



OECD Competition Assessment Reviews

ASEAN

LOGISTICS SECTOR



OECD Competition Assessment Reviews: Logistics Sector in ASEAN

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Foreword

Southeast Asia, economically one of the fastest growing regions in the world, has benefited from broadly embracing an economic growth model 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.

This report, *OECD Competition Assessment Reviews: Logistics Sector in ASEAN*, undertaken within the framework of the ASEAN Competition Action Plan, assesses the impact of regulation on competition in the sector. This report covers the five main subsectors of the logistics market: freight transportation, including transport by road, inland waterway and maritime; freight forwarding; warehousing; small-package delivery services; and value-added services. In parallel, the OECD has assessed the impact of state-owned enterprises on competition in ASEAN in *OECD Competitive Neutrality Reviews: Small-Package Delivery Services in ASEAN*.

The OECD assessment was conducted in consultation with the authorities and local stakeholders in each, and 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 about 500 pieces of legislation across the region and identifies 475 regulatory barriers where changes could be made to foster greater competition in the logistics sector. This is especially important for ASEAN where logistics currently accounts for about 5% of GDP. This report offers policy recommendations that can help ASEAN governments address structural and regulatory shortcomings in this sector.

These structural reforms have become even more pressing as the ASEAN economy is expected to have contracted by 4.4% in 2020 (compared to a growth rate of 4.4% in 2019) due to the COVID-19 pandemic, with containment measures severely affecting key economic activities such as exports and tourism. These policy recommendations can contribute to reforms that help the 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 governments of the ASEAN member states, as well as the ASEAN Secretariat and the UK Government, on their efforts to analyse and 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 further support its reforms to the benefit of its citizens.

Greg Medcraft



Director, OECD Directorate for Financial and Enterprise Affairs

Acknowledgements

The report builds on the country reports on the ten ASEAN member states, prepared in the context of the *Fostering competition in ASEAN* project.

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The country reports were prepared in collaboration with the following authorities and public companies who participated in meetings and provided information and feedback throughout the project:

1. ASEAN Secretariat and UK Government.
2. Brunei Darussalam: Competition Commission Brunei Darussalam (CCBD); Ministry of Transport and Infocommunications; Maritime and Port Authority of Brunei Darussalam; Registry of Companies and Business Names Ministry of Finance and Economy; Darussalam Assets; FDI Action and Support Centre.
3. Cambodia: Ministry of Commerce (Consumer Protection, Competition and Fraud Repression Directorate General)(Department of Competition), Ministry of Public Works and Transport (MPWT) (Logistics Department, Directorate of Administrative Services, Directorate of Transport (Road Transport, Land Transport, Water Transport and Merchant Marine departments)), Ministry of Economics and Finance (Public Enterprise Department), Sihanoukville Autonomous Port Authority, Phnom Penh Autonomous Port Authority, Ministry of Land Management, Ministry of Posts and Telecommunications and Cambodia Post.

4. Indonesia: Indonesia Competition Commission (ICC); Ministry of Trade; Ministry of Finance; Ministry of Transportation (Directorate General of Land Transportation); Ministry of Transportation (Directorate General of Transportation Infrastructure); Ministry of Transportation (Directorate General of Rail Transportation); Ministry of Transportation (Directorate General of Sea Transportation, Directorate of Sea Traffic and Transport and Directorate of Ports); Ministry of Communication and Information Technology (Directorate General of Post and Information Technology); Ministry of State Owned Enterprises; Coordinating Ministry for Economic Affairs; Ministry of Cooperation and Small and Medium Enterprises; Investment Coordinating Board (BKPM); Pos Indonesia; Motor Transport Enterprise of the Republic of Indonesia (DAMRI); KAI Logistik; Indonesian National Shipping (PELNI); and Pelindo.
5. Lao PDR: Lao Competition Commission (LCC), Competition Division (Department of Internal Trade, Ministry of Industry and Commerce), Ministry of Finance, Ministry of Public Works and Transportation.
6. Malaysia: Malaysia Competition Commission (MyCC); Ministry of Transport (Logistics, Maritime, BLPD and NLTF); Malaysia Productivity Corporation (MPC); Road Transport Department (JPJ); Land Public Transport Agency (APAD); Port Klang Free Trade Zone (PKFZ); Port Klang Authority (PKA); Maritime Institute of Malaysia (MIMA); Royal Malaysian Customs Department (RMCD); Ministry of Economic Affairs (MEA); Attorney General's Chambers (AGC); Malaysian Investment Development Authority (MIDA); SME Corporation Malaysia; Malaysia Communications and Multimedia Commission (MCMC) and Pos Malaysia.
7. Myanmar: Myanmar Competition Commission (MCC); Ministry of Transport and Communications (Postal Regulation Division, Inland Transport Department, Department of Marine Administration); Directorate of Investment and Company Administration; Customs Department; Ministry of Commerce; Myanmar Port Authority; Myanmar Post; Myanma Railways; Myanmar Shipyards; Ministry of Investment and Foreign Economic Relations; Ministry of Planning, Finance, and Industry.
8. Philippines: Philippine Competition Commission (PCC); Anti-Red Tape Authority (ARTA); Bureau of Customs; Bureau of Immigration; Department of Information and Communications Technology – Postal Regulation Department (DICT – PRD); Department of Trade and Industry (DTI); Department of Transportation; Metropolitan Manila Development Authority (MMDA); National Economic Development Authority (NEDA); Philippine Postal Corporation (PHLPOST); Philippine Ports Authority (PPA); The Board of Investments (BOI); Cebu Ports Authority (CPA) (Freedom of Information Office); Department of Interior and Local Government (DILG); Philippine Economic Zone Authority (PEZA); The Department of Public Works and Highways (DPWH).
9. Singapore: Competition and Consumer Commission of Singapore (CCCS); Enterprise Singapore; Economic Development Board (EDB); Infocomm Media Development Authority (IMDA); Ministry of Transport; Singapore Land Authority (SLA); Singapore Maritime Institute; PSA Corporation; Ministry of Industry and Trade; Singapore Post.
10. Thailand: Office of Trade Competition Commission (OTCC), Thailand Post Co., Ltd., State Enterprise Policy Office (SEPO), Port Authority of Thailand, Ministry of Digital Economy and Society, Department of Land Transport and Marine Department.
11. Viet Nam: Viet Nam Competition and Consumer Authority (VCCA); Viet Nam Business Registrar; Viet Nam Inland Waterway Administration (VIWA); Central Institute for Economic Management; Viet Nam National Railway Administration; Viet Nam Maritime Administration (VINAMARINE); Ministry of Information and Communications, Postal Department.

The following trade associations and private companies were interviewed:

1. Brunei Darussalam: Muara Port Company; Brunei Darussalam Malay Chamber of Commerce and Industry; Brunei Darussalam International Chamber of Commerce & Industry; DHL Express;

- Shipping Association of Brunei Darussalam; Bee Seng Shipping Sdn. Bhd; Brunei Darussalam Freight Forwarders Association; Federation of Transportation and Stevedoring of Brunei Darussalam; MOC Sdn. Bhd, Archipelago Group; Bollorè Logistics; SDV Logistics; Brunei Darussalam International Air Cargo Centre; and Sivli Logistics.
2. Cambodia: Cambodian Truckers' Association (CAMTA); Cambodian Freight Forwarders' Association (CAMFFA); EuroCham; AmCham; Royal Railway; Phzar; Kerry Logistics; FedEx; DHL; Advance Glory Logistics and Fair & Easy.
 3. Indonesia: Association of Indonesian Hauliers (AMH); Federation of Indonesian Freight Forwarders (FMFF); Indonesian Shipowners' Association (INSA); Land Transportation Association (ORGANDA); Association of Indonesian Loading and Unloading Companies (APBMI); Association of Indonesian Express Delivery Service Companies (ASPERINDO); EuroCham Indonesia; Lazada; RPX; JNE; Pandu Logistik; and J&T Express.
 4. Lao PDR: DHL Express Lao Sole Company Limited; Fair & Easy; Bollorè Laos.
 5. Malaysia: Association of Malaysian Hauliers (AMH); Federation of Malaysian Freight Forwarders (FMFF); Malaysian National Shippers Council (MNSC); Malaysian Ship Owners' Association (MASA); Malaysia Institute of Transport (MITRANS) and Women in Logistics and Transport Malaysia (WILAT).
 6. Myanmar: British Chamber of Commerce; DHL; EuroCham; Myanmar International Freight Forwarders Association; MGL Express; UK Department of International Trade; ZawGyi Mart.
 7. Philippines: Confederation of Truckers Association of the Philippines; Philippines Interisland Shipping Association; Supply Chain Management Association of the Philippines; and LBC.
 8. Singapore: AmCham; DHL Express; Singapore Shipping Association; Supply Chain Asia.
 9. Thailand: Thai National Shippers' Council (TNSC); Thai Retailers Association; Thai Federation on Logistics; European Association for Business and Commerce.
 10. Viet Nam: Viet Nam Association of Small and Medium Enterprises (VINASME); Viet Nam Chamber of Commerce and Industry (VCCI); US-ASEAN Business Council; Viet Nam Association for Women Entrepreneurs; Viet Nam Automobile Transportation Association (VATA); European Chamber of Commerce; AmCham Viet Nam.

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The information in this report is updated as of the date of finalisation of the individual country reports, while economic forecasts have been updated with more recent figures reflecting the impact of the COVID-19 pandemic.

Fostering competition in ASEAN

ASEAN member states have agreed to implement significant advances in competition policy 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 Experts Group on Competition (AEGC), together with the OECD, 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 10 ASEAN member states, both in general (4.1) and with a focus on state-owned enterprises (4.2).

This report contributes to ACAP Outcome 4.1.2 (Impact of non-tariff barriers on competition), building on a competition assessment of regulatory constraints on competition in the logistics services sector. More specifically, the agreed scope for the project is to cover:

1. freight transportation, including transport by road, inland waterways and maritime, and rail
2. freight forwarding
3. warehousing
4. small-package delivery services
5. value-added services.

This regional report concludes a series of 10 similar assessments, one for each ASEAN member state.

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Abbreviations and acronyms

| | |
|----------------|--|
| ABRP | Administrative Burden Reduction Programme (United Kingdom) |
| ACRF | ASEAN Comprehensive Recovery Framework |
| AEC | ASEAN Economic Community Blueprint |
| AEGC | ASEAN Experts Group on Competition |
| AFAFGIT | ASEAN Framework Agreement on the Facilitation of Goods in Transit |
| AFAFIST | ASEAN Framework Agreement on the Facilitation of Inter-State Transport |
| AFAMT | ASEAN Framework Agreement on Multimodal Transport |
| AFAS | ASEAN Framework Agreement on Services |
| AGCM | Italian Competition Authority |
| APAD | Land Public Transport Agency (Malaysia) |
| ARTA | Anti-Red Tape Authority (Philippines) |
| ASEC | ASEAN Secretariat |
| ASSIST | ASEAN Solutions for Investments, Services and Trade |
| ATISA | ASEAN Trade in Services Agreement |
| ASSM | ASEAN Single Shipping Market |
| AVE | Ad valorem equivalents |
| BBA | Break-bulk agents |
| BOI | Board of Investment (Thailand) |
| CAGR | Compound annual growth rate |
| CBTA | Cross-Border Transport Agreement |
| CC | Cargo consolidators |
| COAG | Council of Australian Governments |
| CPC | Certificate of public convenience |
| CPTPP | Comprehensive and Progressive Trans-Pacific Partnership |
| DOTr | Department of Transportation (Philippines) |
| DWT | Deadweight tonnage |
| ECJ | European Court of Justice |
| FCDO | Foreign, Commonwealth & Development Office |
| FDI | Foreign Direct Investment |
| FOI | Freedom of Information (Philippines) |
| FS | Ferrovie dello Stato Italiane |
| GCI | Global Competitiveness Index |
| GOCC | Government-owned and controlled corporation |
| KAI | Kereta Api Indonesia (Indonesian state railways) |
| KFTC | Korea Fair Trade Commission |
| KLTSPP | ASEAN Transport Strategic Plan, 2016-2025 |
| KFTC | Korea Fair Trade Commission |
| ICC | Indonesia Competition Commission |

| | |
|-------------------|---|
| IFF | International freight-forwarders |
| IPR | Intellectual property rights |
| ITF | International Transport Forum |
| LAK | Lao Kip |
| LPI | Logistics Performance Index |
| LSBCI | Liner Shipping Bilateral Connectivity Index |
| LTO | Land Transport Office (Philippines) |
| MARINA | Maritime Industry Authority (Philippines) |
| MC | Memorandum Circular (Philippines) |
| MFP | Multifactor productivity |
| MOFE | Ministry of Finance and Economy (Brunei Darussalam) |
| MPABD | Marine and Port Authority (Brunei Darussalam) |
| MTO | Multimodal transport operator |
| MYR | Malaysian Ringgit |
| NCP | National Competition Policy |
| NVOCC | Non-vessel operating common carriers |
| OSS | Online Single Submission licensing system, Indonesia |
| PAT | Port Authority of Thailand |
| PBRIS | Philippine Business Regulation Information System |
| PEMUDAH | Pasukan Petugas Khas Pemudahcara Perniagaan (Special Taskforce to Facilitate Business, Malaysia) |
| PHP | Philippine peso |
| PMR | Product Market Regulation |
| PSC | Point of Single Contact e-portal (European Union) |
| PPA | Philippine Ports Authority |
| RCEP | Regional Comprehensive Economic Partnership |
| RIA | Regulatory Impact Assessment |
| RRC | Regulatory Reform Committee (Korea) |
| SME | Small and medium enterprises |
| SOE | State-owned enterprises |
| SRT | State Railway of Thailand |
| STRI | OECD Services Trade Restrictiveness Index |
| SSO | Singapore Statutes Online |
| TFWG | ASEAN Transport Facilitation Working Group |
| TTCB | ASEAN Transit Transport Coordinating Board |
| UNCTAD | United Nations Conference on Trade and Development |
| UNECE | United Nations Economic Commission for Europe |
| VINAMARINE | Vietnam Maritime Administration |
| VIWA | Vietnam Inland Waterway Administration |
| VND | Vietnamese dong |
| VRC | Vietnam Railways Corporation |
| WGI | Worldwide Governance Indicators |

Executive summary

Main economic characteristics of the logistics sector in ASEAN

The logistics sector constitutes a cornerstone for the development of an integrated internal market in ASEAN and its further opening up and integration into the world economy. In 2019, the sector's contribution to GDP averaged 5% across ASEAN member states, employing on average around 5% of the working population.

ASEAN total freight and logistics market revenues were estimated at USD 357.78 billion in 2019; they are expected to have dropped by 12% in 2020 to USD 316.54 billion as a consequence of restrictions on mobility and activity caused by the COVID-19 pandemic. Across member states, the freight transport and warehousing segments are set to be most affected with an estimated drop of more than 10%. However, freight transport within cities, such as courier, express and parcel-delivery services, is expected to have grown by about 20% in 2020 as a result of the changing consumer behaviours during the lockdown.

Key recommendations

Sector-specific recommendations

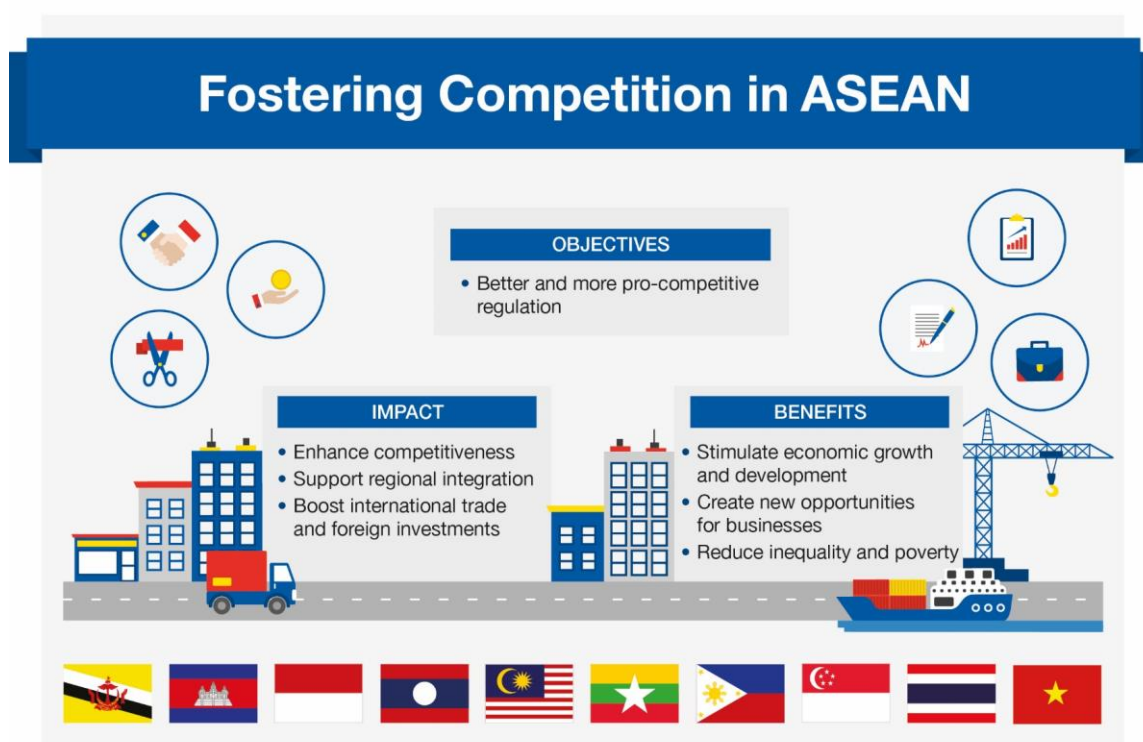
- Remove restrictive provisions setting quotas on the number of permits for cross-border road freight transport and replace with a licence system. Licensing criteria should be clearly defined in the international agreement or implementing laws or regulations. Alternatively, assess market need and demand every one to three years, and consider increasing the number of licences that can be issued. Both these recommendations would require negotiations between signing countries.
- Avoid limitations on the number of authorised road freight transport carriers. Market-access requirements – such as professional competency or technical conditions for vehicles – should be clearly laid down in the law. Asset requirements for market entry should not result in excessive burden for operators or limit market entry beyond what is necessary to achieve specific legitimate policy objectives.
- Review regulations or provisions that limit the areas in which road freight transport licensees can operate, so that they can provide their services without any geographic restrictions. Furthermore, review regulations or provisions that limit firms' fleet size, by restricting new-vehicle registrations or imposing a minimum or maximum number of vehicles, while maintaining provisions that pursue a legitimate policy objective (such as safety or environmental protection).
- Ensure that regulations imposing safety requirements and roadworthiness inspections on road freight transport licensees are clear and proportionate to the pursued policy goal and do not generate excessive costs.
- Open the domestic shipping market to ASEAN competition by lifting the ban on ASEAN vessels carrying domestic cargo. This report provides alternative policy options that go towards lifting the ban on cabotage for ASEAN vessels.
- Remove excessive licensing requirements for domestic shipping, such as vessel ownership, economic-needs tests and the submission of business plans.
- When selecting port or terminal operators and port service providers, use open tender processes rather than direct negotiation. Adopt best practices for tender processes and concessions.

- Ensure clear separation between the regulatory and operational functions of port authorities to avoid real or perceived conflicts of interest.
- Limit direct provision of pilotage services by port authorities to cases where the private sector shows no manifest interest in providing the service due to lack of economic viability or when the authority does not have the capacity to run tenders.
- Only allow the regulation of maximum prices, not minimum prices, in cases where competition is limited. Maximum prices should be regularly revised to ensure they are in line with market dynamics and provide the necessary incentives for innovation and investment.
- Implement planned railway sector reform and initiate regulatory reforms that can foster competition in freight transport services by railway. This could involve some form of separation between infrastructure management and rail freight transport service operations.
- Legislate the requirement to grant third-party access to railway infrastructure to ensure access for new entrants on transparent and non-discriminatory terms. In order to make this requirement effective, ensure that the regulator or the relevant ministerial department has broad powers to intervene in the market, for example, allow it to set and enforce access charges and conditions.
- Ratify and fully implement the ASEAN Framework Agreement on Multimodal Transport into national legal orders.

Recommendations affecting the whole logistics sector

- Enhance liberalisation efforts in logistics sub-sectors, which remain partly off limits to foreign investors, holding back potential economy-wide productivity gains. In the report, the OECD recommends three options to gradually relax foreign-ownership limitations.
- Remove guidelines setting out specific rates for logistics services. In the case of broad and informative guidelines, remove any attached penalty provisions so that they are simply advisory.
- Adjust the scope of any advantages enjoyed by SOEs to ensure that SOEs and private firms providing similar services are subject to the same regulatory requirements.
- Ensure that public-procurement rules treat all potential suppliers equitably, without discrimination and irrespective of ownership; this means that SOEs are subject to requirements comparable to those demanded from private bidders. Reconsider the practice of direct assignments between SOEs or between SOEs and government entities and encourage open tenders, clearly defining the circumstances when alternative procedures can be applied.

Infographic 1. Fostering Competition in ASEAN



Competition assessment of laws and regulations to improve logistics

| SELECTED COMPETITION ASSESSMENT PRINCIPLES | SELECTED PRINCIPLES RECOMMENDED TO ASEAN MEMBER STATES |
|---|--|
| <ol style="list-style-type: none"> Licence and permit requirements Institutional framework and governance Restrictions on the geographic flow of goods, services, capital and labour Grants of exclusive rights | <ol style="list-style-type: none"> Review market access requirements for freight transport services Separate regulatory functions from commercial functions in the provision of ports services Implement ASEAN-wide agreements promoting greater integration Favour open tender processes rather than direct negotiation when selecting port or terminal operators |

Key facts

| | | | | |
|---------------------------|------------------------------|---|--|---|
| 1 region report | 10 country reports | Over 160 public and private stakeholders consulted in ASEAN | Over 500 analysed pieces of legislation in ASEAN | Logistics accounts for 5% of GDP and 5% of employment in ASEAN ¹ |
|---------------------------|------------------------------|---|--|---|

¹ Mordor Intelligence based on data from national statistics institutes.

1 Introduction

Laws and regulations are key instruments in achieving public policy objectives, such as consumer protection, public health and environmental protection. When they are overly restrictive or onerous, however, a comprehensive review can help identify problematic areas and develop alternative policies that achieve government objectives without harming competition.

Competition Assessment Projects evaluate market regulations to identify regulatory barriers to competition. These include regulations that restrict entry into a market; constrain firms' ability to compete (for example, by regulating prices); treat competitors differently (for instance, by favouring incumbents); facilitate co-ordination among competitors; or restrict consumers' ability to change suppliers. The methodology followed in this systematic exercise is summarised in Annex A, which also describes the stages of the project and provides full references to the OECD Competition Assessment methodology.

This chapter provides some background on the ASEAN Competition Assessment Project, before summarising the main findings of the literature on the benefits of competition and providing a snapshot of the recommendations that are most relevant across ASEAN. Detailed country-specific recommendations can be found in the individual country reports.

1.1. Introduction to the ASEAN Competition Assessment Project

Logistics plays a significant role in increasing a country's economic development. The Association of Southeast Asian Nations (ASEAN) made the logistics sector 1 of 12 priority sectors in its ASEAN Economic Community Blueprint 2025 (AEC Blueprint). As part of the initiatives of the ASEAN Competition Action Plan 2016-2025 (ACAP), the ASEAN Secretariat asked the OECD to carry out an independent competition assessment of legislation in the logistics sector and to prepare a regional report assessing the impact on competition of state-owned enterprises (SOE) and government-linked monopolies in selected ASEAN markets. The AEC Blueprint charts the broad trajectories of ASEAN economic integration from 2016 to 2025, following the formal establishment of the ASEAN Economic Community on 31 December 2015.

In 2018, the OECD team began conducting competition assessments of laws and regulations in each of the ten ASEAN member states (AMS). It worked in close co-ordination with the ASEAN Secretariat (ASEC), the ASEAN Experts Group on Competition (AEGC), as well as with the responsible authorities within each member state, in particular the respective competition authorities. The analysis was funded by the ASEAN Economic Reform Programme under the UK Foreign, Commonwealth & Development Office (UK Government).

The following report brings together the findings in all the 10 member states for the project's first component, a competition assessment of laws and regulation in the logistics sector in ASEAN. The second component of the project is addressed in OECD Competitive Neutrality Reviews: Small-Package Delivery Services in ASEAN.

1.2. The benefits of competition

The Competition Assessment Project aims to identify regulations that may unduly restrict market forces and which by doing so, may harm a country's growth prospects. In particular, the project identifies regulatory provisions that:

- are unclear, vague and imprecise, or lack transparency and so may be applied in an arbitrary fashion
- prevent new firms, including small- and medium-sized businesses from accessing markets
- allow a limited number of firms to earn greater profits than they otherwise would, for reasons unrelated to their underlying productivity or the quality of their products
- cause consumers to pay more than they otherwise would.

Each restriction is likely to have an impact well beyond individual consumers in the sectors assessed. When consumers can choose and shop around for products and services, firms are forced to compete with each other, innovate more and be more productive (Nickell, 1996^[1]) (Blundell, 1999^[2]) (Griffith, 2006^[3]). Industries in which there is greater competition experience faster productivity growth. These conclusions have been demonstrated by a wide variety of empirical studies and summarised in the OECD's "Factsheet on how competition policy affects macro-economic outcomes" (OECD, 2014^[4]). Competition stimulates productivity primarily because it provides the opportunity for more efficient firms to enter and gain market share at the expense of less efficient firms.

In addition to evidence of competition fostering productivity and economic growth, studies have shown the positive effects of more flexible product market regulation (PMR), the area most relevant to this project.¹ These studies analyse the impact of regulation on productivity, employment, research and development, and investment, among other variables. Differences in regulation also matter and can reduce significantly both trade and foreign direct investment (FDI) (Fournier et al., 2015^[5]) (Fournier, 2015^[6]).²

A particularly large body of evidence points to the productivity gains of more flexible PMR. At company and industry level, restrictive PMR is associated with lower multifactor productivity (MFP) (Nicoletti and Scarpetta, 2003^[7]) (Arnold, Nicoletti and Scarpetta, 2011^[8]).³ The result also holds at an aggregate level (Égert, 2017^[9]).⁴ Anti-competitive regulations have an impact on productivity that goes beyond the sector in which they are applied and this effect is more important for those sectors closer to the productivity frontier (Bourlès et al., 2013^[10]).⁵ Specifically, a large part of the impact on productivity is due to investment in research and development (Cette, Lopez and Mairesse, 2013^[11]). Moreover, lowering regulatory barriers in network industries can have a significant impact on exports (Daude and de la Maisonneuve, 2018^[12]).

Innovation and investment in knowledge-based capital, such as computerised information and intellectual property rights (IPRs), are also negatively affected by stricter PMR. A number of studies show that competitive pressure, as measured by lower regulatory barriers (for example, lower market-entry costs), encourages firms in services sectors, such as retail and road transport, to adopt digital technologies, including cloud computing (Andrews and Criscuolo, 2013^[13]) (Andrews and Westmore, 2014^[14]) (Andrews, Nicoletti and Timiliotis, 2018^[15]). Pro-competition reforms to PMR are also associated with an increase in the number of patents, while more stringent PMR are shown to be associated with reduced investment and to amplify the negative effects of a more stringent labour market (Égert, 2018^[16]).⁶

Greater flexibility can also lead to higher employment. Cahuc and Kamarz found that after road-transport deregulation in France, employment levels in the sector increased at a faster rate than before deregulation (Cahuc and Kamarz, 2004^[17]).⁷ A 10-year, 18-country OECD study concluded that small firms five years old or less on average contribute about 42% of job creation (Criscuolo, Gal and Menon, 2014^[18]). As noted by the OECD, "such a disproportionately large role by young firms in job creation suggests that reducing barriers to entrepreneurship can contribute significantly to income equality via employment effects" (OECD, 2015^[19]).

There is also some evidence on the benefits of lifting anti-competitive regulations in terms of reducing income inequality. One study published in 2015 found that less restrictive PMR improved household incomes and reduced income inequality (Causa, 2016^[20]).⁸

Finally, a 2018 study looked at the impact of PMR on the persistence of profits over the long term (Eklund and Lappi, 2018^[21]). Regulations that raise barriers to entry can protect incumbents' above-average profits. The authors found that more stringent PMR, as measured by the OECD PMR indicator, is associated with persistent profits.

The results described above hold in a variety of settings, but specific estimates may differ depending on the country. For instance, Égert quantified the impact of structural reforms, including PMR and labour reform, in a large sample including both OECD and non-OECD countries, and found that “stringent product market regulations will have a three-time larger negative impact on MFP in countries with per capita income lower than about USD 8 000 (in PPP terms)” (Égert, 2017^[22]).⁹

Recent research suggests that increased market competition can have a positive effect on gender discrimination and gender equality (Pike, 2018^[23]) (Cooke, 2018^[24]). Further, as mentioned in the paper given at the OECD Global Forum on Competition: Competition Policy and Gender in 2018, restrictive or discriminatory laws or policies against women's economic participation may be interpreted as anti-competitive regulations. Consequently, pro-competitive regulations following from a pro-competition policy that takes gender into account can help to address issues of gender equality. For this reason, this project also took into account laws that specifically hinder the involvement of women in the logistics business, resulting in the creation of anti-competitive barriers. Such laws could restrict competition by limiting the ability of some suppliers (women) to provide a good or service or by significantly raising the cost of entry or exit by a supplier.

In summary, anti-competitive regulations that hinder market entry and expansion may be particularly damaging for a country's economy as they reduce productivity growth, limit investment and innovation, harm employment creation, and may favour certain firms over other firms and consumers, with consequences for income inequality.

1.3. Main recommendations from the ASEAN Competition Assessment Project

As part of the ASEAN Competition Assessment Project, the OECD has made about 470 country-level recommendations to mitigate harm to competition from regulatory barriers in the logistics sector. These are set out in detail in the ASEAN country reports that are being published by the OECD and on which this regional report is based. This chapter summarises some of the most common issues that the OECD review has identified across ASEAN member states and that are analysed in Chapters 3 to 7 of this report.

1.3.1. Sector-specific recommendations

Road freight transport

Member states have bilateral or multilateral agreements in the road freight sector that often include quantitative limitations to the number of cross-border permits for transport between ASEAN countries. While there has been some progress in increasing the number of permits that each signing party can issue, these quotas still limit the potential of further trade and integration in the ASEAN region, especially when considering the significant and constant increase of intra-ASEAN trade since the 1990s, with the subsequent increase in demand for cross-border freight transport services.

The OECD recommends two options:

- Remove the restrictive provisions setting quotas and replace with a licence system. The licensing criteria should be clearly defined in the international agreement or implementing laws or regulations.
- Assess market needs and demand every one to three years, and consider increasing the number of licences that can be issued.

All member states have certain regulations in place regarding access to the market of road freight transport. In certain instances, regulations are broad and do not provide clear guidance or set out clear requirements for all market players. In other cases, the assessment has identified regulations that are often aimed at promoting quality and safety, but which in trying to achieve these objectives, result in burdensome requirements and complex procedures and risk hindering business activity. Examples of such licensing requirements include professional-competence requirements and the requirement for delivery companies to own a garage. There are also limited cases where authorities have the power to set and enforce quotas on operator licences. Examples of operational constraints include determining *ex ante* the routes that operators can take, limiting the validity of a licence within a certain region, or regulating the number of trailers that can be registered for each prime mover. In addition, some countries require frequent technical checks, which are important to ensure safety but could generate excessive costs, for instance, if the vehicle is off the road for a significant amount of time, limiting the number of trips it can take.

The OECD recommends:

- Avoid limitations on the number of licences to operate as a carrier. Market-access requirements – such as professional competency or technical conditions for vehicles – should be clearly set out in the law. Asset requirements for market entry should not result in excessive burden for operators or limit market entry beyond what is necessary to achieve specific legitimate policy objectives.
- Review regulations or provisions that limit the areas in which commercial vehicle licensees can operate, so that they can provide their freight transport services without any geographic restrictions.
- Review regulations or provisions that limit firms' fleet size, by restricting new-vehicle registrations or imposing a minimum or maximum number of vehicles, while maintaining provisions that pursue a legitimate policy objective (such as safety or the protection of the environment).
- Ensure that regulations imposing safety requirements and roadworthiness inspections are clear and proportionate to the pursued policy goal and do not generate excessive costs. For instance, vehicles should be kept off the road for inspection no longer than necessary and safety requirements take into account factors such as a vehicle's age and the number of kilometres travelled.

Water freight transport

All member states regulate market access in the water freight transport sector (inland waterway and maritime). National regulations usually require operators to hold a licence, but certain impose burdensome requirements that result in barriers to entry in pursuit of a policy objective. Moreover, member states typically have provisions on cabotage in place, restricting the ability of foreign suppliers to offer domestic services within a given country.

The OECD recommends to:

- Remove excessive licensing requirements, such as vessel ownership, economics needs tests, and the submission of business plans.
- If an economic-needs test is maintained, clear and transparent guidelines should be established to detail the criteria used to judge economic needs and to limit how discretion may be exercised.

