</b>
3.1. Brunei Darussalam	19
3.2. The scope and importance of SOEs in Brunei Darussalam	19
3.3. Competition law and SOEs	20
3.4. SOE-specific legislation	21
<b>4 Small-package delivery services in Brunei Darussalam</b>	<b>22</b>
4.1. Economic overview of the logistics sector: a focus on small-package delivery services (SPDS)	22
4.2. Competitive landscape of the SPDS sector	25
4.3. Sector regulation	25
<b>5 BPSD and its impact on competition in SPDS</b>	<b>27</b>
5.1. SOEs active in the SPDS sector: BPSD	27
5.2. Assessment of BPSD's advantages and disadvantages in the SPDS sector	28
<b>Annex A. List of reviewed legislation</b>	<b>37</b>
References	38
Notes	40

## FIGURES

Figure 4.1. Overview of steps in a small-package delivery service	23
Figure 4.2. E-commerce market value in ASEAN, 2015-21	24



# Abbreviations and acronyms

<b>3PL</b>	Third-party logistics
<b>ACAP</b>	ASEAN Competition Action Plan
<b>AEC</b>	ASEAN Economic Community
<b>AEGC</b>	ASEAN Experts Group on Competition
<b>AITI</b>	Authority for Infocommunications Technology Industry of Brunei Darussalam
<b>APEC</b>	Asia-Pacific Economic Cooperation
<b>ASC</b>	Authorised service contractor
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>B2B</b>	Business-to-business commerce
<b>B2C</b>	Business-to-consumer commerce
<b>BDAS</b>	Brunei Darussalam Accounting Standards
<b>BEDB</b>	Brunei Economic Development Board
<b>BIACC</b>	Brunei International Air Cargo Centre
<b>BPSD</b>	Brunei Postal Services Department
<b>CEO</b>	Chief executive officer
<b>COD</b>	Cash-On-Delivery
<b>CPTPP</b>	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
<b>DA</b>	Darussalam Assets Sdn Bhd
<b>DARe</b>	Darussalam Enterprise
<b>DCCA</b>	Department of Competition and Consumer Affairs
<b>EABC</b>	European Association for Business and Commerce
<b>EMS</b>	Express Mail Services
<b>GLM</b>	Government-linked monopoly
<b>GLC</b>	Government-linked company
<b>ICT</b>	Information and communications technology
<b>IFRS</b>	International Financial Reporting Standards
<b>MOFC</b>	Minister for Finance Corporation
<b>MPA</b>	Maritime and Port Authority
<b>MPC</b>	Muara Port Company Sdn Bhd
<b>MTB</b>	Mini Tender Board
<b>MTIC</b>	Ministry of Transport and Infocommunications
<b>OSP</b>	Outside service providers
<b>PMO</b>	Prime Minister's Office
<b>PSO</b>	Public-Service Obligation
<b>PUD</b>	Pick-up and delivery
<b>RB</b>	Royal Brunei Airlines
<b>RBTS</b>	Royal Brunei Technical Services Sdn Bhd
<b>ROCBN</b>	Registry of Companies and Businesses Names
<b>SEC</b>	Securities and Exchange Commission
<b>SOE</b>	State-owned enterprise
<b>SPDS</b>	Small-package delivery services
<b>STB</b>	State Tender Board

**UPU**  
**WTO**

Universal Postal Union  
World Trade Organization

# Executive summary

## State-owned enterprises and competition

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

SOEs may enjoy rights or privileges unavailable to private competitors, which give them an 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 financially disadvantaged consumers often suffer disproportionately from the exercise of market power. A level playing field also benefits taxpayers as (often limited) public resources can be better allocated to other public services, including pensions, healthcare and social benefits. Finally, research has shown that including gender considerations in competition policy can improve gender equality.

## BPSD and the small-package delivery services sector in Brunei Darussalam

Brunei is a small oil-rich sultanate along the northern coast of the island of Borneo, bordering the South China Sea and Malaysia. It became a part of the ASEAN on 7 January 1984. According to the World Bank, the country is one of the high-income economies in the world. For a country with a population of approximately 450 000, its GDP is the second highest in the ASEAN region. The per capita GDP of Brunei is almost US\$ 30 000.

SOEs, and more generally the public sector, play an important role in the Brunei economy, including in the small-package delivery services (SPDS) sector, where Brunei Postal Services Department (BPSD) is active. To fulfil its potential and exploit the international developments, a level playing field in the SPDS sector is crucial for developing a competitive SPDS market.

The Post Office Act (“Chapter 52 of the Laws of Brunei”), 1984 and the Post Office Rules, 1993 are the main pieces of legislation regulating the SPDS sector in Brunei Darussalam. Some provisions contained in this legislation (and other legislation generally applicable to SOEs in Brunei Darussalam) result in several obstacles that may prevent the existence of a level playing field in the SPDS sector, harm competition, and – as a result – may contribute to hinder the domestic economy and consumers to reap the full benefits from the rapidly developing e-commerce activities.

In Brunei Darussalam, as in many countries around the world, the volume of traditional letters and postcards is falling drastically as a result of electronic communication. This has led to increasing

commercial importance of the SPDS market for the incumbent postal operator, the Brunei Postal Services Department under the Ministry of Transport and Infocommunications.

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

Since the 1990s, many OECD countries have addressed the issue of levelling the playing field between incumbent postal operators and private competitors also active in (contestable) commercial markets. In these countries, the SPDS 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 BPSD are often interrelated and should therefore be looked at holistically, rather than in isolation. For instance, any actions that aim to reverse or decrease BPSD's rights and privileges should be accompanied by a clear assessment of the impact and possible disadvantages that result from BPSD's public-service obligation (PSO), including the compensation mechanism. In other words, any measures to improve the competitiveness of the SPDS sector must take into account that BPSD's viability can only be assured when it is adequately compensated for the fulfilment of its PSO.

## Key recommendations

This report identifies 19 recommendations that aim to improve the level playing field in the SPDS sector in Brunei Darussalam. If fully implemented, these recommendations can be expected to generate significant benefits to the economy of Brunei Darussalam, 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 a 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:

- Should the benefits exceed the costs, BPSD's corporatisation plan should be implemented. An identifiably separate entity should be established with its own accounts and management, and management would need to be told to seek, and be rewarded for seeking, to operate on a commercial and profitable basis.
- BPSD should be adequately compensated to cover for the fulfilment of the services to (or on behalf of) the government and its PSO.
- For its PSO, accounting separation and reporting requirements should be introduced to ensure that government subsidies and funds do not cross-subsidise SPDS provided in competition with private market participants.
- Section 10(4) of Competition Order 2015 lists a number of exemptions from its applicability. These exemptions may include cases in which the SOE acts on behalf of the government or a statutory body. The scope of this exemption should be clarified to exclude commercial activities carried out by BPSD in competition with other market participants.

- BPSD should not exercise at the same time regulatory functions and commercial activities.
  - Pending BPSD corporatisation, strict safeguards shall be introduced within the Ministry of Transport and Infocommunications to avoid the involvement of officials managing BPSD's commercial activities in regulatory initiatives and decisions.
  - Once corporatised, assuming that BPSD will remain a SOE, there should be a clear separation between the State's ownership function and the State's regulatory functions that may influence the conditions for BPSD (and its private competitors) to operate and effectively compete on the market.
- A new framework conferring regulatory powers to a statutory body or separate authority should ensure that the authority receiving such powers acts objectively, impartially and consistently, without conflict of interest.
- BPSD commercial activities – both as a ministerial department and after corporatisation – should be accounted separately and subject to the same tax treatment as its competitors.

# 1 Introduction

## 1.1. Scope of the report

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

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

## 1.2. 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. In September 2020, the Asian Development Bank (ADB) revised its estimates for GDP growth in Asia in 2020 and 2021. According to the ADB (ADB, 2020<sup>[1]</sup>), Southeast Asia's (i.e. ASEAN member states + Timor-Leste) GDP is expected to contract 3.8% in 2020 and rebound to 5.5% in 2021. For Brunei Darussalam, the ADB expects that the economy will still grow in 2020, albeit at a slower pace than earlier foreseen, because of the COVID-19 epidemic. A recovery to pre-COVID levels is expected in 2021, with a GDP growth rate of 3%, compared to 3.9% in 2019.

The pandemic has provoked an abrupt and sharp increase in the use of e-commerce. For instance, in the week of 22 March 2020, weekly downloads for shopping applications in Thailand are estimated to have increased by 60%, while Indonesia, Singapore and Viet Nam each recorded a 10% increase (OECD, 2020, p. 99<sup>[2]</sup>). E-commerce is likely to keep growing as consumers continue to shun physical stores in favour of online shopping solutions (ASEAN, 2020<sup>[3]</sup>).

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

businesses' initiatives to provide connectivity to "vulnerable communities", removing barriers for SMEs, and providing easier access to products with better price and quality (World Economic Forum, 2020<sup>[4]</sup>).

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

Regional co-operation plays and will continue to play a key role in this context. ASEAN has put in place a framework for COVID-19 responses across multiple sectors (United Nations, 2020<sup>[5]</sup>). Moreover, the ASEAN Expert Group on Competition (AEGC) released a joint statement in Response to the COVID-19 Pandemic.<sup>1</sup> APEC is also taking collective initiatives. In May 2020, the ministers responsible for trade in APEC economies pledged to work together to mitigate the impact of COVID-19, committing (among other considerations) to facilitate the flow of goods across borders, as well as to strengthen e-commerce and related services (OECD, 2020, p. 99<sup>[2]</sup>).

