FOSTERING COMPETITION IN ASEAN

OECD Competitive Neutrality Reviews

CAMBODIA

SMALL-PACKAGE DELIVERY SERVICES

OECD BETTER POLICIES FOR BETTER LIVES

UK Government

ASSOCIATION OF SOUTHEAST ASIAN NATIONS

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

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Foreword

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

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

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

The OECD assessment was conducted in consultation with the Cambodian authorities and with local stakeholders, with the support of the ASEAN Secretariat and the ASEAN Economic Reform Programme under the UK Foreign, Commonwealth & Development Office (UK Government). The assessment prioritises 21 pieces of legislation and identifies 17 regulatory barriers where changes could be made to foster competition in the small-package delivery services by levelling the playing field between public and private companies. This is especially important for Cambodia, where there is a significant potential for further development of the e-commerce sector, which can contribute to the economic growth of the country. This report offers policy recommendations that can help the Cambodian government address structural and regulatory shortcomings in the small-package delivery services sector.

These structural reforms have become even more pressing as the Cambodian economy shrunk by about 3% in 2020 due to the COVID-19 pandemic. These policy recommendations contribute to reforms that can help the Cambodian 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 Cambodian government, as well as the ASEAN Secretariat and the UK Foreign, Commonwealth & Development Office (UK Government), on their efforts to lift regulatory barriers to competition and to improve the business environment. The OECD looks forward to continuing and broadening its co-operation with ASEAN to support further its reforms to the benefit of its citizens.

Greg Medcraft

Director, OECD Directorate for Financial and Enterprise Affairs

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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:

- Cambodia Post
- Ministry of Economy and Finance
- Ministry of Land Management
- Ministry of Post and Telecommunications
- Ministry of Public Works and Transportation

The following trade associations and private companies were interviewed:

- Advanced Glory Logistics
- American Chamber of Commerce in Cambodia
- DHL Express
- European Chamber of Commerce in Cambodia
- Kerry Worldbridge Logistics
- Phzar
- TSP Express Cambodia (FedEx Express).

The ASEAN Secretariat and David Fruitman provided valuable inputs.

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

Valuable comments throughout the process and on the final report were provided by Antonio Capobianco, Acting Head of the OECD Competition Division.

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The project was funded by the ASEAN Economic Reform Programme under the UK Foreign, Commonwealth & Development Office (UK Government).

The information and figures in the report are updated as of December 2020.

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

Fostering competition in ASEAN

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

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

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

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

The current report on Cambodia is part of a series of ten similar assessments (one for each ASEAN member state).

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Abbreviations and acronyms

3PL	Third-party logistics
ACAP	ASEAN Competition Action Plan
AEC	ASEAN Economic Community
AEGC	ASEAN Experts Group on Competition
APEC	Asia-Pacific Economic Cooperation
ASC	Authorised service contractor
ASEAN	Association of Southeast Asian Nations
B2B	Business-to-business commerce
B2C	Business-to-consumer commerce
GLM	Government-linked monopoly
GLC	Government-linked company
ICT	Information and communications technology
KHR	Cambodian riel
OSP	Outside service providers
PEEC	Public establishment with economic characteristics
PSO	Public-service obligation
PUD	Pick-up and delivery
SOE	State-owned enterprise
SPDS	Small-package delivery services
UPU	Universal Postal Union
VAT	Value-added tax

Executive summary

State-owned enterprises and competition

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

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

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

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

Located in the Greater Mekong sub-region, Cambodia is a constitutional monarchy with a population in 2019 of approximately 16.49 million.

In Cambodia, SOEs (also called “public enterprises”) are legal entities with financial autonomy and the mission to enable the country’s economic and social development. Shifting from a planned economy to a market-driven one, the government privatised several SOEs throughout the years. The country had 187 wholly owned SOEs in 1989; by the end of 2000, 160 had been wholly or partially privatised. As of February 2020, 13 SOEs remained in Cambodia, including 2 joint ventures.

The Law of 11 July 2002 on Postal Sector and subsidiary legislation governs small-package delivery services in Cambodia. The Ministry of Post and Telecommunications – in particular the General Department of Post – is the sector regulator. Cambodia Post, the main SOE active in small-package delivery services, has been established as a “public enterprise” by Sub-Decree No. 57 of 21 June 2010. Cambodia Post is financially supervised by the Ministry of Economy and Finance and technically supervised by the Ministry of Post and Telecommunications.

A level playing field in the small-package delivery services sector is crucial to further increase competition and fulfil the sector's potential. Preventing the existence of a level playing field in the sector are some obstacles that may harm competition, and stop consumers from fully benefiting from a rapidly developing e-commerce market (further accelerated by the COVID-19 pandemic).

While there are different options to improve the level playing field in the small-package delivery services sector, it is important to note that the rights, privileges and duties (or advantages and disadvantages) of Cambodia Post are often interrelated and should therefore be looked at as a whole. This requires a holistic approach.

Key recommendations

This report identifies 17 recommendations that aim to improve the level playing field in the Cambodian SPDS sector. If fully implemented, these recommendations can be expected to generate significant benefits to the Cambodian economy, and more broadly to ASEAN. Full implementation of the recommendations set out in this report can be expected to deliver positive long-term effects on employment, productivity, growth and improve the ability of businesses to compete.

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

The main recommendations are:

1. Clearly define and publicly disclose Cambodia Post's public-policy objectives. Ensure that Cambodia Post receives adequate compensation for its public-policy objectives and that revenue and costs related to these activities are clearly separated in its accounts.
2. Adopt a competition law to fully benefit from a level playing field and do not exempt SOEs from the scope of the competition law. Explicitly including SOEs when defining the scope of applicability could increase legal certainty in this regard.
3. Ensure independence of the competition authority to avoid any attempt by ministries or other government authorities to influence the competition authority's decisions to investigate SOEs' conduct.
4. Apply the same licensing requirements and fees to Cambodia Post and privately owned providers of small-package delivery services. Alternatively, consider simplifying the licensing procedure and reducing costs for privately owned providers.
5. Avoid any tax exemptions on Cambodia Post's commercial activities.
6. Amend Sub-Decree No. 41 of 6 August 1997 on the Implementation of the General Statute of Public Enterprises (as supplemented by Sub-Decree No. 71 of 22 April 2011), clearly indicating that SOEs' loans and liabilities are not guaranteed by the state.

1 Introduction

1.1. Scope of the report

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

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

The COVID-19 pandemic is disrupting global supply chains in unprecedented ways and will have a significant economic impact with GDP contractions in most ASEAN member states in 2020. As in other countries, due to COVID-19 and the resulting restrictions to contain the pandemic, ASEAN member states are facing a decline in consumption, investment, and trade, with a severe impact on key sectors such as tourism. Nevertheless, COVID-19 should not affect the long-term progress of ASEAN, driven by its middle-class boom. According to the Asian Development Bank (ADB) (2021[1]), Southeast Asia's (i.e. ASEAN member states + Timor-Leste) GDP contracted 4% in 2020 and is expected to rebound to 4.4% in 2021. For Cambodia, the ADB recorded a GDP contraction of 3.1% in 2020 and expects a rebound to 4% in 2021.

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

The COVID-19 crisis will lead to long-term changes. It will likely expedite the shift to e-commerce, especially for consumers that were until recently more resistant to online retail channels. Brick-and-mortar businesses will also evolve offering services beyond retail, including last-mile deliveries. 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 (Word Economic Forum, 2020[4]).

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.

In this context, regional co-operation plays and will continue to play a key role. ASEAN has put in place a framework for COVID-19 response across multiple sectors (United Nations, 2020[5]). Moreover, the ASEAN Expert Group on Competition (AEGC) released a joint statement in response to the COVID-19 Pandemic.[1] Regional economic forum Asia-Pacific Economic Cooperation (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[2]).

1.3. Report structure

The report is structured as five chapters. The executive summary outlines the content of the report and provides an overview of its key recommendations; Chapter 1 introduces the scope and structure of the report; Chapter 2 defines state-owned enterprises and the relationship between state-owned enterprises and competition policy; Chapter 3 provides an overview of the economic importance and the legal framework of state-owned enterprises in Cambodia; Chapter 4 describes the competitive landscape and the regulation applicable to small-package delivery services in Cambodia; Chapter 5 focuses on Cambodia Post, the main SOE providing small-package delivery services, advantages or disadvantages that can impact on competition, and recommendations to improve the level playing field.