In relation to cabotage, the OECD recommends one of the following options:

- Open up the domestic-shipping market to ASEAN competition by lifting the ban on ASEAN vessels carrying domestic cargo.
- Amend cabotage rules to allow foreign ships to carry their own cargo (and other foreign cargo) domestically; for example, allow ships to travel domestically to the port of final call after arriving at a first port of entry, subject to ex post analysis of the impact of the amendments. A further step would be to allow foreign ships to carry other domestic cargo from the port of entry to the port of final call, if the foreign vessel has capacity after unloading goods at the port of entry.
- Allow international ships to operate in the domestic shipping market on specific routes where there is demand and conduct an evaluation on demand every one to three years to consider whether to liberalise additional routes.

In the ports sector, the legislation allows for the operation of ports or terminals or the provision of port services by the port authority or by other entities, be they private companies or SOEs. The review has found that tenders are not always used to select providers of port services or terminal and port operators. The OECD makes three complementary recommendations:

- Use open tender processes rather than direct negotiation in the selection of terminal operators and service providers. Concessions should not be extended automatically and incumbents should not be granted preferential treatment when renewing concessions.
- Issue clear and publicly accessible tender guidelines for the selection of port operators or service providers. Tender processes should be open, transparent and based on fair and non-discriminatory criteria. Technical requirements should ensure a level playing field and so allow new entrants.
- Issue guidelines on concessions, including the duration, renewal and investment requirements, to provide sufficient incentives to the chosen company, while allowing re-tendering and making the market contestable.

In some member states, the port authority offers port services, while also being responsible for regulating and monitoring those same services. This situation may not provide sufficient incentives for the delivery of efficient and innovative services to port users. The OECD recommends:

- A clear separation between the regulatory and operational functions of port authorities to avoid real or perceived conflicts of interest.

For pilotage services, the OECD has found that the private sector has either no involvement at any stage and the service is directly provided by a public entity, or a monopolist other than the public authority has been tasked with providing pilotage services without any prior competitive process. In practice, the OECD found that in many instances no assessment has been made of potential interest by private operators in providing pilotage services.

The OECD recommends to:

- Separate regulatory and service-delivery functions.
- Limit direct provision by port authorities to cases when the private sector shows no manifest interest in providing a service due to lack of economic viability or when the authority does not have the capacity to run tenders. The private sector's perceived lack of interest should be re-evaluated on a regular basis, in order to make sure that direct provision is not unduly restricting entry. If there is private sector interest, member states should create an appropriate legal framework so that piloting services are tendered based on fair, transparent and non-discriminatory terms that guarantee competition for the market.

While price regulation is in place in several sectors of OECD countries, best practice suggests that it should be limited to natural monopolies or other exceptional situations. In the case of port services, incumbent providers often face limited competitive pressure and, if left unregulated, may charge excessive prices.

The OECD recommends to limit price regulation to:

- The regulation of maximum prices, not minimum prices for commercial services, in cases where competition is limited. Maximum prices should be regularly revised to ensure they are in line with market dynamics and provide the necessary incentives for innovation and investment.

Rail freight transport

In the rail freight transport sector, a small number of member states have made steps to allow new entrants to provide freight transport services. Nevertheless, in several cases, the regulatory framework has not been adapted to enable competition. For example, in many countries, a single entity both operates the network and provides freight transport services, sometimes in competition with other providers. These vertically integrated companies may have an incentive either to foreclose competitors by denying them access to an essential input or to favour their own freight transport arm.

The OECD encourages member states to:

- Implement plans for reform of the railway sector and initiate regulatory reforms that can foster competition in freight transport services by railway. This could involve some form of separation between infrastructure management and rail freight transport service operations. This separation could take the form of accounting separation through separate accounts for the infrastructure and the freight businesses; functional separation by creating separate entities under the same ownership; or ownership separation.
- Legislate the requirement to grant third-party access to railway infrastructure to ensure access for new entrants on transparent and non-discriminatory terms. In order to make this requirement effective, ensure that the regulator or the relevant ministerial department has broad powers to intervene in the market, for example, allow it to set and enforce access charges and conditions.

Multimodal transport and freight-forwarding

The OECD welcomes ASEAN-wide initiatives to favour market integration. In 2005, ASEAN signed the ASEAN Framework Agreement on Multimodal Transport (AFAMT) to promote the integration of different modes of transport and facilitate the region-wide development of goods transportation by at least two different means of transport. Despite its expected benefits, such as more efficient procedures at transshipment points, simplified administrative procedures, and cost savings, certain member states are still to ratify and implement the agreement. The OECD recommends:

- All member states ratify and fully implement the AFAMT into their national legislation.

1.3.2. Recommendations affecting the whole logistics sector

ASEAN member states have historically been successful in attracting FDI. To promote intra-ASEAN investments in the services sector, they set ambitious goals for services integration, which were also set out in the 1995 ASEAN Framework Agreement on Services (AFAS). On 7 October 2020, they signed the ASEAN Trade in Services Agreement (ATISA), which affirms ASEAN's commitment to free and open trade and regional economic integration and will eventually fully supersede AFAS.¹⁰ This agreement deepens the integration of the services sector by building upon achievements made under AFAS. Despite this and member states' liberalisation commitments in the logistics sector, ASEAN still shows lower levels of openness than OECD economies.

The OECD recommends enhancing liberalisation efforts in the logistics sector, which remains partially off limits to foreign investors, a situation that may be holding back potential productivity gains. The OECD therefore recommends one of the following options:

- Relax foreign-equity limits progressively and moving towards authorising 100% foreign ownership in the long term. If not already implemented, a first step may be to implement the AFAS target of allowing 70% ASEAN foreign-ownership in entities providing logistics services and subsequently extending it to non-ASEAN nationals.
- Relax foreign-equity limits in logistics on a reciprocal basis for nationals of those countries that allow ASEAN nationals to hold 100% shares in a company.
- Allow 100% ownership in entities providing logistics services with a screening system for FDI over a certain value threshold. The screening system should be appropriately structured with clear upfront criteria and a right of appeal against the final decision. Furthermore, the screening system should be applied in limited situations, for instance to address certain public policy goals.

During its country-specific competition assessment reviews, the OECD has identified several provisions that impose minimum-capital requirements that businesses must meet when registering or applying for a licence. These requirements are essentially a condition for market entry and so may discourage potential competitors. Depending on the minimum capital requirements identified in each member state, the OECD recommends to either:

- Lift sector-specific minimum capital requirements as currently laid down in the law and require operators to comply only with existing horizontal requirements under commercial law (if any). Alternatively, bank guarantees or insurance contracts could replace cash deposits to comply with these capital requirements.
- Ensure that any horizontal minimum capital requirements are the same for all businesses, irrespective of whether they are domestic or foreign entities. Bank guarantees or insurance contracts could replace cash deposits to comply with these capital requirements.

The competition assessment reviews in member states identified pricing guidelines or provisions granting authorities the power to set prices. These occur throughout the logistics sector in road freight transport, maritime freight transport, ports, small-package delivery services, and freight forwarding. The OECD has two recommendations:

- Remove guidelines setting out specific rates. In the case of broad and informative guidelines, remove any attached penalty provisions so that they are simply advisory.
- Remove the obligation that prices should be above costs for any non-dominant firm.

The OECD has identified a number of examples in the logistics sector where state-owned enterprises (SOEs) and private players do not compete on a level playing field.¹¹ These include, for example, exempting SOEs from certain regulatory requirements, such as obtaining a licence in order to provide services. These differences can result in SOEs receiving more favourable treatment than their private-sector competitors and so distorts competition in relevant sectors. The OECD recommends member states:

- Ensure that SOEs' commercial activities are subject to the same regulatory requirements, including on licensing, as competing private firms.
- Alternatively, member states could consider lowering the burden on licensees by simplifying licensing procedures for all players.

Moreover, in some member states, public-procurement regimes do not apply to transactions between SOEs or between SOEs and other government entities. The OECD has three recommendations:

- Ensure that public-procurement rules treat all potential suppliers equitably, without discrimination and irrespective of ownership; this means that SOEs are subject to requirements comparable to those demanded from private bidders.
- Reconsider the practice of direct assignments from one SOE to another or from government entities to SOEs, and encourage open tenders, clearly defining the circumstances when alternatives procedures can be applied.
- Establish internal guidelines and provide training to officials to ensure that non-discriminatory public-procurement rules are followed and enforced and that SOEs are not granted preferential access to the provision of services to government agencies.

1.3.3. Regulatory quality

The ASEAN Competition Assessment project focuses on the logistics sector in ASEAN and does not specifically address the general business environment. ASEAN member states have already implemented several initiatives that seek to improve the general business environment, such as one-stop shops for business registration and online databases of legislation. A number of member states have introduced competition-assessment initiatives, while ASEAN has also developed regional guidelines on good regulatory practices to improve the design and implementation of regulations. To support these ongoing initiatives, the report makes suggestions in relation to removing or reducing the administrative burden on market participants and improving access to legislation.

Regulations that result in high administrative burdens and costs reduce competition by discouraging market entry and favouring larger players, and result in higher prices and lower-quality services for consumers. To streamline procedures and licence requirements in the logistics sector, the OECD makes three policy suggestions:

- Introduce single application processes for each logistics business; for example, a single licence application for goods vehicles, which includes all relevant permits.
- Remove inconsistencies between regulations issued by different authorities that regulate the same issue, such as technical requirements.
- Increase the use of technology and one-stop shops for licences, permits and procedural requirements.

Difficulties in accessing legislation and unclear legal frameworks can also be a barrier to competition by creating legal uncertainty and increasing costs for actual and potential market participants. The OECD notes instances in which logistics legislation and guidelines are not published; legislation is available, but not easily accessible or understandable; and repealed laws continue to appear as if they are in force. To improve access to logistics legislation, the OECD makes the following policy suggestions:

- Publish all primary and secondary logistics legislation on a single database. Alternatively, or until this is implemented, each logistics authority should publish a complete list of legislation it administers on its website, including each legislative act's current status, with any obsolete legislation clearly marked.
- Update all logistics legislation in the database to include new amendments, so that stakeholders can access a consolidated version of the relevant legislation. Alternatively, or until this is implemented, authorities should list the original version of legislation with a link to any amendments.
- Make databases and legal texts electronically searchable.

1.4. Benefits of lifting barriers in logistics

The OECD's recommendations address specific restrictions identified in the legislation. Their impact is directly linked to removing those restrictions and the consequent positive effect on competition in relevant sectors. Expected benefits from implementing recommendations include increasing consumer welfare – for instance, through lower prices – and increasing FDI in the sector. In addition to these benefits, full implementation of the OECD's recommendations can be expected to deliver positive long-term effects for small- and medium-sized enterprises (SMEs) and employment. Given the importance of logistics for the performance of many other sectors of the economy, lifting barriers to competition in this sector could have a significant economic impact across the economy and could facilitate cross-border trade.

This report contains approximate estimates of the benefits from implementing selected recommendations (see Chapter 8). The estimates range between USD 4 billion to USD 4.1 billion a year for the impacted ASEAN member states. The main recommendations driving the benefits are those focused on improving licensing requirements in road freight transport; easing cabotage restrictions in water freight transport; and pro-competitive reform in rail freight transport. In order to calculate these estimates, the OECD has relied on the framework for evaluating changes in consumer welfare described in the Annex to Chapter 8.

These figures are likely to underestimate the actual impact of fully implementing the ASEAN Competition Assessment Project recommendations for a variety of reasons. First, it was impossible to quantify the effects of all the individual recommendations in all ASEAN member states, due to insufficient data or because of the nature of the regulatory change. Second, the Competition Assessment project is concentrated on laws and regulations in the logistics sector, with a focus on legislation rather than enforcement. Changes in regulation can only have an impact if regulations are enforced, however; as this is not always the case, the direct benefits of lifting regulatory restrictions can be limited. Third, the estimates do not account for benefits to the business environment arising from improving the quality of the legislation; for instance, by implementing recommendations to streamline the body of legislation and to provide more guidance and clarity to businesses. Fourth, the estimation framework focuses on the impact on consumer welfare, which is the standard approach followed by most competition authorities and embedded in the OECD Competition Assessment Toolkit (OECD, 2019^[25]). Also, other benefits, such as increases in employment and improved cross-border trade are not included in this estimate.

In addition to benefits in consumer welfare and increased FDI in logistics, the OECD envisages the following potential benefits from lifting regulatory barriers to competition, i.e. benefits to cross-border trade, SMEs and employment, and gender equality.

An OECD study provides an indication of the potential benefits for transport services: the average costs of regulatory barriers to cross-border trade, expressed as percentages of total trade value, range from 80% to 150% for two ASEAN member states (Benz and Jaax, 2020^[26]). The OECD has not, however, been able to quantify precisely the anticipated benefits in cross-border trade for all ten member states.

The OECD recommendations are expected to benefit SMEs by ensuring that all enterprises have equal access to markets and lowering barriers to entry and administrative burdens (which tend to disadvantage SMEs relatively more than larger competitors). According to ASEAN data, SMEs account for more than 89% of establishments in member states and more than 52% of total employment.

Competition policy can also be a way to address gender equality. For example, lowering regulatory barriers to competition and improving the business environment will benefit entrepreneurship, including women's entrepreneurship. In addition to its social benefits, improvements in women's entrepreneurship and participation in the labour force increase economic growth, income equality and productivity. In East and Southern Asia (excluding the People's Republic of China), one study suggests that gains would be particularly significant and the removal of gender bias could increase GDP by 30% compared with a business-as-usual scenario (McKinsey Global Institute, 2015^[27]).

2 Economic overview

2.1. ASEAN key economic features

Located in the heart of the Asia-Pacific region, the member states of the Association of Southeast Asian Nations (ASEAN) span an area of approximately 4.49 million km² (3% of the planet's total land area) and have a combined population of 671 million people (8.5% of the world's population), the world's third largest population block after the People's Republic of China ("China") and India (Worldometer, 2020^[28]). ASEAN's high share of working-age population provides a large productive workforce serving a market with a fast-growing middle-class of potential consumers that is bigger than North America and the European Union. Over the past 20 years, the region's labour-force participation rate has been stable at levels that compare favourably with the OECD average. During that period, unemployment rates were relatively low in most countries and, before the COVID-19 pandemic, were even below 2% in certain ASEAN member states.

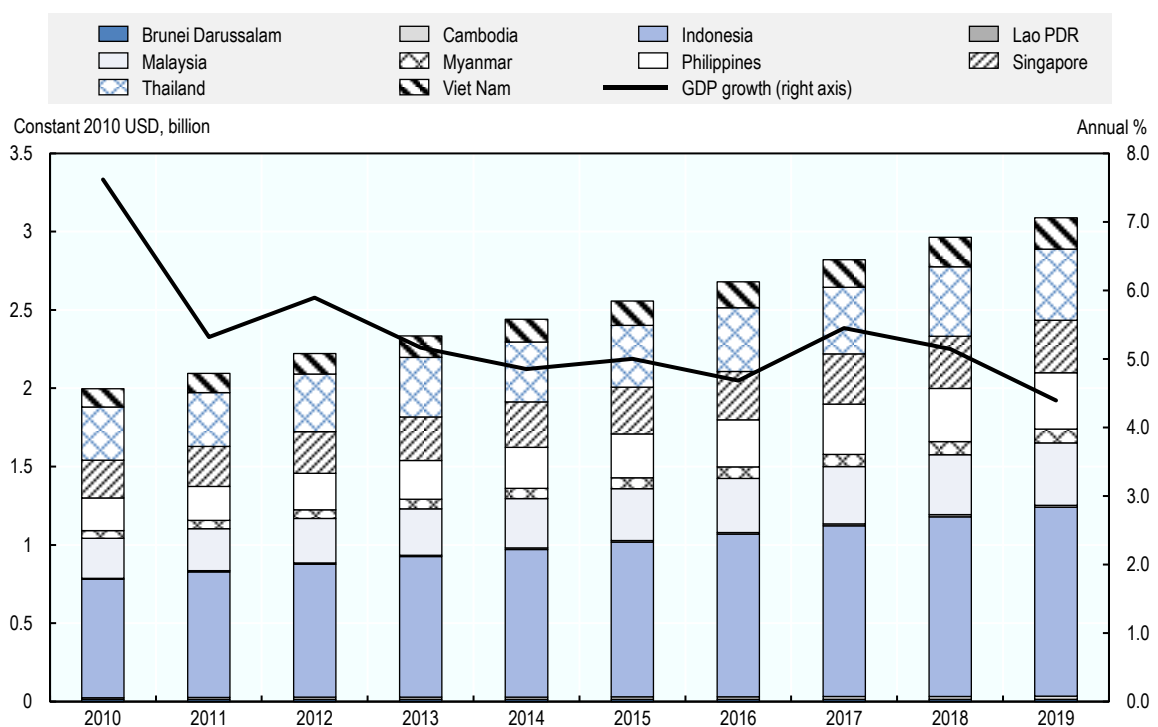
Figure 2.1. ASEAN key economic figures



Source: (ASEAN Macro-economic Database, 2020^[29]) <https://data.aseanstats.org/>.

In 2019, the total combined GDP of the ten member states was USD 3.1 trillion, making ASEAN the fifth largest economy in the world. GDP has almost doubled since 2005, when it was USD 1.54 trillion. Figure 2.2 shows the increase in GDP since 2010. Member states registered an average GDP growth of 5.4% over the period 2010-2019 with the highest growth recorded in Cambodia, Lao PDR, Myanmar and Viet Nam, with an average growth rate of 6.8%. GDP per capita has followed a similar trend reaching USD 4 818 in 2019 compared to USD 3 299 in 2010. Particularly significant improvement in GDP per capita was recorded in Lao PDR and Myanmar over the 2000-2019 period, increasing by over 600% (ASEAN Secretariat, 2020^[30]). While trade has played an important role in ASEAN's economic development, domestic demand is also becoming an essential driver of the region's solid and steady growth performance.

Figure 2.2. ASEAN GDP and average growth rate, 2010-19



Source: (World Bank, 2020^[31]).

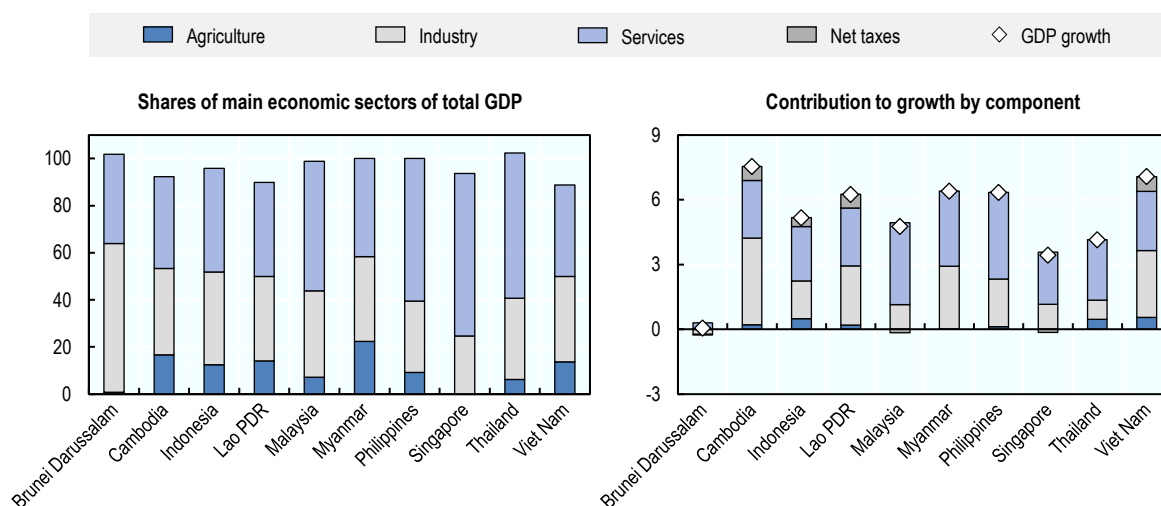
Figure 2.3 shows that while economic structures differ across ASEAN, services was both the leading sector and main driver of growth across member states in 2018. This sector's share of regional GDP increased from 46.6% in 2005 to 50.6% in 2019 (ASEAN Secretariat, 2020^[30]).

The existence of ASEAN, in addition to the region's strategic geographic position and its historical role as a trade hub, has played a key role in spurring international trade and FDI inflows. Total values of trade in both goods and services have increased significantly over the past ten years in the region and in 2019 reached more than USD 2.8 trillion for goods and USD 844.5 billion for services, while total FDI inflows were valued at USD 160.5 billion.

ASEAN's total trade in goods more than doubled in the period 2009 to 2019, with a steady positive trade balance. Figure 2.4 shows that intra-ASEAN trade accounts for the largest share of the region's total trade reaching 22% in 2019. ASEAN's top three trading partners in 2019 were China (18%), the United States

(10.5%) and the European Union (10%). Manufacturing goods constitute the largest share of both total exports and imports in ASEAN exceeding 75% in seven countries out of ten.

Figure 2.3. Percentage shares of main economic sectors of total GDP and percentage point contribution to growth by component, 2019

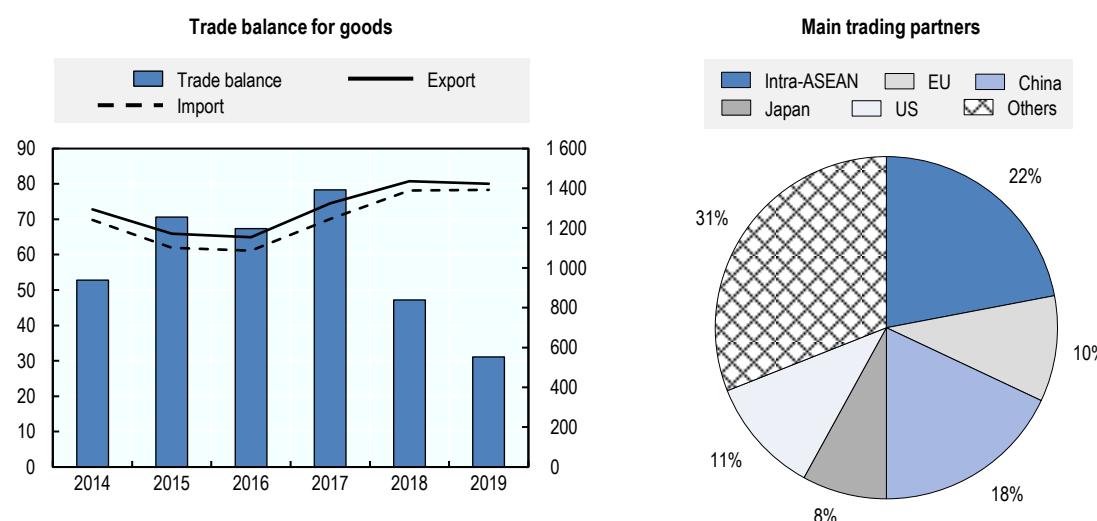


Note: The sum of these main three economic sectors may not add up to 100% due to differences in how statistical discrepancies are treated by countries.

Contribution to growth by component: The latest available data on contribution to growth by component for Cambodia, Lao PDR and Myanmar are from 2018. In the data compilation, the agriculture sector refers to agriculture, fisheries and forestry. Net taxes are equal to gross tax minus subsidies. Thailand uses chain volume measures, and the sum of contributions to growth is not necessarily equal to GDP growth. Viet Nam has not to publish the demand-side components of GDP. The data are as of June 2020.

Source: (ASEAN Macro-economic Database, 2020^[29]), (OECD, 2020^[32]).

Figure 2.4. Trade balance for goods (billions, USD) and main trading partners, 2014-19

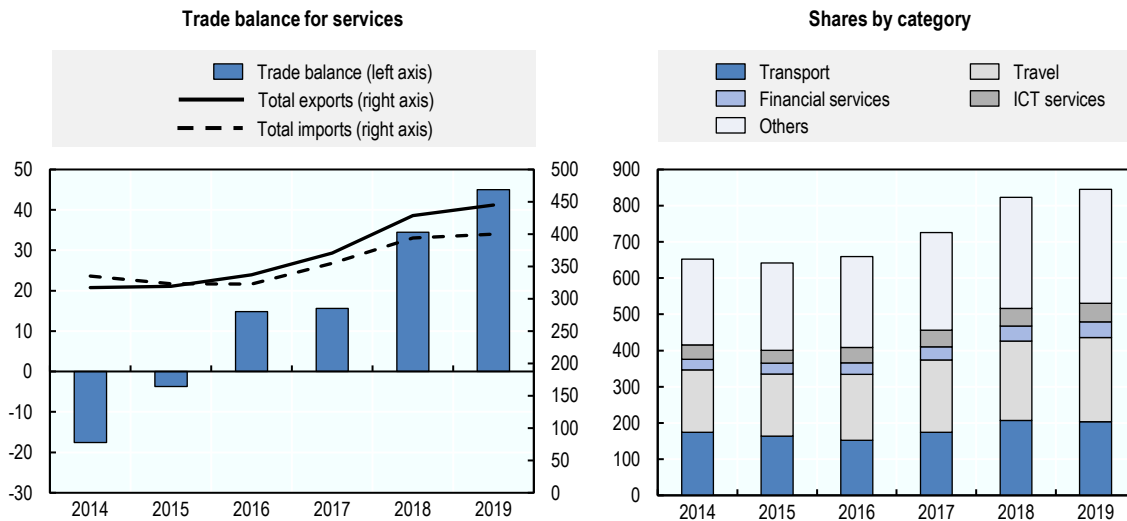


Source: (ASEAN Macro-economic Database, 2020^[29]).

After a continuous deficit for nearly all the preceding decade, ASEAN's balance of trade in services has recorded a surplus since 2016. It reached USD 44.9 billion of a total trade volume of USD 844.5 billion in

2019, while extra-ASEAN services trade increased to 85.2%. Figure 2.5 shows that amongst the services sub-sectors, travel (27.6%) and transport (24.1%) contributed the most to total services trade in 2019.

Figure 2.5. Trade balance for services (billion, USD) and shares by category, 2014-19



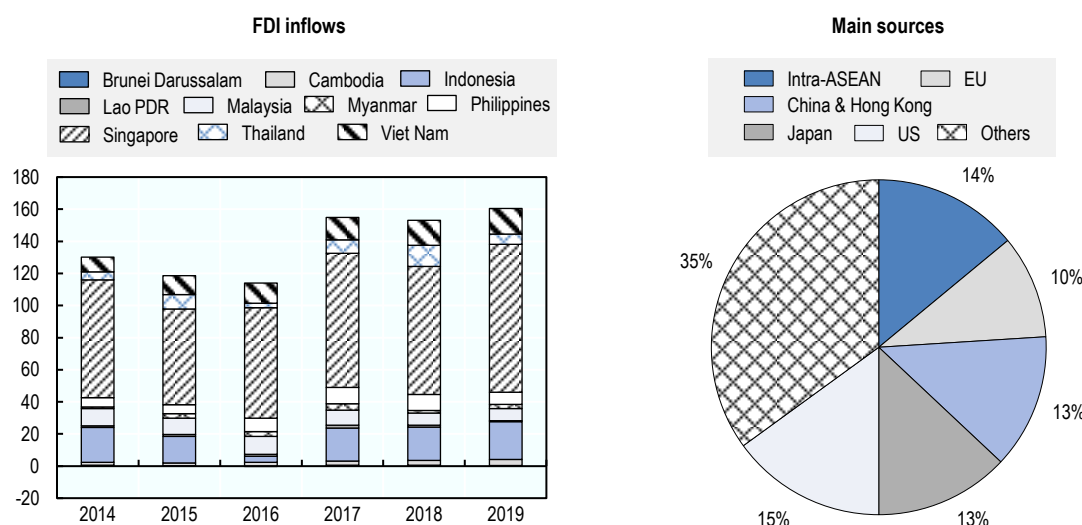
Source: (ASEAN Macro-economic Database, 2020^[29]).

Alongside international trade, FDI has increasingly become a driving factor in ASEAN's economic development. FDI stocks amounted to 76% of ASEAN GDP in 2016, up from 25% in 2006. The share of FDI attracted by ASEAN, compared with OECD countries, has increased. In 2016, FDI stocks in ASEAN were 10% of those of OECD countries (OECD-UNIDO, 2019^[33]). The United States (15.2%), Japan (12.7%) and the European Union (10.1%) were the largest extra-ASEAN sources of FDI inflows in 2019 (Figure 2.6). Intra-ASEAN FDI inflows had risen to 14% of total inflows reaching USD 22.36 billion in 2019, fivefold the 2005 value. The service sector was the largest recipient (61.2%), followed by manufacturing (35%).

Signed in November 2020, the Regional Comprehensive Economic Partnership (RCEP), a free-trade agreement between all ASEAN member states, Australia, China, Japan, Korea and New Zealand, aims to establish a modern and comprehensive economic partnership that will facilitate the expansion of regional trade and investment. Chapters 2, 8 and 10 are dedicated to trade and investment with provisions targeting a high level of trade liberalisation and investment facilitation among the signatories, including rules on market access, national treatment, most-favoured-nation treatment, and local presence.

The Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) is a free-trade agreement signed in 2016 by 12 countries, including 4 ASEAN member countries: Brunei Darussalam, Malaysia, Singapore and Viet Nam in addition to Australia, Canada, Chile, Japan, Mexico, New Zealand, Peru and the United States. The agreement is designed to create a comprehensive trade and investment regulatory framework that facilitates market access. Chapter 10 on cross-border trade in services applies to measures affecting the access to and use of distribution, transport or telecommunications networks and includes annexes on the recognition of professional services and express delivery services. The provisions of the chapter signal the commitment of signatories to maintain a level-playing field for service suppliers, by providing the same treatment granted by CPTPP partners to third parties and to domestic service suppliers, and by refraining from imposing quantitative restrictions or requiring a specific type of legal entity or joint-venture as a condition for the supply of services.

Figure 2.6. FDI inflows (billions, USD) 2014-19 and their main sources, 2019



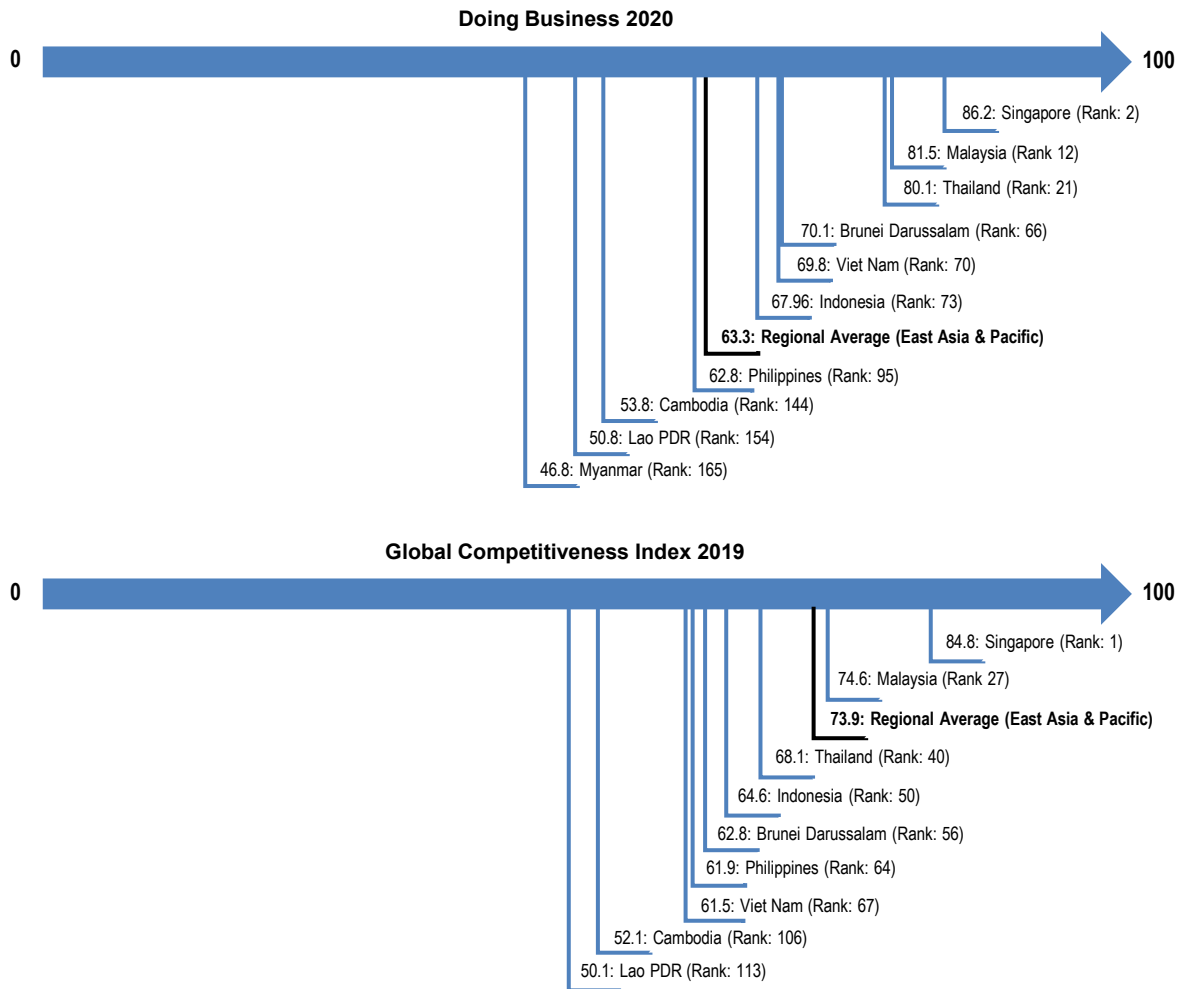
Source: (ASEAN Macro-economic Database, 2020_[29]).