### 1.3. Report structure

The report is structured as five chapters. This executive summary outlines the content of the report and provides an overview of its key recommendations; Chapter 1 defines state-owned enterprises and the relationship between state-owned enterprises and competition policy; Chapter 2 provides an overview of the economic importance and the legal framework of state-owned enterprises in Brunei Darussalam; Chapter 3 describes the competitive landscape and the regulation applicable to small package delivery services in Brunei Darussalam; Chapter 4 focuses on BPSD, the government department currently providing SPDS in Brunei Darussalam and the advantages or disadvantages that can impact on competition, and offers recommendations to improve the level playing field.

# 2 State-owned enterprises and competition

## 2.1. Introduction

SOEs play a significant role in many national economies around the world. Approximately 22% of the world's largest 100 firms are estimated to be effectively under state control, with many of these operating key upstream and downstream activities in international supply chains, such as public utilities, manufacturing, metals and mining, and petroleum (OECD, 2016<sup>[6]</sup>).

The role and importance of SOEs differ substantially between regions, countries and sectors. In Southeast Asia, they still represent a major part of many economies, measured by the percentage of GDP, employment and fiscal revenues, and remain indispensable players in almost all key sectors, building, maintaining and operating critical infrastructure, delivering critical services, and providing public employment. Their characteristics as publicly owned enterprises allow them to play a critical role in most economies and to contribute to developmental goals that – in practice – often result from other (political or economic) objectives (OECD, 2015<sup>[7]</sup>).

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

Several 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, 2015<sup>[8]</sup>).<sup>2</sup> In OECD countries (and beyond), SOEs' roles evolved significantly between 1990 and 2010, with large privatisation initiatives throughout the 1990s and early 2000s (OECD, 2018<sup>[9]</sup>; 2009<sup>[10]</sup>; 2019<sup>[11]</sup>). At the same time, many governments have sought to rationalise the enterprises they continue to own, subjecting them to the same laws and treatment as private enterprises and professionalising their ownership and governance.

## 2.2. Definition of SOEs

An SOE is an enterprise entirely or partly owned by the state; it can be organised in different forms and serve a wide range of functions. Certain countries, including ASEAN member states, use different terms 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, 2015, pp. 14-15<sup>[8]</sup>)*

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

### 1. Ownership structure

- a. **Enterprise wholly owned by the state.** An enterprise under a nation’s laws over which the state exercises full ownership is more than likely to be an SOE. An enterprise’s institutional form, such as a company limited by shares or partnership, is not generally determinative.
  - b. **Enterprise controlled by the state.** An enterprise controlled by the state should ordinarily be considered an SOE. “Control” should be assessed in a substantive way, and may require case-by-case assessment. It would normally be established in cases where the state, by directly or indirectly holding a majority of the voting rights in an enterprise, exercises influence over an enterprise’s strategic decisions, such as approval of budgets, business plans and major investments, as well as the appointment of senior management.<sup>3</sup> In countries where the state invests in a wide range of companies through sovereign wealth funds or publicly owned holding companies, the state’s control may be indirectly exercised; this may require an assessment. The state can exercise an equivalent degree of control in situations where, for example, an enterprise’s by-laws allow the state to appoint the majority of the board of directors or assign a “golden share” that gives veto rights for certain strategic decisions. Not all ownership amounts to control, however. For instance, small equity holdings of less than 10% held by independent asset managers such as public pension funds would not ordinarily amount to control and an enterprise would not be considered an SOE. Similarly, enterprises temporarily controlled by the state in the course of bankruptcy or similar procedures would not ordinarily be SOEs.
- 2. Economic nature of activities.** An entity established by law whose purposes or activities are largely economic in nature would be considered an SOE. An economic activity is one that involves offering goods or services in a given market and which could, at least in principle, be carried out by a profit-seeking private operator. Economic activities mostly take place in markets open to competition or where competition could occur, given existent laws and regulations.

## 2.3. Benefits of competition

There is broad consensus that competition creates significant benefits for consumers. When consumers can choose between different providers of goods or services, firms are forced to compete 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<sup>[12]</sup>). For instance, when Australia engaged in broad pro-competitive regulatory reforms in the 1990s, its Productivity Commission estimated that these reforms resulted in a GDP increase of at least 2.5%. Importantly, research has shown that competitive restrictions have a disproportionately negative impact on the poor meaning that pro-competition policies, by eliminating cartel-like market

conditions, can substantially enhance living standards for the economically disadvantaged or impoverished by reducing prices and increasing real income (Ennis, Gonzaga and Pike, 2017<sup>[13]</sup>).

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

That said, sound and effective competition does not always arise naturally: the temptation is strong for economic players to restrict competition to achieve greater profits.

## 2.4. SOEs and competitive neutrality

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

At ASEAN level, the *Economic Community Blueprint 2025* affirms that one of the elements necessary to increase the region's productivity is to ensure "a level playing for all firms, regardless of ownership". This is also identified as the fundamental goal of competition policy and law.<sup>4</sup> These principles are also noted in the 2010 *ASEAN Regional Guidelines on Competition Policy*, in which the ASEAN Expert Group on Competition (AEGC) stated that: "Competition policy should be an instrument of general application, i.e., applying to all economic sectors and to all businesses engaged in commercial economic activities (production and supply of goods and services), including State-owned enterprises" (ASEAN, 2010<sup>[14]</sup>). This results in no ASEAN competition law giving SOEs a general exemption.

The ultimate objective is to level the playing field between privately owned entities and entities owned by, or linked to, the state, so that no business entity has advantages or disadvantages that result solely from its ownership (OECD, n.d., pp. 62-63<sup>[15]</sup>). 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 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, n.d., p. 39<sup>[16]</sup>).

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<sup>[17]</sup>).

### 2.4.1. SOEs and departures from competitive neutrality

Governments may take deliberate decisions to depart from competitive neutrality in cases where SOEs may be necessary to correct market failures or to achieve other policy objectives. In other words, governments' choices for non-neutrality include both economic rationales (circumstances where the economic outcome may be made more efficient through intervention), and broader policy rationales (in which case social objectives may justify exceptions to economic efficiency principles) (OECD, 2012<sup>[17]</sup>; Capobianco and Christiansen, 2011<sup>[18]</sup>).

A common economic rationale is the correction of market failures in specific markets. While the majority of markets may be best served by suppliers pursuing ordinary commercial objectives, certain markets have special characteristics that can lead to “market failures”, in which the ordinary interaction of supply and demand does *not* lead to the most economically efficient outcome. In such identifiable circumstances, an SOE whose operating principles depart from ordinary profit maximisation may achieve the most efficient attainable outcome.

The rationale for correcting market failures is most widely seen in industries with “natural monopoly” characteristics where – due to cost structures – it would not be economically efficient or likely in practice for competitors to operate. This effect is particularly common in network industries and utility industries, such as segments of the telecommunications and electricity industries, and domestic water supply, where economies of scale and network effects often legitimise the presence of a single provider.

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

Beyond these economic rationales for SOEs, a number of broader policy rationales may also be relevant. First, governments may identify certain basic services that should be accessible to all members of society through a provider with a PSO. Such services typically include: 1) communication services such as postal services and telecommunications; 2) utilities such as electricity and water distribution; and 3) basic education. A PSO requires the provision of a minimum service to all consumers, often including those in sparsely populated areas where provision is uneconomic; it does not necessarily require the presence of an SOE and instead may be imposed on privately owned operators, with loss-making services compensated through cross-subsidisation from other services or direct government transfers (or both). Governments may decide, however, that it is more effective to achieve the social objective through an SOE rather than a privately owned operator.

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

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

In addition, governments may have fiscal objectives for SOEs, such as ensuring a profit stream from the SOE to the national budget.

Finally, other political objectives may include the support of interest groups, such as public employees. For instance, SOEs remain a major source of employment and can provide better conditions than those in the private sector (OECD, 2017<sub>[19]</sub>).<sup>6</sup>

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

#### **2.4.2. Key distortions of competition by SOEs**

Whether intentional or not, departures from competitive neutrality can result in significant distortions of competition. An SOE’s market competitiveness can be enhanced (or impaired) through government ownership or connections in a number of ways.<sup>7</sup>

### 1. Financial treatment

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

### 2. Asymmetrical regulation

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

### 3. Corporate governance

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

# 3 SOEs' framework and the importance of SOEs in Brunei Darussalam

## 3.1. Brunei Darussalam

Brunei Darussalam is a small oil-rich country located on the isle of Borneo, bordered by Malaysia and the South China Sea. It has a high income per capita with a population of approximately 450 000 and GDP per capita of approximately USD 30 000 (ADB, 2020<sup>[20]</sup>).

With its reliance on hydrocarbons, Brunei Darussalam's economy is susceptible to fluctuations in commodity prices (OECD/ERIA, 2018<sup>[20]</sup>). After four consecutive years of negative growth from 2013 to 2016, following a slump in world oil prices, the economy recorded real GDP growth of 1.3% in 2017, of 0.1% in 2018 and of 3.9% in 2019 (ADB, 2020<sup>[21]</sup>). Due to COVID-19, its GDP growth is expected to slow down to 1.4% in 2020 and rebound to 3% in 2021 (ADB, 2020<sup>[21]</sup>). In general, Brunei Darussalam continues to face some challenges in diversifying its economy (OECD, 2018<sup>[22]</sup>).