2 State-owned enterprises and competition

2.1. Introduction

SOEs play a significant role in many national economies around the world. In 2016, 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[6]).

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

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, with varied results; these states could capitalise on the experiences of different OECD countries, including those cited in the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (OECD, 2015[8]).[2] In OECD countries (and beyond), SOEs' roles evolved significantly between 1990 and 2010, with large privatisation initiatives throughout the 1990s and early 2000s. 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, public 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[8])*

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

1. Ownership structure
   a. **Enterprise wholly owned by the state**. An enterprise under a nation's laws over which the state exercises full ownership is more than likely to be an SOE. An enterprise's institutional form, such as company limited by shares or partnership, is not generally determinative.
   b. **Enterprise controlled by the state**. An enterprise controlled by the state should ordinarily be considered an SOE. "Control" should be assessed in a substantive way, and may require case-by-case assessment. It would normally be established in cases where the state, by directly or indirectly holding a majority of the voting rights in an enterprise, exercises influence over an enterprise's strategic decisions, such as approval of budgets, business plans and major investments, as well as appointment of senior management.3 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[9]). 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[10]).

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

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

2.4. SOEs and competitive neutrality

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

At ASEAN level, the *Economic Community Blueprint 2025* affirms that one of the elements necessary to increasing the region's productivity is to ensure "a level playing for all firms, regardless of ownership". This is also identified as the fundamental goal of competition policy and law.[4] 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".[5] 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[11]). This principle, broadly known as competitive neutrality, should address distortions of competition caused by the state playing an active role in commercial markets.

The rationale for pursuing competitive neutrality is both economic and political. The main economic rationale is that it enhances allocative efficiency throughout the economy. Where certain agents – whether state-owned or private – are put at an undue disadvantage, goods and services are no longer produced by those who can do it most efficiently. This leads to lower real income and a suboptimal use of scarce resources relative to a baseline scenario, such as inefficient production methods or the non-adoption of new and better technologies (OECD, n.d., p. 39[12]).

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 public-service obligations (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[13]).

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[13]) (Capobianco and Christiansen, 2011[14]).

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

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

A further economic rationale is that in some markets, "externalities" – wider social benefits or costs not captured in price – associated with a product or service may make the market outcome inefficient, justifying provision of the product or service through an SOE.[6]

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

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

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

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

Finally, other political objectives may include the support of interest groups, such as public employees. For instance, SOEs remain a major source of employment and can provide better conditions than those in the private sector (OECD, 2017[15]).

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.[7]

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.

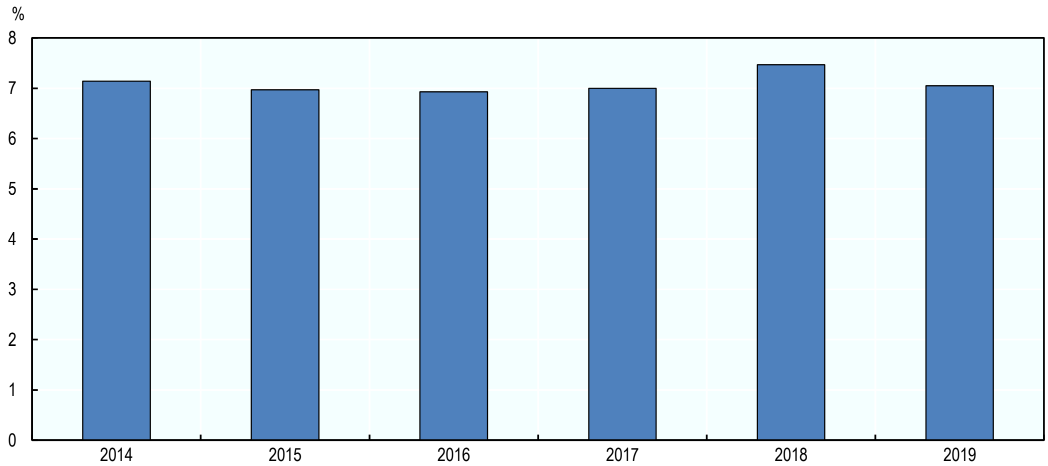
3 SOEs' framework and the importance of SOEs in Cambodia

3.1. Cambodia

Located in the Greater Mekong sub-region, Cambodia is a constitutional monarchy with a population in 2019 of approximately 16.49 million.[8] Administratively, it is divided into 24 provinces and the special administrative unit Phnom Penh. Cambodia has a statutory law system, with the 1993 Constitution being the supreme law.[9]

Between 1998 and 2018, Cambodia's GDP had an average growth rate of 8%, making it one of the fastest-growing economies in the world.[10]. Cambodia's GDP growth rate was 7.1% in 2019. Due to COVID-19, its GDP decline 3.1% in 2020, with predicted growth of 4% in 2021 (ADB, 2021, p. 35[1]).

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



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

Since 2015, the World Bank considers Cambodia a lower middle-income economy. Cambodia aspires to attain upper middle-income status by 2030. The country was ranked 106 in the World Economic Forum's 2019 Global Competitiveness Index, four positions higher than in 2018 (World Economic Forum, 2019[16]). Cambodia is a signatory to ASEAN and the World Trade Organization.

3.2. The scope and importance of SOEs in Cambodia

In Cambodia, SOEs (also called "public enterprises") are legal entities with financial autonomy and the mission to enable the country's economic and social development.[11] Pursuant to Article 3 of the Law of 17 June 1996 on the General Statute of Public Enterprises, there are three types of SOEs in Cambodia:

1. **State company.** An entity fully owned by the state, with financial autonomy and operating commercial businesses in competitive markets.
2. **Public establishment with economic characteristics (PEEC).** A public legal entity with autonomous financial management, producing/selling goods or services[12] (for example, portable water or electricity) and granted exclusive rights for specific areas determined by the competent technical supervisory ministry.
3. **Joint-venture.** An entity in which a majority (more than 51%) of capital is owned by the state and the minority is owned by private investors.

If the state owns less than 51% of a legal entity, this is considered a private company and subject to the generally applicable rules established by the Ministry of Commerce.

There is no clear state-ownership policy in Cambodia (OECD, 2018[17]). Shifting from a planned economy to a market-driven one, the government privatised several SOEs throughout the years. As reported in OECD (2018[17]), the country had 187 wholly owned SOEs in 1989; by the end of 2000, 160 had been wholly or partially privatised. Based on information provided by the Ministry of Economy and Finance, as of February 2020, there were 13 SOEs, including 2 joint ventures, in Cambodia (these are listed in Table 3.1).

Table 3.1. SOEs active in Cambodia

Enterprise	Type of SOE	Establishment date	Business type	Government share (%)	Private share (%)
Telecom Cambodia	State company	Sub-Decree No. 01 Dated on 12/01/05	Telecom Service	100	0
Sihanoukville Autonomous Port	State company	Sub-Decree No. 14 Dated on 18/02/99	Port Service	100	0
Phnom Penh Autonomous Port	State company	Sub-Decree No. 15 Dated on 18/02/99	Port Service	100	0
Electricity of Cambodia	State company	Royal Decree No. 0396/10 Dated on 15/03/96	Electricity Supply	100	0
Cambodia Post	State company	Sub-Decree No. 57 Dated on 21/06/10	Postal services	100	0
Rural Development Bank Cambodia	State company	Sub-Decree No. 01 Dated on 21/01/97	Rural Development Loan	100	0
Green Trade Company	State company	Sub-Decree No. 72 Dated on 23/11/98	Buy and Sell Rice	100	0
Phnom Penh Water Supply Authority	PEEC	Sub-Decree No. 19 Dated on 18/02/99	Supply clean water	100	0
Siem Reap Water Supply Authority	PEEC	Sub-Decree No. 04 Dated on 09/03/96	Supply clean water	100	0
Publishing and Distribution House	PEEC	Sub-Decree No. 26 Dated on 18/02/99	Publishing textbooks	100	0
Building and Public Works Laboratory	PEEC	Sub-Decree No. 15 Dated on 24/02/97	Laboratory services	100	0
Cambodian Reinsurance Company	Joint venture	Sub-Decree No. 07 Dated on 24/01/02	Insurance services	60.2	39.8
Cambodia Securities Exchange	Joint venture	MOU dated on 23/03/09	Trading on securities	55	45

Source: Information provided by the Ministry of Economy and Finance to OECD.