ASEAN's increasing FDI attractiveness is a reflection of its high quality and fast improving business environment, as recorded in the World Bank's *Doing Business 2020* report and the World Economic Forum 2019 Global Competitiveness Index (GCI) (Figure 2.7). These latest rankings confirm the quality of the business environment of certain member states, such as Singapore, Malaysia and Thailand (they are among the top 50 worldwide in the 2019 GCI and the 2020 *Doing Business* rankings). Other member states have recorded great improvements in their business environment, such as the Philippines, which rose 29 places in *Doing Business 2020* compared to 2019, and Viet Nam, which rose 10 places in the most recent GCI. More generally, *Doing Business 2020* notes that most ASEAN member states perform well in access to credit with an average regional rank of 82, while there were notable reforms in construction permits and starting a business (World Bank, 2020_[34]).

The COVID-19 pandemic that began in early 2020 has interrupted decades of strong and sustained economic growth. As one of the first regions affected by the virus's rapid spread, ASEAN has faced supply-chain disruption and stalled demand, which have limited flows of travel, trade and investment. The economic downturn caused by domestic containment measures has weighed on private consumption and investment and the region is now in a severe recession that will have important effects on the job market. Economic performance is expected to weaken significantly across ASEAN countries in 2020 compared to 2019 (Figure 2.8). The region's economy as a whole is expected to contract by 4.4% in 2020 before growth rises to 5.2% in 2021, barring a second wave of infections (Asian Development Bank, 2020_[35]).¹²

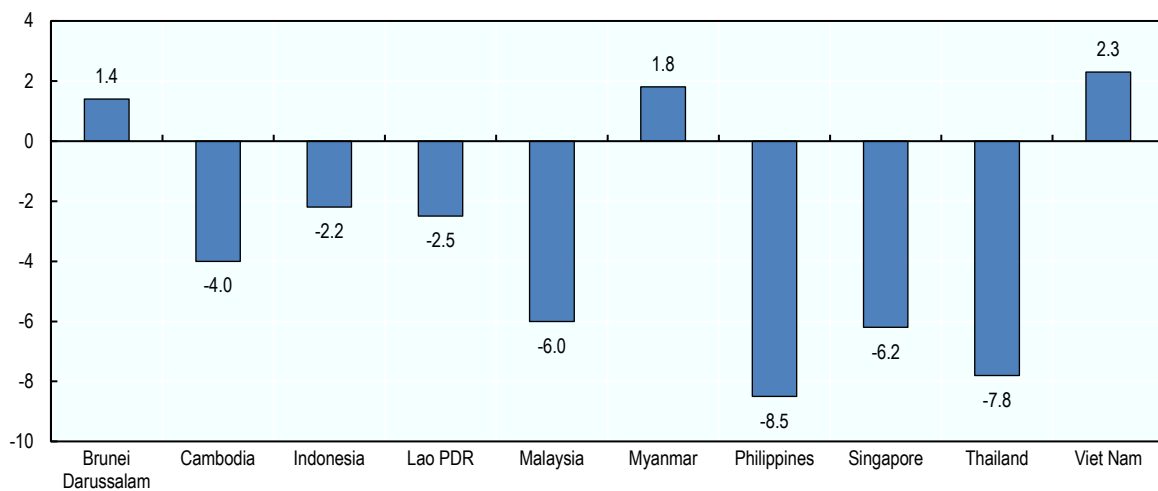
The COVID-19 pandemic has highlighted the importance of ASEAN-level co-ordination and co-operation. On 9 June 2020, the ASEAN Expert Group on Competition (AEGC) released a "Joint Statement in Response to the Coronavirus Disease (COVID-19) Pandemic", which noted the continuing importance of competition law, regional co-operation and enforcement by national competition authorities.¹³ On 12 November 2020, the association adopted the ASEAN Comprehensive Recovery Framework (ACRF) and an implementation plan, which offered a regional policy response for post COVID-19 recovery.¹⁴ It set out five broad strategies that will drive recovery: enhancing health systems; strengthening human security; maximising the potential of intra-ASEAN market and broader economic integration; accelerating inclusive digital transformation; and advancing towards a more sustainable and resilient future. Competition policy and regional co-operation will continue to play a key role in this context.

Figure 2.7. ASEAN Doing Business 2020 and Global Competitiveness Index 2019 rankings



Source: (World Bank, 2020^[34]) (World Economic Forum, 2019^[36]).

Figure 2.8. Expected percentage real GDP growth, 2020



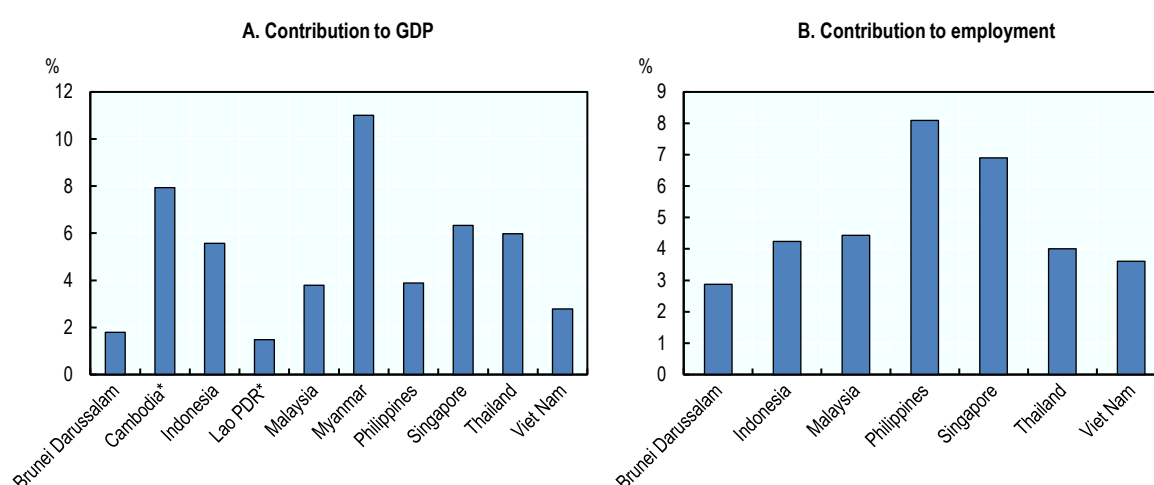
Source: (Asian Development Bank, 2020^[35]).

2.2. Overview of the logistics sector

2.2.1. Sector's contribution to the economy

The logistics sector constitutes a cornerstone for the development of an integrated internal market in ASEAN and its opening up and integration into the world economy.¹⁵ In 2019, the sector's contribution to GDP averaged 5.1% across ASEAN member states, with the highest rates in Myanmar (11%), Cambodia (7.9%) and Singapore (6.3%) (Figure 2.9, Panel A). The sector is also an important contributor to jobs. In 2019 in ASEAN member states, it employed on average around 5% of the working population, with rates of 8.09% in the Philippines and 6.9% in Singapore (Figure 2.9, Panel B).

Figure 2.9. Logistics sector contribution to the economies of ASEAN member states



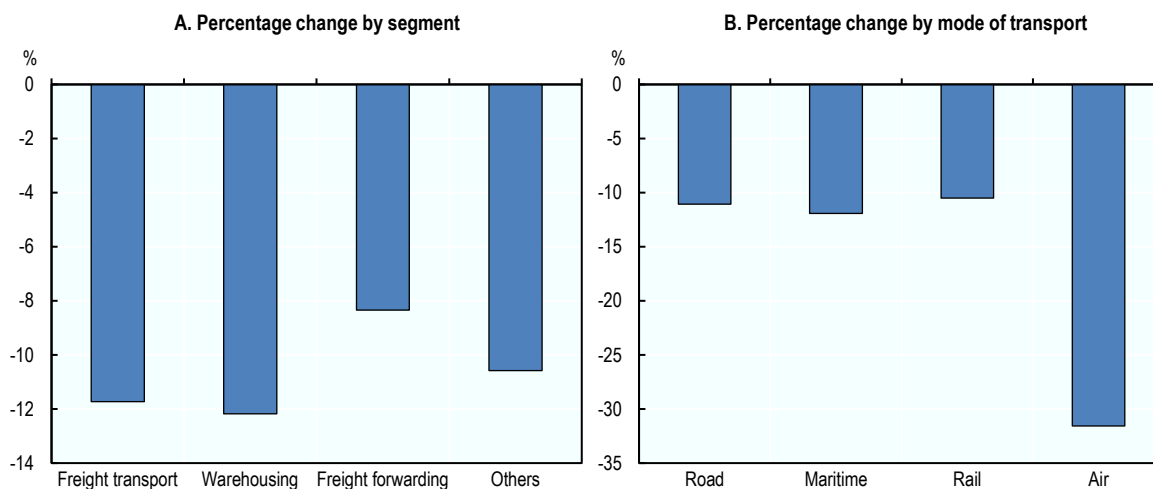
Note: * Data for Cambodia and Lao PDR are from 2018. Employment data were not available for Cambodia, Lao PDR and Myanmar.
Source: (Mordor Intelligence, 2020_[37]) based on data from national statistics institutes.

ASEAN total freight and logistics market revenues were estimated at USD 357.78 billion in 2019; they are expected to have dropped by 12% in 2020 to USD 316.54 billion as a consequence of restrictions on mobility and activity caused by the COVID-19 pandemic (Figure 2.11). Across member states, the freight transport and warehousing segments are set to be most affected with an estimated drop of more than 10% (Mordor Intelligence, 2020_[37]). For specific modes of transport, the impact is expected to be most significant for airfreight, with an estimated drop of -31%, and maritime freight revenues (-12%) (Figure 2.10). However, there are large differences within the different transport sectors; within the shipping sector container shipping has been witnessing record profits in 2020.

During the COVID-19 pandemic, such restrictions also had an impact on cross-border freight transport operations. According to an ESCAP Survey on Freight Transport Policy Responses to COVID-19 (July 2020), 86% of respondents from ASEAN member states agreed or strongly agreed that cross-border freight operations had become more costly or time consuming due to the pandemic.¹⁶

However, freight transport within cities, such as courier, express and parcel-delivery services, is expected to have grown by about 20% in 2020 as a result of the changing consumer behaviours during the lockdown with strong online demand for grocery items, home furnishings and medical supplies, among others.

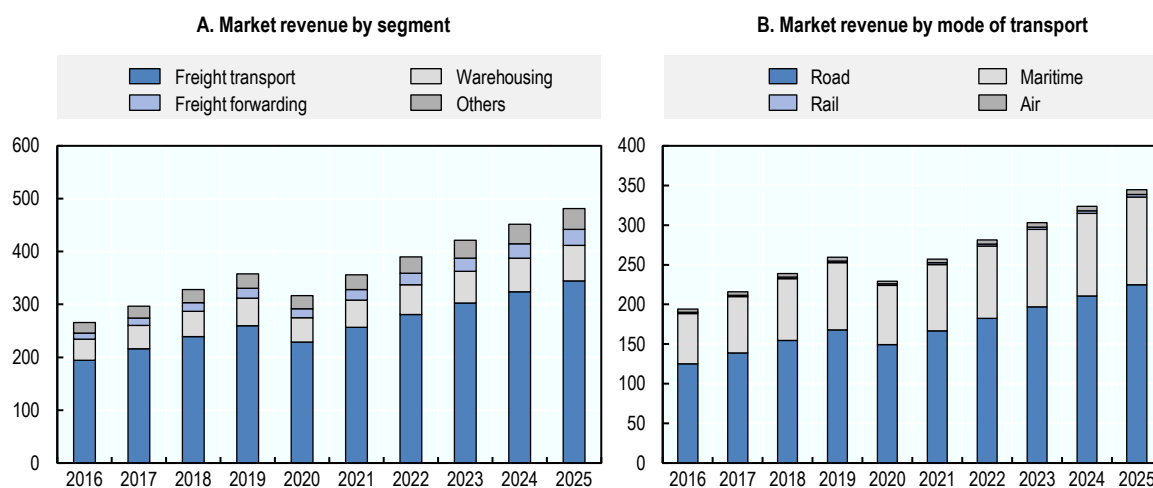
Figure 2.10. Projected COVID-19 impact on freight transport revenues



Source: (Mordor Intelligence, 2020_[37]).

Total market revenues are projected to return to pre-crisis growth levels by the end of 2021 and reach USD 481 billion by 2025, with a compound annual growth rate (CAGR) of 5.07% over the 2020-2025 period (Mordor Intelligence, 2020_[37]). Figure 2.11, Panel A, shows that freight transport accounts for the largest share of the sector's total revenues – about 72.6% in 2019 – followed by warehousing (14.6%) and freight forwarding (5.2%). Freight forwarding registered the highest CAGR over the 2016-2019 period with 11.8% and is still expected to maintain this momentum with the highest CAGR (8.7%) among the different logistics segments over 2020-2025 period. Warehousing grew by 7% per year over the 2016-2019 period and is expected to register a moderate 4.3% CAGR over the 2020-2025 period.

Figure 2.11. ASEAN freight and logistics market revenue 2016-25 (billions, USD)

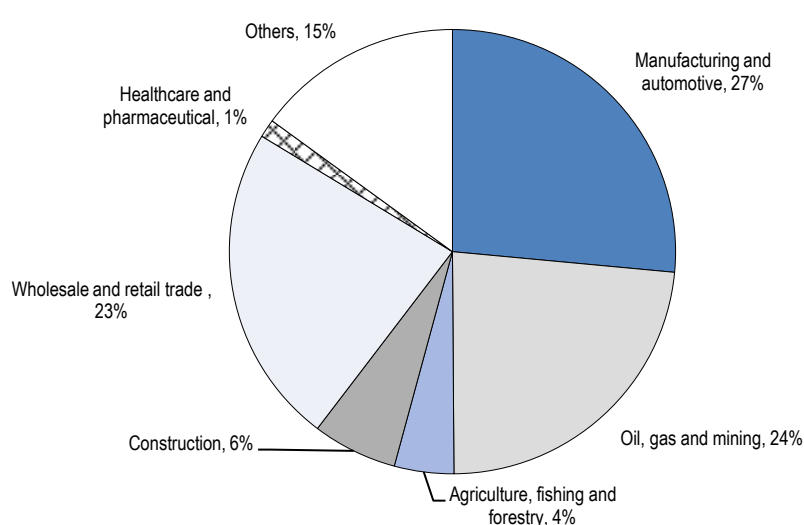


Source: (Mordor Intelligence, 2020_[37]).

Freight transport will continue to be the main revenue generator in the sector. It had a 7.5% CAGR over the 2016-2019 period and is projected to have 4.8% CAGR throughout the 2020-2025 period. Road freight is the primary mode of transportation in domestic markets in ASEAN and is by far the largest contributor to total freight transport revenues with a share of 64.6% in 2019. It was followed by sea freight transport (32.6%), which should grow by 4.9% CAGR over the 2020-2025 period (Figure 2.11, Panel B).

End users of freight and logistics services are made up of the manufacturing and automotive sector, oil and gas sector, and wholesale and retail trade sector, which accounted for about 75% of total market revenues in 2019. As shown in Section 2.1, manufactured goods constitute a major share of both total exports and total imports in most member states and the manufacturing sector is expected to remain the major revenue generator for the freight and logistics sector throughout the 2020-2025 period.

Figure 2.12. Market revenue by sector, 2019



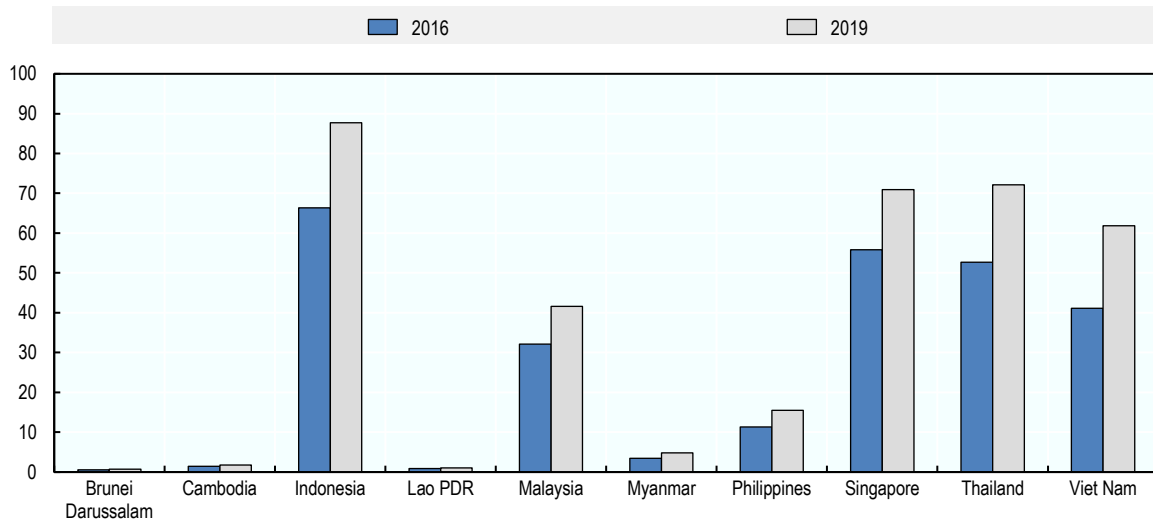
Source: (Mordor Intelligence, 2020^[37]).

In 2019, Indonesia was the largest market for freight and logistics in ASEAN with almost 25% of total regional sector revenues, followed by Thailand (20.2%) and Singapore (19.8%) (Figure 2.13). According to estimates by India-based data company Mordor Intelligence, the Indonesian freight and logistics market is projected to exceed USD 128 billion in revenue by 2025 with 6.6% CAGR over the 2019-2025 period, the second highest rate across member states after Viet Nam (7.3%) and followed by Myanmar (5.5%) and the Philippines (5%).

FDI into ASEAN transport and logistics sectors reached USD 1.4 billion in 2019, just 1% of the region's total FDI inflows that year. By country, the share of total FDI inflows into the transport and logistics sector was highest in Indonesia at 16.8%, followed by Myanmar (12%); it did not exceed 3% in the other member states.

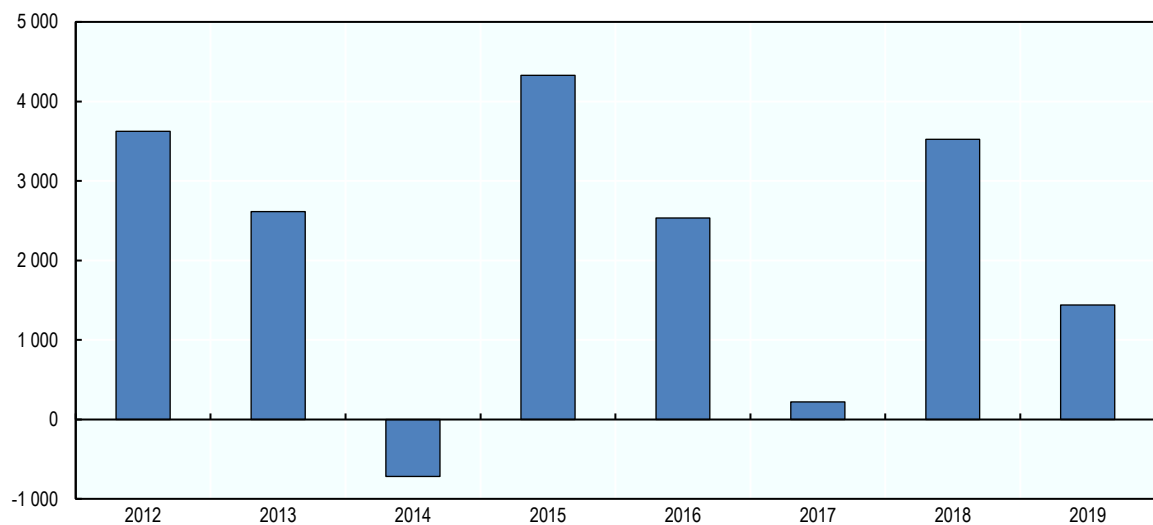
The ASEAN freight and logistics market remains fragmented, with a mix of major international and local operators. Some member states, such as Indonesia and the Philippines, have a large number of local players and certain major international players, while others such as Singapore, Viet Nam, and Thailand have a large number of international players (Mordor Intelligence, 2020^[37]). Major freight and logistics actors across ASEAN include DHL Group, DB Schenker, Kerry Logistics, Nippon Express and CJ Logistics.

Figure 2.13. Market revenue by country 2016 and 2019 (billions, USD)



Source: (Mordor Intelligence, 2020^[37]).

Figure 2.14. Foreign direct investment inflows in logistics 2012-19 (millions, USD)



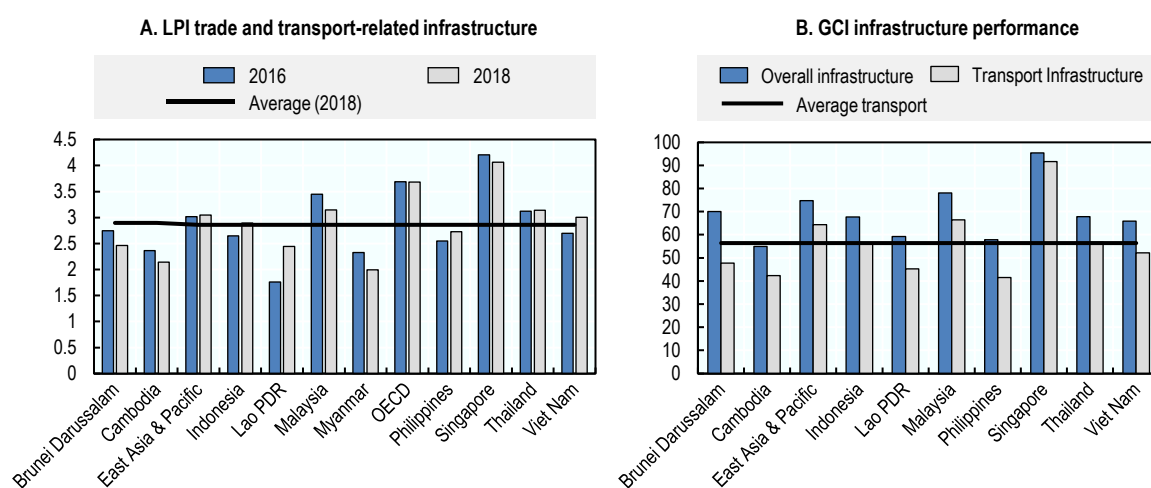
Source: (ASEAN Macro-economic Database, 2020^[29]).

2.2.2. Infrastructure quality

Infrastructure quality is a determinant factor for logistics performance. Several international performance assessments indicate that infrastructure quality across ASEAN is relatively disparate. Figure 2.15, Panel A, shows the quality of trade and transport-related infrastructure in member states according to the World Bank's 2018 Logistics Performance Index (LPI) (see Box 2.1). The regional average score for East Asia and Pacific was 3.01 and only three member states (Malaysia, Singapore and Thailand) scored higher. Singapore remains the best performer in the region and higher than the OECD average. According to the World Economic Forum's 2019 Global Competitiveness Index (GCI), East Asia and Pacific ranked second in terms of infrastructure quality after the region defined by the World Economic Forum as including Europe

and North America with a score of 74.8. Only two member states (Singapore and Malaysia) scored above this average (Figure 2.15, Panel B).

Figure 2.15. Infrastructure quality indicators



Source: (World Bank, 2020^[34]) (World Economic Forum, 2019^[36]).

Table 2.1 shows member states' overall LPI performance in 2018. Singapore ranked 7 among 160 countries globally with a score of 4.00. Other ASEAN countries also performed well in the LPI, scoring more than 3 points. These include Thailand (3.41), Viet Nam (3.27), Malaysia (3.22), and Indonesia (3.15). The remaining ASEAN countries improved their performances in 2018 compared to previous years; for example, Lao PDR improved its score by 0.4 points and its rank by 70 positions compared with 2016.

Table 2.1. Logistics Performance Index overall ranking, 2018

| Overall ranking | Country |
|-----------------|-------------------|
| 1 | Germany |
| [...] | |
| 7 | Singapore |
| 32 | Thailand |
| 39 | Viet Nam |
| 41 | Malaysia |
| 46 | Indonesia |
| 60 | Philippines |
| 80 | Brunei Darussalam |
| 82 | Lao PDR |
| 98 | Cambodia |
| 137 | Myanmar |

Source: (World Bank, 2018^[38]).

Box 2.1. World Bank Logistics Performance Index

The World Bank's Logistics Performance Index (LPI) benchmarks countries' logistics performance using indicators (scored from 1, the lowest, to 5) to create an overall LPI index that allows for worldwide, regional and income-group country comparisons.

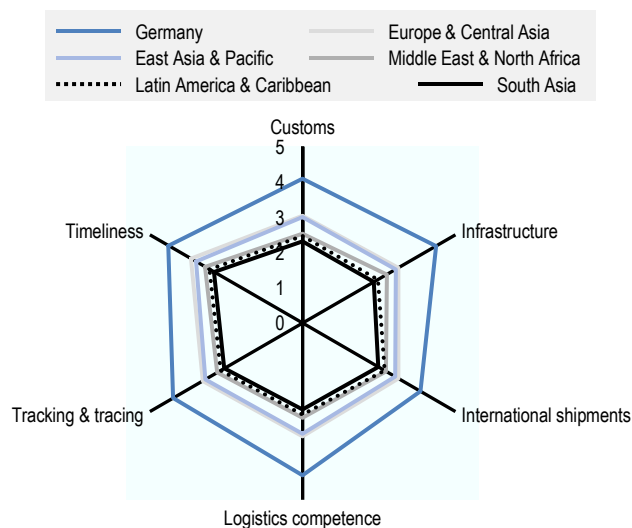
A country's final LPI is the weighted average of its score based upon six key criteria.

1. Efficiency of the clearance process, including speed, simplicity and predictability of formalities, by border control agencies, including customs.
2. Quality of trade and transport related infrastructure, such as ports, railroads, roads, and information technology.
3. Ease of arranging competitively priced shipments.
4. Competence and quality of logistics services, such as transport operators and customs brokers).
5. Ability to track and trace consignments.
6. Timeliness of shipments in reaching destination within the scheduled or expected delivery time.

Source: (World Bank, 2018^[38]).

Figure 2.16 shows East Asia and Pacific's LPI sub-indicators scores against the top performer at the global level (Germany) in 2018 and other regions; as noted, criteria are scored from 1 (lowest) to 5 (highest). The figure shows that customs procedures appear to be the most challenging area for the majority of ASEAN member states: eight out of ten scored below three points. On the other hand, only three member states received below three points on the timeliness sub-indicator, which scores ability to deliver shipments within the scheduled or expected time frames.

Figure 2.16. ASEAN LPI scores compared to global leader Germany and other regions

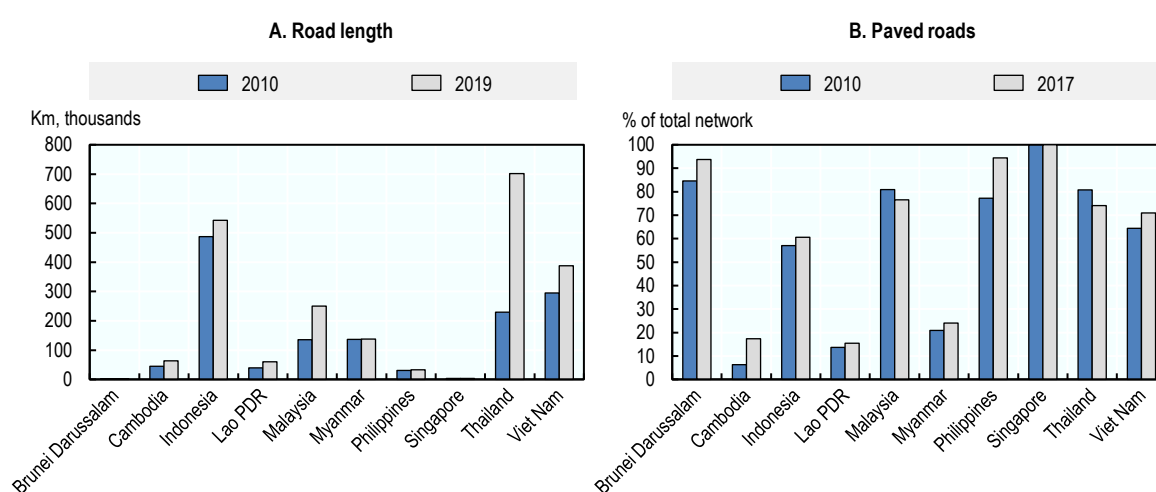


Note: According to World Bank regions classification, the ten ASEAN member states are part of the East Asia Pacific region, which also includes China, Korea, Mongolia, Pacific Islands, Papua New Guinea and Timor-Leste.

Source: (World Bank, 2018^[38]).

Road transport plays a crucial role in logistics and overall, the quality of roads and port infrastructure across member states has significantly improved over in the period 2009 to 2019. Railway infrastructure has received less attention. Significant improvements in land connectivity were observed across all member states, with a 55.3% increase in total road length compared to 2010 and a road network that exceeded 2.1 million kilometres in 2019 (Figure 2.17, Panel A). Thailand, Indonesia, Viet Nam, Malaysia, and Myanmar recorded the highest total road length in the region (over 100 000 kilometres each) whereas other member states have less than 60 000 km. In 2017, the percentage of paved roads in the total road network reached 61.4% across ASEAN (up from 59% in 2010) and exceeded 70% in most countries (Figure 2.17, Panel B).

Figure 2.17. ASEAN road infrastructure



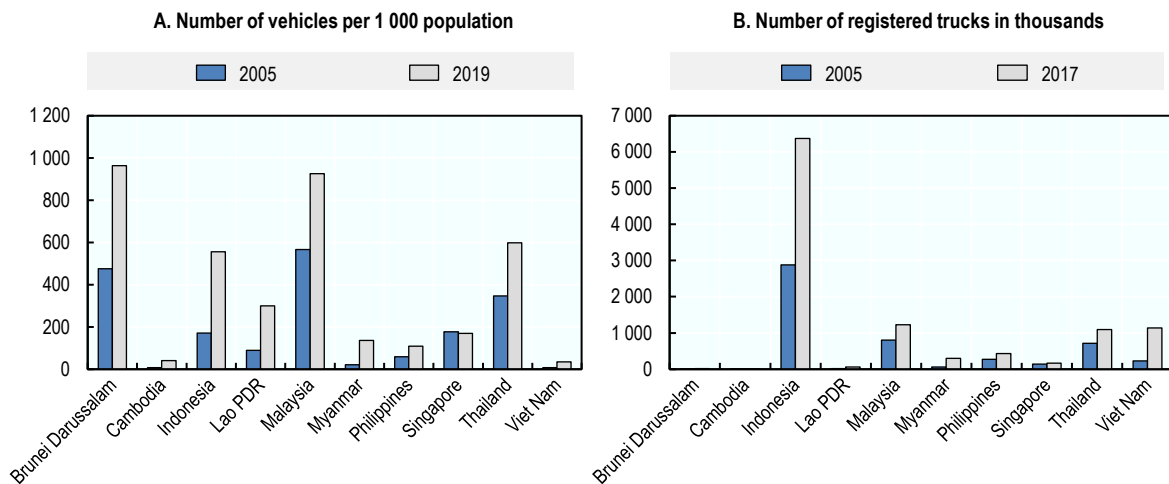
Note: The latest available data for road length in Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, and Viet Nam are from 2018.

Source: (ASEANstats, 2020^[39]).

The number of motor vehicles increased significantly across member states over the 2005-2019 period. The total number of registered motor vehicles in ASEAN in 2019 was 243.9 million units, an increase of 193.5% compared to 2005. Taking into account the size of each state's population, Brunei Darussalam (962.9), Malaysia (925.1) and Thailand (598.8) recorded the highest number of total registered motor vehicles per 1 000 population (Figure 2.18). The number of registered trucks also significantly increased across all member states; in 2017, there were 10.8 million units, an increase of 111.4% compared to 2005. Of these trucks, more than half were registered in Indonesia: around 6.3 million units or a 121.5% increase when compared with 2005.