Brunei Darussalam is implementing Wawasan Brunei 2035 (also called Brunei Vision 2035), a long-term development plan which seeks to diversify its economy towards new sectors such as logistics, financial services and sustainable tourism (Centre for Strategic and Policy Studies, 2014, p. 3<sup>[23]</sup>), as well as the Halal certification and trade industry. The Prime Minister's Office (PMO) has a leading role in coordinating actions and the Brunei Economic Development Board (BEDB) plays a key role by facilitating foreign investments.

Of relevance for this report is the fact that Brunei Darussalam is a member of the World Trade Organization (WTO) (since 1995) and Asia-Pacific Economic Cooperation (APEC), and a signatory to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Brunei Darussalam ranked 55<sup>th</sup> in the World Bank Group Doing Business 2019 report (World Bank, 2019<sup>[24]</sup>) and 62<sup>nd</sup> in the World Economic Forum Global Competitiveness Index 4.0 2018, gaining two positions compared to 2017.

## 3.2. The scope and importance of SOEs in Brunei Darussalam

Brunei's SOEs are active in a number of key sectors such as oil and gas, telecommunications, transport, and energy generation/distribution, either in the form of State wholly owned companies or in joint ventures with foreign investors (Bryane, 2017<sup>[25]</sup>). The Ministry of Transport and Infocommunications (MTIC) indicated that there is an intention to further corporatise SOEs, including commercial services currently provided by ministerial departments under MTIC. Darussalam Assets Sdn Bhd (DA), a government linked holding company established in 2012. DA is owned by the Minister for Finance Corporation ("MOFC") and

it is “an integral part of the Government led initiative to spur economic development”.<sup>8</sup> DA’s portfolio includes SOEs active in various sectors of the economy including telecommunications, energy generation/distribution, transport (logistics and aviation), agribusiness, food and beverage, leisure and tourism, medical, education, hospitality, and real estate.<sup>9</sup> DA subsidiaries active in logistics include BIACC Sdn Bhd (previously known as Brunei International Air Cargo Centre [BIACC]),<sup>10</sup> Royal Brunei Airlines Sdn Bhd, Royal Brunei Technical Services Sdn Bhd (RBTS),<sup>11</sup> specialised in supply chain services and one-stop turnkey logistics solutions, and Muara Port Company Sdn Bhd (MPC), which is the terminal operator of Muara port.<sup>12</sup> Moreover, DA explained that it is looking at potential synergies and collaboration opportunities among its SOEs with logistics activities.

As mentioned above, Brunei Darussalam is a signatory to the CPTPP. It shall be noted that Chapter 17 of CPTPP prescribes a number of non-discriminatory and transparency rules that should apply to SOEs. The following exemptions apply to Brunei Darussalam.

1. Contrary to Article 17.10(1), Brunei Darussalam is not required to submit and make publicly available a list of its SOEs for the first five years since the date of entry into force of the CPTPP (30 December 2018).
2. For a period of five years after the date of entry into force, Article 17.4 (concerning the non-discriminatory treatment and commercial considerations) and Article 17.6 (concerning non-commercial assistance) shall not apply with respect to SOEs or designated monopolies of Brunei Darussalam, if in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of the relevant SOE was less than SDR 500 million.<sup>13</sup>
3. Under Annex IV, broader exemptions apply to SOEs engaged in the petroleum industry, as well as the supply of natural gas or manufactured petrochemical products and their derivatives.

### 3.3. Competition law and SOEs

On 7<sup>th</sup> January 2015, Brunei Darussalam introduced its first competition law (Competition Order 2015). In August 2017, it established both a Competition Commission and a Department of Competition and Consumer Affairs (DCCA) in the Department of Economic Planning and Statistics (previously known as Department of Economic Planning and Development) under the Ministry of Finance and Economy. They are jointly entrusted with the powers to enforce the Competition Order 2015.

The Competition Order 2015 has come into force in January 2020, and guidelines are expected to clarify certain provisions and provide more legal certainty to businesses.

In principle, the Competition Order 2015 applies to SOEs, unless they are performing “government activities”. The DCCA explained that activities performed by SOEs shall not be considered “government activities” if: a) not under instructions of the government, b) not in the interest of the government, c) not funded by the government, or d) not approved by the government.

In addition, Section 10(4)-(5) of Competition Order 2015 lists a number of exemptions from its applicability. These exemptions may include cases in which the SOE acts on behalf of the government or a statutory body. There is no guidance clarifying the scope of this provision.

Under the Third Schedule of Competition Order 2015, legal monopolies would be excluded from the applicability of the rules on anti-competitive agreements and abuses of dominance (Sections 11 and 21) when such rules would “obstruct the performance” of monopolies generating revenues for the government. Similar exclusion would also apply to services of general economic interest, and to agreements or conduct to comply with legal requirements, to avoid conflicts with international obligations or for reasons of public policy.

Finally, under the Monopolies Act (Chapter 73 of the Laws of Brunei) His Majesty the Sultan has the power to grant monopoly rights. Once granted, any breach of such rights is considered a criminal offence.<sup>14</sup> The sectors currently covered by monopolies are listed in the First Schedule and do not include any logistics-related activity. That said, His Majesty the Sultan could include new activities by amending the First Schedule.

### 3.4. SOE-specific legislation

#### 3.4.1. Governance principles

SOEs that are formally incorporated and registered with the Registry of Companies and Businesses Names (ROCBN)<sup>15</sup> as private limited companies are subject to the Companies Act (Chapter 39 of the Laws of Brunei). The OECD understands that a Code of Corporate Governance has been issued in 2006 and it currently applies to all public companies, including public SOEs.

Although there are no corporate governance rules generally applicable to (non-public) SOEs (i.e. SOEs that are formally incorporated as private limited companies), the OECD was informed that DA has started rolling out a corporate governance code and a corporate governance manual requiring its portfolio companies to adopt these governance rules. Furthermore, DA is in the process of designing policies for the remuneration of directors of its portfolio SOEs.

The second<sup>16</sup> Minister of Finance and Economy is the Chairman of a number of SOEs, including those held by DA (e.g. Muara Port Company). Moreover, senior government officials are often sitting in SOEs' Board of Directors, although sector-related ministries, unless commercial activities are performed by a ministerial department itself, do not directly manage SOEs.

#### 3.4.2. Accountability and transparency

SOEs that are formally incorporated as private limited companies are subject to the Brunei Darussalam Accounting Standards (BDAS) and to the reporting obligations prescribed under Chapter 39 of the Laws of Brunei. Moreover, the OECD understands that DA is in the process of adopting the International Financial Reporting Standards (IFRS) for its portfolio SOEs.

#### 3.4.3. Access to public resources and other benefits

According to DA, it has not provided any guarantees to date as it has always declined SOEs' request to issue guarantees for their financial commitments.

However, in practice, stakeholders noted that many SOEs are not profitable in Brunei Darussalam. According to DA, this is due to the fact that – given the size of the domestic market – for certain activities requiring substantial investments it is challenging to be commercially viable. Moreover, in the past, SOEs have been receiving considerable financial assistance because they were considered of strategic importance (e.g. power generation, water treatment and distribution and healthcare). The OECD did not have access to specific information in this regard.

Until 2017, in many cases, SOEs obtained financial resources through equity injections. The OECD understands that, in the last two years, DA initiated a plan to optimise SOEs' financial positions, instructing its portfolio SOEs in need of financing to reach out to commercial banks to obtain loans under commercial terms.

# 4 Small-package delivery services in Brunei Darussalam

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

### 4.1.1. Competition in the postal sector

Postal services are a form of transportation or communication service for delivering goods and information from one point to another. Postal operators compete with firms offering a variety of delivery or communications services, including, most importantly, telecommunications services. Postal services differ from other physical delivery services due to the large volume and the nature of letters and other goods they deliver; this allows them to take significant advantage of economies of scale and scope in delivery (OECD, 1999<sup>[26]</sup>).

In many countries, an incumbent postal operator benefits or has benefited in the past from a monopoly over the handling of certain classes of mail, usually defined as mail items below a certain weight or price, or both. The primary reason for this protection of certain areas from competition is the need to preserve the internal cross-subsidisation that finances non-commercial PSO. This allows the operator to maintain service quality on unprofitable high-cost or low-volume delivery routes when other concerns, such as the obligation to maintain geographically uniform prices, limit its ability to raise prices (OECD, 1999<sup>[26]</sup>).

This type of cross-subsidisation – using revenues from commercial activities for the non-commercial and non-profitable activities – is threatened by increasing competition. When introducing or increasing competition, countries must consider other mechanisms for the provision of any non-commercial services that need to be maintained. A variety of competitively neutral methods exist for financing non-commercial obligations, which do not threaten competition (OECD, 1999<sup>[26]</sup>).<sup>17</sup>

For many incumbent postal operators, the often non-regulated or less regulated and commercially attractive activity of delivering small packages to consumers has been one of the main means through which non-commercial activities have been cross-subsidised. Moreover, the drastic decline in the volume of traditional letters and postcards due to electronic communications, which has been observed in many countries around the world, continues to increase the commercial importance of small-package delivery services for incumbent postal operators.<sup>18</sup> Combining commercial and non-commercial activities should not, however, provide the incumbent postal operator with a competitive advantage in relation to its competitors in an openly competitive market.