In addition, it has been noted (OECD, 2018, p. 42[17]) that "in Cambodia, a number of economic activities are performed either within the general government sector or by companies that, while not classified as state-owned enterprises, are closely related to the government."

As noted in OECD (2018, p. 228[17]), the Cambodian government expressed its commitment to continue to reform the SOE sector, also by establishing further separation between ownership and regulation. SOEs with sound financial performance are encouraged to seek listing on the stock market or attract private investors. However, this has occurred in a limited number of cases so far. Based on information provided by the Ministry of Economy and Finance, other listing of SOEs may be possible in the next years.

3.3. Competition law and SOEs

Cambodia is currently developing its first competition law. In April 2020, it was reported that the government was in the process of finalising the draft and submit it to the National Assembly for approval.[13]

Based on information provided by Cambodia Import Export Inspection and Fraud Repression Directorate-General (CamControl), the competition law would allow private enterprises to compete with SOEs under *de jure* equal terms and conditions. The OECD understands that Article 2 of the draft law envisages that it would apply "to all persons conducting business activities, or any actions supporting business activities", while Article 3.11 of the draft law defines "persons" as "natural persons or legal persons carrying on business activities regardless whether for profit or non-profit, registered or unregistered".

3.4. SOE-specific legislation

Law of 17 June 1996 on the General Statute of Public Enterprises outlines the key rules governing SOEs. As a general principle, under Article 4, SOEs shall be managed "in accordance with principles and procedure" of the generally-applicable commercial law in Cambodia, i.e. the 2005 Law on Commercial Enterprises. The implementing Sub-Decree No. 41 of 6 August 1997 on the Implementation of the General Statute of Public Enterprises, supplemented by Sub-Decree No. 71 of 22 April 2011, further outlines the framework applicable to SOEs.[14]

The Ministry of Economy and Finance indicated that a new law on SOEs is currently being drafted by a working group. This reform is not expected to be enacted before 2022.

3.4.1. Governance principles

While Law of 17 June 1996 on the General Statute of Public Enterprises and its implementing sub-decrees outline the general framework for SOEs, the Ministry of Economy and Finance, in agreement with the respective line ministries, is in charge of drafting SOEs' statutes (which further regulate their governance) and their corporate registration.[15] Moreover, publicly listed SOEs are subject to specific corporate governance rules.

The Ministry of Economy and Finance, and in particular its Public Enterprise Department, exercises ownership rights in both state companies and joint ventures and supervises SOEs' financial aspects. Line ministries supervise technical and operational aspects of SOEs in their respective sectors.[16]

3.4.2. SOEs' governing bodies

The council of administration (i.e. the SOE's board of directors) is the highest governing body of SOEs and, pursuant to Article 4 of the General Statute of Public Enterprises, "fulfils its functions with full autonomy". The council of administration shall not exceed 7 members and it can delegate powers to the president of the general managers or to a general manager.[17] The council of administration is also entrusted with the powers usually conferred to the general meeting in private companies.[18]

The Ministry of Economy and Finance appoints SOE board members by sub-decree, after a proposal of the line ministry. SOE boards are generally composed of senior government officials, including representatives of the relevant line ministry and the Ministry of Economy and Finance (OECD, 2018[17]). The chairperson of the board is a representative of the line ministry. The OECD understands that, for publicly listed SOEs, the board also includes an independent director and a non-executive director representing private shareholders.

3.4.3. Accountability and transparency

SOEs are under no obligation to disclose or publish annual reports and financial statements.

They must submit quarterly financial reports as well as annual financial reports and statements to the Ministry of Economy and Finance. SOEs' financial reports are audited by their respective line ministries and the Ministry of Economy and Finance. Pursuant to Article 17 of the General Statute of Public Enterprises, SOEs' accounts shall also be audited by an accounting expert, i.e. an external and independent auditor. The National Audit Authority – established by the Law of 14 March 2000 on Audit and reporting directly to the National Assembly – ensures that SOEs' budget implementation is in conformity with the Budget Law (OECD, 2018[17]).

Finally, under Articles 20 to 25 of the General Statute of Public Enterprises, the line ministry (through its board representatives) ensures that the SOE's decisions are in conformity with the objectives of the government and the instructions of the line ministry, while the State comptroller assesses the financial status of the SOE.

3.4.4. Access to public resources

If an SOE needs additional funding, after the board's approval, a motivated request should be addressed to the Ministry of Economy and Finance. The relevant line ministry may support such request, but the decision lies ultimately with the minister of Economy and Finance, who may consult with the prime minister and other ministries.[19]

4 Small-package delivery services in Cambodia

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

4.1.1. Competition in the postal sector

Postal services are a form of transportation or communication service for delivering goods and information from one point to another. Postal operators compete with firms offering a variety of delivery or communications services. Postal services differ from other physical delivery services due to the volume and nature of letters and other goods delivered through the post, which allows them to take significant advantage of economies of scale and scope in delivery (OECD, 1999[18]).

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, size, or both. The primary reason for this protection of certain areas from competition is the need to preserve the internal cross-subsidisation used to finance non-commercial public-service obligations. This allows the operator to maintain service quality on unprofitable high-cost or low-volume delivery routes when other concerns, such as the obligation to maintain geographically uniform prices, limit its ability to raise prices (OECD, 1999[18]).

This type of cross-subsidisation – using revenues from commercial activities for the non-commercial and non-profitable activities – is threatened by increasing competition. When introducing or increasing competition, countries must consider other mechanisms for the provision of any non-commercial services. A variety of competitively neutral methods exist for financing non-commercial obligations (OECD, 1999[18]).[20]

For many incumbent postal operators, the often non-regulated or less regulated and commercially attractive activity of delivering small packages to consumers has been one of the main means through which non-commercial activities have been cross-subsidised. Moreover, the drastic decline in the volume of traditional letters and postcards due to electronic communications, as has been observed in many countries around the world, continues to increase the commercial importance of small-package delivery services for incumbent postal operators.[21] However, combining commercial and non-commercial activities should not provide the incumbent postal operator a competitive advantage in relation to its competitors in an openly competitive market.

4.1.2. Definition of a small package

There are various definitions of “small package” in the logistics industry. One 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,[22] 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).[23]

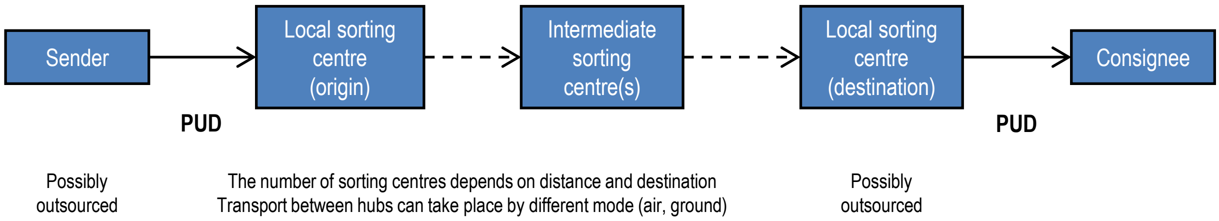
In Cambodia, Article 4 of the Law of 11 July 2002 on Postal Sector (Postal Law) defines “small parcels” as “postal items having fixed dimension and weighing not more than 2 kilogrammes”. The Postal Law also identifies a category called “parcel post” which includes items packaged in a cardboard paper or in a box for which size and weight is determined by the Ministry of Post and Telecommunications.

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.[24] SPDS are 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[19]).

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



Source: OECD analysis based on European Commission case COMP/M.6570 – UPS/ TNT Express; (Dennis, 2011[19]).