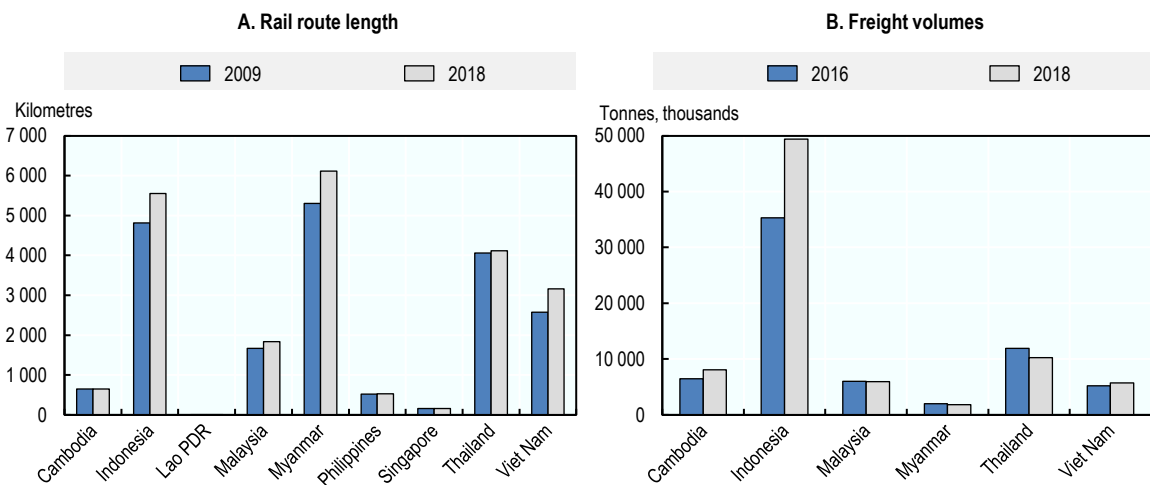
The railway network in ASEAN has not evolved significantly over the past decade. In 2018, the total length of rail routes across member states reached 22 127 kilometres or about 11.9% longer than 2009. This is a relatively limited network when compared to more developed regions such as North America and the European Union, partly reflecting the different size and geography of ASEAN.¹⁷ With 6 112 kilometres, Myanmar has the longest railway network in ASEAN, followed by Indonesia (5 550 kilometres) and Thailand (4 115 kilometres). A total of 81.2 million tonnes of freight were transported by rail in ASEAN in 2018 (Figure 2.19, Panel B), with over half of this total (49.4 million tonnes) transported in Indonesia; Thailand (10.2 million tonnes) and Cambodia (8.1 million tonnes) were also among the members state that used rail most frequently for freight and cargo transport in 2018.

Figure 2.18. Number of registered motor vehicles



Note: The latest available data for Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, and Viet Nam were 2018.
Source: (ASEANstats, 2020^[39]).

Figure 2.19. Railways network and freight transport



Note: Data for Brunei Darussalam is missing. Latest available data for Singapore is 2012.
Source: (ASEAN, 2019^[40]).

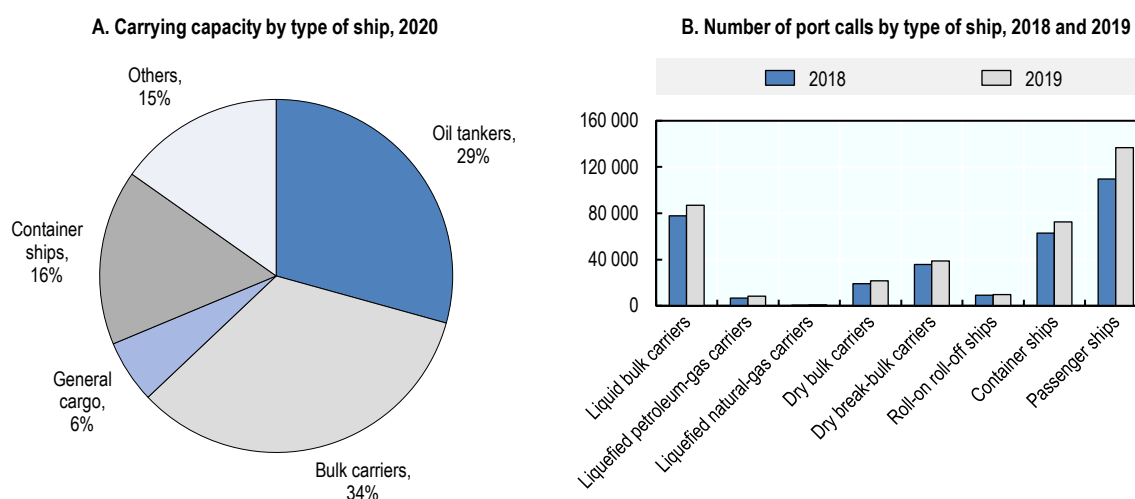
Due to its geography and the number of island states, shipping has long been the major form of transport between the various countries in Southeast Asia and the main trade channel connecting the region and the rest of the world. ASEAN member states contain an extensive network of 475 international ports and 1 355 domestic ports (ASEANstats, 2018^[41]), most of which are located in the archipelagos of the Philippines and Indonesia, as well as in Viet Nam. ASEAN's total merchant fleet by flag of registration reached 19 741 vessels in 2020 (Table 2.2).

Table 2.2. ASEAN ports, fleet and carrying capacity, 2020

| Country | International ports | Ships | Carrying capacity (DWT, thousands) |
|-------------------|---------------------|--------|------------------------------------|
| Brunei Darussalam | 1 | 102 | 466 |
| Cambodia | 3 | 257 | 465 |
| Indonesia | 85 | 10 137 | 26 900 |
| Lao PDR | n.a | 1 | 2 |
| Malaysia | 15 | 1 772 | 10 379 |
| Myanmar | 9 | 93 | 178 |
| Philippines | 189 | 1 747 | 6 482 |
| Singapore | 1 | 3 420 | 140 393 |
| Thailand | 8 | 840 | 6 688 |
| Viet Nam | 163 | 1 909 | 9 177 |

Source: (UNCTADStat, 2020^[42]).

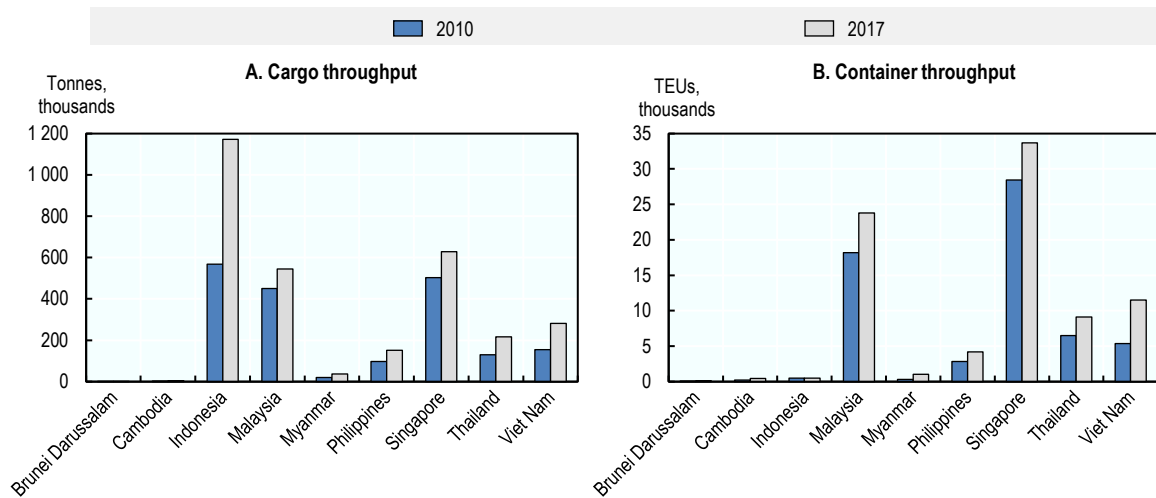
Of ASEAN's merchant fleet, 50% is registered under the Indonesian flag, while Singapore has 16.8%, Viet Nam 9.4%, Malaysia 8.7%, and the Philippines 8.6%. Total carrying capacity in the region exceeds 200 million deadweight tonnage (DWT). Bulk carriers (33.6%), oil tankers (29.3%) and container ships (16.1%) accounted for the majority of this capacity (Figure 2.20, Panel A). Port calls data show that ASEAN ports are mainly used by container vessels and liquid bulk carriers, in addition to passenger vessels that accounted for the largest number of port calls in 2019 (Figure 2.20, Panel B).

Figure 2.20. Carrying capacity and port calls in ASEAN

Source: (UNCTADStat, 2020^[42]).

A total of 3 billion tonnes of freight was transported through ASEAN ports in 2017 (Figure 2.21, Panel A). With 1.17 billion tonnes, Indonesia shipped the largest share of sea freight in the region, followed by Singapore (627.6 million tonnes) and Malaysia (544.7 million tonnes). Total throughput in ASEAN ports was 84 million TEU in 2017 (Figure 2.21, Panel B); Singapore accounted for the largest share with over 33.6 million TEU, followed by Malaysia (23.7 million) and Viet Nam (11.4 million).

Figure 2.21. International sea cargo throughput in ASEAN region

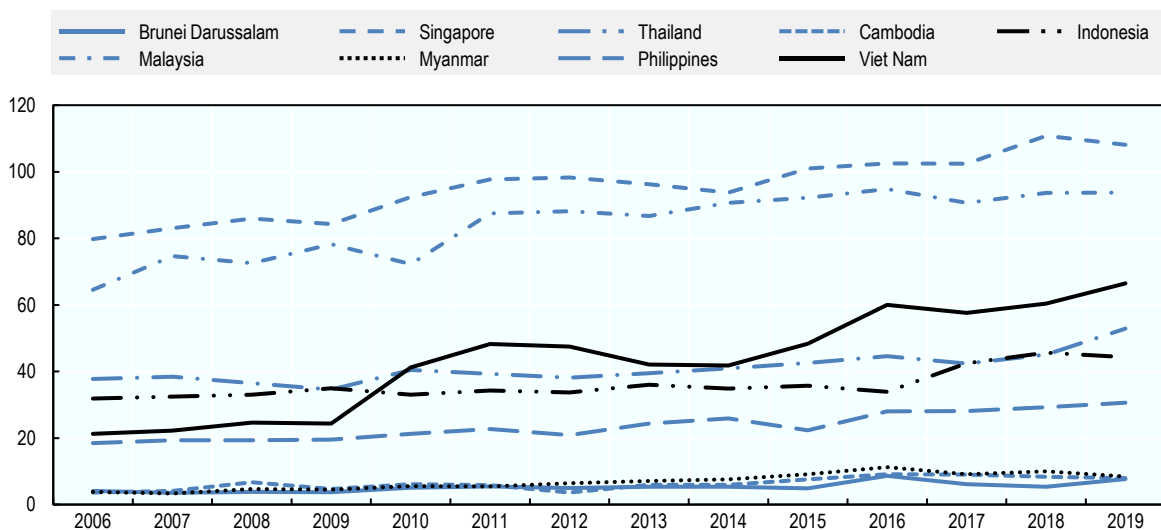


Source: (ASEANstats, 2020^[39]).

2.2.3. International connectivity

ASEAN member states’ liner-shipping connections with other countries have improved since 2006, although most of this growth seems to be driven by growth in ship size calling AMS’s ports. Figure 2.22 shows ASEAN countries’ ranking in UNCTAD’s annual Liner Shipping Connectivity Index, which reveals countries’ levels of integration into the global networks of liner shipping.¹⁸ As can be seen from the figure below, since 2006 member states’ connectivity indexes have increased.

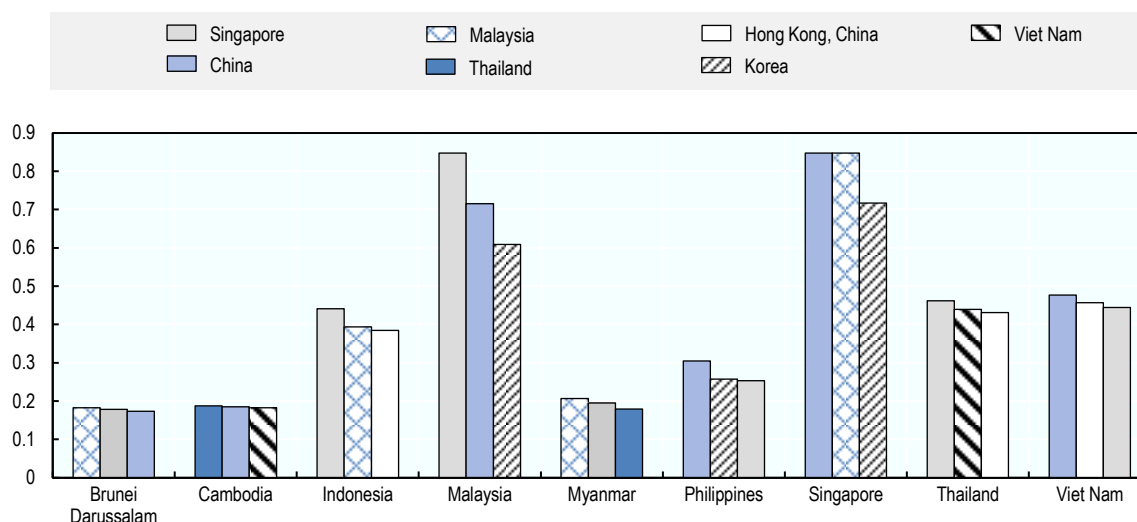
Figure 2.22. Annual Liner Shipping Connectivity Index, 2006-19



Note: The index for the country with the score of 100 in 2006 (China) is used as the basis and all other indices are in relation to this value.
Source: (UNCTADStat, 2020^[42]).

Figure 2.23 shows the three countries with which each member state had the strongest bilateral connections – a crucial determinant of bilateral trade – in 2019.¹⁹ The literature empirically shows a close relationship between bilateral maritime liner-shipping connectivity and exports in containerised goods. A lack of a direct maritime connection with a country results in lower values of exports with that country (Fugazza and Hoffmann, 2017^[43]). In general, Singapore was among the top three bilateral connections for all member states (with the exception of Cambodia), whereas China, Korea and Hong Kong, China were the top three non-ASEAN trading partners of the majority of member states in 2019.

Figure 2.23. Liner Shipping Bilateral Connectivity Index (LSBCI), 2019



Note: Leading partners: 0 = minimum; 1 = maximum.

Source: (UNCTADStat, 2020^[42]).

Liner shipping has become increasingly concentrated over the last decade, due to consolidation and increased co-operation via alliances and consortia. Although liner conferences are no longer automatically exempted from competition law in the European Union, US and various other countries, they are not inhibited in certain ASEAN countries.²⁰ This is particularly noteworthy considering that liner companies have been able to quadruple ocean freight rates in 2020 despite the COVID-crisis, thanks to collective capacity withdrawal in the first half of 2020.

3 Road freight transport

In several ASEAN countries, road freight transport is the dominant mode of domestic transport. It allows door-to-door transport, which limits transshipment costs that arise when transferring cargo between different modes of transport, for example, from rail to road.

Generally, road freight transport can be distinguished between transport for own-account, in which firms internalise transportation services by using their own vehicles, and third-party transportation or transportation for hire or reward, in which third-party operators provide services to other firms. The present review covers both types of freight transport.

Based on analyses of the legislation in each member state, this chapter examines policy measures that might be restricting competition in the market for road freight transport services. It discusses some of the most common issues that the OECD reviews have identified across member states. These include:

1. restrictions on the number of permits that countries can issue to authorise cross-border transport by road, pursuant to bilateral or multilateral international agreements
2. market-access requirements in light of the specific policy objectives
3. restrictions imposed on certain operations, such as requirements on fleet size or restricted areas of operations.

The individual country reports provide details on country-specific barriers.

3.1. Restrictions on cross-border transport by road

Description of the barrier. To accommodate increasing cross-border transport needs stemming from growing intra-ASEAN trade, member states have several agreements in place to develop cross-border transport by road, including:

- Cross-Border Transport Agreement (CBTA) for the free movement of goods throughout the Greater Mekong sub-region.²¹
- ASEAN Framework Agreement on the Facilitation of Goods in Transit (AFAFGIT).²²
- ASEAN Framework Agreement on the Facilitation of Inter-State Transport (AFAFIST).²³

When companies encounter issues in the area of cross-border services or due to non-tariff measures in relation to the certain ASEAN economic agreements, they can have recourse to a mechanism for the expedited and effective solution of such cross-border issues. This non-binding and consultative mechanism is known as ASEAN Solutions for Investments, Services and Trade (ASSIST).²⁴

Despite these efforts, all the above-mentioned agreements include limits on the number of permits that countries can issue to authorise cross-border transport by road.

- The CBTA provides that any transport operator properly licensed for cross-border transport operations in its home country according to the criteria set in the agreement shall be entitled to undertake cross-border transport operations. Yet, as stated in Article 23: “The National Transport Facilitation Committee of each Contracting Party ... will exchange and issue the agreed number of

permits each year.”²⁵ In 2020, each signatory was permitted to issue up to 500 permits for cargo transportation and for non-scheduled passenger transportation. This arrangement is subject to annual review by a joint committee.

- The AFAFGIT and its protocols provide that each contracting party can issue no more than 60 vehicle permits for transit transport by road.²⁶ This number has been subsequently increased to 500 vehicles per country in 2009.²⁷
- The AFAFIST provides that the agreed number of transport vehicles allowed for interstate transport shall be no more than 500 vehicles for each signatory.²⁸ This number can be discussed from time to time between the contracting parties.

Box 3.1 provides an example of a bilateral agreement that has been updated over time, with a consequent increase in the number of quotas.

Box 3.1. Quota increases in bilateral cross-border transport agreements between Cambodia and Viet Nam

To accommodate the increasing needs of cross-border trade, Cambodia and Viet Nam have signed several agreements to exchange traffic rights. The quotas set out in these agreements have been regularly reviewed, passing from 40 truck permits in 1998 to 150 in 2009, 300 in 2010 and 500 in 2012. The two countries then agreed to introduce annual 100-vehicle permit increases each year.

The legal bases for the exchange of traffic rights between Cambodia and Viet Nam include:

1. the Agreement on Road Transportation, signed in 1998
2. a protocol stipulating an initial quota of 40 vehicles, signed in Hanoi on 10 October 2005
3. a Memorandum of Understanding (MoU) increasing the quota to 150 vehicles, signed in Phnom Penh on 17 March 2009
4. an amendment to the MoU increasing the quota to 300, signed in Phnom Penh on 15 September 2010
5. an amendment to the MoU raising the quota to 500, signed in Bali on 30 November 2012.

Source: (Sisovanna, 2019^[44]).

Harm to competition. Whilst such agreements are to be welcomed and have helped to develop road transport among ASEAN members, they give rise to a model in which interactions between demand and supply are replaced by central decision-making with a potential for a high degree of error. This results in a “highly restrictive” model in which access to the market is strictly controlled (World Bank/IRU, 2016^[45]). In particular, if the number of permits is insufficient to satisfy demand for cross-border services, this is likely to increase transportation costs and result in delays. For example, if no cross-border transport operators are available, one operator is required to deliver goods to the border, which are then moved to another operator to deliver them to the end point within the destination country. In contrast, using one company that is able to offer cross-border transport and logistics services can reduce costs and delays, for instance, by shortening the number and duration of contract negotiations or avoiding trans-shipments at the border.

In ASEAN, few companies are currently able to secure a permit and provide these services. These are in general global players such as DHL, DB Schenker Group, CEVA Logistics, Kerry Logistics/KART and Nippon Express, which hold 60-70 % of market share in ASEAN (Mordor Intelligence, 2019^[46]).

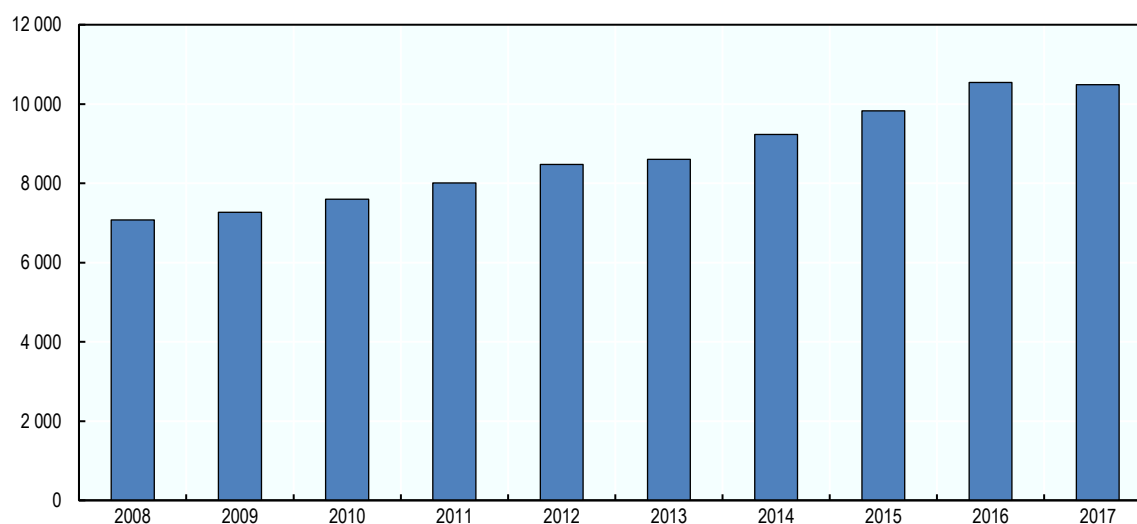
At the same time, data show that intra-ASEAN trade is growing and this could lead to an increase in demand of cross-border transport services.

In 2018, the ASEAN cross-border road transport market was valued at an estimated USD 2 023 billion (Mordor Intelligence, 2019^[46]). As discussed in Section 2.1, the total values of trade in both goods and services have increased significantly over the past few years in the region and in 2019 reached more than USD 2.8 trillion for goods and USD 844.5 billion for services. Intra-ASEAN trade accounts for the largest share of its total trade, reaching 22% in 2019. This rising intra-ASEAN trade will make cross-border transport services increasingly important.

Given their geographic situation, certain ASEAN countries at the centre of the region are particularly well-placed to become hubs for cross-border road transport activities. For instance, more than 30 provinces of Thailand border other member states, namely Myanmar, Lao PDR, Malaysia and Cambodia. Similarly, Myanmar is strategically positioned between India and the People's Republic of China ("China") to benefit from trade from and between these two economies. Indeed, China has heavily invested in modernising transport infrastructure in the provinces of Ruili and Yunnan that border Myanmar to boost connectivity between the two countries. Furthermore, Myanmar has opened seven trade zones at the border with Thailand to boost their trade links.²⁹

The increasing demand for transport services by road is confirmed by the growth in the number of registered trucks in all ASEAN countries. As shown in Figure 3.1, the number of trucks increased by 48.3% between 2008 and 2017, with peaks of 194.2% in Indonesia and 185.9% in Viet Nam.

Figure 3.1. Number of registered trucks in ASEAN countries (thousands), 2008-17



Note: The latest data are from 2017, except for Myanmar for which no data are available.

Source: ASEANStatsDataPortal, <https://data.aseanstats.org/indicator/ASE.TRP.ROD.B.008>.

Recommendation. The OECD recommends one of the following options.

1. Remove these restrictive provisions setting quotas and replace with a licence system. The licensing criteria should be clearly defined in the international agreement or implementing laws or regulations.
2. Assess market need and demand every one to three years, and consider increasing the number of licences that can be issued.

Both these recommendations would require negotiations between signing countries.

3.2. Licensing requirements on road freight transport

Description of obstacle. All ASEAN member states have regulations in place regarding access to the road freight transport market. In certain instances, regulations are broad and do not provide clear guidance or set out clear requirements for all market players. For example, in Brunei Darussalam, the Director of Land Transport may exempt any motor vehicle or trailer from the requirements laid down in the law, a power not subject to any limitations or conditions.³⁰

Such regulations usually require operators to hold a licence, subject to certain requirements. They often limit market entry or impose burdens on operators, including:

- **Quantitative limitations** may restrict the number of authorised carriers. This means that if the limit has been reached, new entry is only possible when current players exit the market. For instance, in Thailand, the Central Land Transport Control Board (for the Bangkok area) or the Provincial Land Transport Control Boards have the power to issue decisions of general application setting the maximum number of transport operators. Certain regulations may also limit the size of vehicle fleets or the number of new truck registrations.³¹
- **Qualitative requirements** can apply conditions that operators need to meet, which may include, for example, criteria of professional competence for road transport company managers, obligations for certain on-board devices or certain financial requirements for companies. For instance, in Lao PDR, the Land Transport Law requires that road transport managers have at least five years of experience in the management of a business to provide domestic freight transport, while 20% of employees must be transport experts with two years' experience and meet specific education requirements.
- **Asset requirements** can impose obligations to own certain assets, such as a garage or a parking lot for trucks. For example, in the Philippines, to obtain a certificate of public convenience (CPC) to provide trucks-for-hire transport service, applicants must provide a sketch or dimensions of their garage and the corresponding contract or lease. The legislation provides the "standard garage requirements" and demands proof of ownership or right of possession, sufficient parking space for all units, and a designated amount of space for additional requirements – such as areas for maintenance, clearing bays, restrooms – and maintenance facilities.³²

Box 3.2. Professional competence for market entry in road haulage services in the European Union

Regulation 1071/2009 of the European Parliament and of the Council of 21 October 2009 sets market-entry criteria for operators in road-haulage services. All EU countries require a road haulage operator licence for carrying goods for hire or reward in a vehicle or combination of vehicles with an authorised weight exceeding 3.5 tonnes; operator licences have a maximum duration of five years. National licences are issued by member states and are valid within their country of issue; international licences are valid for road haulage in all EU member states. According to Regulation 1071/2009, operators are required to prove their professional competence in order to be granted market entry. They should have an effective and stable establishment in a member state, be of good repute, and have appropriate financial standing. Member states have the discretion to impose additional requirements, which shall be proportionate and non-discriminatory, for entry as a road-transport operator.

In practice, all EU countries require road transport managers to provide proof of high-quality professional competence. Authorities certify this after 140 hours of training and an examination covering the topics laid down in Annex I of Regulation 1071/2009. A successful examination leads to the award of an open-ended certificate of professional competence. A member state may exempt certain

individuals from sitting the exam, such as the holders of certain higher education or technical-education qualifications issued in that member state. Member states may also exempt individuals with proven managerial experience of road-haulage businesses from the certificate of professional competence exam. Recognised degrees and the length of previous managerial experience vary by country.

Significant differences exist in the extra requirements and exemptions that member states require of road transport managers. In 2017, the European Commission issued a proposal to amend Regulation 1071/2009, so that member states would no longer be allowed to impose additional access requirements to the profession. Regulation 1055/2020 was adopted on 16 July 2020 to abolish this possibility; it notes that the possibility to make access to the occupation of road transport operator subject to additional requirements than those applied in Regulation 1071/2009 “has not proven to be necessary in order to respond to imperative needs and has led to divergences in respect of such access”.

Source: European Commission, Proposal for a Regulation of the European Parliament and the Council amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to the developments in the sector; Regulation (EU) 2020/1055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector.

Harm to competition. While regulations often have legitimate policy objectives, they can impose an excessive burden on operators or limit market entry beyond that strictly necessary to achieve those policy objectives.

Setting a maximum number of licences limits market entry and competition with potential detrimental effects on consumers, for instance in terms of limited supply, lower quality and higher prices. Box 3.3 provides an example of the consequences and that similar provisions had in Greece and the benefits brought by lifting those restrictions.

Box 3.3. Limited number of goods transport licences in Greece

Certain countries apply a model for national transport restricting both the number of authorised carriers and the size of their fleet, with new entrants only allowed to compensate the exit of other players from the market.

As noted by the World Bank and IRU in their 2016 report on *Road Freight Transport Services Reform: Guiding Principles for Practitioners and Policy Makers*: “this is a highly restrictive model whereby all access conditions are under strict control. Market forces are highly subdued and replaced by central decision making with a high degree of potential error” (World Bank/IRU, 2016, pp. 31-32^[45])

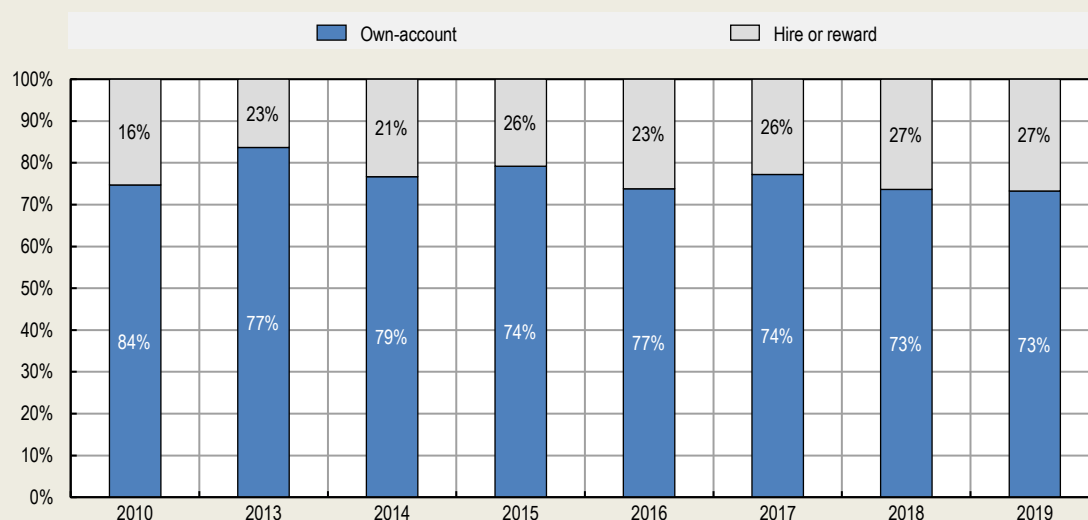
In Greece, the government was in charge of issuing licences to hauliers authorising them to carry goods and in 1970 decided that 33 000 licences were sufficient to satisfy the country’s freight transport demands; it therefore stopped issuing additional licences. The law then stipulated that the total number of permits could be increased only if an appropriate study documented a specific need. In practice, until the deregulation of the sector, only a couple of such studies were conducted and none recommended the issuance of more for-hire permits (Katsiardis, 2019^[47]). As a result, the total number of for-hire truck permits remained fixed for nearly 40 years and the cost of licences rose, reaching EUR 250 000 a truck in 2010. This system protected the profession from competition from new entrants, which was in turn translated into a lack of incentives to innovate. Furthermore, since the same rules did not apply to transport for own account, there was a shift to internalising such transport services. More than 1.4 million vehicles were supposed to carry only their companies’ products, thus leading to low

economies of scale and low use of capacity. Indeed, given that own-account trucks cannot move other firms' products, their share of empty-vehicle kilometres was higher than that of for-hire trucks. In 2010 in Greece, trucks travelled empty 41% of the time, compared to the European average of 25% (Katsiardis, 2019^[47]).

Since 2010, Greece has introduced reforms to liberalise the road freight transport sector. The first piece of legislation was passed in September 2010. This framework allowed the issuance of new for-hire permits to all firms that wanted to enter the market and that met certain qualitative and financial requirements. Prices could be freely set for trucking services. To lessen disruption to the sector, a three-year transition period was enacted, during which new entrants could obtain a permit subject to a fee of EUR 75 000 for the heaviest vehicles in 2010, which decreased to zero over the three-year period. Then, pursuant to Law No. 1/2012, according to the Law No. 3887/2010, Greece has removed entry barriers and price constraints in order to reduce transport costs, increase competition, create economies of scale, and improve service quality.

Following these reforms, since 2013, the share of road freight transport by hire or reward has increased to the detriment of own-account freight transport (see figure below).

Figure 3.2. Share of total freight transport for own-account and hire-or-reward (thousands, tonnes) in Greece, 2013-19



The improvements in the regulatory framework and the increased maturity of firms in the sector led to a significant increase in the technical efficiency of road freight transport firms. After the reform, the average share of empty vehicles per kilometre decreased by 1.6 percentage points for own-account trucks and by 2 percentage points for for-hire trucks (Katsiardis, 2019^[47]).

Note: Data for 2011 and 2012 were not available.

Source: Eurostat, <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do> (accessed on 19 August 2020); (World Bank/IRU, 2016^[45]), and Centre of Planning and Economic Research (KEPE, 2019), Structural Reforms in Greece 2010-2018, www.dx.doi.org/10.2873/100377; (Katsiardis, 2019^[47]).

Requiring ownership of a garage before a licence is granted or setting other minimum requirements as described above may prevent new players, especially SMEs, from entering the market as it significantly raises the cost of entry and requires operators to invest before being guaranteed a permanent operating licence.

Recommendations. Limitations on the number of licences to operate as a carrier should be avoided and market-access requirements – such as professional competency or technical conditions for vehicles – should be clearly laid down in the law. Asset requirements for market entry should not result in excessive burden for operators or limit market entry beyond what is necessary to achieve specific legitimate policy objectives.

3.3. Operational constraints

Description of obstacle. While liberalisation brings well-known benefits, regulations are still needed to alleviate risks arising from the operation of vehicles on road infrastructure, such as dangers and nuisances for other vehicles, pedestrians, and local residents. Safety and environmental regulations aim at minimising accidents and nuisances to the environment, such as pollution and noise levels.

The OECD has identified various regulations that impose operational constraints upon firms that go beyond what is necessary to achieve the specific policy objectives and might create barriers to competition. They include provisions on:

1. restricted areas of operation
2. number of vehicles that a firm can register
3. roadworthiness inspections.

These regulations are not always the least restrictive method of achieving the pursued public policy objective.

For example, the OECD found that in certain member states regulations impose (or grant authorities the power to impose) limits on where licensees can provide road transport services, by determining ex ante permissible routes or by limiting licence validity to a certain region. This is the case, for example, in Thailand, where the Central Land Transport Control Board (for the Bangkok area) and the Provincial Land Transport Control Board (for the rest of the country) have the power to issue decisions of general application that set vehicle routes. Although this provision is currently only applied to passenger transport, the broad definition of “transport” in the law, encompassing both passenger and freight transport,³³ grants the two authorities the power also to set routes for freight transport service providers. In Myanmar, licences for the transport of goods for hire and those for transport of goods for own account can also be restricted for a specific region or a specific route.