### 4.1.2. Definition of a small package

There are various definitions of “small package” in the logistics industry. One method is its weight, with the upper limit determined by how much a single person can handle without using any specific equipment. Different market participants use different weight limits,<sup>19</sup> but a commonly used upper weight limit is



31.5 kilogrammes for a package. A separate category called “parcels” also exists, which is often used to identify packages with a weight of up to 20 kilogrammes within the framework of the Universal Postal Union (UPU).<sup>20</sup>

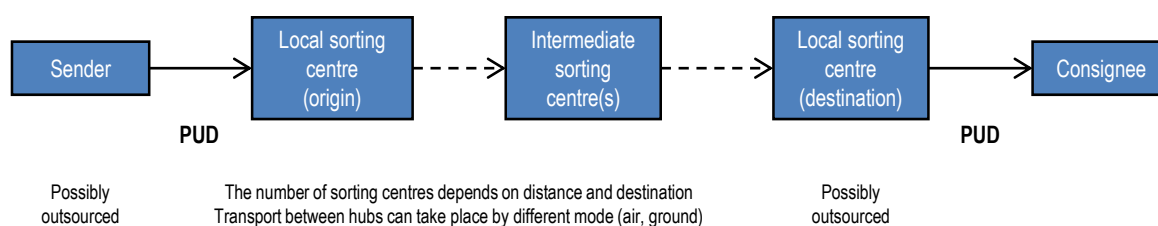
In Brunei, and for the purpose of BPSD’s business, “small packages” fall under two product categories: a) “small packets” (with a weight of up to 2 kg), defined as “any postal article containing small articles of merchandise or small articles of dutiable articles”;<sup>21</sup> and b) “parcels” (with a weight of up to 20 kg).

#### 4.1.3. SPDS market structure and value chain

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

A package moving from sender to consignee will pass through a varying number of “nodes” before reaching its final destination.<sup>22</sup> Small-package delivery is inherently multimodal, using small trucks, cars or messengers for pickup and delivery and other modes of transport such as truck, rail or air for longer distances (Dennis, 2011<sup>[27]</sup>).

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



Source: OECD analysis based on EC merger case COMP/M.6570 – UPS/ TNT Express, 30/1/2013 and Dennis, W.T. (2011<sup>[27]</sup>), *Parcel and Small Package Delivery Industry*, CreateSpace, North Charleston, NC.

Different actors are active in the SPDS value chain, roughly split between integrators and non-integrators.<sup>23</sup>

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

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

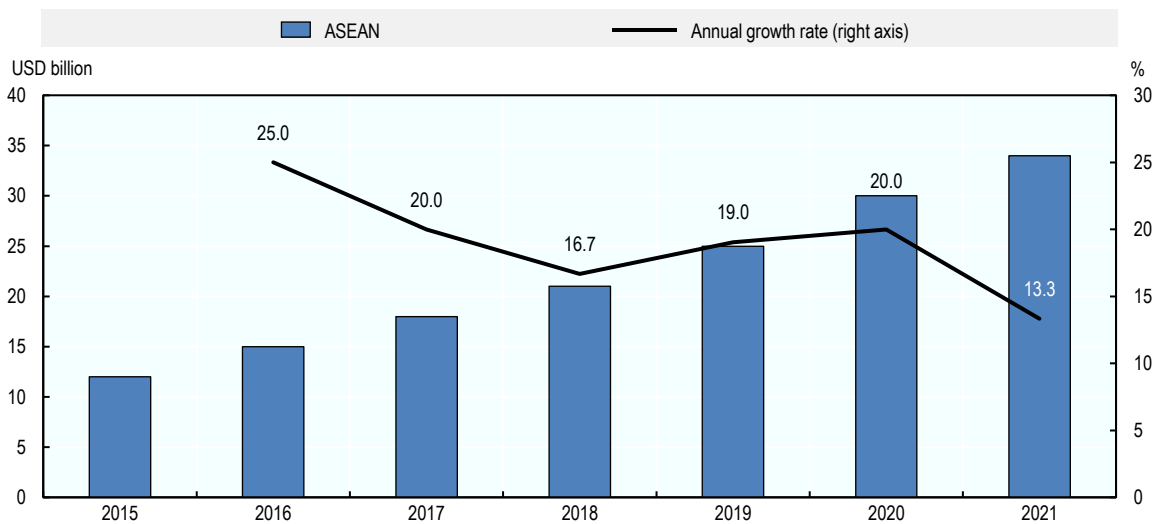
1. **Incumbent postal operators.** In many countries, the incumbent domestic postal operator is active in domestic and international small-package delivery. Generally, declining mail volumes have forced these operators to develop new business areas such as logistics, and in particular, SPDS.<sup>24</sup>
2. **Regional, national or local SPDS companies and partner networks.** These are often concentrated in the domestic small-package market. They may form alliances and partner networks to offer wider-ranging SPDS and expand into neighbouring countries.
3. **Smaller companies** with a domestic PUD ground service in one or more countries.

Many SPDS operators, 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.<sup>25</sup>

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

The advent and rapid growth of e-commerce has contributed to the rapid growth in demand for postal and courier services, which are responsible for the transportation and delivery of the package and some (or all) of the fulfilment activities.<sup>26</sup> The e-commerce market in ASEAN remains relatively small compared to other regions of the world,<sup>27</sup> but by 2021 is expected to have grown at a double-digit pace with a compound annual growth rate of 19% since 2015 (see Figure 4.2). This may be a conservative estimate, as a recent study reported that in 2019 the Southeast Asian e-commerce market was worth USD 38.2 billion, and predicted that it would grow to USD 153 billion by 2024, at a compound annual growth rate of 39% between 2015 and 2024 (Google, Temasek and Bain & Company, n.d.<sup>[28]</sup>). In Brunei, e-commerce revenue is estimated to reach US\$ 49 million in 2020, which equates to a revenue per user of approximately US\$ 296. Beyond 2020, e-commerce revenue is expected to show an annual growth rate (CAGR 2020-2024) of 5.6%, resulting in a projected market volume of US\$61m by 2024 (Statista, n.d.<sup>[29]</sup>). In April 2020, the Authority for Infocommunications Technology Industry of Brunei Darussalam (AITI) and Darussalam Enterprise (DARe) launched Brunei's first local online e-commerce directory eKadaiBrunei.<sup>28</sup> This directory lists e-commerce and logistics providers based in Brunei, helping businesses and the public find trusted providers.

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



Source: OECD (2018<sup>[22]</sup>), *Economic Outlook for Southeast Asia, China and India 2018 – Update: Promoting Opportunities in E-commerce*, <http://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, 2018<sup>[22]</sup>). Ensuring a level playing field and stimulating competition plays a crucial role when optimising the legal and regulatory environment.

ASEAN adopted the *Work Programme on Electronic Commerce 2017-2025*<sup>29</sup> on 7 September 2017 and ASEAN Economic Ministers signed the ASEAN Agreement on Electronic Commerce on 12 November 2018.<sup>30</sup> Both show that ASEAN has recognised the potential of the digital economy, and the need to develop the region's e-commerce industry by creating a conducive environment for its growth through advancing trade rules and building up greater digital connectivity in the region.

Despite Brunei Darussalam having the highest internet and social media penetration in Southeast Asia, with internet penetration at 86% (We Are Social, 2018<sub>[30]</sub>), based on information provided by stakeholders, the use of e-commerce is growing slowly.

Many small businesses in Brunei Darussalam utilise popular social media platforms such as Facebook and Instagram to market their products, benefitting from the high use of social media in the country. Payments are mainly based on cash-on-delivery (COD), even though Baiduri Bank developed online payment solutions that have been adopted by local SMEs (OECD, 2018<sub>[9]</sub>).

## 4.2. Competitive landscape of the SPDS sector

The main challenge for logistics (including the SPDS sector) in Brunei Darussalam is the lack of sufficient volumes of business. The domestic market is considered too small and there are very limited manufacturing and processing activities in the country, although the government is promoting initiatives to this end.

Nevertheless, a number of third-party logistics companies (3PLs), including both local and regional market participants are active in the SPDS market in Brunei Darussalam. In particular, to date, there are 12 licensed SPDS providers which are active market participants, including DHL,<sup>31</sup> FedEx/TNT, SF Asia and UPS.<sup>32</sup> BPSD competes with these market participants in the express delivery segment through its Express Mail Services (EMS) business line.

Large SPDS providers are mainly active in the international segment (both B2B and B2C).<sup>33</sup> DHL is estimated to be #1 in the international segment with a market share of approximately 50%. International door-to-door deliveries are still a challenge for BPSD because there are problems of connectivity and reliability with postal operators' networks in other countries. Moreover, BPSD does not provide for international deliveries to reach directly the final customer because the latter is required to settle customs duties at the post office first.

Large SPDS providers have limited interest to operate in the domestic market because the overall volumes and BPSD's rates are considered too low. BPSD's competitors sometimes outsource to BPSD the (express) last-mile delivery to rural areas. Besides the large operators, the domestic market is characterized by a number of new entrants (e.g. Dart, Dots Deliver, Kjb and Brunei Delivery Service). These providers are mainly active through social media and they operate SPDS services without a license, often using private vehicles for deliveries. Some of these new entrants are active in both the B2B and B2C segments and they exercise competitive pressure on BPSD's SPDS business.