Different actors are active in the SPDS value chain, roughly split between integrators and non-integrators.[25] 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.

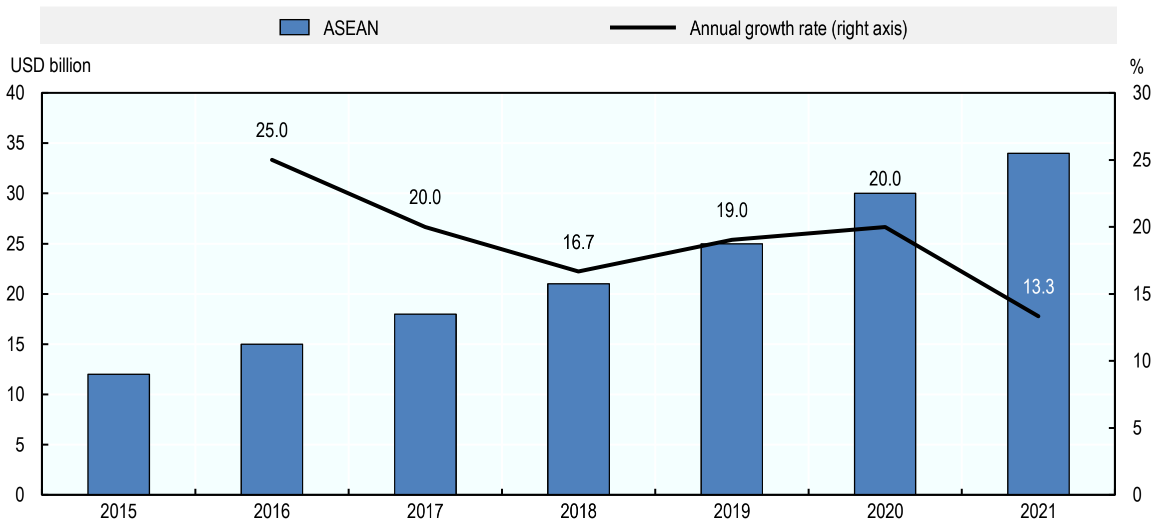
1. **Incumbent postal operators.** In many countries, the incumbent domestic postal operator is active in domestic and international small-package delivery. Generally, declining mail volumes have forced these operators to develop new business areas such as logistics, and in particular, SPDS.[26]
2. **Regional, national or local SPDS companies and partner networks.** These are often concentrated in the domestic small-package market. They may form alliances and partner networks to offer wider-ranging SPDS and expand into neighbouring countries.
3. **Smaller companies** with a domestic PUD ground service in one or more countries.

Many SPDS operators offer ancillary services as a way of diversification, including warehousing and value-added services, such as quality-control service, packaging, labelling and tagging.[27]

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.[28] The e-commerce market in ASEAN remains relatively small compared to other regions of the world,[29] but by 2021 it is expected to have grown at a double-digit pace with a compound annual growth rate of 19% since 2015 (see Figure 4.2). This may be a conservative estimate, as a 2019 study that covered the six largest markets in the region (Indonesia, Malaysia, the Philippines, Singapore, Thailand and Viet Nam) reported that the e-commerce market in these six countries was then worth USD 39 billion and predicted that it would grow to USD 153 billion by 2025, at a compound annual growth rate of 39% between 2015 and 2025 (Google, Temasek and Bain & Company, 2019[20]). In Cambodia, e-commerce revenue is projected to reach USD 222 million in 2021 and USD 313 million in 2025; with an annual growth rate of 9% between 2021 and 2025.[30]

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



Source: OECD (2018[21]).

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[21]). 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*[31] on 7 September 2017 and ASEAN Economic Ministers signed the ASEAN Agreement on Electronic Commerce on 12 November 2018.[32] Both show that ASEAN has recognised the potential of the digital economy, and the need to develop the region's e-commerce industry by creating a conducive environment for its growth through advancing trade rules and building up greater digital connectivity in the region.

In Cambodia, the *National Strategic Development Plan 2014-2018* called for improved quality and reduced costs for delivery services through legislative reforms (OECD, 2018, p. 95[21]).[33] E-commerce is still undeveloped in Cambodia compared to neighbouring countries. As observed in the *Cambodia's Trade Integration Strategy 2019-2023*, e-commerce remains limited to retail shopping, almost entirely for domestic customers with a large portion of transactions conducted through Facebook and other social networks. It is not yet perceived as a potential source of exports. Nonetheless, the sector has been growing in the past decade and, as noted in the *Cambodia's Trade Integration Strategy 2019-2023*, there is a significant potential for further development, which can contribute to the economic growth of the country. Faster growth may be expected in the next year as businesses have been forced to rapidly digitise due to the COVID-19 crisis.

To support SMEs' transition to e-commerce, in 2019, the government launched an online marketplace, Tinh E-commerce. The platform is owned by Cambodia Post (through Cambodia Post E-Solutions PLC) (10%), Paxxa Mobile Solutions (40%) and ZVS Investment (China) (50%). It supports local businesses, including SMEs, to sell their products and it offers logistics services to sellers through Cambodia Post and ZTO Express, a China-based SPDS provider.[34] Moreover, in January 2020, the Ministry of Commerce launched Go4eCam, a pilot government B2B and B2C marketplace to support SMEs.[35]

Despite these initiatives, there are obstacles that affect e-commerce growth rates. The *Cambodia's Trade Integration Strategy 2019-2023* considered logistics a critical barrier for e-commerce, especially in the context of last mile deliveries and the high cost related to these services. Infrastructure improvements are also required to enhance connectivity. For instance, it appears that, in many instances, door-to-door deliveries of e-commerce items cannot be performed because addresses are not clearly defined. Infrastructure investments would also be key to link urban and rural areas and to promote cross-border shipments with neighbouring countries (OECD, 2018[22]).

4.2. Competitive landscape of the SPDS sector

The SPDS sector has grown rapidly in recent years, attracting a number of third-party logistics (3PL) companies. According to information provided by the Ministry of Post and Telecommunications, in February 2020 there were 43 licenced operators active in Cambodia. These include global integrators, foreign players with a regional presence and domestic providers. DHL, FedEx, UPS, 4PX Express, ABL Cambodia, ACI-Air Courier International, Air Express Worldwide, BSK Regional Express Services, Kerry Express, Nippon Express, OCS, Sun Fong (SF Express), and ZTO Express are among these licenced operators (OECD, 2018[22]).

DHL, FedEx and UPS started operations in Cambodia in the 1990s.[36] They focus on the international express deliveries. According to stakeholders' internal estimates, DHL (with a market share of 40-45%) and FedEx (with a market share of 35%) are the largest players in the international express delivery segment. Global integrators also perform limited deliveries in the Phnom Penh area, while their deliveries to other areas are handled through local entities or agents.

Some of the 3PL companies, as well as other local start-ups, focus on the last mile segment and on deliveries in Phnom Penh. In addition, the Ministry of Post and Telecommunications estimates that a large number of deliveries are performed by approximately 100 unlicensed operators. According to stakeholders, last mile deliveries in Phnom Penh are often performed by "low-technology" players, using phones to contact recipients and arrange deliveries, while taxis and buses are often used for intercity deliveries.

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

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

- **Faster fulfilment**. Many SPDS providers offer same-day or on-demand delivery services.
- **Increased visibility**. SPDS providers increasingly provide real-time tracking and tracing, allowing customers to select and modify delivery windows and to communicate directly with drivers.
- **Optimised warehousing**. To reduce costs and delivery time, processes in warehouses such as parcel scanning and sortation systems are optimised by employing artificial intelligence and robotics.
- **New means of transport**. A few market players have introduced new means of transport, such as delivery drones. Other largely employed or future solutions are, for instance, networks of agents (crowdsourcing last-mile delivery), bike/scooter couriers, semiautonomous or autonomous ground vehicles, and droids.

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

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

Source: (Accenture, 2015[23]); (Accenture, 2019[24]); (McKinsey&Company, 2016[25]).