In other member states, the OECD found regulations limiting the size of an operator’s vehicle fleet throughout the duration of its licence in different ways. Certain regulations impose a minimum number of vehicles in order to prevent the atomisation of road transport companies, with the aim of achieving economies of scale and creating stronger firms with larger networks capable of competing with foreign operators.³⁴ This is the case, for example, in Viet Nam, where operators providing freight transport services by road further than 300 kilometres must have a minimum number of vehicles, which depends on where their office is located.³⁵

Other countries limit the number of vehicles that a firm is able to register. In Brunei Darussalam, according to market participants, only two trailers can be registered for each tractor unit. As a result, if a tractor unit’s two trailers remain at a customer’s premises while loading and unloading cargo, the tractor cannot be used with other trailers to transport different goods at the same time. In Malaysia, the number of trailers that can be registered to each tractor unit is also limited.³⁶ In addition, certain business entities (for example, sole proprietorships and partnerships) can apply for a maximum of two sets of licences: these can be used for two sets of vehicles (two tractor units and two trailers) or two licences for “rigid vehicles” (listed in the guidelines) or one set of vehicles consisting of one tractor unit and one trailer and one rigid licence. This limits the size of commercial vehicle operators’ fleets and so limits companies’ use of their resources.

All countries have regulations in place to ensure vehicle safety and driver competence. While suitable safeguards are necessary, certain provisions are unclear or require excessively burdensome inspections that, compared to similar provisions in other countries, go beyond what is necessary to achieve a legitimate policy objective. For example, the Philippines currently has no clear implemented standards and rules for vehicle roadworthiness, with market participants complaining about the absence of inspection facilities.³⁷ In Indonesia, commercial vehicles (including trucks and trailers) are subject to periodic testing for roadworthiness; the first test must be carried out within a year of the issuance of the vehicle's registration certificate,³⁸ and then every six months.³⁹

Harm to competition. Rules that restrict operational areas and routing limit the extent to which licensed operators can compete across an entire country and may have a negative impact on the efficiency of operations and competition. As noted by the OECD, “restrictions on areas of operation, routing and backloading had a direct effect, constraining the level of vehicle utilisation” (OECD, 2001_[48]).

The limitation on how many trailers can be registered (as opposed to used) for each tractor unit may limit a company's transport capacity – by reduced possible use of each tractor unit – and so increase transportation costs for each freight unit.

Minimum fleet-size requirements may aim to combat industry fragmentation, but they can prevent start-ups or SMEs to enter the market or more generally reduce firms' flexibility to respond to changing business conditions, increase their costs, and deter investments. Faced with limited consumer demand and unable to scale down their activities below a certain level, companies could be forced to exit the market completely or maintain the minimum fleet size and so have to absorb excessive and unnecessary costs.

Finally, a lack of clear roadworthiness standards and rules can cause uncertainty and deter market entry, while overly frequent inspections may increase costs for market participants unnecessarily, through both administrative burdens and usage time lost while a truck is being inspected.

Based on OECD country analysis, the described provisions go beyond what is necessary and proportionate to achieve the pursued policy objective. For example, the requirement to have twice yearly inspections instead of annual inspections might be stricter than what is necessary in order to ensure safety and consumer protection.

International comparison. Many OECD countries have significantly liberalised freight transport by road. As noted in the OECD Background Paper “Competition Issues in Road Transport”, the liberalisation of the trucking sector in OECD countries led to several benefits, including a significant reduction of rates (OECD, 2001_[48]).

The 2018 *OECD Competition Assessment Reviews: Portugal* found that on long-distance bus services for scheduled direct routes above 100 kilometres (locally called “high-quality services”), the law required companies to have at least six buses of category III (heavy passenger vehicles with more than nine seats) and an employee as a crew member of each bus (OECD, 2018, p. 81_[49]). Similarly, to be allowed to offer car-rental services operators had to have a minimum number of seven vehicles for the rental of passenger cars and three vehicles for the rental of motorcycles, tricycles and quadbikes. Finally, licensing of truck-rental services required operators to have a minimum number of vehicles licenced in Portugal. To rent trucks weighing less than 6 tonnes, they had to have 12 vehicles or 6 vehicles if they were also renting cars; to rent trucks above 6 tonnes, they had to have 6 vehicles, unless the company had a total minimum fleet tonnage of 50-tonne gross weight.

In the OECD's view, the imposition of a minimum number of vehicles to start a business limited operators' ability to enter markets and increased their operational costs, and was liable to lead to higher prices for consumers. The required initial investment was a particular deterrent to SMEs or entrepreneurs wishing to enter the market.

Similarly, *OECD Competition Assessment Reviews: Tunisia* found that regulations on road freight transport imposed restrictions on fleet size according to the type of entity and market segment (OECD, 2019, p. 161^[50]). In particular, a sole proprietorship could operate using only 1 heavy goods vehicle (HGV, which could be a truck, an articulated vehicle or a double-articulated vehicle), but road freight companies had to use or lease a minimum of 18 HGVs, at least 6 of which had to be motor vehicles (the remainder could be trailers without engines). Furthermore, such companies were also subject to a minimum total tonnage requirement for their fleet of 300 tonnes.

The OECD found that these regulations created a gap in the road-haulage services sector, making it legally impossible to establish a road-haulage operator with a fleet of between 2 and 17 HGVs. A sole proprietorship that wished to expand its business was required to purchase or lease 17 additional HGVs at the same time rather than through gradual and organic growth. As a result, road-haulage companies faced limited competition from smaller and more flexible businesses, and consumers that could have been served by a mid-sized company had only limited options.

Second, these requirements limited the flexibility of companies to respond to changing business conditions by scaling down their activities. Companies could either fully exit the market or maintain the minimum fleet size, regardless of consumer demand, which led to substantial costs for participants and potentially deterred investments, leading to sub-optimal investment and innovation in the sector.

Recommendation. The OECD makes the following recommendations.

1. Review regulations or provisions that limit the areas in which commercial vehicle licensees can operate, so that they can provide their freight transport services without any geographic restrictions.
2. Review regulations or provisions that limit firms' fleet size, by restricting new-vehicle registrations or imposing a minimum or maximum number of vehicles, while maintaining provisions that pursue a legitimate policy objective (such as safety or the protection of the environment).

Ensure that regulations imposing safety requirements and roadworthiness inspections are clear and proportionate to the pursued policy goal and do not generate excessive costs. For instance, vehicles should be kept off the road for inspections no longer than necessary and requirements could take into account a vehicle's age and the number of kilometres travelled.

4 Water freight transport

Maritime and inland water transportation plays a fundamental role in the movement of goods around ASEAN, while promoting international trade and economic growth. As one of the most fundamental services available to cargo owners within a complex value chain, it remains one of the cheapest modes of shipping goods within ASEAN member states and internationally. An efficient maritime transport system can have significant spillover effects for the whole economy.

The provision of maritime transport services is dependent on ports, which serve to link ships to other modes of transportation. Most ports have an extensive infrastructure network that typically includes quays, roads, rail tracks, storage and stacking areas, repair facilities, as well as fences or walls to securely enclose the port (OECD, 2011^[51]). In addition, ports include superstructures constructed above the main infrastructure comprising terminal buildings, warehouses and cargo-handling equipment, such as lifting cranes and pumps.

Ports are managed by port authorities, which are charged with co-ordinating port activities, investing in infrastructure, and operating some or all of the port services. They are also responsible for safety services and navigational aids, including navigational lights, radar and radio, as well as traffic systems. Port authorities can be designated by port institutions and port administrations, and should be distinguished from national port authorities, which are the institutions responsible for sectoral regulation.

Based on an analysis of legislation in each member state, this chapter examines policy measures that might be restricting competition in the market for water freight transport services and for port services in ASEAN. It will introduce the most frequent barriers identified by the OECD team in the individual country competition assessment reviews. Additional member state-specific recommendations are set out in those country reports. In particular, this chapter discusses:

1. cabotage policy in maritime transport
2. licensing requirements for national water transport
3. the role of tenders in the provision of port operations or port services
4. the regulatory and operational overlap of some port authorities in ASEAN
5. the provision of pilotage services by port authorities
6. price regulation of port services.

4.1. ASEAN single shipping market and cabotage policy

Description of obstacle. ASEAN member states have set the target of achieving an ASEAN Single Shipping Market (ASSM) in which ASEAN shipping service providers would face no restrictions on their operations or the establishment of companies across the region, subject to domestic regulations. This target is in line with the broader vision of the ASEAN Economic Community Blueprint (AEC), which aims to create a region with free movement of goods, services, investment, capital and skilled labour.⁴⁰

Between 2010 and 2019, the throughput of the region's container ports grew by 53.4%, outpacing the 49.5% growth of global container throughput. These initiatives aim to accompany the continuous growth of the ASEAN shipping market. Over the same period, certain ASEAN countries registered a spectacular percentage growth of the container port throughput, with Myanmar growing by 234.5%, Brunei Darussalam by 202.9% and Cambodia by 172.3%.⁴¹

Notwithstanding this rapid growth and the objective of an ASSM with little restriction to the free flow of services and investment, many ASEAN countries continue to have domestic maritime cabotage restrictions that prevent foreign or ASEAN companies to carry freight on a route with origin and destination points within the same country. Neither are these limitations addressed in the recent Regional Comprehensive Economic Partnership Agreement signed in November 2020 by Asia-Pacific countries (all ASEAN member states, plus Australia, the People's Republic of China, Japan, New Zealand and Korea), as in Chapter 8, Article 8.2 cabotage in maritime transport services is excluded from its scope of application.

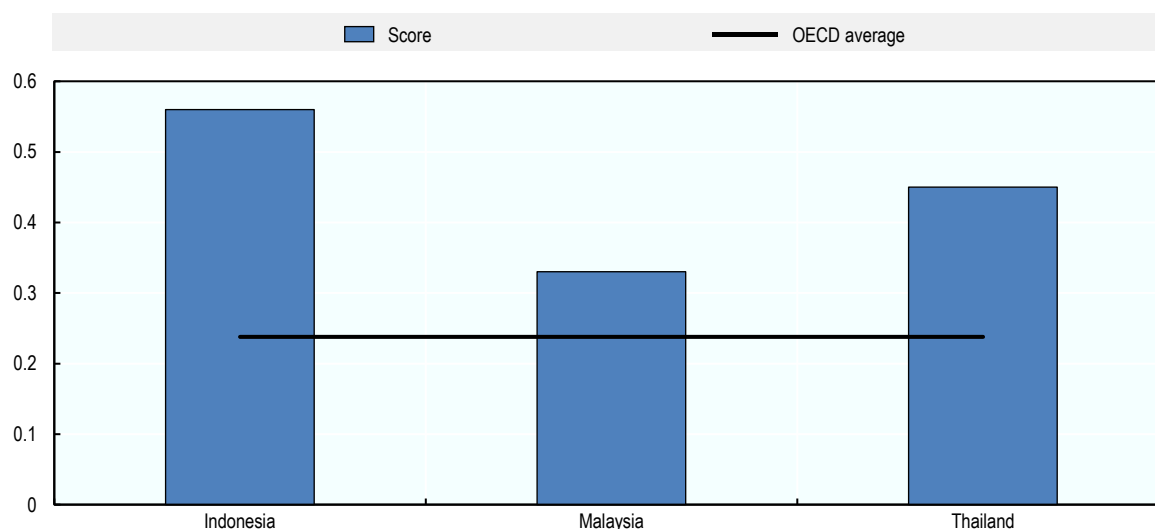
Generally, maritime cabotage is practised by ASEAN countries that are either archipelagic or have an extensive coastline. Brunei Darussalam, Cambodia, Lao PDR and Singapore do not practise maritime cabotage restrictions, while other ASEAN countries continue to do so. In archipelagic countries like Indonesia and the Philippines, maritime connectivity is of great importance for domestic commerce and external trade, while maritime cabotage regulations may constrain the development potential of coastal shipping which is important to link different areas of the same country.

Figure 4.1 shows that in certain ASEAN countries restrictions on foreign entry in the maritime freight transport sector are higher than the OECD average. Cabotage policy is one of the most prominent sector-specific restrictions included in the category of foreign-entry restrictions, alongside restrictions to own and register vessels under the national flag, limitations on port-related services, and cargo-sharing agreements.

Harm to competition. Prohibitions on foreign vessels transporting domestic cargo between ports within the same country prevent foreign firms from entering national freight transportation markets. This may in turn lead to monopolies on certain routes or more broadly favour market concentration, due to restricted market access (Suffian et al., 2013^[52]). Furthermore, cabotage restrictions may increase costs of products by forcing carriers to use more expensive domestic services and so lead to higher operational costs. This may negatively affect trade, and limit the quality of logistics services, for instance, in terms of weaker direct links in global trade lanes.

In certain countries, market participants have stated that cabotage restrictions can contribute to empty containers accumulating in some ports and shortages in others due to inefficient allocation of resources.

Figure 4.1. Services trade restrictions on foreign entry in maritime freight transport services, 2019



Note: The OECD's Services Trade Restrictiveness Index (STRI) has a scale between zero and one, with one being the most restrictive. For ASEAN countries, data is available only for Indonesia, Malaysia and Thailand. Data in this graph only refer to restrictions on foreign entry, including cabotage.

Source: OECD Services Trade Restrictiveness Index, <https://stats.oecd.org/Index.aspx?DataSetCode=STRI#>.

Some studies have shown that restrictions on shipping services are costly, particularly in developing countries. In exporting countries, lowering restrictions such as cabotage may have a greater effect on margins than reducing restrictions on the commercial presence of foreign suppliers (Kang, 2000^[53]).

As certain authors have highlighted, “relaxing cabotage, even partially, would improve maritime connectivity by opening the market, increasing economies of scale, and raising competitiveness” (Zen et al., 2019^[54]). For instance, the use of larger and more advanced foreign vessels can reduce costs by taking advantage of economies of scale and cargo optimisation (UNCTAD, 2017^[55]). International vessels with spare capacity would be allowed to pick up extra cargo once arrived at the port of entry and then ship domestic cargo on the domestic leg of their journey. Also, allowing an international ship to pick up cargo in several ports within a country may be cheaper than shipping cargo to the main international port on smaller ships that lack scale and then transferring them to an international ship.

Recommendation. The OECD recommends one of three options.

1. Open the domestic shipping market to ASEAN competition by lifting the ban on ASEAN vessels carrying domestic cargo.
2. Amend the cabotage rules to allow foreign ships to carry their own cargo (and other foreign cargo) domestically. For example, allowing ships to travel domestically to the port of final call after arriving at a first port of entry, subject to ex post analysis of the impact of the amendments. A further step would then be to allow foreign ships to carry other domestic cargo from the port of entry to the port of final call if the foreign vessel has capacity after unloading goods at the port of entry.
3. Allow international ships to operate in the domestic shipping market on specific routes where there is demand and conduct an evaluation on demand every one to three years to consider whether to liberalise additional routes.

4.2. Licensing requirements for maritime freight transport

Description of obstacle. All ASEAN member states regulate access to their maritime freight transportation markets. In general, national regulations require operators to hold a licence, but some impose burdensome requirements that result in unnecessary or excessive barriers to entry in light of the pursued policy objective. Licensing schemes are often in place for consumer protection or safety objectives. This report does not consider the need for the relevant licences themselves, but rather identifies examples of restrictive licensing requirements.

The individual country competition assessment reviews identified examples of excessively restrictive licensing requirements; these included:

- **Economic needs tests:** as part of the licensing process, the relevant authority may carry out an assessment of the applicant's business and whether its proposed services are needed. In the Philippines, for example, licensing body MARINA requires applicants to submit a feasibility study. MARINA has broad discretion to consider the impact of the proposed service on the local area and evaluates the "economic and beneficial effect" to the port, province or region that the shipper proposes to serve.⁴² It can also assess the financial capacity of the operator to: "provide and sustain a safe, reliable, adequate, efficient and economic service in accordance with the standards set by the government regulation".⁴³ In Indonesia, to obtain a sea transportation business licence, applicants must submit a business plan and shipping business plan.
- **Vessel ownership requirements:** licence conditions include technical requirements, which may stipulate, for example, that a vessel be seaworthy, be flagged in the country in question, and be of a certain size. The OECD identified examples of excessive technical requirements in some member states. For example, in Indonesia, a licence applicant is required to own the vessel, and the applicant must submit proof of ownership.⁴⁴

Harm to competition. While regulations very often have legitimate policy objectives, they can impose an excessive burden on operators or limit market entry beyond what is strictly necessary to achieve those policy objectives.

The economic-needs assessment is likely in place to help an authority support the economic development of ports, the shipping sector and the economy generally. The requirements may also aim to control who can enter the market and the exact services provided. They aim to protect consumers by ensuring that new entrants have a viable business model.

In an economic-needs test, the government authority assesses the need for a new entrant's services. In many member states, it is not clear from legislation how authorities conduct this assessment in practice; for example, the methodology behind decisions about unsatisfied demand for maritime transportation or whether any newly proposed service brings benefits to a region. Moreover, the economic-needs test involves the government authority judging who should enter the market – such as the Philippine authorities evaluating feasibility studies provided by applicants or Indonesian evaluations of business and shipping business plans – even though the authority may not have all the necessary information or skills to assess new entrants' viability and reliability. This may lead to worse outcomes than allowing the market to determine who enters. The authorities' discretion and lack of objective criteria may result in discrimination and lead to the selection of new entrants that do not deliver the best value to consumers; for instance, business plans and feasibility studies are based on forecasts that may not materialise. In addition, submitting these documents may result in higher costs of entry especially for smaller companies; for example, if authorities require more information than new entrants would otherwise include in their business plans, such as estimates of their likely economic impact.

The requirement to own a vessel prevents service providers who wish to lease rather than purchase vessels from obtaining a licence and significantly increases the cost of entry for shipping companies. The purchase of a vessel constitutes a significant financial liability, particularly when compared to chartering or leasing, and limits the potential number of operators able to compete in the market. In countries where a significant proportion of the world's merchant fleet is based – such as the People's Republic of China and the United States – shipping companies are not required to own a ship to operate.⁴⁵ In fact, the proportion of global fleet capacity provided by companies leasing ships increased significantly in recent decades, from 16% in 1995 to 54% by the end of 2018, according to one industry source.⁴⁶ By contrast, ownership requirements may restrict the number of suppliers, reduce competition between suppliers, and result in higher prices or less desirable contract terms for customers. This will decrease competitive pressure for established operators and favour larger potential entrants with the ability to purchase a vessel over smaller firms.

Recommendation. The OECD recommends removing excessive licensing requirements, such as vessel ownership, economic-needs tests and the submission of business plans. If an economic-needs test is maintained, the OECD recommends that clear and transparent guidelines be established to detail the criteria used to judge economic needs and to limit how discretion may be exercised.

4.3. Tenders in selection of port operators or port services providers

Description of obstacle. The participation of the private sector and the degree of competition in the provision of port services depends mainly on the choice of the port-management model. Although port management varies substantially across jurisdictions, there are essentially four models, depending on the different roles attributed to the public and private sectors (see Box 4.1).⁴⁷

Box 4.1. Port management models

Four basic port management models

1. the **public-service port** is fully owned and managed by the state, often through a state-owned port authority, which carries out the roles of investing and providing all the port services
2. the **tool port** involves the public and private sectors with the (state-owned) port authority managing the port and making all investments, while providing private operators with the tools to operate main port activities, such as cargo-handling
3. the **landlord port** is another hybrid model, in which the port authority is in charge of managing and investing in the main infrastructure, while private operators invest in superstructure (such as equipment and terminal buildings) and operate main port activities
4. the **fully privatised port** is fully managed and operated by a private entity, which either owns the port land or has the exclusive rights of exploration attributed through a concession.

The landlord port is the predominant model in OECD countries, particularly for large- and medium-size ports, while models with stronger participation by the public sector are more commonly observed in developing economies (World Bank, 2007, pp. 82-83^[56]). However, non-OECD countries have also adopted the landlord model; for example, a 2016 survey by UNCTAD found that 65% of the 21 ports in Angola, Benin, Dominican Republic, Ghana, Indonesia, Namibia, Peru, the Philippines, and Tanzania follow the landlord model with a mix of participants from the private and public sectors (UNCTAD, 2016^[57]). UNCTAD noted “a global trend towards greater private sector participation, especially in port service delivery” (UNCTAD, 2016, p. 16^[57]). Some of the strengths of the landlord port model include the possibility of introducing competition in the provision of port services and fostering private investment in the port superstructure. A challenge to the landlord port model is the increased

concentration and co-operation in liner shipping, creating oligopsony that most competition authorities have not dealt with (ITF, 2018^[58]). The consequence of this is increased co-operation and mergers between terminals in the same port, transforming the intra-port competition of the classical landlord port model. Another challenge is related to the fact that various shipping companies also operate terminals in ports, using privileges related to their position as shipping company (e.g. exemptions from taxation and competition law) that independent terminal operators do not enjoy, resulting in unfair competition (ITF, 2019^[59]). In ASEAN, many different management models are in place, even in different ports within each member state, with the role of the private sector more or less prominent depending on the country. In Viet Nam, for example, the public-service port model is observed. There is no port authority and seaports are managed directly by a government agency, Vietnam Maritime Administration (VINAMARINE) (World Bank, 2018, p. 40^[60]). Some ports that are not located directly on the sea but on inland waterways that lead to the sea are managed jointly by Vietnam Inland Waterway Administration (VIWA) and VINAMARINE. In Myanmar, the Port of Yangon has followed a landlord model since a privatisation programme was launched in the 1990s (Win, Ganbat and Nam, 2015^[61]). Many member states have recently put in place port reform. For some, this has involved new or increased private-sector involvement in port operations; for example, in Indonesia, after port-sector restructuring in 2018, the legislative monopoly in commercial ports of state-owned enterprise Pelindo was removed. Private companies are now able to enter the market and operate these ports. Their participation is however limited to ports that have opened since the reform.

Table 4.1. Main differences between the basic port management models

| | Ownership of infrastructure | Ownership of superstructure | Cargo-handling operations | Other operations |
|-----------------------|-----------------------------|-----------------------------|---------------------------|-------------------|
| Public service port | Public | Public | Public | Public |
| Tool port | Public | Public | Private | Public or Private |
| Landlord port | Public | Private | Private | Public or private |
| Fully privatised port | Private | Private | Private | Private |

Source: OECD Competition Assessment Reviews Portugal: Volume I – Inland and maritime transports and ports (OECD, 2018, p. 188^[49]), adapted from (World Bank, 2007, p. 85^[56]).

In certain member states, legislation allows for the operation of ports or terminals or the provision of port services by the port authority or by other entities, whether private companies or SOEs. Concession arrangements tend to be used to allow private-sector participation in the operation of a port or terminal or for the provision of port services, such as cargo handling, pilotage, towage or ancillary services.⁴⁸ Licensing can be used as an alternative that allows the participation of (and competition between) multiple operators. Concessions are particularly useful when competition in-the-market may not be viable; for example, where demand does not allow for more than one supplier given high fixed costs or where there are space constraints or safety, security or public interest concerns. As noted by the OECD in 2019, since competition in-the-market can be inefficient or impossible, competition for-the-market can be a way of addressing the market failure of a natural monopoly and deliver advantages to consumers (OECD, 2019^[62]). In these cases, the selection process of these operators is of utmost importance to safeguard the aim of enhancing competition.

In many member states there is room for improvement in such selection processes. The OECD's country reviews identified several issues, including:

1. **Discretion on whether to hold an open tender:** port operators can typically be selected by open tender or direct assignment. In a few member states, including Myanmar and Indonesia, port authorities have discretion on whether to hold tenders or not,⁴⁹ but legislation does not set criteria about when direct assignments are allowed.

2. **Guidelines on tender processes:** while port authorities in member states are often able to issue their own tender notifications, they do not issue publicly available tender guidelines to inform the process.
3. **Guidelines on port concessions:** some member states have no regulatory guidance on the design of concessions, for instance, concerning duration, investment targets or quality of service requirements. While concession agreements are not all publicly available, the OECD understands that the duration of a concession is often based upon agreements between the concession provider (whether government or port authority) and the concessionaire, taking into consideration factors such as investment, return on investment and port location.

Harm to competition. The objective of these selection processes is to develop ports, terminals and port services, or to allow private involvement. The use of concessions can allow the development and expansion of ports, while taking the financial and risk burden off governments, reduce monopoly shortcomings, and encourage efficiency (World Bank, 2007, p. 114^[56]). Where a concession grants an exclusive right, the concessionaire effectively operates as a monopolist with other (public or private) operators banned from the market. Under these circumstances, it is even more important to conduct a competitive tender to select the most suitable supplier, promote investment, innovation and lower prices for port users (OECD, 2014^[63]). Competition concerns arise if selection is made without a tender process or extended automatically.

If selection criteria are not clear or easily accessible, more efficient market players may be excluded and prevented from entering the market. The services provided by the concession holder could therefore be of lower quality. Poor design of a concession process, frequent use of direct assignment and criteria that favour incumbents may lead the decision maker to discriminate between service providers and discourage efficient entry.

Further, the design of the concession is critical. Some concession design factors such as long durations (without appropriate safeguards),⁵⁰ lack of investment requirements and extension through direct negotiation can harm the competitive process (see Box 4.2).

Box 4.2. OECD best practices in public procurement, concessions and fighting bid rigging

The operation of ports or terminals and the provision of certain port services often function as concessions or public-private partnerships governed by similar rules to public procurement. The OECD's comprehensive work on public procurement has led the organisation's council to make a number of recommendations, including:

- a public-procurement system should be transparent at all stages of the procurement cycle
- the integrity of a public-procurement system should be preserved through general standards and procurement-specific safeguards, such as internal training, and compliance measures for relevant stakeholders
- access to procurement opportunities for potential competitors of all sizes should be facilitated
- transparent and effective stakeholder participation should be fostered in the design of public-procurement systems
- digital technologies should be employed to support appropriate e-procurement innovation throughout the procurement cycle to the greatest extent possible
- workforces should receive training to develop their public-procurement know-how
- oversight and control mechanisms should be applied to support accountability throughout the public-procurement cycle, including appropriate complaint and sanctions processes.

The OECD has also worked specifically on concessions and highlighted the importance of concession design. One crucial factor is the duration of the contract, as this can have a significant effect on investment. For example, while a longer period encourages the concessionaire to make the necessary infrastructure investments at the beginning of the period, that incentive diminishes as the concession near its end.

How a concession is awarded is also critical. Auctions are considered the most effective award method. Although negotiations are an option, experience has shown that public authorities are sometimes at a disadvantage to their private-sector counterparts. It is also important that a country's competition authority is involved in the concession process, including tender design.

The OECD has also undertaken significant work on the design of pro-competitive tenders and fighting bid rigging.¹ The OECD Guidelines for Fighting Bid Rigging in Public Procurement are part of the OECD Council Recommendation adopted in 2012, which encourages governments to assess their public-procurement laws and practices to promote more effective procurement and reduce the risk of bid rigging in public tenders. The Guidelines for Fighting Bid Rigging help to identify:

- markets in which bid rigging is more likely to occur
- methods to maximise the number of bids
- best practices for tender specifications, requirements and award criteria
- procedures that inhibit communication among bidders
- suspicious pricing patterns, statements, documents and behaviour by firms.

Note: ¹ For an overview of the OECD's work in procurement reform, see www.oecd.org/competition/cartels/fightingbidrigginginpublicprocurement.htm.

Source: The OECD Recommendation on Public Procurement (www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf); the OECD Recommendation on Fighting Bid Rigging in Public Procurement (www.oecd.org/daf/competition/RecommendationOnFightingBidRigging2012.pdf) and the Guidelines for Fighting Bid Rigging in Public Procurement (www.oecd.org/daf/competition/guidelinesforfightingbidrigginginpublicprocurement.htm). Adapted from (OECD, 2019^[50]) and (OECD, 2014^[63]).

Recommendations. The OECD has three cumulative recommendations.

1. Use open tender processes rather than direct negotiation in the selection of terminal operators and service providers. Concessions should not be extended automatically and incumbents should not be granted preferential treatment when renewing concessions.
2. Issue clear and publicly accessible tender guidelines for the selection of port operators or service providers. Tender processes should be open, transparent and based on fair and non-discriminatory criteria. Technical requirements should ensure a level playing field and so allow new entrants.
3. Issue guidelines on concessions, including the duration, renewal and investment requirements, to provide sufficient incentives to the chosen company, while allowing re-tendering and making the market contestable.

4.4. Overlaps in the regulatory and operational functions of port authorities

Description of obstacle. In ASEAN, as around the world, ports are typically governed by port authorities or equivalent bodies; these “may be established at all levels of government: national, regional, provincial and local” (World Bank, 2007, p. 77^[56]). Port authorities can have a range of powers and functions, including implementing investment and financial and labour policy; awarding concessions to use port infrastructure and provide port services; licensing port services; setting port tariffs; and overseeing safety considerations.

In several ASEAN member states, the OECD has identified overlaps in the regulatory and operational functions of port authorities.

- The Philippine Port Authority (PPA) has overlapping regulatory and commercial functions. For example, it both regulates private-sector service providers and receives a share of their revenues, while also being able to provide port services itself. As a government-owned and controlled corporation (GOCC), PPA is required to remit at least 50% of its annual net earnings to the government as dividends, giving it an incentive to maximise revenues.⁵¹ Current government initiatives are seeking to reform the administration of ports in the Philippines and provide for the separation of PPA's regulatory, commercial and development functions.⁵²
- The Port Authority of Thailand (PAT), a state-owned enterprise (SOE) that runs the country's five major ports under the supervision of the Ministry of Transport, has regulatory and supervisory powers, and operational functions.⁵³ In practice, this means that PAT operates as the regulatory authority for publicly owned ports and, for example, has the power to set tariffs for port services,⁵⁴ to determine usage charges for its ports, and to issue safety regulations. At the same time, PAT can provide port services, often in competition with private operators (Rattanakhomfu et al., 2015, p. 27^[64]).

Harm to competition. In some member states, the port authority both offers port services and regulates and monitors them. This may not provide sufficient incentives for the delivery of efficient and innovative services to port users. For instance, a port authority is incentivised to set fees for its operational arm higher than those that an efficient operator would charge.⁵⁵ Certain member states have no independent regulator for the port sector. Independent regulators are present worldwide in utility sectors, such as in electricity, water and telecommunications, in the transportation sector and in the financial sector (see Box 4.3 for a discussion on independent regulation). They are notably used to “improve market efficiency and tame the conflict of interest stemming from the dual role of the state as owner and regulator” (Bortolotti, 2012, p. 823^[65]). Another study noted a positive relationship between “the level of regulatory independence and economic welfare” (Kirkpatrick and Parker, 2012, p. 35^[66]), citing literature that has shown regulatory independence having a positive impact on investment incentives and behaviour (Kirkpatrick and Parker, 2012, p. 35^[66]) and contributing to “confidence in the consistency and stability of the regulatory environment”. In particular, the independence of the regulator may provide insulation from political involvement, which could undermine credibility of price controls and reduce return on investment.

If a port authority competes with other service providers while also setting the rules, it may have an incentive to discriminate in favour of its own operational arm. For example, it may implement burdensome licensing requirements on service providers. In the *OECD Competition Assessment Reviews: Romania*, the OECD found that while the port authority could provide pilotage services, private pilotage operators were subject to an authorisation regime and had to employ a minimum number of pilots (OECD, 2016^[67]).

A port authority may also have an incentive to set or approve high tariffs for ports services if it is funded through the generated revenues; for example, in the Philippines the PPA regulates tariffs paid by port users for services such as cargo handling and benefits directly from any rate increase as it receives a percentage of service providers' revenues. This institutional set up may lead to conflicts of interest and possibly to excessive fees.⁵⁶

In certain member states, the incentive to raise prices is partially mitigated by regulation. One approach, used in Cambodia⁵⁷ and Viet Nam,⁵⁸ is to designate another authority, such as a ministry, to set rates. Another approach, which may complement the first one, is to establish a consultation or negotiation process between the service provider, such as towage services offered by the port or by a third party, and users. Under this process, the service provider would propose charges to port users and the final charges would take account of their feedback. This approach is followed, for instance, in Indonesia and Singapore.

Box 4.3. The importance of independent regulation

The OECD report, *The Governance of Regulators*, explains that independence is of utmost importance for the quality of regulatory decisions: “Establishing the regulator with a degree of independence (both from those it regulates and from government) can provide greater confidence and trust that regulatory decisions are made with integrity” (OECD, 2014, p. 47^[68]). It is important to create an independent and structurally separate body.

The 2012 OECD Recommendation of the Council on Regulatory Policy and Governance explains that “independent regulatory agencies should be considered in situations where:

- There is a need for the regulatory agency to be independent in order to maintain public confidence.
- Both the government and private entities are regulated under the same framework and competitive neutrality is therefore required.
- The decisions of regulatory agencies can have significant economic impacts on regulated parties and there is a need to protect the agency’s impartiality” (OECD, 2012^[69]).

Is there a need to create an independent regulator of ports?