## 4.3. Sector regulation

The SPDS regulation consists of the Post Office Act (Chapter 52 of the Laws of Brunei) and the rules adopted by the MTIC with the approval of His Majesty the Sultan.<sup>34</sup>

Although under Section 18 of Chapter 52 of the Laws of Brunei, MTIC is the sector regulator for postal services, the OECD understands that – in practice – its regulatory powers mostly concern granting licenses to “express letters” service providers.

In 1993, MTIC adopted the Post Office Rules. It appears that these rules are relevant only with regard to BPSD's activities.

#### **4.3.1. Licensing**

As mentioned above, MTIC has granted 12 licenses to "express letters" service providers to date.

The OECD understands that potential applicants may obtain guidelines on the application process from MTIC (these are called "Guidelines to Application of Licence for the Provision of Local/International Express Letter Service"). A license to operate in the domestic market is subject to an annual fee of BND 500, while a license to operate in the international market is subject to an annual fee of BND 1 500. MTIC can revoke the license if a provider infringes Chapter 52 of the Laws of Brunei. These decisions are not subject to appeal or review by any court or other body.

In addition to the new entrants operating without licenses mentioned in Section 4.2 above, some merchants have their own delivery services without being required to hold a license because, according to MTIC, Chapter 52 of the Laws of Brunei only refers to "postal articles" rather than "goods". So, merchants are free to deliver their own goods/merchandise as these do not fall under the definition of "postal articles".

According to MTIC, with the corporatisation of BPSD anticipated by 2021 (see Section 5.1), the definition and scope of services as well as licensing and regulatory framework will be revised.

#### **4.3.2. Price regulation**

The Post Office Rules regulate BPSD's rates. Its competitors are not subject to any price regulation, except for minimum prices with regard to local and international express letters.<sup>35</sup>

BPSD fixed rates applicable respectively to (both domestic and international) small packets and domestic parcels, depending on their weight and size, are listed in the First Schedule and the Second Schedule to the Post Office Rules. BPSD explained that these rates have not been updated since 1980. For small packets, BPSD rates range between BND 0.20 and BND 2.50. For domestic parcels, BPSD rates range between BND 2.00 and BND 4.00.

As to international deliveries, BPSD maintains some flexibility as the Postmaster-General can set the rates under Section 36 of the Post Office Rules.

At the wholesale level, there is no price regulation. Therefore, BPSD typically charges competitors its standard rates determined by MTIC. Subject to registration as a professional business, BPSD may grant to these customers a BND 0.5 discount on its BND 3 standard rate.

# 5 BPSD and its impact on competition in SPDS

## 5.1. SOEs active in the SPDS sector: BPSD

BPSD is a department under MTIC. It has 21 post offices and a processing centre in Brunei Darussalam. It employs 350 people.

BPSD has three main product lines: a) letters, b) parcels, and c) EMS for letters and parcels. Moreover, it issues stamps and it provides additional services such as payment of utility bills and international money transfer (e.g. for remittances).

BPSD's mail business is significantly decreasing: the number of letters and postcards handled by BPSD dropped from approximately 8.9 million in 2004 to 6.6 million in 2018. On the contrary, SPDS volumes (from approximately 25 000 small packages (small packets and parcels) in 2004 to approximately 268 000 small packages in 2018)<sup>36</sup> and total international revenues are increasing as a result of domestic demand and the volume generated through the UPU system for inbound last-mile deliveries.<sup>37</sup> Nonetheless, in the financial year 2017-2018 stamps' revenues still accounted for approximately BND 2.2 million, i.e. approximately 61% of BPSD total revenues.

According to the information provided by BPSD, the department operates with a budget deficit, with 87% of its budget allocated to wages.

The OECD understands that there is a plan to corporatise BPSD by 2021, maintaining full public ownership and transferring the new company under DA. That said, there seem to be issues that may slow down the corporatisation process such as the fact that – as a ministerial department and contrary to most of the companies in Brunei Darussalam – BPSD operates on a cash basis,<sup>38</sup> and that there is an excess capacity of personnel.

### 5.1.1. Management

BPSD is operating as a ministerial department, so there is no separate management or governance structure. The Postmaster-General, who is appointed by His Majesty the Sultan, heads BPSD and is subject to the direction of the Minister of Transport and Infocommunications.<sup>39</sup>

BPSD can take its own decisions for investments up to BND 50 000. Investments between BND 50 000 and BND 250 000 are subject to the approval of the Minister of Transport and Infocommunications, while investments above BND 250 000 require the approval of MOFE.

### 5.1.2. SPDS business

BPSD is active in both domestic and international SPDS. Express services are provided through its EMS business with a committed time of delivery within three days.

BPSD is mainly active in B2C and C2C segments, while its B2B business is rather small and limited to the domestic market.

To date, BPSD has not implemented any services dedicated to e-commerce businesses and cross-border e-commerce activities have become challenging for a number of reasons, including transit charges and inspections of transit trucks. BPSD explained that it is planning to introduce a dedicated registration system for e-commerce customers and that it will focus on last-mile delivery services. A large warehouse (Mumong Warehouse), cross-border transshipments and hub activities for Brunei Darussalam-Indonesia-Malaysia-Philippines East ASEAN Growth Area (BIMP-EAGA) can support cross-border e-commerce activities.

## 5.2. Assessment of BPSD's advantages and disadvantages in the SPDS sector

### 5.2.1. BPSD's public-service obligation (PSO)

#### General principles

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

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

Where SOEs combine economic activities and public-policy objectives, high standards of transparency and disclosure regarding their cost and revenue structures must be maintained, allowing for an attribution to main activity areas.

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.

BPSD provides services to the government (or on behalf of the government) such as the delivery of mail (see above).

Moreover, it appears that BPSD has a public service obligation (PSO). Due to the decline of the mail business, BPSD's obligation was recently adjusted requiring it to meet a standard of "accessibility/quality of the post services", rather than a duty to deliver everywhere in the country.

For such public service obligations, the law does not prescribe any structural, organisational or accounting separation. Moreover, BPSD does not receive any direct compensation.

The OECD has two recommendations:

1. BPSD should be adequately compensated to cover for the fulfilment of the services to (or on behalf of) the government and its PSO.

Based on other countries' experience (Dieke, 2016<sup>[31]</sup>), the PSO can be funded in various forms including: a) by direct or indirect transfer payments from the government; b) by granting access to PSO through public procurement; or c) by contributions of other service providers or their users into a universal service fund.

2. Accounting separation and reporting requirements should be introduced to ensure that government subsidies and funds do not cross-subsidise SPDS provided in competition with private market participants.

## 5.2.2. An SOE governed and managed as an arm of government

### 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.

#### *BPSD is a ministerial department*

BPSD is a government department and is subject to the financial rules and procedures set out by the government of Brunei Darussalam. Absent any corporate form, BPSD (and its management) is not explicitly subject to any accountability and transparency principles for the receipt and expenditure of public money to perform commercial activities. Commercial activities for BPSD are those that are performed in competition, or potential competition, with other providers and exclude products or services that fall under BPSD's legal monopoly.

Being a ministerial department has also implications on budget allocation. BPSD operates a deficit and it competes with other government departments for its annual budget. Pursuant to Section 3(2) of Chapter 52 of the Laws of Brunei, BPSD's budget is prepared by the Postmaster-General and approved by MOFE.

It is increasingly common for governments to reorganise entities carrying out economic activities and operating in competitive markets into separate legal entities, commonly subject to ordinary company laws. In principle, this may assist in subjecting public entities to the same regulatory framework as its private competitors, and in imposing on these entities similar incentives, and enhance transparency. This limits the scope for anti-competitive practices and non-commercial objectives more generally (Capobianco and Christiansen, 2011). Therefore, the plan to corporatise BPSD goes in the right direction. Once corporatised, the BPSD will be subject to the financial reporting and corporate governance requirements of the Companies Act (Chapter 39 of the Laws of Brunei), avoiding potential advantages compared to its private competitors.

This situation may be exacerbated if the entity has, for instance, ready access to increased government funding to make up for budget shortfalls, so that the entity faces a comparatively softer budget constraint.

The OECD has one recommendation:

1. Should the benefits exceed the costs, BPSD's corporatisation plan should be implemented. An identifiably separate entity should be established with its own accounts and management, and management would need to be told to seek, and be rewarded for seeking, to operate on a commercial and profitable basis.

#### *BPSD services rendered to the government*

Under Section 177 of the Post Office Rules, BPSD shall transmit the government correspondence up to 2 kg<sup>40</sup> free of charge. Section 179 stresses that this privilege "shall be confined to correspondence relating exclusively to official business" and it does not cover value-added services such as registered mail (Section 180).

Although the latter provisions seem to restrict the scope, it appears that there is no clear compensation system for these Franking Privilege services provided to the government, while in principle BPSD should

be reimbursed based on costs incurred. Moreover, there is no rule to calculate the actual costs of fulfilling the obligation.

The OECD does not have further evidence on how the Franking Privilege is applied in practice and how this affects BPSD's business. That said, to maintain a level playing field with private competitors, BPSD needs to be adequately and transparently compensated for the fulfilment of public policy objectives (OECD, 2012<sup>[17]</sup>; 2015<sup>[8]</sup>).