4.3. Sectoral regulation

The Law of 11 July 2002 on Postal Sector (Postal Law) regulates the postal sector – including SPDS – in Cambodia and it applies to all SPDS providers. Under Article 1 of the Postal Law, "all kind of postal services and business … are placed under the managerial and organizational competence of the Ministry of Post and Telecommunications". The Ministry of Post and Telecommunications – in particular the General Department of Post – is the sector regulator. The General Department of Post has the authority to manage and co-ordinate policies and strategic plans for the development of the postal sector. The General Department of Post has three departments: the Department of Post, the Department for the Management and Regulation in Postal Sector, and the Department of Postal Logistics-Finance.

Sub-Decree No. 64 of 10 May 2019 on Organisation and Functioning of Ministry of Post and Telecommunications defines in more detail the functions of the Ministry of Post and Telecommunications. These functions include (i) co-operating with relevant ministries and institutions to monitor the implementation of policies and national strategic plans for the development of the postal sector in Cambodia; (ii) preparing policies to co-ordinate and promote competition for the provision of postal services; and (iii) preparing policies for the issuance of licenses and the implementation of the Universal Service Obligation Fund and the Research and Development Fund.

The OECD understands that the Ministry of Post and Telecommunication has recently started to work on a new Postal Law, which is expected to be finalised by the end of 2021 and implemented in 2022.

4.3.1. Licensing

The 1994 Law on Investment established the basic regulatory framework governing foreign investment in Cambodia. It opens all economic sectors to foreign investment and allows foreign stakeholders to own 100% of companies in most sectors, except for state-owned companies and a few sensitive sectors where local participation or prior authorisation is needed (OECD, 2018, p. 39[21]). No foreign investment restrictions apply to the SPDS sector.

Pursuant to Articles 16 and 23-25 of the Postal Law, the Ministry of Post and Telecommunications issues licences to fulfil postal services. Accordingly, both foreign and domestic SPDS providers are required to obtain a licence from the Ministry of Post and Telecommunications to operate in Cambodia. Under Article 26 of the Postal Law these licenses are not transferrable.

Joint Prakas 1120 of the Ministry of Economy and Finance and the Ministry of Post and Telecommunications of 10 November 2006 sets forth the scope of the International Express Mail Service License. Even though Joint Prakas 1120 only refers to licences for international express deliveries, the OECD understands that these also apply to SPDS providers operating only domestic delivery services. The licence is granted by the Ministry of Post and Telecommunications for the provision of services involving receipt, collection, transport and distribution of parcels with a weight of up to 50 kilogrammes. Pursuant to Articles 4-5 of Joint Prakas 1120, SPDS providers are required to submit an application and to meet certain conditions to obtain a licence. Under Article 6, the Ministry of Post and Telecommunications should approve or decline an application within 15 working days. In practice, however, market players indicated that the licensing process takes one to two months. To speed up the process, the Ministry will implement an online application system by 2021. The licence is valid for one year, and it is renewable. A licence fee of KHR 4 200 000 applies to first licensees and renewals.

Article 48 of the Postal Law prescribes fines between KHR 5 million and 10 million for operating without a licence. However, there has been no enforcement actions in this regard, despite the presence of a large “informal economy” with a large portion of domestic deliveries in Cambodia currently performed by SPDS providers using motorcycles and taxis, and operating without a licence.

4.3.2. Price regulation

SPDS rates are not regulated in Cambodia; SPDS providers are free to set prices for their services.

In general, SOEs are free to set prices independently from line ministries and regulators. While Articles 15, 18 and 50 of the Postal Law prescribe that the Ministry of Post and Telecommunications can fix the “postal charges”, “service fees” as well as “discount or profit provision”, and that it can impose administrative sanctions in case of breach of these provisions, the OECD understands that Cambodia Post as well as other SPDS providers are not subject to any price regulation.

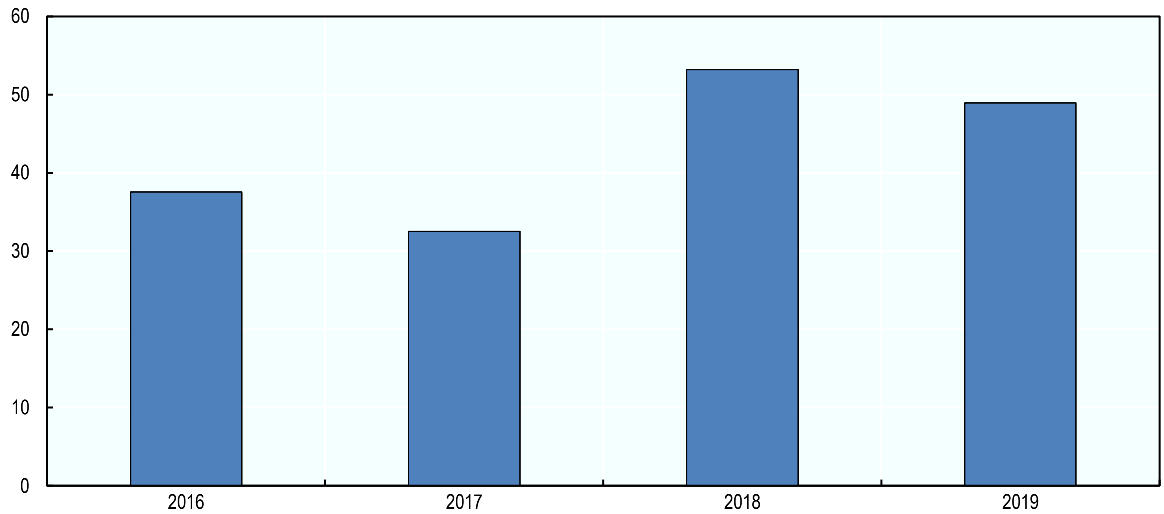
5 Cambodia Post and its impact on competition in SPDS

5.1. SOE active in the SPDS sector: Cambodia Post

Sub-Decree No. 57 of 21 June 2010 on the Establishment of Cambodia Post as a Public Enterprise created Cambodia Post as an entity fully owned by the state. Cambodia Post is financially supervised by the Ministry of Economy and Finance and technically supervised by the Ministry of Post and Telecommunications.

Based on publicly available information, in 2019, Cambodia Post had revenue of KHR 49 billion and operating result of KHR 495 000.[37]

Figure 5.1. Cambodia Post annual revenue, KHR billion



Source: UPU data (http://pls.upu.int/pls/ap/ssp_report.main2020?p_language=AN&p_choice=BROWSE).

Due to COVID-19, in the first six months of 2020, Cambodia Post's revenue dropped by 55% compared to the same period of 2019. Cambodia Post expected its revenue to increase in the second half of 2020 as result of increased online sales.[38] Cambodia Post also holds a 5% stake in Cambodia Post Bank Plc.[39]

5.1.1. Mandate

Cambodia Post's mission is to boost the national economy, while transforming its administrative and financial structure in order to modernise the postal services, increasing standards and affordability.[40]

Sub-Decree No. 57 defines Cambodia Post's rights and obligations. These include (i) providing domestic and international postal services to serve Cambodian people and (ii) providing services through the receipt, collection, transportation and distribution of all kinds of parcels, as well as national and international express delivery services. Based on information provided by the Ministry of Post and Telecommunications, the OECD understands that, while Joint Prakas 1120 assigns to Cambodia Post monopoly rights for the delivery of mail items with a weight of up to 500 grammes, these rights are not enforced in practice and, therefore, Cambodia Post competes with other licensees for these services.

5.1.2. Management

Similar to other SOEs, the council of administration (also called board of directors) of Cambodia Post is its highest governing body. The Ministry of Economy and Finance appoints Cambodia Post's council of administration by sub-decree, after a proposal by the Ministry of Post and Telecommunications.