An independent regulator is set up as part of certain port-reform projects with functions including monitoring pricing and investment, and preventing anticompetitive behaviour (UNCTAD, 2016^[57]). UNCTAD found that seven of the 21 ports in Angola, Benin, Dominican Republic, Ghana, Indonesia, Namibia, Peru, the Philippines, and Tanzania were “subject to market control by an independent regulator” (UNCTAD, 2016^[57]). The study assumed that the remaining ports were regulated in a similar way by a government department.

The World Bank explains that a port-sector regulator can be useful where there is little or no interport competition and port operators are able to use their market power to raise prices. Such situations could enable anticompetitive conduct: “The establishment of a port sector regulator should only be effected in the event of serious threats to free competition within the port. It should preferably have the character of an arbitrator instead of a court of law, and be accepted by the port community as being independent” (World Bank, 2007, p. 89^[56]).

An independent regulator may be useful during the initial stages of liberalisation, during which both public and private port operators may compete, in order to ensure effective and fair competition (World Bank, 2007, p. 102^[56]). During liberalisation, the government may otherwise own and regulate the regulated incumbent and new entrants.

Recommendation. The OECD recommends a clear separation between the regulatory and operational functions of port authorities to avoid real or perceived conflicts of interest.

4.5. Provision of pilotage services by port authorities

Description of obstacle. Pilotage is a service provided by a pilot with local knowledge of the specific port and skills that enable him or her to conduct the navigation and manoeuvring of the vessel within the harbour or in the area around it. Generally, pilotage is compulsory in the port area for safety reasons. Unsafe navigation inside a port poses risks for passengers and other port users, cargo, and port infrastructure (which can interrupt the functioning of a port) and can result in high environmental costs to the wider population. This is particularly true for vessels carrying dangerous cargo.

Around the world, pilotage services are generally offered by:

1. governments (either federal or local)
2. government-controlled entities, such as a port authority or other public entity
3. the private sector.

Each of these models for the provision of pilotage services can be implemented differently and hybrid models are often in place. For instance, the different responsibilities of a government and the private sector can be allocated in a variety of ways. Generally, different models depend on which party assumes any commercial risks (such as those posed by fluctuations in service demand or costs), different models of day-to-day operations, and the ownership of assets such as ships and docks. More specifically, ten models can be identified for the provision of pilotage services, as shown in Table 4.2.

Table 4.2. Overview of models for the provision of pilotage services

| | Description |
|----------|---|
| Model 1 | Pilotage service delivered by federal government |
| Model 2 | Pilotage service delivered by state-owned enterprise (SOE) |
| Model 3 | Pilotage service delivered by municipal, regional or provincial government |
| Model 4 | Pilotage service delivered by stand-alone entity |
| Model 5 | Pilotage service delivered by port model |
| Model 6 | Pilotage service delivered by licensed pilots part of a regulated monopoly |
| Model 7 | Pilotage service delivered by licensed pilots joined to regulated competing organisations |
| Model 8 | Pilotage service delivered by corporation part of a regulated monopoly |
| Model 9 | Pilotage service delivered by corporation with regulated competition |
| Model 10 | Pilotage service delivered by shipowners |

Source: Study commissioned by the Government of Canada as part of the “Pilotage Act Review” (January 2018), www.tc.gc.ca/en/reviews/international-comparisons.html.

Models six and seven are the most common around the world. In model six, governments have no operating responsibilities and the service is provided through a regulated monopoly by licensed pilots with incentives to improve their service. In model seven, there is some form of regulated competition *within* the market to stimulate innovation, efficiency gains and ultimately lower user costs.

In ASEAN, services are provided either by a state-controlled entity, such as PSA Marine in Singapore, or directly by the government through a public authority, such as in Indonesia, where the port authority can delegate pilotage services only if it is not providing the services itself.

In practice, the private sector is not involved at any stage with the service being directly provided by a public entity, or a monopolist other than the public authority is tasked with providing pilotage services without a competitive process. The OECD has found that potential private-sector interest in providing pilotage services has not been assessed.

Harm to competition. Data show that in certain ASEAN countries, service users currently have the perception that port charges are elevated or extremely elevated (Table 4.3). This may be due to several reasons, including a lack of competition.

The OECD considers the direct and exclusive provision of pilotage services by port authorities prevents the entry of any potential competitors, even when there is private sector interest. Without a competitive process to select the most efficient players, public monopolies may result in cost inefficiencies and lack of

innovation. Furthermore, the provision of pilotage service through such a monopoly without any competition *for* the market may result in high prices due to the extraction of monopoly rents.

Table 4.3. Logistics professionals and port charges in their own countries, 2018

| Country | Percentage who consider port charges high or very high |
|-------------------|--|
| Brunei Darussalam | .. |
| Cambodia | .. |
| Indonesia | 83 |
| Lao PDR | .. |
| Malaysia | 25 |
| Myanmar | 39 |
| Philippines | 25 |
| Singapore | 25 |
| Thailand | .. |
| Viet Nam | 40 |

Note: Data are based on a survey of logistics professionals on the logistics environment in their own country. Regarding the level of fees and charges, surveyed logistics professional answered the question about whether, compared to their experience of international logistics, port charges were high or very high.

Source: World Bank, https://lpi.worldbank.org/domestic/environment_institutions/2018/C/VNM#chartarea (accessed on 21 October 2020).

In certain member states, even when there is a private monopolist provider of pilotage services, public authorities maintain the ability to employ pilots and provide the service themselves, for example, when service providers do not properly discharge their obligation. In practice, this possibility introduces a form of competitive constraint on the monopolist service provider.

Although this possibility introduces a competitive constraint on the monopolist's price and service offering, the OECD considers that such competitive pressure can only alleviate to a limited extent the effects of monopolist pilotage service provider.⁵⁹ Indeed, if public authorities have not directly provided any pilotage service themselves for a long time, the costs at which they could provide the service might be significantly above those of the incumbent, thus limiting the extent of this competitive pressure.

In contrast, the OECD considers that competitive tendering would have several advantages, including:

1. a level of competition *for* the market, while addressing safety concerns that could arise from competition *in* the market
2. the provision and maintenance of choice to contracting authorities to optimise cost-effective service delivery
3. absent quality standards and associated enforcement mechanism already set out in regulations, a competitive tendering process would grant the possibility of imposing penalties for failure to maintain services or for non-compliance with service quality requirements established beforehand at the tender stage (which would not be possible in a situation where pilotage services are directly provided by the port authority).

Even when a market is small and only has room for a single service provider, a tendering model could be an option to create a viable competition *for* the market. In a 2012 opinion,⁶⁰ the Italian Competition Authority (AGCM) highlighted that the competition principles should generally govern the provision of technical and nautical services, while legal monopolies should only be limited to situations where they are “absolutely indispensable.” Safety reasons cannot a priori justify the exclusion of any competition mechanism in the provision of port services: “the objective of guaranteeing safety is not necessarily in conflict with

competition among firms, nor with certain institutional settings that introduce the same efficiency incentives as those of a free market.” If there is market failure to justify a legal monopoly regime and exclude competition, authorities should consider whether competition for the market is possible in order to maximise efficiency and reduce tariffs, while ensuring safety. In any case, this possibility must be assessed on a case-by-case basis rather than excluding any form of competition a priori. In the AGCM’s view, if competition for the market is preferred, open tender procedures should be regularly held.

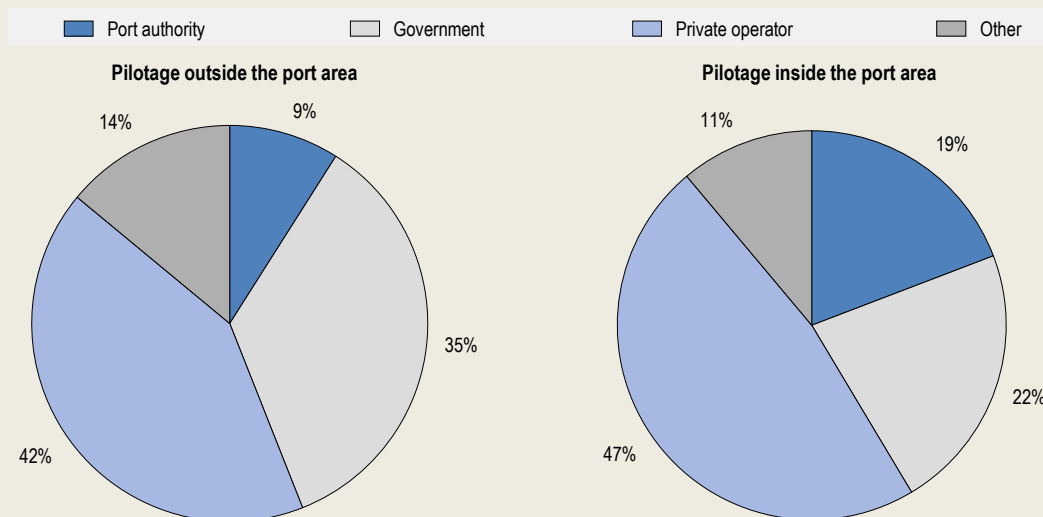
The OECD acknowledges that the market for the provision of pilotage services has significant barriers to entry that could potentially limit the interest in any tender process. However, such barriers to entry can be overcome. For example, if the highly specialised nature of pilotage can result in the lack of any operator with the necessary capacity to offer these services, the OECD considers that any new operator might need a significant amount of time before it achieves the necessary capacity to perform pilotage services. Port authorities can overcome this potential issue by commencing a tender process well before the services are required.

Box 4.4 shows that the most common method of providing pilotage services in the majority of EU ports is through private operators.

Box 4.4. Pilotage service providers in certain EU countries

In European Union ports, the operation of the main port services is mostly in private hands. Although under significant public influence, the charts below show that the provision of pilotage services by private operators is the most common model in EU ports both inside (47%) and outside (42%) the port area.

Figure 4.2. Pilotage outside and inside the port area



Source: European Sea Ports Organisation (ESPO), Trends in EU Ports Governance 2016, [www.espo.be/media/espopublications/Trends in EU ports governance 2016 FINAL VERSION.pdf](http://www.espo.be/media/espopublications/Trends_in_EU_ports_governance_2016_FINAL_VERSION.pdf), p. 11.

Recommendation. The OECD has two recommendations.

1. Member states should separate regulatory and service-delivery functions.
2. Direct provision by port authorities should be limited to cases when the private sector shows no manifest interest in providing a service due to lack of economic viability or when the authority does not have the capacity to run tenders. The private sector's lack of interest should be re-evaluated on a regular basis, in order to make sure that direct provision is not unduly restricting entry. If there is private sector interest, member states should create appropriate legal framework so that piloting services are tendered based on fair, transparent and non-discriminatory terms that guarantee competition for the market, consistently with OECD recommendation under Section 4.3.

4.6. Price regulation

Description of obstacle. Traditional price regulation is often used in the ports sector, for example, for port services. The various country competition assessment reviews identified several types of price regulation, including maximum prices; set price ranges (minimum and maximum prices); and specified fixed prices. Price regulation can be implemented in a number of ways, including through clear procedures set out in legislation or guidelines; official decisions or price approvals by nominated bodies; informal guidelines at the discretion of the sector regulator; or as part of the licencing process.

Maximum prices. In some ports, service providers can charge rates up to a maximum amount. These can be general rates or set specifically by a port operator or service provider. For example, in Thailand, maximum rates are used for new ports: an operator wishing to run a private port submits a port-pricing plan to the Marine Department. It is first assessed by the Merchant Marine Supervising Division, a specific unit within the Marine Department at the Ministry of Transport, then forwarded to the director-general of the Marine Department before prices are finally approved by the Ministry of Transport. Once approved, the port operator cannot charge more than the rates declared in its submission and can only propose new tariffs when applying for a licence renewal.

Minimum and maximum rates. Port operators may also charge rates within a set range. This regime prevents them from charging less than the minimum amount and more than the maximum, but within this range, prices are not fixed giving operators a certain flexibility. In Viet Nam, for example, there are government-set maximum and minimum tariffs for port charges and services such as pilotage and towage services; charges for using public infrastructure, such as bridges, berths and anchors; and for loading and unloading services. Port operators can choose to raise or reduce tariffs within this maximum-minimum range.

Fixed prices or pricing policies and principles. Setting prices involves the imposition of specified tariffs that a provider cannot change. Specifying pricing policies or principles, however, means that the authority sets out how the provider calculates its tariffs, and the factors it must consider and those it cannot. When the port authority in Brunei Darussalam, for example, grants a licence for goods handling and storage, it imposes specific tariffs or sets the pricing policies and principles, "with reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factors".⁶¹ New tariffs are recommended by a committee made of different authorities and departments pursuant to Section 11 of the Marine and Port Authority of Brunei Darussalam Order (MPABD Order), which are then endorsed by the board of directors of the Marine and Port Authority of Brunei Darussalam, before being submitted to the Ministry of Finance and Economy (MOFE) for further consideration and approval.

The OECD also highlights the importance of separation of regulatory and operational functions of port authorities (see Section 4.4) to address possible conflicts of interest and ensure independence and transparency in the calculation of tariffs.

Harm to competition. These examples of price regulation in the provision of port charges and port services may limit operators' ability to set their prices and prevent them from competing on price. This can lead to inefficient outcomes as prices do not adjust to supply and demand and can alter the competitive structure of a given product or market. As such, price regulation should be used only in exceptional circumstances where there is market failure, for example, when a firm controls an asset that is a natural monopoly, preventing such operators from taking advantage of their position. In most other circumstances, minimum or maximum prices may harm consumers, firms, and productivity.

In particular, when minimum prices for commercial services are set above what the market would have set, consumers pay higher prices while consuming less, and can be worse off than without government intervention. Moreover, higher prices keep inefficient, high-cost suppliers in the market, which may result in excess supply (with more output than real demand), preventing a more efficient reallocation of resources. Finally, minimum prices dampen competition between firms and prevent more efficient firms from innovating or increasing productivity to offer lower prices and increased quality to consumers in order to capture market share. However, minimum tariffs for port fees to cover public infrastructure costs could be justified to make sure that public investment costs are recovered, which is increasingly challenging in the oligopsony market situation that characterises liner shipping making it possible for liner companies – or their consortia – to play off ports against each other.

Beyond their distortionary impacts, minimum prices can be challenging for governments to put in place. They are often set with the objective of ensuring that suppliers cover their costs and achieve a reasonable rate of return. This process is not straightforward, however, and assumptions regarding costs can be crucial; for example, if the government assumes that the relevant costs are those of an inefficient supplier, minimum prices might be set too high. In practice, price control involves complex exercises that model variables such as future revenues and costs over time. In the absence of a thorough analysis (which is very difficult and costly to undertake), prices are unlikely to be set at a level encouraging efficiency, and may result in excessive consumer harm.

Maximum prices can similarly lead to significant problems in market functioning. In practice, a maximum price can act as a focal point for firms, limiting price competition since firms will seek to charge a price as close as possible to this price. It may lead to consumer demand outstripping supply, making shortages more likely. Further, firms that would have been able to compete in an efficient market may be forced to exit if they are unable to earn a sufficient return to cover their costs. It is therefore important that maximum prices enable operators to recover their costs, including a reasonable rate of return. However, this form of regulation does protect consumers from excessive pricing and allows some form of competition as operators can grant discounts.

While pricing regulation occurs in several sectors in OECD countries, best practice suggests that it should be limited to natural monopolies or other exceptional situations where there is a lack of competing alternatives. The OECD identified several examples of price regulation in ASEAN.

1. Fixed or maximum rates that seek to protect port users from excessive prices.
2. Minimum rates are generally introduced to help port operators raise sufficient funds to increase service quality through investment in advanced technology and infrastructure upgrades. For example, in Viet Nam, minimum port tariffs were introduced to help providers recoup their investments, as a response to extremely vigorous price competition. The World Bank confirmed that: "Vietnam's Ministry of Transport introduced minimum port tariffs – so-called floor rates – for services in which competition among terminal operators would be viable. This policy is aimed to help private and state operators recoup some of their heavy investment in cargo terminal infrastructure at Cai Mep Port, where overcapacity is putting operator's [sic] sustainability at risk. [...] In August 2014, following a steep decline in prices, Vietnam's Ministry of Transport set a mandatory two-year minimum handling rate of \$46 per 20-foot loaded container to prevent prices from spiralling even lower, according to Bloomberg News (2014). While this measure limits the

potential fiscal implications of losses incurred by state-run operators, it reduces competitive pressure among port operators and could harm competitiveness over the long term.” (World Bank, 2018, p. 39^[60]).

Box 4.5. Price regulation in ports

The 2018 *OECD Competition Assessment Reviews: Portugal* found that port tariffs in the country were subject to multiple forms of price controls, depending on the regime under which the port service was provided, whether by port authorities or private operators. The report recommended removing the provisions on fee-setting criteria, discounts and exemptions. The criteria used, for example, were not considered to be based on transparent, cost-oriented and non-discriminatory principles and so could have the effect of distorting competition.

The World Bank’s *Port Reform Toolkit* states that to respond to market competition: “operators should have the freedom to set their own prices. The operator should be expected to negotiate periodically with its customers and may provide quantum rebates in return for increased throughput. Only in a situation when the operator is in a monopoly position might there be a reason for government interference in tariff setting [...] the Operator shall, however, at all times have the right to increase or decrease such charges and modify the relevant rules and regulations, in accordance with sound business practices.”

Source: (OECD, 2018^[49]) (World Bank, 2007^[56]).

Recommendation. In addition to specific recommendations tailored to the relevant legislative provisions made in the individual country reports, the OECD recommends only allowing the regulation of maximum prices for commercial services, not minimum prices, in cases where competition is limited. Maximum prices should be regularly revised to ensure they are in line with market dynamics and provide the necessary incentives for innovation and investment.

5 Other logistics sectors

This section discusses some of the common barriers to competition identified across ASEAN member states in freight transport by rail, freight forwarding and warehousing. In particular, it covers:

1. vertical integration and third-party access in rail
2. uneven implementation of the ASEAN multimodal transport framework
3. surface requirements for warehouses.

Additional recommendations are set out in individual country competition assessment reviews. This chapter does not cover the issues identified in those reports concerning the small-parcel delivery services market at ASEAN regional level and the main barriers identified in this sector, namely, the differential treatment of SOEs and their competitors. That is the focus of a separate report entitled *OECD Competitive Neutrality Reviews: Small-Parcel Delivery Services in ASEAN*.

5.1. Freight transport by rail

Historically most ASEAN member states have not focused on promoting and developing rail transport and many do not have a significant rail network (ERIA Study Team, 2010^[70]). The development of the sector would require more extensive infrastructure to transport goods both domestically and across ASEAN. However, some regulatory changes could improve the use of existing infrastructure, as well as market efficiency, by allowing new entrants to compete with incumbent operators. While railway infrastructure is a natural monopoly, characterised by significant fixed and sunk costs, it is feasible for competing freight transportation services using that infrastructure to operate in the market.

5.1.1. Vertical integration in rail freight transport

Description of obstacle. Certain member states have taken steps to allow new entrants into rail freight transport. At the same time, the regulatory framework typically has not been adapted to make competition effective. For example, the ASEAN Competition Assessment Reviews looked at various country examples where a single entity was both the operator of the network and the provider of services:

1. **Indonesia.** Kereta Api Indonesia (KAI) is the sole operator for railroad infrastructure and facilities. In addition, the operator provides freight services downstream. Other rail freight service providers may enter the market, if they build their own infrastructure and satisfy legal requirements. As discussed below, there is no framework requiring KAI to allow third-party access to its infrastructure.
2. **Thailand.** State Railway of Thailand (SRT) is the current operator of the railway infrastructure, running all of Thailand's national rail lines, as well as the only train-service operator, both for freight and passengers. This means Thailand has a vertical integration model in which the same company runs both infrastructure and transport services. The OECD understands that the government is currently in discussions over a new Rail Transport Act that would open the market to private operators. Pursuant to the draft act, private operators will be entitled to apply for a rail transport service licence based on clear, transparent and non-discriminatory conditions.

3. **Viet Nam.** Pursuant to a 2003 decision by the prime minister,⁶² a holding company Vietnam Railways Corporation (VRC) is responsible for managing rail infrastructure and for providing transport services by rail. This vertical integration remains in place despite the Railway Law of 2017 providing for separation; this law remains unimplemented, but would separate the infrastructure and transport businesses.

Harm to competition. Vertically integrated companies, which act as both operators of a rail network and freight transport service providers may have an incentive either to foreclose competitors by denying them access to an essential input or to favour their own freight transport arm. These companies may do so, for instance, by preventing potential rail transport service providers from using their railway infrastructure. In a less evidently restrictive manner, the vertically integrated company may charge higher prices to its competitors than to its own service provider or degrade service quality provided to competitors through, for example, track allocation or energy-supply access.

To address these concerns, it is standard practice to require the vertically integrated incumbent to allow downstream competitors access to its infrastructure at regulated prices and conditions (Box 5.2).⁶³ To strengthen the effectiveness of these measures, several models exist in OECD countries concerning separation of infrastructure and cargo transport, spanning from accounting separation to full ownership separation (Box 5.1).

In ASEAN member states where no sectoral reform has been undertaken, such vertically integrated public companies are likely a legacy of when management of the rail network and rail transport services were both carried out by the public authority. In other member states, such as Indonesia, where the regulatory framework provides for the licensing of new entrants in the railways market, the vertically integrated incumbent continues to act as both the operator of infrastructure and provider of freight services, as planned reform has not been implemented. A similar situation exists in Viet Nam, where a new legal framework, providing for separation exists but has yet to be implemented.

Box 5.1. Separation models in OECD countries

On 26 April 2001, the OECD Council adopted a recommendation concerning Structural Separation in Regulated Industries. It recommends that members consider the pros and cons of structural separation – also known as ownership separation – of certain regulated firms,⁶⁴ balancing the benefits and costs of structural measures against the benefits and costs of behavioural measures (OECD, 2001^[71]). Accounting and functional separation are considered “forms of partial separation” and are considered potentially less effective than structural policies, but “play a useful and important role in supporting certain policies such as access regulation”.

In the European Union, in 26 member states, a single vertically integrated company had historically been responsible for managing rail infrastructure and providing rail transport services (European Court of Auditors, 2016, p. 32^[72]).

Directive No. 91/440/EEC on the development of railways, is the main measure taken to increase competitiveness in rail transport. It distinguishes between the provision of transport services and the operation of infrastructure, identifying the necessity for these two areas to be managed separately in order to facilitate further railway development and efficiency within the EU. The Directive covers four areas of policy in particular: 1) independence of railway undertakings in their management, administration and internal control over administrative, economic and accounting matters, so that assets, budgets and accounts are separate from those of the state; 2) separation of infrastructure management and transport operations; 3) reduction of debt and improvement of finances; and 4) access

rights to railway infrastructure. These principles have been implemented through different models across EU countries.

Privatisation or ownership separation may solve access and discrimination problems, and might accelerate investment in infrastructure. Several models exist in OECD countries, going from full ownership separation to functional separation. Some countries such as Sweden, have implemented full structural separation, while other countries, such as Germany and Italy, have legislated for functional separation by organising infrastructure and operations into separate subsidiaries with a holding company structure. For example, in June 2000, Italian state-owned monopoly Ferrovie dello Stato Italiane (FS) was transformed into a holding company, comprising an infrastructure manager (Rete Ferroviaria Italiana) and an operator responsible for freight and passenger services (Trenitalia).

In Sweden, railway infrastructure and operations were separated in 1988. A government agency, the Swedish Rail Administration (now the Swedish Transport Administration) became responsible for infrastructure and railway transport became the responsibility of a public-service enterprise, Statens Järnvägar (SJ). In 1996, competition was allowed in freight rail transport operations (OECD, 2006, p. 42^[73]) (OECD, 2012, pp. 102-104^[74]).

Evidence on the impact of railway sector reform, including separation, is mixed. Post liberalisation, the UNECE notes that the EU rail freight market “remains heavily concentrated and characterized by a low number of newcomers and the persistence of large market shares of incumbent operators” (UNECE, 2018, p. 40^[75]). In 2017, in the EU, the market share of competitors in the rail freight transport market was “higher than 40 percent in Sweden, the UK, Bulgaria, Romania, Italy, and the Netherlands” and in “all but nine member States (Croatia, Finland, Ireland, Greece, Lithuania, Luxembourg, Portugal, Slovakia and Slovenia), the market share of competitors is in a range of between 20 per cent and 55 per cent” (UNECE, 2018, p. 43^[75]). As the UNECE report explains, some authors find that increased levels of separation and privatisation are not associated with lower prices, mainly because state-owned operators can charge subsidised railway fares. However, other studies conclude that there have been improvements in efficiency and that customer satisfaction and quality have improved following the opening of the railway industry (UNECE, 2018, pp. 53,54^[75]).

Source: (European Court of Auditors, 2016, p. 32^[72]) (UNECE, 2018^[75]) (OECD, 2006, p. 42^[73]) (OECD, 2012, pp. 102-104^[74]).

Recommendations. The OECD has two recommendations.

1. Implement plans for reform of the railway sector.
2. Initiate regulatory reforms that can foster competition in freight transport services by railway. This could involve some form of separation between infrastructure management and rail freight transport service operations. This could take the form of accounting separation through separate accounts for the infrastructure and the freight businesses; functional separation by creating separate entities under the same ownership; or ownership separation.

In addition, and as discussed in Section 5.1.2, a suitable regulatory framework for third-party access should be introduced.

5.1.2. Third-party access

Description of obstacle. In certain member states, such as in Indonesia⁶⁵ and Myanmar, private companies can enter the rail freight market and operate alongside the vertically integrated incumbent. To do so, these companies must obtain a licence and either build their own infrastructure or negotiate with the incumbent to use existing tracks. Subject to meeting stipulated requirements, new entrants have a right to build infrastructure, but as this requires significant investment that is inefficient to duplicate, potential

entrants might prefer to use existing tracks. The OECD understands, however, that in these member states, access to existing tracks is difficult for new entrants as the vertically integrated incumbent controls the infrastructure and there are no clear rules for third-party access.⁶⁶ Consequently, in these member states, the vertically integrated incumbent retains an exclusive right to operate and control the existing railway infrastructure, with no obligation to allow access to infrastructure. This prevents other market players from accessing the infrastructure and limits market access. According to stakeholders, it can be difficult to negotiate with incumbents the use of the network on a voluntary basis and this difficulty is exacerbated by the fact that the incumbent is vertically integrated.

Harm to competition. The difficulties in obtaining access to the existing infrastructure controlled by the competing incumbent may deter new entry as the alternative option – constructing infrastructure – may not be viable.

The incumbent firm has an incentive to prevent potential competitors from offering freight transportation services. Even if it were to negotiate access agreements with its competitors, the charges for access and for ancillary services may still have the effect of disadvantaging competitors. This incentive to exclude or apply discriminatory conditions to competitors may prevent other market players from accessing infrastructure and from providing freight services downstream in competition with vertically integrated firms' services.

In order to make entry viable, a number of jurisdictions impose a requirement on the infrastructure provider to allow third-party access on regulated terms (Box 5.2). Third party access goes hand in hand with separation reforms, as set out in 5.1.1. Typically, in order to make the requirement on third-party access operational and to mitigate the incumbent's market power, a sectoral regulator or ministerial department has broad powers to intervene in the market.

The EU liberalisation reforms required member states to have national regulatory bodies independent of infrastructure managers, charging bodies, allocation bodies or applicants to ensure fair and non-discriminatory access to their rail networks (European Court of Auditors, 2016, p. 35^[72]). The regulator has a monitoring function, acts as an appeal body for complaints, and supervises negotiations between parties, intervening where necessary (European Commission, 2020^[76]).

Recommendations. The OECD has two complementary recommendations.

1. Legislate the requirement to grant third-party access to railway infrastructure to ensure access for new entrants on transparent and non-discriminatory terms.
2. In order to make this requirement effective, ensure that the regulator or the relevant ministerial department has broad powers to intervene in the market, for example, allow it to set and enforce access charges and conditions.

Box 5.2. Third-party access in the railway sector in the EU

Three of the most common models in the railway sector include 1) granting concessions to monopolistic operators; 2) tender concessions for sub-networks; and 3) open-access models (UNECE, 2018, p. 39^[75]). The second model allows for competition *for* the market, while the third model allows competition *in* the market. The open-access model is present in all EU countries allowing competition in the market for freight services (UNECE, 2018, p. 39^[75]). In addition to the independence of the infrastructure manager, as noted in Box 5.1, other considerations exist for successful third-party access.

Fair, non-discriminatory and transparent access. The incumbent operator is subject to a requirement to allow third-party access to infrastructure. This requirement should be made operational by setting clear conditions to access facilities or services. In the *OECD Competition Assessment Reviews: Romania*, the OECD identified unclear access conditions, notably through the use of phrases such as “alternative options” and “viable alternative” that were ill-defined and left significant discretion to the infrastructure manager to deny third-party access to the network. The OECD considered this could lead to discrimination and could favour the incumbent operator (OECD, 2016, pp. 164-165^[67]).

Infrastructure charges

In the EU, infrastructure managers are required to set charges in accordance with EU Regulation No. 2015/909, which establishes that charges should reflect the direct costs incurred from operating the train service.¹ The regulation sets out how direct costs should be calculated and cost categories considered. The infrastructure manager can only include costs that it can “objectively and robustly demonstrate” are “triggered directly by the operation of the train service”, for example infrastructure subject to wear and tear by train-service operators (European Commission, 2020^[77]).⁶⁷

Post-liberalisation access barriers

The European Court of Auditors identified several factors that could lead to discriminatory practices and weaken competition, despite liberalisation, including preferential access for the incumbent freight operator to terminals and point infrastructure and train path allocation. New entrants could also face barriers in obtaining rolling stock given its high initial cost and maintenance charges, while incumbent operators may already have a large fleet and could own or partly own maintenance facilities (European Court of Auditors, 2016, p. 34^[72]).

Note: ¹ European Commission (12 June 2015), Commission Implementing Regulation (EU) 2015/99 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0909&from=EN>.

5.2. Freight forwarding and multimodal transport

Freight forwarders organise transportation of items on behalf of their customers, for instance by combining different modes of transport in order to better respond to customers’ needs. Their activities also include tracking inland transportation, preparation of shipping and export documents, booking cargo space, negotiating freight charges, freight consolidation, cargo insurance, and the filing of insurance claims. They can also provide additional ancillary activities, such as customs clearance or warehousing. Acting as intermediaries between cargo owners and transport service providers, freight forwarders do not usually own any transport assets or network and normally hire transportation capacity from third parties.

This section discusses how ASEAN has relatively successfully promoted the integration of different modes of transport and the current weaknesses of its policy initiatives, which would require further efforts of implementation at national level.

5.2.1. Implementation of the ASEAN Multimodal Transport Agreement

In November 2015, to encourage international trade among ASEAN countries and with third-party countries, all ASEAN member states signed the ASEAN Framework Agreement on Multimodal Transport (AFAMT) in order to develop and facilitate the transportation of goods performed with at least two different means of transport. AFAMT regulates transport documents (Articles 4-6), the cases (Articles 7-13) and extent (Articles 14-20) of an operator's liability, as well as the circumstances in which the consignor will be held liable (Article 21). Finally, the AFAMT regulates possible claims and jurisdictional issues. Implementation of AFAMT will minimise time lost at transshipment points and simplify administrative procedures, leading to cost savings and a more competitive logistics system (Zen et al., 2019^[54]).

To support its ratification and implementation, ASEAN developed the Implementation Framework of the ASEAN Framework Agreement on Multimodal Transport.⁶⁸ This framework presents the key activities essential for AFAMT's implementation, alongside timelines for each activity and future reviews. It also identifies the ASEAN Transit Transport Coordinating Board (TTCB) through the ASEAN Transport Facilitation Working Group (TFWG) as the competent body to co-ordinate and oversee the overall implementation of the measures.

Description of obstacle. Seven ASEAN member states have ratified the AFAMT, which has entered into force (Box 5.3 provides an example). However, Brunei Darussalam, Malaysia and Singapore have yet to ratify, however. Furthermore, although seven member states have ratified the agreement, some of them still need to enact national laws, regulations or guidelines to implement it.

Box 5.3. Thailand's Multimodal Transport Act

In 2005, Thailand enacted the Multimodal Transport Act B.E. 2548 (2005) in order to have single law governing shipments by different means of transport and provide more certainty as to the liability of multimodal transport operators (MTOs).

The act or MTA applies to all international transport of goods from their place of origin to destination and regulates many different aspects of multimodal transport.

1. **Conditions and registration to operate as an MTO.** Thailand provides for three types of MTOs: 1) Thai-registered companies under Section 39(1) of the MTA; 2) foreign-registered companies from those countries with which Thailand has an agreement, including ASEAN (Section 39(2) of the MTA); 3) foreign-registered companies in general under Section 39(3) of the MTA. All MTOs must register before they can operate, subject to financial penalties; Table 5.1 shows the most recent statistics on registration of MTOs under the MTA.
2. **Limitation periods for multimodal transport proceedings.** These must be commenced within nine months of the day on which an MTO delivered or should have delivered goods.
3. **Operator liability.** This is limited to the cost of the freight.