The OECD has two recommendations:

1. BPSD should keep separate accounts related to the provision of Franking Privilege services. This is necessary to ensure that activities reserved for BPSD such as Franking Privilege services do not provide a conduit for cross-subsidising BPSD's competitive activities (OECD, 2012<sup>[17]</sup>).
2. Franking Privilege services should be adequately compensated. Compensation can take various forms, as long as it is identified and accounted for (OECD, 2015<sup>[8]</sup>).

### 5.2.3. Different regulatory treatment

#### 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.

#### Competition laws

Although SPDS and ancillary activities are not exempted *per se* from the applicability of Competition Order 2015, BPSD services fall within the scope of Section 10(4) exemption because BPSD is part of the government and it carries out such activities on behalf of the government. This exemption applies to all BPSD activities. It shall be noted that the same exemption would apply even if BPSD were to be transformed into a statutory body.<sup>41</sup>

Exemptions from competition rules may have an incentive for SOEs to engage in anti-competitive conducts and may hamper economic efficiency in sectors where competition may currently not be feasible but where new entrants could materialise in the longer run (OECD, 2012<sup>[17]</sup>).

The OECD has one recommendation:

1. The scope of Section 10(4) exemption should be clarified to exclude commercial activities carried out by BPSD in competition, or potential competition, with other market participants.

#### BPSD's role as the sector 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.



As indicated above, MTIC is the sector regulator and BPSD is part of MTIC. Therefore, there is no structural separation between regulatory and commercial functions.

This lack of separation emerges clearly in Chapter 52 of the Laws of Brunei. First, under Section 25, BPSD has the power to deal with the postal articles sent in violation of any provision in Chapter 52 of the Laws of Brunei (e.g. in breach of the “exclusive privilege” under Section 5 or of the conditions of transmission under Part IV). Second, under Sections 83-84 and 86, the Postmaster-General (i.e. BPSD) has the power to prosecute, search and arrest without a warrant in case of violations of Chapter 52 of the Laws of Brunei, as well as receive payments of fines imposed as a consequence of such violations.

When the government both sets regulation in a market and is also operating in the market, a conflict of interest can (or may be perceived to) arise (OECD, 2015<sup>[8]</sup>). This regulatory power conferred to BPSD conflicts with its role as a commercial player.

As mentioned above, the OECD understands that under the current corporatisation plan, BPSD’s new company will be transferred to DA, while the regulatory functions would likely be transferred to an existing statutory body or separate authority. The plan seems to mirror the model adopted under the Maritime and Port Authority Order 2017, which prescribed the separation of the regulatory and commercial functions of the Maritime and Port Authority (MPA). Under this reform, MPA was transformed into a statutory body with (mainly) regulatory functions,<sup>42</sup> while the commercial functions as the port terminal operator are now performed by Muara Port Company.

The OECD has three recommendations:

1. BPSD should not exercise at the same time regulatory functions and commercial activities. Pending BPSD corporatisation, strict safeguards should be introduced within MTIC to avoid the involvement of officials managing BPSD’s commercial activities in MTIC regulatory initiatives and decisions. Chapter 52 of the Laws of Brunei should be amended accordingly.
2. Once corporatized, assuming that BPSD will remain a SOE, there should be a clear separation between the State’s ownership function and the State’s regulatory functions that may influence the conditions for BPSD (and its private competitors) to operate and effectively compete on the market.
3. A new framework conferring regulatory powers to a statutory body or separate authority should ensure that the authority receiving such powers acts objectively, impartially and consistently, without conflict of interest.

### *BPSD’s legal monopoly*

#### 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.

Under Section 5 of the Post Office Act, BPSD has “the exclusive privilege of conveying from one place to another, and of performing all the incidental services of receiving, collecting, dispatching and delivering letters”. In other words, BPSD holds a legal monopoly for letters and postcards. Under Section 63 of the Post Office Act, any infringement of this exclusive privilege is sanctioned with a fine of BND 50 per letter (or BND 100 in case of recidivism).

Section 6(A) contemplates the possibility of MTIC granting a discretionary (non-transferrable) license for delivery of letters. Stakeholders explained that – in practice – this “exclusive privilege” is limited to non-express delivery services. Therefore, the Post Office Act raises uncertainty as to the scope of this legal monopoly in Brunei Darussalam.

Information provided by MTIC indicates that, even after potential corporatisation of BPSD, these services may remain subject to monopoly rights at least for a certain period (based on financial projections). The OECD understands that, as part of the move towards corporatisation of BPSD, amendments to the Post Office Act will provide more clarity on the boundaries for the legal monopoly.

In a number of OECD countries, monopolies granted to postal operators have been lifted or their scope reduced to promote competition. For instance, in France and Germany, the market is fully open to competition for all postal items (although with different schemes applicable to universal service obligations).

The OECD has one recommendation:

1. Section 5 of the Post Office Act should be clarified to define the exact scope of the legal monopoly of BPSD. It should be explicit on the exclusion of the delivery of express mail and parcels/small packages. This could be done for instance by defining precisely what falls within the notion of "letter" and exclusive privilege. The OECD supports Brunei Darussalam's efforts to provide more clarity in the Post Office Act.

Alternatively, and only if economically feasible, the government could consider lifting the monopoly rights, in effect liberalising the mail business.

### *Exemption from liability*

#### **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.*

As a ministerial department, BPSD is not a legal body that can be sued. Moreover, under sections 37 to 40 of the Post Office Act, BPSD is not responsible for losses or damages to shipments. The Postmaster-General exercises full discretion on any compensation.<sup>43</sup> Finally, although under section 127 of the Post Office Rules BPSD appears to be liable for its express mail service, i.e. including small packets up to 2 kg, section 191 of the Post Office Rules explicitly states that the government may provide funds to BPSD to cover for such liability. This could in theory result in a direct subsidy for BPSD's commercial activities. According to information provided by BPSD, there are no government funds to BPSD for these purposes.

Being exempted from any legal action and, in particular, from liability for losses or damages to shipments, results in a competitive advantage for BPSD compared with its private competitors that are subject to liability under the international conventions. Such exemptions contribute to artificially lower costs of delivery for BPSD, instead of being more efficient.

The OECD has two recommendations:

1. The Post Office Act should be amended to fully reflect the UPU standards and international conventions on liability to BPSD non-express delivery services.
2. No funds or other financial support should be granted to BPSD to cover compensations for liability resulting from its express mail services. Section 191 of the Post Office Rules should be repealed.

### *BPSD's rates*

#### General principles

Where SOEs combine economic activities and public-policy objectives, high standards of transparency and disclosure regarding their cost and revenue structures must be maintained, allowing for an attribution to main activity areas.

As explained in Section 3.3.2, BPSD's rates are regulated. Even in case of negotiations with large customers, BPSD's proposal for individual (discounted) rates requires MTIC's prior approval.

These regulated rates have not increased since 1980.<sup>44</sup> Accordingly, stakeholders suggested that BPSD rates are below costs and prevent international market participants from entering (and effectively competing on) the domestic segment.<sup>45</sup>

An SOE's below-cost pricing strategy does not need to amount to full predation in the competition law sense in order to have a distorting effect on the market. It may be sufficient for it to use an artificially low cost base created by its advantages as an SOE for it to distort market competitive outcomes. Moreover, a SOE may not need to recoup its losses in engaging in predation in the same manner that a private enterprise would need to for successful predation (Capobianco and Christiansen, 2011, p. 17 and ff<sub>[18]</sub>).<sup>46</sup> When an SOE operates at the same time in both competitive and non-competitive markets, the SOE may be able to exclude competitors by pricing below costs and by cross subsidising from the non-competitive sector to the competitive sector (OECD, 2012, p. 72<sub>[17]</sub>).<sup>47</sup>

The OECD has two recommendations:

1. BPSD should exercise its commercial discretion as to rates applied to its services, including SPDS, competing with private players.
2. Should non-express mail remain a legal monopoly, a price regulation framework would have to be maintained and updated for such services. Regulated prices should reflect BPSD actual costs (based on separate and transparent accounting criteria) and ensure market-consistent rates of return (OECD, 2012, p. 55 and ff<sub>[17]</sub>).

### *Obligation on shipmasters*

Sections 44-45 of Chapter 52 of the Laws of Brunei prescribe obligations for masters of vessels departing or arriving at any port in Brunei Darussalam to convey or deliver BPSD's shipments. Moreover, these services are not offered at arm's length because, under Section 47, the Postmaster-General determines the gratuity to be paid to vessels for these services. Section 69 prescribes fines up to BND 1 000 for violations of these duties.

These provisions could result in an advantage for BPSD compared with its competitors. Even though it appears that they are not enforced (because small packages are not delivered by sea), such provisions

affect legal certainty in the SPDS sector. Furthermore, these provisions might 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. Sections 44, 45, 47 and 69 of Chapter 52 of the Laws of Brunei should be repealed.

#### **5.2.4. Privileged access to public procurement markets**

##### *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.

The 1983 Financial Regulations 327-340 regulate government procurement. Procurement of goods, services, and works exceeding BND 50 000 is conducted through open tenders.<sup>48</sup>

BPSD should comply with the Financial Regulations requiring ministerial departments to source products and services through public tenders irrespective of whether these relate to its commercial activities. BPSD is also listed among the “Central Government Entities” under Annex 15A (Section A) subject to the government procurement framework under Chapter 15 of the CPTTP.

In the sector being analysed, government contracts appear to be open to private market participants, with the exception of the delivery of government’s letters (which are also exempted from stamps and fall under the Franking Privilege).