Pursuant to Sub-Decree No. 57, the board is composed of five members, including representatives of the Ministry of Post and Telecommunications, the Ministry of Economy and Finance and the Council of Ministers, and a representative of Cambodia Post's employees. The Ministry of Post and Telecommunications' representatives are the chairman of the board and the director-general of Cambodia Post (who is elected through a request of the minister of Post and Telecommunication). Moreover, the OECD understands that the State comptroller sits on Cambodia Post's board. Ministers are not board members.[41]

5.1.3. SPDS business

Cambodia Post provides SPDS both domestically and internationally.[42] These services are:

1. **Parcel Post Service.** The service covers both domestic and international deliveries. Domestic shipments using Parcel Post Service must not exceed 30 kilogrammes and meet size requirements.[43] For international deliveries, size and weight requirements of the destination country apply.
2. **Express Mail Service (EMS).** EMS is a premium service for customers, including corporate entities, sending parcels (and express mail) domestically or internationally. Domestic EMS is not yet widely available. Since February 2016, Cambodia Post operates in a partnership with Kerry Worldbridge Logistics to expand EMS coverage (OECD, 2018[22]).

Between March and August 2020, due to COVID-19, Cambodia Post suspended international express deliveries for both mail and small packages. In August 2020, it resumed this service at least from and to certain countries after having partnered with a new air carrier.[44]

Despite its extensive network, according to stakeholders, Cambodia Post does not have a strong presence in domestic SPDS, nor is it considered to be competing closely with global integrators in the segment of international SPDS.

5.2. Assessment of Cambodia Post's advantages and disadvantages in the SPDS sector

This section identifies and assesses Cambodia Post's advantages and disadvantages in the SPDS sector, and offers recommendations to address these issues. Each sub-section commences by setting out the general principles guiding the assessment; these are mainly taken from the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (2015[8]).

5.2.1. Cambodia Post's public-policy objectives

General principles

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

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

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

The OECD understands that even though Cambodia Post is not subject to a PSO to deliver mail and small packages across the country, in practice it uses its "best efforts" to deliver everywhere in Cambodia through its widespread network.[45] The OECD could not confirm whether Cambodia Post receives any form of compensation for deliveries to non-profitable areas,[46] nor whether revenue and costs related to these services are separated in Cambodia Post's financial statements.

To maintain a level playing field with private competitors, SOEs need to be adequately compensated for the fulfilment of public-policy objectives. If SOEs are overcompensated for their public-policy activities, this would result in a subsidy for their competitive activities, distorting the level playing field, while under-compensation can jeopardise SOEs' viability. Adequate compensation can be achieved through different mechanisms including specific legal or contractual provisions. Moreover, to assess whether the compensation is adequate, it is crucial to ensure any costs related to the fulfilment of public-policy objectives be clearly identified and disclosed (OECD, 2015, p. 47[8]). In other countries, adequate compensation of public policy objectives takes different forms. In the past, the European Commission considered compensation schemes legitimate if subject to accounting separation and the application of a so-called "overcompensation test". For instance, the European Commission authorised: 1) the UK to grant a network subsidy to the Post Office to keep open and modernise non-commercially viable offices, such as those in rural areas; 2) Italy to grant compensation to Poste Italiane for the universal postal service and for reduced postal tariffs offered to publishers, not-for-profit organisations and electoral candidates; and 3) France to grant compensation to La Poste to finance the public service of delivering press items to citizens and the provision of postal services in remote areas.

The OECD has one recommendation.

1. Clearly define and publicly disclose Cambodia Post's PSOs. Ensure that Cambodia Post receives adequate compensation for its PSOs (if any), including for instance non-commercial delivery services for government agencies and other public authorities, and that revenue and costs related to the performance of such PSO services are clearly separated from commercial activities in Cambodia Post's accounts.

5.2.2. Cambodia Post governed and managed as an arm of government

General principles

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

The General Statute of Public Enterprises introduced safeguards to ensure the autonomy of SOEs boards. Article 4 affirms that SOEs' boards exercise their functions with full autonomy and Article 11 states that the board determines the objectives and controls the management of the SOE. Moreover, Article 10 declares that the function of president, general director or board member is incompatible with the function of member of the National Assembly and government. Finally, Article 43 defines the principles on the selection of state representatives to the board of public-private "joint ventures". However, the OECD understands that there are no similar principles and rules applicable to "state companies".

Despite these safeguards, it appears that the state continues to exercise undue influence over SOEs' businesses and that there is no clear separation between the state's ownership and regulation functions in Cambodia (OECD, 2018[17]).

The OECD understands that, even though the law assigns authority and independence to SOEs' boards, in practice the Ministry of Economy and Finance – as well as the respective line ministries – exercise influence over SOEs' operations. For instance, while Article 18 of the General Statute of Public Enterprises prescribes that only SOEs' acquisitions shall be done in accordance with the conditions determined by the Ministry of Economy and Finance, it seems that, in practice, any investment requires the Ministry of Economy and Finance's approval.

With regard to Cambodia Post, while it is a separate legal entity, deemed to be autonomous and financially independent from the government in its business operations,[47] the line ministry (i.e. the Ministry of Post and Telecommunications, which is also the sector regulator) seems to be able to exercise influence over Cambodia Post. Evidence of the line ministry's influence is Sub-Decree No. 57 on the Establishment of Cambodia Post as Public Enterprise prescribing that (i) two representatives of the Ministry of Post and Telecommunications sit on the board; (ii) one of these representatives is also the chairperson of the board; and (iii) the second representative is the director-general of Cambodia Post.[48] Moreover, Article 2(16) states that Cambodia Post can enter into loan agreements only if approved by the Ministry of Post and Telecommunications and the Ministry of Economy and Finance. Finally, as described in Section 4.3.2, Articles 15, 18 and 50 of the Postal Law prescribe that the Ministry of Post and Telecommunications can fix Cambodia Post's "postal charges", "service fees" as well as "discount or profit provision". That said, the OECD understands that in practice this provision is no longer applicable since Cambodia Post was established as an SOE.

The OECD was not able to assess whether in practice Cambodia Post's board has sufficient authority, competences and objectivity to carry out its functions, nor is the OECD aware of cases in which the government exercised undue influence.

The OECD has three recommendations.

1. Ensure that Article 4 of the General Statute of Public Enterprises is fully implemented by refraining from electing an excessive number of directors from within state-run bodies and by increasing transparency on SOEs' board members qualification and nomination process.

2. Amend or repeal Articles 15, 18 and 50 of the Postal Law to avoid any potential undue influence over Cambodia Post's business decisions with regard to its commercial activities.
3. Limit *ex ante* ministerial approval to Cambodia Post's (and other SOEs') significant transactions.

5.2.3. Different regulatory treatment

General principle

The legal and regulatory framework for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs undertake economic activities.

Competition laws

As mentioned in Section 3.3, Cambodia is currently developing its first competition law. Based on the draft publicly available[49] and on more recent information shared by CamControl, there is no exemption applicable to SOEs. Therefore, it seems that it would equally apply to SOEs and privately owned businesses, in line with international practices.

The OECD's work on competitive neutrality shows clearly that broad and neutral competition law and enforcement help to ensure a level playing field and that competition is not distorted unduly by the presence and actions of SOEs (OECD, 2018[17]). Avoiding exemptions for SOEs competing with private entities is important as SOEs may have an incentive to engage in anticompetitive behaviour that can be as harmful as restrictions of competition by private competitors. The independence of the competition authority from other government stakeholders, including from line ministries exercising "technical control" over SOEs and from financial ministries exercising state's ownership rights, is also key to ensure that the competition law will be applied effectively and equally to SOEs.

The OECD has three recommendations.

1. Adopt a competition law to fully benefit from a level playing field for both SOEs and privately owned enterprises.
2. Do not exempt SOEs from the scope of the competition law, allowing for an independent case-by-case assessment of their potential anticompetitive conduct. Explicitly including SOEs when defining the scope of applicability could increase legal certainty in this regard.
3. Ensure independence of the competition authority to avoid any attempt by ministries or other government authorities to influence the competition authority's decisions to investigate SOEs' conduct.

Licensing requirements

As mentioned in Section 4.3.1, SPDS providers are required to obtain a licence from the Ministry of Post and Telecommunications to operate in Cambodia. The licence is valid for one year, and it is renewable. A licence fee of KHR 4 200 000 applies to first licensees and renewals.

While under the Postal Law and Joint Prakas 1120 Cambodia Post is not technically exempted, it is unclear whether the same requirements apply to Cambodia Post. For instance, based on information provided by the Ministry of Post and Telecommunications, it seems that Cambodia Post is exempted from licensing fees (while it appears that there is no legal basis for this exemption). This different treatment may confer an advantage to Cambodia Post.