Table 5.1. Registration of MTOs under the Multimodal Transport Act

| | 2016 | 2017 | 2018 | 2019 | 2020 |
|--|------|------|------|------|------|
| Registration of MTOs under Section 39(1) | 46 | 117 | 72 | 28 | 27 |
| Registration of agents under Section 39(3) | 0 | 0 | 29 | 20 | 18 |

Note: Statistics are updated as of 31 July 2020.

Source: Marine Department, Multimodal Transport Act, B.E. 2548 (2005), https://asean.org/storage/2012/05/Thailand_Multimodal-Transport-Act-B-E-2548-Royal-Gazette.pdf.

Harm to competition. The lack of ratification and/or implementation of the AFAMT results in missed opportunities and efficiency gains for trade, companies and consumers.

Economic literature has highlighted the importance of multimodal transport connectivity for trade and its benefits for companies and consumers (Shepherd and Serafica, 2011^[78]). The expansion of a transportation network as a result of enhanced multimodal connectivity improves the efficiency of global supply chains by providing better links to supplies, inputs and final goods. Multimodal transport can help achieve these advantages, by combining different modes of transport so that each is used for the suitable length of the haul for minimising costs. According to some global estimates, each day saved when transporting goods leads to an average ad valorem tariff reduction of between approximately 0.4% and 1% for exports, and 0.8% and 1.5% for imports (Hummels et al., 2007^[79]). Furthermore, more efficient transport links can give manufacturers access to cheaper inputs, while international companies can explore potential complementary businesses in new areas. As highlighted in the World Bank's *World Development Report 2009: Reshaping Economic Geography*, in the short term reduced transport costs lead to countries trading more with distant areas, but in the long term reducing costs favours regional integration through increased trade with neighbouring countries (World Bank, 2009^[80]). The implementation of this agreement can also help support more resilient and sustainable Covid-19 recovery by facilitating freight transport across the region.⁶⁹

Recommendation. The OECD recommends that all member states ratify and fully implement the ASEAN Framework Agreement on Multimodal Transport into their respective national legal orders.

5.3. Warehousing

Warehousing encompasses the storage of goods either in general warehouses or in bonded warehouses (where dutiable goods may be stored, manipulated, or undergo manufacturing operations without payment of duties).

Warehousing operators usually need to obtain a licence to provide services to third parties. This section discusses a specific restrictive requirement laid down in the legislation on warehousing of certain ASEAN member states. As explained in the OECD Competition Assessment country reports, there are other issues related to land, however, that affect warehousing and have been noted in some countries in the region as hampering investment. In particular, in some ASEAN member states registering property can be lengthy and cumbersome.⁷⁰ Effective registration systems for land property rights can provide incentives to invest and as a result contribute to higher productivity and growth of this sector. Box 5.4 provides evidence of the economic benefits of effective land registration.

Box 5.4. Economic benefits of effective land registration and efficient administration systems

Land registers are used around the world to map, prove, and secure property and use rights. Registered property rights are necessary to support investment, productivity, and growth. For example, rising values and more efficient land use are often observed in economies with effective property registration systems. In Thailand, property values rose by 75% to 197% following a land-titling project that expanded property registration (Burns, 2002^[81]). In addition, formal property markets encourage employment and increase domestic stability, and owners with registered property titles are more likely to invest in the local economy.

The benefits of land registration extend beyond the private sector. For a government, having reliable, up-to-date information of land registries is essential for the correct assessment and collection of taxes. In Thailand, annual revenue from property and transfer taxes rose from USD 200 million in the 1980s

to USD 1.2 billion by 1995. A land-titling property project that began in the 1980s is credited as being a driver of this rise in revenue.

Evidence in a 2014 study by the World Bank on the economic impact of 20 years of land registration projects in Europe and Central Asia points to their high rates of return. The World Bank's experience in supporting land registration projects has shown that secure tenure and efficient land and property registration systems are important for economic growth. Improved income and increased assets for beneficiaries, as well as reduced costs, are the primary economic benefits accruing from land registration projects. In due course, these improvements are usually reflected in national accounts as economic growth. The World Bank estimates the short-term and long-term benefits to the economy of registering a property to be about USD 16. In other words, registering 1 million properties leads to an estimated economic benefit of USD 16 million in the target country.

Source: World Bank, "Registering Property: Why does property registration matter?", www.doingbusiness.org/en/data/exploretopics/registering-property/why-matters (accessed on 10 January 2021); World Bank (2014), "Economic Impact of 20 Years of ECA Land Registration Projects".

5.3.1. Surface requirements for warehouses

Description of obstacle. Certain member states impose specific requirements on warehousing operators for the location of their warehouses or their minimum surface.

1. In **Viet Nam**, bonded warehouses must be at least 5 000 m², including warehousing, storage yard and auxiliary works, of which the area specifically dedicated to warehousing should be no less than 1 000 m².⁷¹ Different requirements apply to bonded warehouses specialising in the storage of specific goods, for which the minimum area is 1 000 m² or the minimum storage volume is 1 000 m³.
2. In **Malaysia**, depending on the type of goods stored, public bonded warehouses must have a minimum space of between 1 860 m² to 4 645 m².⁷²

Harm to competition. By obliging companies to have a minimum surface irrespective of their actual business needs, these provisions increase entry and operational costs and may reduce companies' ability to enter the market and provide price-competitive services.

First, these minimum requirements may lead to high initial costs for new entrants and discourage entry, especially by SMEs that may otherwise choose a smaller business scale, and so reduce competitive pressure as fewer operators enter the market.

Second, the minimum surface requirement may also reduce existing firms' flexibility to adjust to market conditions and may increase their operational costs, given that their volumes may not justify such minimum surface. This may result in unnecessary burden and costs. Such higher costs may eventually lead to less competitive pressure and increased prices.

Third, certain operators may not have sufficient volumes on their own to justify such big warehouses and may choose to share warehouses with other operators. The legislation would effectively be setting a minimum scale for businesses, possibly leading to market concentration in certain areas.

The OECD was not able to identify the official policy objective of those provisions imposing minimum surface requirements for warehouses.

Recommendation. The OECD recommends removing general minimum surface requirements and leave the decision to market participants.

6 Horizontal findings on the logistics sector

Based on the analysis of legislation conducted in each ASEAN member state, this chapter covers some of the most frequent barriers applying horizontally across two or more logistics sub-sectors. Additional specific recommendations are set out in each individual country competition assessment review.

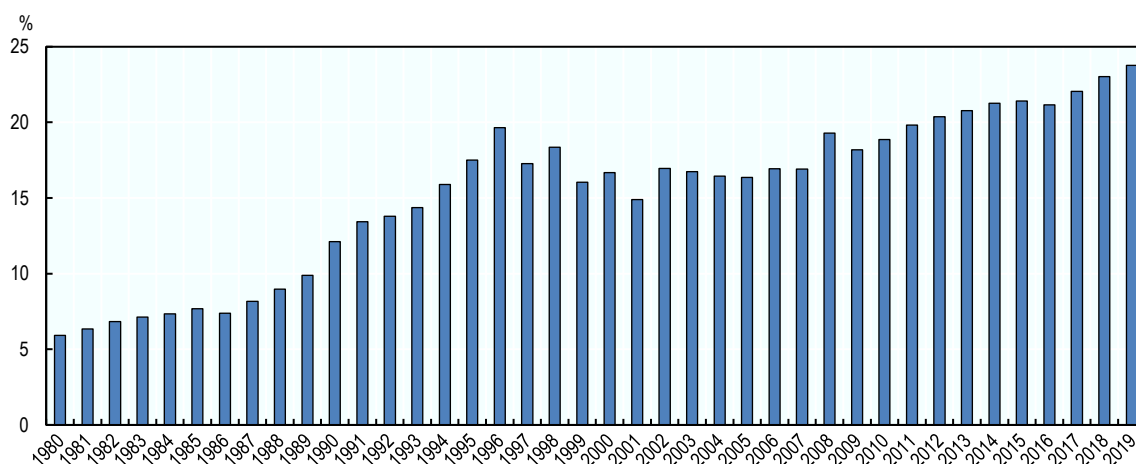
In particular, this chapter covers:

1. foreign direct investment (FDI) restrictions, including limitations on foreign ownership
2. minimum capital requirements
3. provisions limiting freedom to set prices, including guidelines setting out specific rates and price formulas, and authorities' powers to set prices
4. differential regulatory treatment benefitting SOEs and affecting a level playing field
5. provisions imposing compulsory membership in associations as a condition for operating in the market.

6.1. FDI restrictions

ASEAN member states have historically been successful in attracting FDI. As shown in Figure 6.1, since the Asian financial crisis in 1997, they have managed to maintain and even slightly increase their share of FDI. This despite increasing competition from emerging economies worldwide, which have started to embrace a more liberal approach and actively compete to attract FDI (OECD, 2019^[82]).

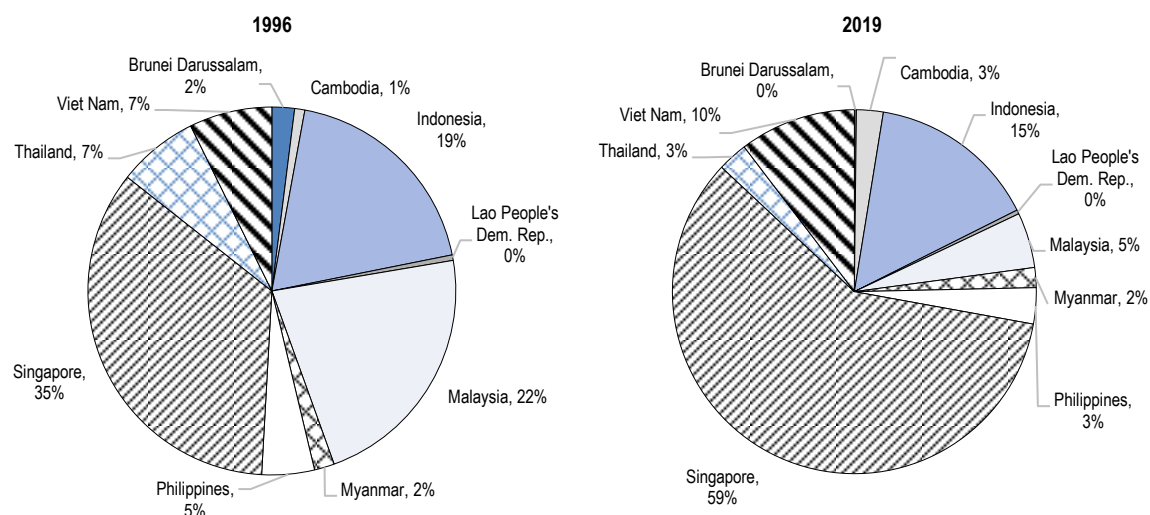
Figure 6.1. ASEAN share of FDI stock as percentage of developing country total, 1980-2019



Source: UNCTADStat, <http://unctadstat.unctad.org/wds/TableViewer/tableView.aspx> (accessed on 21 October 2020).

All member states have benefited from the growth of FDI inflows. Generally, their respective share of inward FDI has been relatively stable, with the exception of Singapore, which has sharply risen, and Malaysia, which has concomitantly decreased. ASEAN has attracted investments from a diverse number of countries, with the United States (15.2%), Japan (12.7%) and the EU (10.1%) representing the largest extra-ASEAN source of FDI inflows in 2019 (see Section 2.1 for more details). This diversification of the source countries is one of the traditional strengths of the region (OECD, 2019, p. 25^[82]).

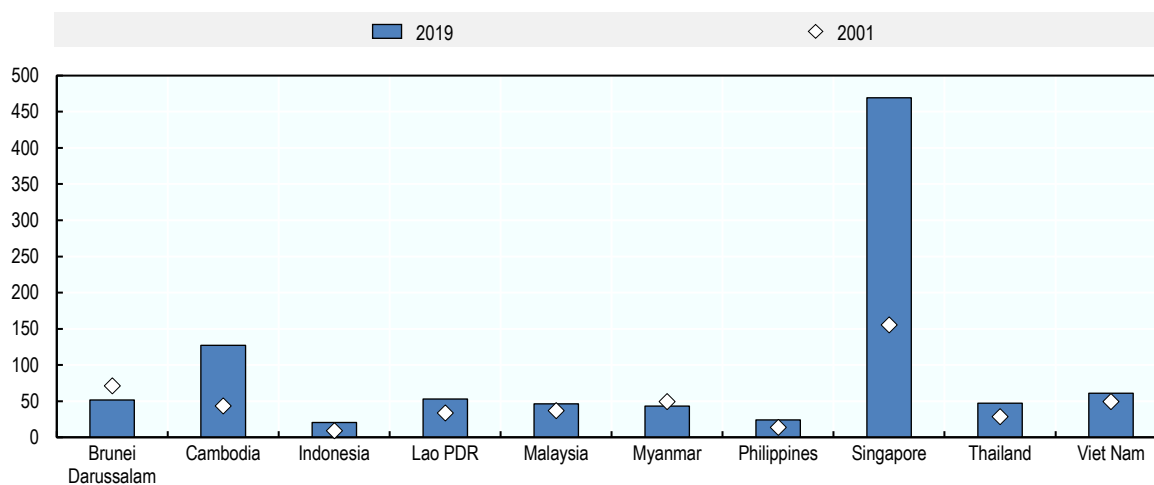
Figure 6.2. Shares of FDI distribution within ASEAN, 1996 and 2019



Source: UNCTADStat, <https://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx>.

The performance over time of each member state relative to the region gives an idea of which countries are providing a more suitable environment for investors. For individual economies, however, it is also important to look at the share of FDI relative to the size of the domestic market. This has increased in almost all member states, registering record levels in many member states in 2019 (Figure 6.3).

Figure 6.3. FDI as a percentage of GDP in ASEAN, 2001 and 2019

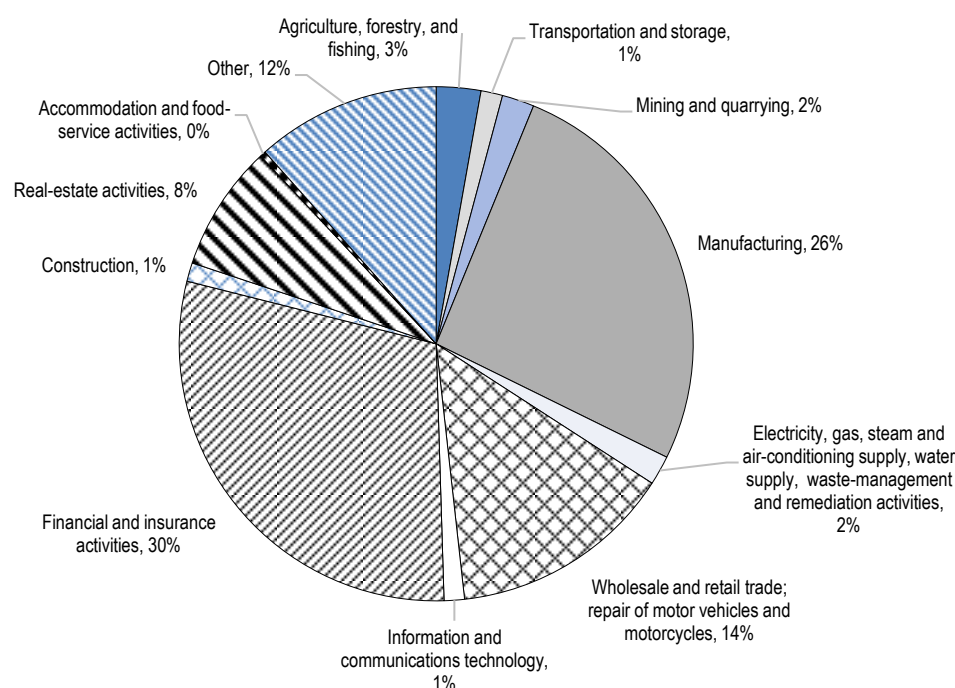


Source: UNCTADStat, <https://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx>.

Another important element is the share of FDI *within* and *from* the region. As noted in Section 2.1, in 2019, the total amount of intra-ASEAN FDI inflows reached USD 22.36 billion and accounted for about 14% of total inflows to the region (Figure 6.4).

When looking at specific economic sectors, for the period 2014 to 2019, financial and insurance activities attracted the highest percentage (29.4%) of FDI, followed by manufacturing activities (26.1%).⁷³ The transportation and storage sector accounted for almost 1.4% over the same period and reached its peak in 2018 at 2.4% of total inward FDI (for more specific data on FDI in the ASEAN transport and logistics sector, see Section 2.2).

Figure 6.4. Flows of inward FDI to ASEAN, by economic sector, 2014-19



Source: ASEANstatsDataPortal, “Flows of Inward Foreign Direct Investment (FDI) to ASEAN by Source Country and Economic Sectors (in million US\$)”, <https://data.aseanstats.org/fdi-by-sources-and-sectors>.

To promote intra-ASEAN investments in the services sector, member states have set ambitious goals for services integration and in 1995 signed the ASEAN Framework Agreement on Services (AFAS). Following this agreement, the 2007 ASEAN Economic Community (AEC) Blueprint included the goal of a free flow in services as the first pillar of a single market and production base. The objective of AFAS is 1) to eliminate “substantially all existing discriminatory measures and market access limitations amongst member States”, and 2) to prohibit “new or more discriminatory measures and market access limitations”.

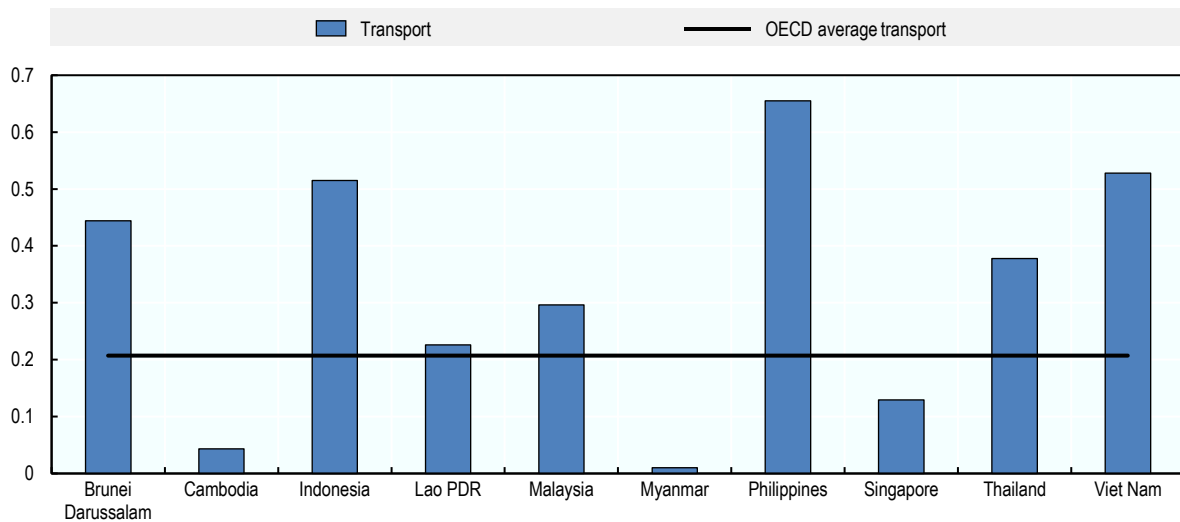
In relation to the logistics sector, which is a priority for integration,⁷⁴ AFAS prescribed 70% ASEAN equity participation in the sector by 2013, while allowing member states to have a 15% flexibility on these commitments. All other market-access limitations were required to be removed by 2015.

In October 2020, member states signed the ASEAN Trade in Services Agreement (ATISA), which affirms ASEAN’s commitment to free and open trade and regional economic integration and will supersede AFAS.⁷⁵ The agreement deepens the integration of the services sector by building upon AFAS. It also introduces a number of changes to the traditional AFAS approach by mandating member states to transition from existing schedules of commitments for which commitments do not apply unless a sector or

sub-sector is specifically *included* towards a schedule of non-conforming measures, which assumes that a sector falls within the liberalisation commitment, unless specifically *excluded*, and lists measures that run counter to the liberalisation commitments.

Description of obstacle. Despite liberalisation commitments included in AFAS for the logistics sector, ASEAN still shows lower levels of openness than OECD economies (Figure 6.5).

Figure 6.5. OECD FDI Regulatory Restrictiveness Index in the ASEAN transport sector, 2019



Note: Restrictions in the OECD FDI Regulatory Restrictiveness Index are evaluated on a 0 (open) to 1 (closed) scale. Data include all types of restrictions, namely: 1) foreign equity limitations; 2) discriminatory screening or approval mechanisms; 3) restrictions on the employment of foreigners as key personnel; and 4) other operational restrictions, such as those on capital repatriation or land ownership by foreign-owned enterprises.

Source: OECD FDI Regulatory Restrictiveness Index, <https://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#>.

Many member states have different types of barriers to FDI in place.

- **Limitations on foreign ownerships.** Typically these are imposed by limiting the share of companies' equity capital that non-nationals and residents are allowed to hold; they may also simply prohibit any foreign ownership. For example, in Indonesia and Lao PDR foreign participation in the road transport sector is limited to 49%.⁷⁶ In Thailand, foreigners can hold up to 49% share in courier companies, but above this threshold, require a foreign business licence; this can be difficult to obtain if Thai operators are already providing similar services. In the Philippines, freight transport and logistics are currently considered as public utilities and, as such, are subject to a 40% foreign-equity restriction. In Viet Nam, foreign investors cannot own more than 49% of a public company in so-called conditional sectors, such as logistics.
- **Constraints on the ability of foreign nationals to work in certain companies.** Certain member states restrict employment of foreign nationals, which investors may consider as a barrier to the expertise necessary to make their investment viable. For example, in Viet Nam, the total number of foreign seafarers working on a ship registered in Viet Nam cannot exceed a third of the ship's personnel, and the captain or first mate must be a Vietnamese citizen. Similarly, in Thailand, vessels used for marine commerce in territorial waters can only employ Thai-national crew, while Thai vessels used for international transport must employ Thai-national crew in certain proportions prescribed in the law.⁷⁷ In the Philippines, certain marine professions (such as deck officers and engine officers) are also reserved for nationals, while all executives and managing directors of a public utility must be Filipinos.⁷⁸

Since AFAS was signed in 1995, member states have carried out ten rounds of negotiations and concluded ten commitment packages submitted by each member state; these include the list of current restrictions to services liberalisation and future liberalisation efforts. The protocol to implement the tenth package of commitments was signed in November 2018 in Singapore⁷⁹ and includes several annexes with each member state's respective commitments in different sectors, including transport.⁸⁰

However, AFAS negotiations have often not managed to meet stipulated goals within approved timelines. They have also not brought about greater transparency and clarification to the liberalisation process, as demonstrated by the challenge of accessing the latest AFAS schedules and following their implementation status (OECD, 2019, p. 45_[82]).

Harm to competition. FDI is a tool for economic growth, especially in developing countries. It brings not only financial resources, but also increases in employment, improvements in human capital, and innovative businesses practices. More generally, it enables the transfer of technology and knowledge.

Empirical studies have shown a positive and strongly significant relationship between FDI net inflows and poverty reduction in ASEAN; this is especially true in less economically developed and low-income member states, since it can create jobs, develop local skills and stimulate technological progress (Ahmad et al., 2019_[83]). Another study confirmed a positive and significant, indirect impact of FDI on poverty reduction and economic growth in Viet Nam (Hung, 2005_[84]). Similarly, another study concluded that FDI has a positive impact on poverty reduction through the growth of exports in Indonesia (Tambunan, 2005_[85]).

These restrictions on FDI in the logistics sector may limit market entry, increase consumer prices with spill-over effects across the economy, reduce economic growth, job creation, transfer of know-how, and innovation. Given that a significant proportion of FDI in ASEAN is from other ASEAN countries, FDI restrictions may also run counter to the objective of deeper regional integration.

Box 6.1 discusses the approach of certain neighbouring countries to foreign-equity restrictions in the transport sector.

Box 6.1. Foreign-equity limitations in OECD Asia-Pacific countries

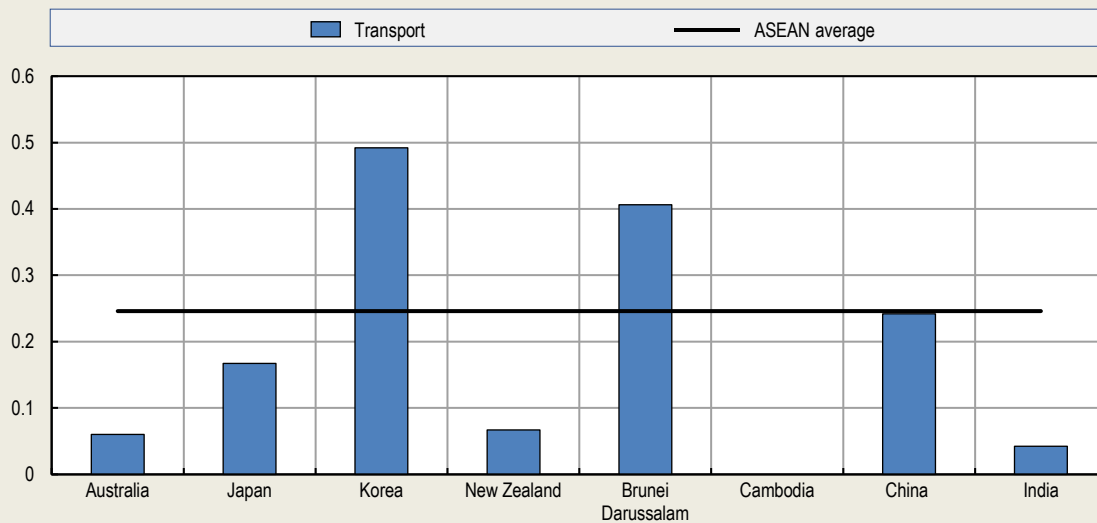
The OECD FDI Regulatory Restrictiveness Index (FDI Index) measures statutory restrictions on FDI across 22 economic sectors. It gauges the restrictiveness of a country's FDI rules by looking at the four main types of restrictions on FDI:

1. foreign-equity limitations
2. discriminatory screening or approval mechanisms
3. restrictions on the employment of foreigners as key personnel
4. other operational restrictions, such as those on capital repatriation or land ownership by foreign-owned enterprises.

Restrictions are evaluated using a scale from 0 (open) to 1 (closed).

Figure 6.6 shows the level of restrictiveness for foreign-equity limitations in the transport sector in four OECD countries (Australia, Japan, Korea and New Zealand) and two non-OECD countries (the People's Republic of China and India). Data show that, with the exception of Korea, the countries included in the OECD database have a lower level of restrictiveness.

Figure 6.6. FDI regulatory restrictiveness index in the transport sector, 2019



Note: Data refer only to foreign-equity barriers, not other FDI barriers, such as those on screening and approval of foreign investments or restrictions on key foreign personnel.

Source: OECD FDI Regulatory Restrictiveness Index, <https://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#>.

Looking at land transport more specifically, data are even more significant and show that while all the above-mentioned countries in the graph have no foreign-equity restrictions in place and thus score zero in surface transport, ASEAN member states show an overall average of 0.188 in the same sector.

In the maritime transport sector, with the exception of Korea, the above-mentioned OECD countries appear to be more open than ASEAN member states which register an average of 0.241 compared to zero in Australia, Japan and New Zealand, and 0.225 in the People's Republic of China.

Source: OECD FDI Regulatory Restrictiveness Index, <https://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#>.

Recommendation. Member states should enhance liberalisation efforts in the logistics sector, which remains partly off limits to foreign investors, holding back potential economy-wide productivity gains. The OECD recommends one of three options to address issues stemming from foreign-ownership limitations.

1. Progressively relax foreign-equity limits towards allowing 100% foreign ownership in the long term. If not already implemented, a first step may be to implement the AFAS target of 70% ASEAN ownership in entities providing logistics services, before extending it to non-ASEAN nationals.
2. Relax foreign-equity limits on a reciprocal basis for nationals of those countries that allow ASEAN nationals to hold 100% shares in a company.
3. Allow 100% ownership and apply the screening system of foreign-direct investments, when the investment goes beyond a certain value threshold. The screening system should be appropriately structured with clear upfront criteria and a right of appeal against the final decision. Furthermore, the screening system should be applied in limited situations, for instance to address certain public policy goals.

6.2. Minimum capital requirements

A number of countries impose requirements on the minimum amount of capital that businesses must deposit when they set up a company or apply for a licence. For example, paid-in minimum capital can be required to obtain an operating licence for specific businesses such as freight transportation services, postal services, and vehicle and ship registrations. As such, minimum capital requirements are a de facto condition for market entry. While the amount of minimum capital required is often a fixed amount, it can also be variable, such as a percentage of the value of a ship to be registered. Legislation in member states typically specifies how capital should be presented, such as through a bank deposit.

Description of obstacle. In the course of its country-specific competition assessment reviews, the OECD has identified several provisions imposing minimum capital requirements.

Minimum capital requirement for logistics operators.⁸¹ In Malaysia, operators applying for a licence to provide small-package delivery services need to justify a minimum paid-up capital ranging from about USD 24 140 (MYR 100 000) to USD 24 140 000 (MYR 100 million) depending on the type of licence. A similar restriction was also identified in Viet Nam, where a licence for domestic delivery services requires a minimum paid-up capital of about USD 86 770 (VND 2 billion) and USD 217 000 (VND 5 billion) for international delivery services. In the Philippines, all freight forwarders are subject to a minimum capital requirement according to the scope of their activities. International freight forwarders face a higher requirement of about USD 38 600 (PHP 2 million) than domestic freight forwarders (about USD 4 800 - PHP 250 000). In Thailand, multimodal transport operators (MTOs) need a minimum capital of XDR 80 000 (Special drawing rights), an amount set in the ASEAN Framework Agreement on Multimodal Transport.

Minimum capital requirement for foreign businesses. This is a minimum capital requirement imposed only upon foreign businesses, irrespective of their sector, and so including transport service providers. For instance, foreign investors in the Philippines face a minimum capital requirement of approximately USD 200 000,⁸² while in Thailand it is set at USD 64 400 (THB 2 million).⁸³ Domestic businesses providing transport services are not subject to this requirement.

Minimum capital requirement for ship registration. For instance, companies willing to register a ship in Brunei Darussalam are required to have a minimum paid-up capital equal to 10% of the ship's value or USD 366 510, i.e. BND 500 000, whichever is the lesser amount, with a minimum amount of USD 36 650 (i.e. BND 50 000). A similar requirement exists in Malaysia where minimum paid-up capital equal to 10% of the ship's value or about USD 241 400, i.e. MYR 1 million (whichever is higher) is required to register a ship with the Malaysia International Ship Registry. Ships registered with the domestic Malaysian registry (Traditional Ship Registry, TSR) do not have this capital requirement.

Box 6.2. Lao PDR's abolition of minimum capital requirements for certain foreign investors

In November 2017, the Lao Ministry of Industry and Commerce issued Notification No. 2633/Cabinet/MOIC to abolish minimum registered capital requirements for certain foreign investors seeking to register a company in Lao PDR. Previously, the 2009 Law on Investment Promotion (No 2/NA) had required foreign investors to produce a minimum capital of USD 115 000 (LAK 1 billion). These minimum capital requirements were more likely to affect less capital-intensive industries and particularly SMEs, which are common in many service sectors (OECD, 2017, p. 35^[86]).

The 2016 Law on Investment Promotion (No. 14/NA) had introduced some amendments to facilitate foreign investment, but did not amend directly the minimum capital requirements for foreign investors. The 2017 notification abolished minimum registered capital requirements for foreign investors, with the exception of business activities governed by other existing laws or regulations that may still require minimum registered capital.

This policy change is in line with the overall international trends mentioned in Box 6.3 on reducing minimum capital requirements and, combined with broader efforts on easing FDI restrictions, could deliver economy-wide benefits such as job creation, transfer of know-how and innovation, increasing productivity, and economic growth.

Source: Ministry of Industry and Commerce, Notification No. 2633/cabinet/MOIC, 7 November 2017, http://laoservicesportal.org.la/images/download/Announcement_2017121509125252.pdf.

The objective of minimum capital requirements is to ensure a firm's ability to fulfil its obligations and so protect consumers and creditors from risky and potentially insolvent businesses, and to ensure reliable and efficient services. Certain identified measures also aim to protect domestic operators against international competition.

Harm to competition. The restrictive minimum capital requirements identified by the OECD could harm competition in two main ways. First, where the required amount is excessive or disproportionate to the envisaged policy objective, it results in undue costs of entry for new business and discourages investment and market entry. This is particularly relevant for small- and medium-sized enterprises (SMEs) with relatively limited financial capabilities. Second, some minimum capital requirements identified are only applicable to foreign operators, yet the OECD has identified no policy objectives other than the protection of domestic operators against international competition. When domestic operators are not subject to the same requirements, this constitutes a higher barrier to entry for foreign operators, which reinforces the effect of any FDI restrictions (Section 6.1 on FDI restrictions).

Furthermore, studies have observed that capital requirements are not necessarily the best way to achieve a policy maker's objective of ensuring a firm can fulfil its obligations (Box 6.3). This may explain recent World Bank data that, since 2003, 58 countries have eliminated minimum capital requirements as a pre-condition to starting a business, while 48 have reduced the amount of capital required (World Bank, 2020^[34]). Several ASEAN countries have also eased, if not eliminated, their minimum capital requirements. For example, operators in Lao PDR wishing to provide multimodal transport services can provide a bank guarantee as an alternative to a cash deposit to comply with the relevant minimum capital requirement.⁸⁴

Box 6.3. International comparison on capital requirements

Many countries have general minimum paid-up capital requirements for specific types of company structure – say, limited liability companies or public limited-liability companies – rather than capital requirements specific to the company’s business sector.