Private SPDS providers confirmed that tenders are launched and sometimes awarded to private market participants. In the context of public contracts and awarded tenders, BPSD explained that it operates at arm’s-length with other government agencies and it applies its standard rates. The only difference is that the government’s payments (from its budget) are in the form of “payment vouchers” (generally used to process bills and payments of inter-governmental services and supplies). Therefore, it seems that BPSD does not receive any clear preferential treatment. However, the OECD does not have sufficient information to reach any conclusion as to whether, in practice, there is a level playing field between SOEs and private market participants bidding for public tenders.

The OECD has no recommendation.

#### **5.2.5. Financial advantages**

##### *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.

DA explained that SOEs are subject to the same tax treatment as private companies. However, in the case of non-corporatised entities operating commercial activities such as BPSD, these are not subject to any taxation.

In principle, to maintain a level playing field, SOEs should be subject to equivalent tax treatment as private competitors (OECD, 2015, p. 49<sup>[8]</sup>). Although tax benefits may be to compensate for public policy or other non-economic activities, the exemption related to BPSD's commercial activities confers a non-neutral advantage that none of its competitors enjoys in relation to similar activities.

The OECD has one recommendation:

1. BPSD's commercial activities – both as a ministerial department and after corporatisation – should be accounted separately and subject to the same tax treatment as its competitors.

#### *Exemption for vehicles*

The Road Traffic Act prescribes that transport service operators are required to apply for a “public service vehicle license” for each vehicle (also called S-license). For commercial vehicles, the initial license is valid for five years. The first renewal is valid for another five years, after which subsequent renewals are granted for an additional two years. Such licenses are subject to the payment of a fee. Moreover, commercial vehicles are subject to a road tax and inspection every six months.

The OECD understands that vehicles owned and operated by ministerial departments such as BPSD are not required to comply with these requirements.

Licenses, road taxes, inspection and insurance requirements may represent a significant cost for SPDS providers. Therefore, this exemption may have a significant impact on BPSD's business, by lowering BPSD's costs compared to its private competitors.

The OECD has one recommendation:

1. BPSD's vehicles operating commercial functions such as deliveries should be subject to the same conditions of its private competitors.

#### *Other financial advantages*

### General principles

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.

As mentioned above, BPSD is not required to be profitable. It operates at a loss and it is “subsidised” each year by increasing its allocated budget.

BPSD's overall business, especially when corporatised, should be operated on the basis that it should earn a profit and pay a commercial level of return (i.e. dividend) to the government on the equity funds employed. This is important for several key reasons. First, if the entity is paying less than a commercial return, there is an implicit subsidy by the government. Second, an inefficient SOE-business may crowd out more efficient private businesses from the market.

The OECD has one recommendation:

1. Equity funds provided to BPSD through the State budget should be subject to a required minimum expected rate of return that is consistent with private companies in similar circumstances.<sup>49</sup>

## Annex A. List of reviewed legislation

Post Office Act (“Chapter 52 of the Laws of Brunei”), 1984

Post Office Rules, 1993

Monopolies Act (“Chapter 73 of the Laws of Brunei”), 2003

Competition Order, 2015

Companies Act (“Chapter 39 of the Laws of Brunei”), 2016

Maritime and Port Authority of Brunei Darussalam Order, 2017

## References

- ADB (2020), *Asian Development Outlook (ADO) 2020 Update: Wellness in Worrying Times*, [1]  
<http://dx.doi.org/10.22617/FLS200256-3>.
- ADB (2020), *Asian Development Outlook Supplement*, June 2020, [22]  
<https://www.adb.org/sites/default/files/publication/612261/ado-supplement-june-2020.pdf>.
- ADB (2020), *Brunei Darussalam Key Indicators 2020*, [20]  
<https://data.adb.org/media/6186/download>.
- ASEAN (2020), *Economic Impact of COVID-19 Outbreak on ASEAN, Policy Brief, April 2020*, [3]  
[https://asean.org/storage/2020/04/ASEAN-Policy-Brief-April-2020\\_FINAL.pdf](https://asean.org/storage/2020/04/ASEAN-Policy-Brief-April-2020_FINAL.pdf).
- ASEAN (2010), *ASEAN Regional Guidelines on Competition Policy*, Section 3.1.2, Association of Southeast Asian Nations, [14]  
[https://www.icao.int/sustainability/Documents/Compendium\\_FairCompetition/ASEAN/ASEAN-RegionalGuidelinesonCompetitionPolicy.pdf](https://www.icao.int/sustainability/Documents/Compendium_FairCompetition/ASEAN/ASEAN-RegionalGuidelinesonCompetitionPolicy.pdf).
- Bryane, M. (2017), *The Effect of Competition Law on Brunei's Small and Medium Enterprises*, [26]  
 ZBW - Deutsche Zentralbibliothek für Wirtschaftswissenschaften, Leibniz-  
 Informationszentrum Wirtschaft, <https://www.econstor.eu/handle/10419/169114>.
- Capobianco, A. and H. Christiansen (2011), *Competitive Neutrality and State-Owned Enterprises: Challenges and Policy Options*, OECD Publishing, Paris, [18]  
<http://www.dx.doi.org/10.1787/5kg9xfjdhg6-en>.
- Centre for Strategic and Policy Studies (2014), *A Review for the Purpose of Formulating a Roadmap and Draft National Masterplan for a Sustainable Land Transportation System for Brunei – Executive Summary*, [24]  
[http://www.csps.org.bn/Downloadables/Vol5\\_LTMP\\_ExecutiveSummary.pdf](http://www.csps.org.bn/Downloadables/Vol5_LTMP_ExecutiveSummary.pdf).
- Dennis, W. (2011), *Parcel and Small Package Delivery Industry*, CreateSpace, North Charleston, NC. [28]
- Dieke, A. (2016), *Alternative funding models for the universal service obligation: The European experience*, Wik Consult, Washington, DC, [32]  
[http://www.wik.org/uploads/media/AD\\_2016\\_04\\_29\\_OIG\\_Washington.pdf](http://www.wik.org/uploads/media/AD_2016_04_29_OIG_Washington.pdf).
- EC (2018), *Main Developments in the Postal Sector (2013-2016): Study for the European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs*, European Commission, [33]  
<https://op.europa.eu/en/publication-detail/-/publication/d2279>.
- Ennis, S., P. Gonzaga and C. Pike (2017), “The effects of market power on inequality”, CPI Antitrust Chronicle, [13]  
<http://www.competitionpolicyinternational.com/the-effects-of-market-power-on-inequality>.
- Google, Temasek and Bain & Company (n.d.), “e-Conomy SEA 2019: Swipe up and to the right – Southeast Asia’s \$100 billion Internet economy”, [29]  
[http://www.blog.google/documents/47/SEA\\_Internet\\_Economy\\_Report\\_2019.pdf](http://www.blog.google/documents/47/SEA_Internet_Economy_Report_2019.pdf).
- OECD (2020), *Economic Outlook for Southeast Asia, China and India 2020 – Update: Meeting the Challenges of COVID-19*, OECD Publishing, Paris, [2]  
<https://dx.doi.org/10.1787/e8c90b68->



- [en.](#)
- OECD (2019), *A Policy Maker's Guide to Privatisation, Corporate Governance*, OECD Publishing, Paris, <https://doi.org/10.1787/ea4eff68-en>. [11]
- OECD (2018), *Economic Outlook for Southeast Asia, China and India 2018: Update: Promoting Opportunities in E-commerce*, OECD Publishing, Paris, <http://www.dx.doi.org/10.1787/9789264302990-en>. [23]
- OECD (2018), *Privatisation and the Broadening of Ownership of State-Owned Enterprises*, OECD, Paris, <https://www.oecd.org/daf/ca/Privatisation-and-the-Broadening-of-Ownership-of-SOEs-Stocktaking-of-National-Practices.pdf>. [9]
- OECD (2017), *The Size and Sectoral Distribution of State-Owned Enterprises*, OECD Publishing, Paris, <http://www.dx.doi.org/10.1787/9789264280663-en>. [19]
- OECD (2016), *State-Owned Enterprises as Global Competitors: A Challenge or an Opportunity?*, OECD Publishing, Paris, <http://www.dx.doi.org/10.1787/9789264262096-en>. [6]
- OECD (2015), *OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264244160-en>. [8]
- OECD (2015), *State-Owned Enterprises in the Development Process*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264229617-en>. [7]
- OECD (2014), "Factsheet on how competition policy affects macro-economic outcomes", OECD, Paris. [12]
- OECD (2012), *Competitive Neutrality: Maintaining a Level Playing Field Between Public and Private Business*, OECD Publishing, Paris, <http://www.dx.doi.org/10.1787/9789264178953-en>. [17]
- OECD (2009), *Privatisation in the 21st Century: Recent Experiences of OECD Countries, Report on Good Practices*, OECD, Paris, <http://www.oecd.org/daf/ca/corporategovernanceofstate-ownedenterprises/48476423.pdf>. [10]
- OECD (1999), "Promoting competition in postal services", OECD Policy Roundtable, OECD, Paris, <http://www.oecd.org/daf/competition/sectors/1920548.pdf>. [27]
- OECD (n.d.), *OECD Competition Assessment Toolkit, Volume 2*, OECD, Paris, <https://www.oecd.org/competition/assessment-toolkit.htm>. [15]
- OECD (n.d.), *OECD Competition Assessment Toolkit, Volume 3*, OECD, Paris, <https://www.oecd.org/competition/assessment-toolkit.htm>. [16]
- OECD/ERIA (2018), *SME Policy Index: ASEAN 2018: Boosting Competitiveness and Inclusive Growth*, SME Policy Index, OECD Publishing, Paris/ERIA, Jakarta, <http://www.dx.doi.org/10.1787/9789264305328-en>. [21]
- Statista (n.d.), *Digital Market Outlook Brunei Darussalam*, <https://www.statista.com/outlook/243/181/ecommerce/brunei-darussalam>. [30]
- United Nations (2020), *Policy Brief: The Impact of COVID-19 on South-East Asia, July 2020*, <https://unsdg.un.org/resources/policy-brief-impact-covid-19-south-east-asia>. [5]