The OECD has one recommendation.

1. Apply the same licensing requirements and fees to Cambodia Post and privately owned SPDS providers. Alternatively, consider simplifying the licensing procedure and reducing costs for privately owned SPDS providers.

Transparency and auditing requirements

General principle

A coherent disclosure policy should be adopted with SOEs observing high standards of transparency and reporting according to best practice accounting and auditing standards.

In Cambodia, the Ministry of Economy and Finance does not publish aggregate reports with information on SOEs' financial performance and other non-financial indicators. Moreover, individual SOEs are under no obligation to disclose or publish annual reports and financial statements. In practice, Cambodia Post's financial and non-financial reports are not publicly available, even though Cambodia Post's annual review and plans are to some extent presented in public.[50]

With regard to auditing, Prakas of 19 December 2018 on Corporate Governance of Listed Companies requires publicly listed companies to have an audit committee and to have its financial reports audited by an external certified auditor. For both listed and non-listed SOEs, the Law of 14 March 2000 on Audit establishes internal audit functions within the relevant ministries, institutions and SOEs.[51] These functions report internally and submit a report to the National Audit Authority. Moreover, all SOEs must submit their financial reports to independent external auditors if they meet two of the following criteria: (1) annual turnover of at least KHR 4 billion; (2) total assets of at least KHR 3 billion; and (3) at least 100 employees.[52] The OECD has no information on whether this system is widely adopted by SOEs.

The OECD has three recommendations.

1. Develop a disclosure policy at SOE level; and mechanisms to measure and report on implementation of disclosure requirements.
2. Develop consistent reporting on SOEs and publish annually an aggregate report on SOEs, providing financial and non-financial information. Good practice calls for the use of web-based communications to facilitate access by the general public.
3. Ensure that SOEs' financial statements, including Cambodia Post's, are subject to independent external audit.

Cambodia Post's arrangement for customs clearance

It appears that Cambodia Post has an exclusive arrangement allowing for officers of the General Department of Customs and Excise to be present at the SOE's premises and warehouses. Discussions with stakeholders suggest that this arrangement might speed up customs clearance, which would benefit Cambodia Post's international SDPS business. The OECD has no further information supporting this claim. On the contrary, Cambodia Post claims that officers' presence slows down operations, precluding door-to-door deliveries of parcels.

The OECD has one recommendation.

1. Ensure that the General Department of Customs and Excise provides the same service to all market players and subjects all of them to the same procedures, irrespective of whether they are SOEs or privately owned companies.

5.2.4. Privileged access to public procurement

General principle

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

In Cambodia, the Law of 14 January 2012 on Public Procurement applies to all public procurement undertaken by state institutions and SOEs.[53] It defines "public procurement" as the procurement undertaken by ministries, institutions, local authorities, public enterprises, public administrative enterprises, other financial autonomous entities, and public-private partnerships. Therefore, the OECD understands that SOEs shall comply with the procurement rules when acquiring goods or services, including for commercial activities.

It seems that there is no *de jure* preference granted to SOEs in government procurement in Cambodia. According to the Ministry of Economy and Finance Procurement Manual (May 2012),[54] SOEs will only be considered eligible to participate in government procurement if (i) they are legally and financially autonomous; (ii) they operate under commercial law, and (iii) they are independent from the Ministry of Economy and Finance or from the government agency (or its parent ministry) undertaking the specific project. Moreover, the Ministry of Economy and Finance stated that when SOEs enter into contracts with government agencies, these contracts are under commercial terms.

The OECD has not been able to identify cases in which Cambodia Post was granted preferential treatment in public procurement procedures or in other arrangements with government agencies.

The OECD has no recommendation.

5.2.5. Financial advantages

Tax treatment

General principle

SOEs undertaking economic activities should not be exempt from the application of general laws and tax codes. Laws and regulations should not unduly discriminate between SOEs and their market competitors.

SOEs in Cambodia are subject to the same legal system with regard to taxes and duties as privately owned enterprises, unless otherwise stipulated in the law.[55] This is also confirmed by the fact that SOEs fall under the definition of "taxpayer" under the Law on Taxation.[56] Nevertheless, two exemptions seem to arise.

First, pursuant to Article 9 of the Law on Taxation, an exemption from the income tax applies to income of the Royal government and government institutions. SOEs that qualify as government institutions are entitled to this exemption, subject to approval by the Ministry of Economy and Finance. While the Law on Taxation does not define SOEs and government institutions, Cambodia Post may qualify as a government institution. According to information provided by the Ministry of Post and Telecommunications, it seems that Cambodia Post is currently exempted from income tax, but this exemption may no longer apply in the future.

Second, under the Sub-Decree on Value-added-tax (VAT), Cambodia Post's postal services are considered "non-taxable supply". As a result, Cambodia Post is not required to charge VAT for its domestic delivery services, including SPDS. Although in principle tax benefits may aim at compensating SOEs for public-policy objectives, the exemption seems to extend to commercial activities, conferring a competitive advantage to Cambodia Post.

The OECD has one recommendation.

1. Avoid any tax exemptions on Cambodia Post's commercial activities. Amend the Law on Taxation and the Sub-Decree on VAT accordingly.

Usage of land

General principle

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

Public land in Cambodia is generally owned by individual ministries, while construction is supervised by the Ministry of Land Management. A new Law on Management, Use and Disposal of the State Property was promulgated on 14 November 2020. Under this new law, the OECD understands that the Ministry of Economy and Finance serves as the competent authority entrusted with the management, use and disposal of state property. State property is classified as "state public property" or "state private property". The state public property refers to properties serving public services, while the state private property refers to state property no longer required for the public interest or for providing public services. State public property which no longer serves the public interest may be reclassified as state private property through a sub-decree.[57]

The OECD understands that Cambodia Post's facilities are considered state private property under the Ministry of Economy and Finance's management, and – as such – ownership or occupation rights are exempted from the 4% stamp duty/registration tax. Moreover, the government charges permit fees for the construction of commercial facilities. The OECD understands that while Cambodia Post would be charged permit fees for building new facilities (e.g. post offices or warehouses), the same fees would not be charged if the initiative is undertaken by the line ministry.

The OECD has two recommendations.

1. Except for land and facilities strictly related to public-policy objectives assigned to Cambodia Post (if any), no rights related to state properties should be granted to Cambodia Post under preferential conditions such as tax exemptions.
2. Increase transparency by disclosing – for instance in publicly available financial reports – the list of SOE properties to which tax or fee exemptions apply.

Access to finance

General principles

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

SOEs' relations with all financial institutions, as well as non-financial SOEs, should be based on purely commercial grounds. SOEs' reliance on state-owned financial institutions may distort their incentive structure and lead to excessive indebtedness and wasted resources.

Even when funding is obtained from private lenders and granted on commercial terms, if the creditors assume there is an implicit state guarantee on SOEs' debts, this situation can lead to artificially low funding costs for SOEs and distort the competitive landscape.

Under Sub-Decree No. 71 capital injections into SOEs can be in cash or in kind. If in cash, funds must be transferred into the SOE's account at the National Bank of Cambodia or the National Treasury. If in kind, the SOE must prepare a list of these assets and attach it to its articles of incorporation. Moreover, Articles 26, 31, and 35 of Sub-Decree No. 41 prescribe that capital injections must be assessed by an Evaluation Committee with members assigned by the technical ministry and the Ministry of Economy and Finance. The OECD has no specific information on capital injections into Cambodia Post.

For SOEs' access to debt, the OECD understands that the Ministry of Economy and Finance has the sole right to grant loans on behalf of state institutions, subject to prime minister's approval. Moreover, under Article 3 of Sub-Decree No. 41 "the state will be responsible for loan contracts of public enterprise only for contracts it officially ensures in advance". This means, in practice, that the state will be responsible for SOEs' loans if the state has guaranteed these loans in advance.[58] In addition, pursuant to Article 4 of the Sub-Decree No. 71, SOEs wanting to issue securities or bonds must obtain governmental approval. Finally, with specific regard to Cambodia Post, pursuant to Article 21 of Sub-Decree No. 57, the state is responsible for Cambodia Post's debts only if Ministry of Economy and Finance's prior approval was granted.

There is no publicly available information on SOEs' loans guaranteed by the state and the OECD is not aware of any state-guaranteed loan to Cambodia Post. The Ministry of Post and Telecommunications and the Ministry of Economy and Finance stated that Cambodia Post did not receive any financial support by the state since its establishment.

The OECD has two recommendations.

1. Amend Sub-Decree No. 41 and Sub-Decree No. 71 clearly indicating that in principle SOEs' loans and liabilities are not guaranteed by the State.
2. Apply reporting and disclosure requirements for SOEs' debt obligations and state's financial assistance – including guarantees – to SOEs.

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Notes

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

[2] 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, https://www.oecd.org/corporate/corporategovernanceofstate-ownedenterprisesinasia.htm.

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

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

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

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

[7] For a more elaborate description, see Capobianco and Christiansen (2011[14]).

[8] World Bank data, see https://data.worldbank.org/indicator/SP.POP.TOTL?locations=KH.

[9] For further information, see https://unimelb.libguides.com/c.php?g=402982&p=4809362 and http://en.chbab.net/about-cambodian-law. In Cambodia, laws are called “kram”; ministerial orders (or proclamations) used to implement and clarify specific provisions are called “prakas”.

[10] See www.worldbank.org/en/country/cambodia/overview.

[11] Articles 2 and 4 of Law of 17 June 1996 on the General Statute of Public Enterprises.

[12] Article 26 of Law of 17 June 1996 on the General Statute of Public Enterprises.

[13] See www.phnompenhpost.com/business/govt-set-finalise-antitrust-competition-draft-law.

[14] For instance, under Articles 30 and 38 of Sub-Decree No. 41, SOEs must be registered in accordance with the procedure under commercial law.

[15] See Article 32 of Law of 17 June 1996 on the General Statute of Public Enterprises. SOEs' statutes are the form of sub-decrees.

[16] Article 6 of Law of 17 June 1996 on the General Statute of Public Enterprises.

[17] Article 10 of Law of 17 June 1996 on the General Statute of Public Enterprises.

[18] Article 34 of Law of 17 June 1996 on the General Statute of Public Enterprises.

[19] The Ministry of Economy and Finance submitted to the OECD that there has been no state capital investment in SOEs in the last five years.

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

[21] See, for example, European Commission (2018[27]).

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

[23] 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.

[24] A node is a connection point within a network. See, European Commission case COMP/M.6570 – UPS/ TNT Express, paragraph 44.

[25] 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").

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

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

[28] The definition of e-commerce used in this report is that in *OECD's Glossary of Statistical Terms*: "An

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

[29] In 2018, the ASEAN e-commerce market accounted for approximately 1% of worldwide e-commerce revenue. See OECD (2018[21]).

[30] See www.statista.com/outlook/243/185/ecommerce/cambodia.

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

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

[33] In 2019, Cambodia passed an e-commerce law; two implementing regulations were recently issued. For further information, see www.dfdl.com/resources/legal-and-tax-updates/e-commerce-law-the-impact-on-cambodias-online-business/.

[34] See www.khmertimeskh.com/634706/state-backed-online-shopping-platform-launched/.

[35] See www.khmertimeskh.com/686950/pilot-project-to-boost-e-commerce-for-kingdoms-smes/.

[36] Some international players operate in Cambodia through agents.

[37] See UPU data (http://pls.upu.int/pls/ap/ssp_report.main2020?p_language=AN&p_choice=BROWSE). See also www.phnompenhpost.com/business/cambodia-post-registers-more-133-million-revenue-last-year.

[38] See www.phnompenhpost.com/business/cambodia-post-back-business.

[39] Canadia Investment Holding Plc is Cambodia Post Bank's largest shareholder (50%), followed by Fullerton Bank (45%). In 2018, the bank reported profits for USD 13.81 million (see www.phnompenhpost.com/business/cambodia-post-back-business).

[40] See www.cambodiapost.post/en/page/history-of-post.

[41] The OECD did not have access to Cambodian Post's articles of association. The OECD understands that SOEs' articles of association are internal document signed and stamped by the Ministry of Economy and Finance and the responsible line ministry.

[42] Cambodia Post can either directly perform these services or outsource them to third parties (see Article 33 of the Postal Law).

[43] Maximum size (length + width + height) must not exceed 3 meters, with a maximum length not exceeding 1.50 meter.

[44] See www.phnompenhpost.com/business/cambodia-post-back-business, where it is noted that rates increased by USD 8 per kilogramme for the duration of COVID-19.

[45] Articles 40-42 of Law of 17 December 2015 on Telecommunications.

[46] While Cambodia established and implemented a universal service obligation fund for telecommunications services (see articles 40-42 of Law of 17 December 2015 on Telecommunications), there is no similar fund for the postal sector.

[47] See Cambodia Post website (www.cambodiapost.post/en).

[48] Pursuant to Article 7 of Sub-Decree No. 57, Cambodia Post's board members can be appointed from among civil servants who have served at least five years or have retired, or other Cambodian individuals with professional competency. Sub-Decree No. 57 does not restrict board members from holding political positions, but it prevents them from operating businesses that have conflicting interests with Cambodia Post.

[49] See www.asean-competition.org/file/pdf_file/Draft%20Law%20on%20Competition%202018.pdf.

[50] See www.phnompenhpost.com/business/cambodia-post-registers-more-133-million-revenue-last-year.

More broadly, the disclosure of financial and non-financial information by firms (including private ones) in Cambodia is perceived as being partial and untimely. The OECD has already recommended the government to consider using the disclosure practices of publicly listed firms as a good practice for non-listed firms (OECD, 2018[17]).

[51] Article 41 of the Law 14 March 2000 on Audit.

[52] Article 17 of the General Statute of Public Enterprises and Prakas 563 of the Ministry of Economy and Finance of 10 July 2020.

[53] See www.state.gov/reports/2018-investment-climate-statements/cambodia/.

[54] See https://www.pfm.gov.kh/document/publication/2.Procurement Manual Volumn I.pdf.

[55] Article 5 of the General Statute of Public Enterprises. See also www.state.gov/reports/2018-investment-climate-statements/cambodia/.

[56] Law of 2 February 1997 on Taxation, as amended in 2003.

[57] See www.dfdl.com/resources/legal-and-tax-updates/cambodia-monthly-legal-update-november-2020/.

[58] Regulations do not impose on (or recommend to) SOEs to contract loans with state-owned banks and financial institutions. There is no publicly available information indicating whether SOEs' loans are typically contracted with state-owned banks/financial institutions in Cambodia.

Annex A. List of reviewed legislation

Constitution of 1993

National Strategic Development Plan 2014-2018

Trade Integration Strategy 2019-2023

Law of 5 June 1994 on Investment

Law of 17 June 1996 on the General Statute of Public Enterprises

Law of 2 February 1997 on Taxation, as amended in 2003

Law of 14 March 2000 on Audit

Law of 11 July 2002 on Postal Sector

Law of 19 June 2005 on Commercial Enterprises

Law of 13 May 2008 on Public Finance

Law of 14 January 2012 on Public Procurement

Law of 17 December 2015 on Telecommunications

Law of 14 November 2020 on Management, Use and Disposal of the State Property

Draft competition law

Joint Prakas 1120 of the Ministry of Economy and Finance and the Ministry of Post and Telecommunications

Prakas of 19 December 2018 on Corporate Governance of Listed Companies

Sub-Decree No. 41 of 6 August 1997 on the Implementation of the General Statute of Public Enterprises, supplemented by Sub-Decree No. 71 of 22 April 2011

Sub-Decree No. 57 of 21 June 2010 on the Establishment of Cambodia Post as a Public Enterprise

Sub-Decree No. 64 of 10 May 2019 on Organisation and Functioning of Ministry of Post and Telecommunications

Sub-Decree on Value-added-tax

Ministry of Economy and Finance Procurement Manual (May 2012)

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

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

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

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