- We Are Social (2018), *Global Digital Report*, <https://wearesocial.com/blog/2018/01/global-digital-report-2018>. [31]
- Word Economic Forum (2020), *8 ways ASEAN consumer habits will change by 2030 - shaped by COVID-19, tech and more*, <https://www.weforum.org/agenda/2020/06/8-ways-asean-consumer-habits-will-change-by-2030-shaped-by-covid19-tech-and-more>. [4]
- World Bank (2019), *Doing Business 2019 – Training for Reform*, [https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report\\_web-version.pdf](https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf). [25]

## Notes

<sup>1</sup> See <https://asean.org/asean-experts-group-competition-releases-statement-response-covid-19>.

<sup>2</sup> In this context, the OECD-Asia Network on Corporate Governance of State-Owned Enterprises provides a forum for the governments of Asian countries and corporate governance practitioners to share good practices and identify common priorities for strengthening SOEC corporate governance.

<sup>3</sup> EU Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (“Merger Regulation”), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008XC0416\(08\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008XC0416(08)), paragraphs 65-73.

<sup>4</sup> *AEC Blueprint 2025*, paragraphs 25-26. See also *AEC 2025 Consolidated Strategic Action Plan*.

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

<sup>6</sup> This number focuses on full- 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.

<sup>7</sup> For a more elaborate description, see Capobianco and Christiansen (2011<sub>[18]</sub>).

<sup>8</sup> For further information, see <https://www.da.com.bn/>.

<sup>9</sup> A list of SOEs in DA’s portfolio is available at <https://www.da.com.bn/portfolio/>.

<sup>10</sup> See, <https://www.biacc.com.bn/>.

<sup>11</sup> See, <https://www.rbts.com.bn/>.

<sup>12</sup> MPC is a joint venture between DA and Beibu Gulf Holding (Hong Kong).

<sup>13</sup> This exemption also applies to Malaysia and Viet Nam.

<sup>14</sup> Under Section 3, the offender can be subject to imprisonment for five years, to a fine and to forfeiture of the plant (if any) used for such activities.

<sup>15</sup> ROCBN is a division under the Ministry of Finance and Economy.

<sup>16</sup> In Brunei Darussalam, some Ministries are held directly by His Majesty the Sultan.

<sup>17</sup> One option is raising funds for universal service through charges, such as taxation or a levy, on all postal operators.

<sup>18</sup> See, for example, EC (2018)<sup>[32]</sup>.

<sup>19</sup> European Commission Case M.6570 – UPS/ TNT Express, paragraphs 36-39, and European Commission Case M.7630 – FEDEX / TNT EXPRESS, paragraphs 78-80.

<sup>20</sup> Established in 1874, the Universal Postal Union (UPU) is a specialised agency of the United Nations. With 192 member countries, the UPU is the primary forum for co-operation between postal-sector participants. The UPU helps to ensure a truly universal network of up-to-date products and services, sets the rules for international mail exchanges, and makes recommendations to stimulate growth in mail, parcel and financial services volumes and improve quality of service for customers.

<sup>21</sup> Post Office Rules 1993, Section 26.

<sup>22</sup> A node is a connection point within a network. See, EC merger case COMP/M.6570 – UPS/ TNT Express, 30/1/2013, recital 44.

<sup>23</sup> The European Commission defines integrators using five basic characteristics: 1) ownership of or full operational control over all transportation assets, including an air network with scheduled flights, through which a large proportion of the volumes handled by the company is carried; 2) sufficient global geographic coverage; 3) a hub-and-spoke operating model; 4) a proprietary IT network that allows all relevant data to run across one network; 5) a reputation for reliably delivering parcels on time (so-called “end-to-end credibility”).

<sup>24</sup> 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, particularly in the B2C segment.

<sup>25</sup> Integrators or larger SPDS operators may outsource certain elements of the value chain to 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 an 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 in that country of its own account. An ASC may also be integrator branded, in which case the vans and drivers usually carry the brand of the integrator on their trucks, paperwork and uniforms, so customers may not realise that the ASC is an independent company.

<sup>26</sup> The definition of e-commerce used in this report is taken from the OECD Glossary of Statistical Terms (<https://stats.oecd.org/glossary/detail.asp?ID=4721>): “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”.

<sup>27</sup> In 2018, the ASEAN e-commerce market accounted for approximately 1% of worldwide e-commerce revenue. See OECD (2018<sup>[22]</sup>).

<sup>28</sup> See, <http://www.ekadaibrunei.bn/e-commerce-platforms>.

<sup>29</sup> See, <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2017-2025-ASEAN-WP-e-Commerce.pdf>.

<sup>30</sup> See, <http://agreement.asean.org/media/download/20190306035048.pdf>.

<sup>31</sup> DHL entered the market in 1976 and it operates through its subsidiary DHL Express Brunei. It owns vans and one truck. Moreover, it recently opened a processing warehouse.

<sup>32</sup> FedEx and UPS are active through local agents. FedEx’s agent in Brunei Darussalam is Archipelago Group.

<sup>33</sup> Based on BPSD internal estimates, in the international segment the volume for inbound deliveries amount to 8 to 10 times the volume for outbound deliveries.

<sup>34</sup> See Sections 18 and 97 of Chapter 52 of the Laws of Brunei.

<sup>35</sup> The OECD understands that “Guidelines to Application of Licence for the Provision of Local/International Express Letter Service” stipulate as follows:

- The minimum charge for a local express letter shall not be lower than BND 1 per item or three times the prevailing local postage charged by BPSD for an ordinary (non-express) letter in the first weight-step of 20 grams, whichever is higher.
- The minimum charge for an international express letter shall not be lower than three times the prevailing postage charged by BPSD for an ordinary (non-express) airmail letter in the first weight-step of 20 grams to the same country of destination.

<sup>36</sup> Brunei Department of Statistics, based on BPSD data.

<sup>37</sup> Revenues increased from BND 386 755 in financial year 2015/16 to BND 1 009 957 in financial year 2017/18.

<sup>38</sup> In a cash basis accounting system revenue is recorded when cash is received from customers, and expenses are recorded when cash is paid to suppliers and employees.

<sup>39</sup> Section 3 of Chapter 52 of the Laws of Brunei.

<sup>40</sup> It seems this is not limited to letters, but it includes at least “small packets”.

<sup>41</sup> Section 10(4)(b) of Competition Order 2015.

<sup>42</sup> MPA seems to maintain some commercial functions.

<sup>43</sup> See also Section 48 of the Post Office Rules.

<sup>44</sup> The OECD understands that BPSD submitted a motivated request to the government to increase such rates.

<sup>45</sup> Similarly, BPSD's EMS rates for international deliveries can be even four times lower than the rates applied by private players.

<sup>46</sup> "SOEs enjoying significant subsidies and not necessarily aiming to maximise their long-term profits may engage in predation without recoupment. When SOEs operate at the same time in reserved and non-reserved markets, the concern is that the SOE can exclude competitors by pricing below costs and cross-subsidise to the competitive sector from the reserved sector without the need to recoup its losses in the post-predation period".

<sup>47</sup> "The EU rules on State Aid specifically ensure that there is no cross-subsidisation of commercial activities with funds granted to cover service of general economic interest. Where cross-subsidisation is allowed among EU (incl. EEA) member states, it can only be from profit-making activities to finance public service activities ensuring that overcompensation is not provided. This not only safeguards the competitive situation in the market but also aims to use public funds more efficiently".

<sup>48</sup> Further information is available at <https://www.mofe.gov.bn/divisions/state-tender-board-procurement-process-workflow.aspx>. For values between BND 50 000 and BND 250 000, tenders are considered by the Mini Tender Board (MTB) in each ministry; for values above BND 250 000, tenders are considered by the State Tender Board (STB) in the Ministry of Finance and Economy and will be approved by the Minister of Finance and Economy.

<sup>49</sup> For the different methods to calculate a commercial rate of return applicable to SOEs, see OECD (2012<sub>[17]</sub>), p. 55 and ff.

## **OECD COMPETITIVE NEUTRALITY REVIEWS: SMALL-PACKAGE DELIVERY SERVICES IN BRUNEI DARUSSALAM**

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 Brunei Darussalam” are contributions to an ASEAN-wide project that implements part of the ASEAN Competition Action Plan 2016-2025 and is funded by the UK Prosperity Fund (UK Government). Designed to foster competition in ASEAN, the project involves conducting assessments of regulatory constraints on competition in the logistics services sector in all 10 ASEAN countries to identify regulations that hinder the efficient functioning of markets and create an unlevel playing field for business.

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

[www.oecd.org/competition](https://www.oecd.org/competition)