In *Doing Business 2014*, in a chapter entitled “Why are minimum capital requirements a concern for entrepreneurs?”, the World Bank observed that, in general, minimum share capital is not an effective measure of a firm’s ability to fulfil its debt and client service obligations. In particular, share capital is a measure of the investment of a firm’s owners, not the assets available to cover debts and operating costs. In the report, the World Bank concluded that minimum capital requirements protect neither consumers nor investors and that they are associated with less access to financing for SMEs and a lower number of new companies in the formal sector. Creditors prefer to rely on objective assessments of companies’ commercial risks based on analysis of financial statements, business plans and references, as many other factors can affect a firm’s chances of facing insolvency. Moreover, such capital requirements are particularly inefficient if firms are allowed to withdraw deposited funds soon after incorporation.

Contrary to initial expectations, the World Bank report cites evidence that minimum capital requirements do not help the recovery of investments; indeed, they are negatively associated with creditor recovery rates. Credit recovery rates tend to be higher in economies without minimum capital requirements, which suggest that other alternative measures – such as efficient credit and collateral registries and enhanced corporate governance standards – are potentially more efficient in addressing such concerns. Moreover, capital requirements tend to diminish firms’ growth potential.

Minimum capital requirements have been found to be associated with higher levels of informality, and with firms operating without formal registrations for a longer period. In turn, informality results in an unlevel playing field in the market, increased difficulty in enforcing necessary regulations, and lost tax revenue for the state.

Commercial bank guarantees and insurance contracts are a better instrument for managing counterparty risks, and should therefore be the focus of any regulation seeking to promote a set minimum level of business certainty for users of road freight services.

In addition to being largely ineffective in achieving policy makers’ objectives, higher minimum capital requirements are associated with lower business entry, as shown in the World Bank’s report, *Doing Business 2020: Comparing Business Regulation in 190 Economies* report.

International experience shows that an increasing number of countries have eliminated or lowered minimum capital requirements. In 2003, 124 countries had minimum capital requirements to create a company. Since then, 58 countries have eliminated these capital requirements altogether. The World Bank finds that the most significant changes have occurred in the Middle East and North Africa, where average minimum capital requirements amounted to 466% of income per capita when the 2003 *Doing Business* report was published, but had dropped to 5% of income per capita in the 2020 report.

Source: (World Bank, 2013^[87]); (World Bank, 2020^[34]).

Recommendation. Depending on the minimum capital requirements identified in each member state, the OECD recommends one of two options.

1. Lift sector-specific minimum capital requirements and require operators to comply only with any horizontal requirements under the commercial law. Alternatively, bank guarantees or insurance contracts rather than cash deposits should be accepted to comply with these capital requirements.
2. Ensure that any horizontal minimum capital requirements are the same for all businesses, irrespective of whether they are domestic or foreign entities. Bank guarantees or insurance contracts rather than cash deposits should be accepted to comply with these capital requirements.

6.3. Pricing guidelines and power to set prices

While pricing regulation occurs in several sectors in OECD countries, best practice suggests that it should be limited to market failures, such as natural monopolies. For example, this may be the case in the port sector covered in Section 4.6. In non-monopoly sectors, such as road freight transport and freight forwarding, market entry is typically freer, which leads to a larger number of market players and consequently, less price regulation.

In addition to earlier examples of price regulation, the competition assessment reviews in member states identified pricing guidelines or provisions granting authorities the power to set prices. These occur throughout the logistics sector in road freight transport, maritime freight transport, ports, small-package delivery services, and freight forwarding.

6.3.1. Pricing guidelines

Description of obstacle. The OECD has identified instances of guidelines setting out specific rates or formulas for market participants to use when calculating their prices. Such guidelines may be binding or simply recommendations.

Guideline prescribing indicative rates. In the Philippines, a regulation prescribes non-binding indicative rates for freight-forwarding services to guide accredited non-vessel operating common carriers (NVOCC), cargo consolidators (CC), international freight forwarders (IFF), and break-bulk agents (BBA).

Guidelines prescribing the methodology for setting rates. In Indonesia, the government has issued guidelines on how road transport companies should calculate their prices, and subjects businesses to an administrative penalty for failing to follow them. According to these rules, factors to consider in determining price include the weight and volume of cargo; the type of cargo carried; and the duration and distance of any cargo's transport. The freight rate is calculated by considering fixed costs – including licensing and administration, employee salaries; and vehicle insurance – and variable costs, such as fuel consumption, oil and lubricant use, tyre wear, vehicle maintenance and miscellaneous expenses. The OECD understands that freight transportation companies are permitted to set their own prices, but that these must be based on these guidelines. The presence of the penalty provision in the legislation suggest guidelines are binding.

In certain cases, guidelines may also include additional requirements not to set below-cost prices applicable to both dominant and non-dominant players. For instance, in the Indonesian commercial postal and courier sub-sector, the OECD identified price-regulation guidelines, which contain an additional general prohibition on below-cost pricing as part of the tariff formula. The legislation provides that the tariffs of commercial post services cannot be lower than the operating costs. There is a penalty provision for failing to follow the tariff formula, which suggests that it is binding.

Harm to competition. Guidelines that list specific rates, even when non-binding, may encourage companies to orient themselves accordingly and so act as a focal point; this could lead to price co-ordination and result in higher prices for consumers. Binding guidelines that stipulate a formula, which must be followed when calculating prices, limit companies' ability to set their own prices and to compete

on price; for example, they are unable to undercut rivals' prices in order to gain market share. Moreover, the requirement to price above cost may lead to inefficient outcomes and harm consumers in the end, by limiting the entry of new players (see Box 6.4).

According to Indonesian government authorities, the pricing guidance is in place to help businesses, especially SMEs, understand how to set prices or to help guide their pricing decisions. The above-cost-pricing requirement is in place to avoid unfair business practices and anticompetitive behaviour.⁸⁵

Recommendation. The OECD has two recommendations.

1. Remove guidelines setting out specific rates. In the case of broad and informative guidelines, remove any attached penalty provisions so that they are simply advisory.
2. Remove the obligation that prices should be above costs for any non-dominant firm.

Box 6.4. Below-cost pricing

Selling certain products below cost is a common strategy used to attract consumers, for example, to encourage them to try a new product or retailer. In these circumstances, pricing below cost may well be less expensive than running large advertising campaigns (OECD, 2018^[49]). In addition, it can be used to grant discounts to repeat customers, to compensate a consumer switching from one product to another when switching costs are high, or to clear out obsolete or dead stock that would be costly to store or discard. Further, when a firm has multiple products, it can price one product below cost (a “loss leader”) in order to attract consumers to other more profitable products. These strategies can therefore be both pro-competitive and beneficial for consumers.

OECD Competition Assessment Reviews: Portugal noted that empirical studies have investigated the effects of the regulation of below-cost pricing in a number of countries (OECD, 2018^[49]). One study found that restrictions on below-cost sales led to price increases in Ireland (Allain and Chamolle, 2011^[88]). Another study reached similar conclusions in France and found that “the transparency of the invoiced price fosters retailer price alignment and reduction in intra-brand/inter-store competition” (Colla and Lapoule, 2008^[89]). In addition, the authors found that French rules prohibiting below-cost pricing caused retailers to focus less on negotiating the lowest possible prices from their suppliers, which would benefit consumers. Instead, they would place more effort on obtaining promotional fees and other manufacturer incentives that improve retailer profitability without benefitting consumers (since promotional fees and other manufacturer incentives are not considered elements of the “purchase price” for the purposes of the below-cost pricing rule). This contributed to keeping prices higher for consumers.

The majority of OECD countries have no below-cost pricing restrictions, including Australia, Canada, Denmark, Finland, Greece, Hungary, Iceland, Ireland, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Sweden, and the United Kingdom.¹ Below-cost pricing restrictions are found in countries including Portugal, Spain and Italy. Other countries, such as Greece and Luxembourg, have removed restrictions

There are cases, however, in which below-cost pricing does impair market functioning and so requires action. These concerns can generally be addressed using competition law on a case-by-case basis, in which pro-competitive below-cost pricing can be distinguished from anticompetitive strategies. In particular, below-cost pricing becomes problematic from a competition perspective when it is put in place by a dominant firm – one whose position of economic strength in a market allows it to behave independently of its competitors, customers and consumers – with the intention of driving its rivals, such as small businesses, out of the market and then raising prices to above-market levels, for instance to recover any initial losses.² This predatory-pricing strategy is an abuse of dominance, for example, under

Indonesian competition law, in line with the competition-law frameworks of the majority of other ASEAN jurisdictions.³

Similar distinctions in competition law exist globally. European case law has underlined that below-cost pricing strategies by dominant firms are not intrinsically abusive, but in specific circumstances can be illegitimate.⁴ In the United States, below-cost pricing strategies are considered abusive solely if there is evidence that losses have been recouped.⁵

Notes:

¹ See OECD (2021), “Sectoral Product Market Regulation Indicators”, www.oecd.org/economy/reform/OECD-PMR-Sector-Indicator-%20values-2018.xlsx.

² Case 27/76, *United Brands Company and United Brands Continentaal BV v Commission* (1978), ECR 207, paragraph 65; Case 85/76, *Hoffmann-La Roche & Co. AG v Commission* (1979), ECR 461, paragraph 38.

³ See Article 20 (predatory pricing), Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, http://eng.kppu.go.id/wp-content/uploads/2016/11/law_5_year_1999_.pdf

⁴ The European Court of Justice (ECJ) in *Akzo Chemie BV v Commission* (Case C-62/86, ECLI:EU:C:1991:286) distinguished between: 1) average total costs (ATC), and 2) average variable costs (AVC). ATC reflects the total cost of production of one unit of output, while AVC indicates the variable cost of production of one unit of output, and is calculated by dividing the variable costs (excluding the fixed costs) by the number of units produced. The ECJ held that predation can be presumed when firms price products below AVC since in this case the undertaking is losing money by producing the product. When prices are above AVC, but below ATC, the conduct may be considered abusive only if the undertaking is intended to eliminate a competitor.

⁵ See US Supreme Court decisions in *Brooke Group Ltd v Brown & Williamson Tobacco Corp*, 509, US 209 (1993) and *Weyerhaeuser Co v Ross-Simmons Hardwood Lumber Co Inc.*, 549 US 312 (2007).

Source: (OECD, 2018^[49]) (OECD, 2019^[50]) (OECD, 2021^[90]).

6.3.2. Discretion to regulate prices

In non-monopoly sectors, price regulation is often at the discretion of the sectoral regulator, which has the ability to intervene in certain circumstances or can impose pricing conditions including maximum or minimum prices as part of the licensing process. The OECD identified several examples.

Broad powers to intervene in price setting. The OECD identified examples in legislation that provided regulatory bodies with broad discretion to regulate prices in the road freight, maritime freight and freight-forwarding sectors, and may give them the power to issue regulations or set prices during the licensing process.

In Lao PDR, for example, the National Transport Committee has the power to set a price structure that the Division of Public Works and Transport in each province or city must then implement. The Law on Land Transport also provides incentives for those that “make outstanding achievements [...] to strictly follow the specified transport price structure”.⁸⁶ The OECD understands that despite this legal basis, no price-structure regulation has actually been issued.

In Malaysia, the Land Public Transport Agency (APAD) has the power to determine freight rates for cargo while, in the maritime freight market, the Domestic Shipping Licensing Board has broad powers to “prescribe the rates which may be charged for the carriage of passengers or cargo by any ship engaged in domestic shipping”.⁸⁷

A similar power exists in the Philippines, where the maritime sectoral regulator MARINA has the power to intervene in the setting of domestic shipping rates when deemed necessary to protect the public interest. MARINA also has the power to create specialised rules for monopolised routes, which can include price regulation. Regulators can also intervene in the licensing process.

In Thailand, the authority in charge of issuing licences for freight forwarding by road has the power to set freight rates as part of the licensing process.⁸⁸ The provision suggests that the Central Registrar, with the

approval of the Central Land Transport Control Board, has the power to prescribe conditions in the licence including tariffs or fees. The wording of this provision suggests that fixed, minimum or maximum tariffs could be introduced.

Inclusion of freight transport in price regulation of passenger transport. The OECD found that powers aimed at the regulation of passenger transport might unintentionally include freight transport. In Thailand, the Central Land Transport Control Board (for the Bangkok area) and Provincial Land Transport Control Board (for the rest of the country) have the power to issue decisions of general application that set transport rates and other transport-service charges. In theory, this power applies to both passenger and freight transport; however, in practice the regulatory body only sets rates for passenger services.

Harm to competition. The power to intervene to regulate prices may be used to set minimum prices with the objective of protecting consumers from lower-cost and (presumably) lower-quality alternatives. There is no guarantee, however, that a higher-priced option is indeed of higher quality (see Box 6.5). In addition, as set out in Section 4.6, setting minimum prices can be detrimental to consumers by depriving them of lower-cost services and so reducing consumption, while keeping higher-cost service providers in the market and providing insufficient incentives to seek efficiency.

In contrast, the power to regulate freight rates can be justified in monopoly sectors, where the control of maximum prices may serve as a counterweight to a lack of alternatives. In these cases, the policy maker aims to protect consumers from high prices. However, this is not usually the case in sectors such as road freight transport and freight-forwarding, where market entry is typically freer, which leads to a large number of market players.

More broadly, imposing prices may limit firms' flexibility to adjust their prices to market conditions, for instance when introducing new products or services in the market or in times of low demand.

Finally, if the cases in which the authority can intervene are not clearly specified in the legislation, this creates uncertainty for operators. Especially in sectors requiring significant investments, firms may choose to enter a sector based upon their expectation that they will be able to set prices to recoup their investments. After the investment has been made, the authorities could have an incentive to intervene in the market to guarantee consumers lower prices, which may not be high enough to allow firms to recoup the investment. Potential investors may anticipate this risk and consequently invest less, potentially depriving consumers of better-value products and more innovation.

Box 6.5. Minimum prices in the Italian road freight transport sector

In 2012, the Italian Competition Authority (AGCM) issued an opinion on decisions taken by the Observatory on Road Transport and of the Ministry of Infrastructure and Transport. Specifically, the Observatory adopted certain provisions establishing the minimum operating costs of road freight transport that ensure compliance with the safety parameters provided for by legislation. The latter then issued a decree implementing the observatory's recommendations.

According to the AGCM, the ministerial decree and related decisions by the Observatory broke competition law, both at a national and European level, as they artificially fixed minimum prices for road-transport activities. Those decisions were not based on any well-founded safety requirements specific to road transport and effectively introduced compulsory tariffs across Italian territory, with significant effects on trade between EU member states.

Since the Ministry of Infrastructure and Transport and the Observatory contested the AGCM's judgement, the competition authority appealed, and the appeal court issued a non-definitive decision and requested a ruling from the European Court of Justice (ECJ).

The ECJ concluded that "although it cannot be ruled out that the protection of road safety may constitute a legitimate objective, the fixing of minimum operating costs does not appear appropriate, either directly or indirectly, for ensuring that that objective is attained" (paragraph 51). This, the court ruled, was for two reasons: 1) such an approach did not allow "carriers to prove that, although they offer prices lower than the minimum tariffs fixed, they comply fully with the safety provisions in force" (paragraph 55); and 2) "there are a number of rules, including the rules of EU law [...] relating specifically to road safety, which constitute more effective and less restrictive measures, such as the EU rules on the maximum weekly working time, breaks, rest, night work and roadworthiness tests for vehicles" (paragraph 56).

Source: Italian Competition Authority (2012), Opinion AS913 of 5 March 2012; European Court of Justice, C-208/13 of 4 September 2014.

Recommendation. The OECD recommends removing the ability to intervene in price regulation for freight transport (other than those cases covered in Section 4.6). If these powers are maintained, the OECD recommends setting clear guidelines and limiting interventions to exceptional circumstances, for example, in the case of monopoly routes, where entry is not likely.

6.4. Differential treatment of SOEs

The OECD has identified a number of provisions in various logistics sub-sectors that grant special regulatory treatment to state-owned enterprises (SOEs).⁸⁹ Such treatment may give SOEs a competitive advantage compared to private players. For instance, discriminatory measures may significantly raise costs of entry and doing business for private suppliers relative to SOE suppliers and limit the ability of some suppliers to provide their services.

6.4.1. Competitive neutrality

The principle of competitive neutrality – whereby state-owned and private businesses compete 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, 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 requirements to operate (underfinanced) public services or to comply with civil-service labour rules, which raise their costs and affect their ability to compete effectively with privately owned competitors.

A level playing field between public and private market participants allows both to compete on fair terms, leading to more choice, higher quality and lower prices for consumers, which ultimately, benefits economic growth and development. 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 rather than to SOEs.

At ASEAN level, the *ASEAN Economic Community Blueprint 2025* affirms that one of the elements necessary to increase the region's productivity is to ensure "a level playing [field] for all firms, regardless of ownership"; this is also identified as the fundamental goal of competition policy and law (ASEAN, 2015^[91]).⁹⁰ These principles are also noted in the *2010 ASEAN Regional Guidelines on Competition Policy*, in which the ASEAN Experts Group on Competition (AEGC) stated that: "Competition policy should be an instrument of general application, *i.e.*, applying to all economic sectors and to all businesses engaged in commercial economic activities (production and supply of goods and services), including State-owned enterprises" (ASEAN, 2010^[92]). This results in no ASEAN competition law giving SOEs a general exemption.

Governments may deliberately depart from competitive neutrality when SOEs may be necessary to correct market failures or to achieve other policy objectives (OECD, 2012^[93]) (Capobianco and Christiansen, 2011^[94]). While the majority of markets may be best served by suppliers pursuing 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. When analysing the level playing field between public and private entities, the socio-economic and developmental role and policy objective of an SOE should always be considered.

6.4.2. Differential treatment of SOEs in the ASEAN logistics sector

The OECD has identified a number of examples in the logistics sector in which SOEs receive different treatment to private players. This report will not, however, address any such barriers in the small-package delivery services sector as these are covered in *OECD Competitive Neutrality Reviews: Small-Package Delivery Services in ASEAN*.

SOEs subject to different regulatory requirements

Description of obstacle. In several ASEAN member states, SOEs are exempt from certain regulatory requirements with which private operators are required to comply, such as the requirement to have an operating licence, asset requirements or specialised staffing requirements. The OECD identified examples in the Myanmar maritime sector. For example, government ships benefit from an exemption from the Merchant Shipping Act, including the requirement to obtain an operating permit.⁹¹ In the shipyard sector, Myanmar Shipyards, like other SOEs in Myanmar, can obtain privileges from the Ministry of Commerce, including exemptions from the requirement to obtain an import/export licence and the general operational licence; these licences are required for private-sector operators. In Lao PDR, SOEs in the freight transportation sector, including road, waterway and railway, are not required to obtain a business operator licence that private operators must obtain in order to operate.

Harm to competition. Provisions granting SOEs exemptions from various regulatory requirements that apply to privately owned companies may reduce SOEs' entry costs, operating costs or administrative burdens (such as operational licence requirements), compared to other market participants. These provisions have the potential to distort competition in the relevant sectors.

Recommendations. The OECD has two complementary recommendations.

1. Ensure that SOEs' commercial activities are subject to the same regulatory requirements, including on licensing, as competing private firms.
2. Alternatively, member states could consider lowering the burden on licensees by simplifying licensing procedures for all players.

Exemption from public-procurement rules of transactions between SOEs and government entities

The majority of member states have a public-procurement regime, which plays an important role in encouraging public-sector efficiency and fostering citizen trust. The background to the OECD *Recommendation of the Council on Public Procurement* states that: "Well-designed public procurement systems also contribute to achieving pressing policy goals such as environmental protection, innovation, job creation and the development of small and medium enterprises" (OECD, 2015^[95]). *OECD Guidelines on Corporate Governance of State-Owned Enterprises* explains that "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" (OECD, 2015, p. 50^[96]).

Description of obstacle. Certain member states' public procurement regimes do not apply to transactions between SOEs or between SOEs and other government entities. For example, a SOE or other government entity that wishes to contract for services with a private company must usually hold a tender process; yet if it contracts with a SOE, no tender process is required. Such exemptions exist, for example, in Lao PDR, Myanmar, Indonesia and the Philippines.⁹²

Harm to competition. This exemption increases the likelihood that an SOE or government entity will choose to contract with an SOE, as conducting a tender process can be burdensome. This eliminates competition and potentially lower-cost and better quality offers from private firms.

Recommendations. The OECD has three recommendations.

1. Ensure that public-procurement rules treat all potential suppliers equitably, without discrimination and irrespective of ownership; this means that SOEs are subject to requirements comparable to those demanded from private bidders.
2. Reconsider the practice of direct assignments from one SOE to another or from government entities to SOEs, and encourage open tenders, clearly defining the circumstances when alternatives procedures can be applied.
3. Establish internal guidelines and provide training to officials to ensure that non-discriminatory public-procurement rules are followed and enforced and that SOEs are not granted preferential access to the provision of services to government agencies.

6.5. Compulsory association membership

Description of obstacle. In several member states, the OECD found that the membership of an association was a prerequisite for market entry. These rules oblige service providers to join an industry association or professional association in order to operate. The different laws typically specify which association prospective service providers are required to join.

For instance, in Indonesia and Myanmar, potential freight forwarders must become members of the national freight-forwarding association in order to operate. In the Philippines, a shipbuilding entity must become a member of a shipyard association recognised by the Maritime Industry Authority (MARINA) prior to the issuance of a new or renewed MARINA licence. In Lao PDR, while companies do not need to be members of an industry association, individuals must be part of the Land Transporters Association, a group for all business operators engaged in land transport activities.

The objective of these measures appears to be ensuring a certain degree of control over the industry and facilitating interactions between government and businesses. In some cases, compulsory membership is viewed by the authorities as a substitute for registration or licensing by public authorities, particularly when a country's regulatory framework does not provide for these mechanisms. Associations can also keep their members informed of the latest sectoral developments, such as market trends or changes in legislation, which can save costs for members.

Harm to competition. Compulsory membership requirements identified by the OECD may harm competition in two main ways. First, if the current association members can deny registration to a new member, they would effectively prevent potential competitors from entering the market. In addition, such a requirement may increase the cost of doing business and restrict market entry as membership in industry associations generally require certain dues, such as registration and annual fees. Second, an industry association with some responsibility for regulating its members' conduct without government supervision can potentially have a significant anti-competitive impact. International experience reveals that industry associations can be platforms that facilitate anti-competitive practices, for example, by co-ordinating their members' prices and business practices. Compulsory membership has also been found to be problematic, for example, when the association imposes restrictive conditions that limit market entry (Box 6.6).

Box 6.6. Mandatory membership in trade associations

In Mexico, a 1936 law made membership in a business chamber a compulsory requirement for an industry or business to operate. To ensure compliance, public offices were prohibited by law from authorising business and industrial activities of applicants that did not present proof of membership in a business chamber. Mexico's Supreme Court of the Justice of the Nation struck this requirement down in 1995, holding that mandatory membership in a chamber of commerce or business association is unconstitutional as it violated the right not to associate.

In Greece, individual wine-makers on the island of Samos were required to become members of local co-operatives. These co-operatives, in turn, had to deliver all their grape production to the Union of Vinicultural Co-operatives of Samos, the exclusive producer and marketer of Samian wine. In 2016, the EU Commission asked Greece to amend Compulsory Law No. 6985/1934 which prevented the wine growers from producing and marketing their wines independently.

Source: (OECD, 2007^[97]); European Commission (22 July 2016), European Commission Memo No. 16-2490, Infringement No. 20084585, https://ec.europa.eu/commission/presscorner/detail/EN/MEMO_16_2490.

Recommendation. The OECD recommends removing the identified compulsory membership requirements.

7 Regulatory quality

The OECD's analysis in the ASEAN Competition Assessment Project has focused on laws and regulations that may reduce competition in the logistics sector. In addition to the specific regulatory framework of the logistics sector in ASEAN member states, the wider business environment, including factors such as the ability to enforce contracts or to obtain credit to fund investment, also has an impact on suppliers' ability to compete.⁹³ While these factors are outside the scope of the OECD project, during the competition assessment, the OECD has made some observations as to the quality of regulations and of regulatory practices in member states. These are summarised in the present chapter, which offers some suggestions for consideration, based on principles of good regulation and on the OECD work on regulatory policy.⁹⁴

Regulatory quality matters for competition. For example, a clear and easily accessible regulatory framework is essential for new entrants that are not necessarily familiar with the national legal framework, and for small competitors, for which compliance costs and administrative burdens are relatively more important than for larger companies. Most OECD countries have made efforts to lower regulatory burdens, particularly in the interest of improving economic activity and the ease of doing business (OECD, 2018^[98]).

ASEAN has developed regional guidelines for good regulatory practices to improve the quality of regulations. Last revised in 2018, the ASEAN Guidelines on Good Regulatory Practices include recommendations for the design and implementation of regulations based on six core principles. According to these guidelines, regulations should:

1. have a clear policy rationale, objectives, and institutional framework
2. produce benefits that justify costs and be the least distortive to markets
3. be consistent, transparent, and practical
4. support regional regulatory co-operation
5. promote stakeholder engagement and participation
6. be subject to regular review for continued relevance, efficiency, and effectiveness.

Box 7.1 summarises the corresponding principles encapsulated by the OECD 2012 Recommendation of the Council on Regulatory Policy and Governance and the 1995 Recommendation on Improving the Quality of Government Regulation.

Box 7.1. What is regulatory quality?

Regulations are the rules that govern the everyday life of businesses and citizens. They are essential for economic growth, social welfare and environmental protection, but can also be costly in both economic and social terms. In that context, "regulatory quality" is about enhancing the performance, cost effectiveness, and legal quality of regulation and administrative formalities. The notion of regulatory quality covers the process or the way regulations are developed and enforced, which should follow the key principles of consultation, transparency, accountability and evidence. Beyond process, the notion of regulatory quality also covers good outcomes (regulations that are effective at achieving their objectives); efficient (do not impose unnecessary costs); coherent (when considered within the full

regulatory regime); and simple (regulations and the rules for their implementation are clear and easy to understand for users).

Building and expanding on the OECD's 2012 Recommendation of the Council on Regulatory Policy and Governance and the 1995 Recommendation of the Council on Improving the Quality of Government Regulation, regulatory quality can be defined by regulations that:

1. serve clearly identified policy goals, and are effective in achieving those goals
2. are clear, simple and practical for users
3. have a sound legal and empirical basis
4. are consistent with other regulations and policies
5. produce benefits that justify costs, considering the distribution of effects across society and taking into account economic, environmental and social effects
6. are implemented in a fair, transparent and proportionate way
7. minimise costs and market distortions
8. promote innovation through market incentives and goal-based approaches
9. are compatible as far as possible with competition and trade- and investment-facilitating principles at domestic and international levels.

In addition, the 2012 Recommendation on Regulatory Policy and Governance provides guidance to ensure the quality and transparency of government regulations, in particular through the OECD Reference Checklist for Regulatory Decision-making.

Source: Text partly reproduced from Box 1.1 in (OECD, 2015_[99]); (OECD, 1995_[100]); (OECD, 2012_[69]).

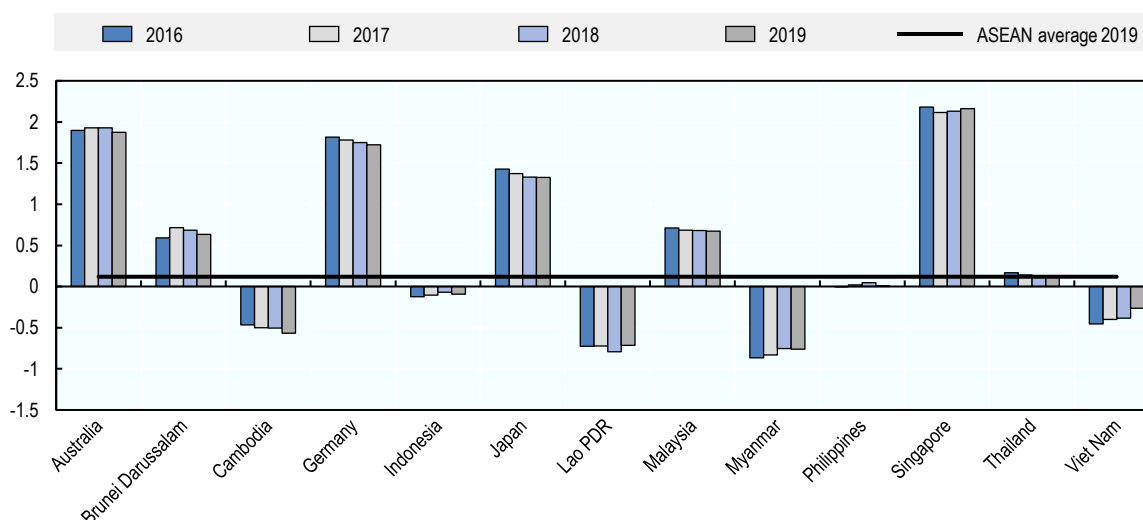
As shown in Figure 7.1, the World Bank's regulatory quality scores – which capture perceptions of a government's ability to formulate and implement sound policies and regulations that permit and promote private-sector development – show the Philippines, Cambodia, Indonesia, Lao PDR, Myanmar, and Viet Nam have room for convergence with both other ASEAN member states (such as Brunei Darussalam, Singapore, Malaysia and Thailand) and OECD countries (such as Australia, Germany and Japan).

To help narrow differences in the region, ASEAN has issued the Principles for Good Business Registration Practices, which include recommendations such as establishing “one-stop” or “single-roof” service centres to simplify business registration processes and investing in technology to create a comprehensive online business registration system (ASEAN, 2017_[101]).

Based on the analysis of legislation conducted in each member state and information collected from stakeholders, this chapter covers some of the most frequent barriers relating to the general business environment. Additional member state-specific recommendations are set out in the individual country competition assessment reviews.

In particular, this chapter covers issues related to: 1) administrative burdens, and 2) access to legislation. While it does not provide a comprehensive review of regulatory quality in ASEAN member states nor does it make suggestions in this sense, it also mentions some of the initiatives undertaken by member states to improve their overall regulatory quality.

Figure 7.1. Regulatory quality estimates for ASEAN and selected OECD countries, 2016-19



Note: Lowest = -2.5; highest = 2.5. The regulatory quality estimate indicator captures the perception of a government's ability to formulate and implement sound policies and regulations that permit and promote private-sector development.

Source: World Bank's Worldwide Governance Indicators, <http://info.worldbank.org/governance/wgi>.

7.1. Administrative burdens

The OECD has long-recognised administrative simplification as an important means of improving the regulatory environment.⁹⁵ In many countries, assessing regulatory burden and cutting identified administrative red tape are some of the first steps of regulatory reform. Burden reduction programmes attempt to make government administration more streamlined, transparent and efficient, while aiming to provide services more quickly and more effectively – all while considering economic, social, and environmental objectives (OECD, 2018_[98]). Following the 2012 Recommendation of the Council on Regulatory Policy and Governance and the 2005 OECD Guiding Principles for Regulatory Quality and Performance, efforts to address these burdens have adopted certain key principles.

1. Processes should be clear, in terms of timelines, required information, fees to be paid, and key contacts. The criteria used to grant approvals or review applications should be transparent and objective. The scope and duration of stakeholder consultations should be clear (OECD, 2005_[102]).⁹⁶
2. Processes should be simplified, as far as possible. When multiple authorities are involved, market participants can be provided with a “one-stop shop”, so that they deal with only a single point of contact. Duplication should be avoided, both in terms of the information requested from participants and the different steps of a process (OECD, 2012_[69]).
3. Processes should be timely, since overly long processes can create disincentives for entry, and impose undue costs on market participants, with consequences for competition more broadly (OECD, 2012_[69]).⁹⁷
4. Processes should be justified by a well-defined policy goal, and should not exceed what is required to achieve the goal (OECD, 2012_[69]).⁹⁸

All ten ASEAN member states have now introduced one-stop shops as a single-entry point for registering businesses and obtaining related information, certification, and permits (OECD, 2018_[103]). While these initiatives can go a long way in improving regulatory frameworks, their implementation is complex and requires significant reforms. The OECD's 2020 Best Practice Principles on One-Stop Shops offer guidance in this regard (OECD, 2020_[104]).

Description of the obstacle. In the course of its review, the OECD has identified various regulations that, while not directly restricting competition, are unclear and impractical for businesses, are inconsistent with other regulations and policies, or impose administrative burdens and costs on market participants. These costs can include the costs of producing paper-based applications in the absence of electronic application systems; non-monetary costs that can have significant financial implications, such as time spent completing applications with different government offices or delays to business processes while awaiting approval.

Some examples of these administrative barriers are listed below.

- **Indonesia.** The country has made significant improvements to its business licensing regime with the introduction of its Online Single Submission (OSS) system and regional one-stop shop centres. For example, the Ministry of Communications and Informatics (MCI) now accepts applications for a postal license through the OSS, eliminating the need for physical documents to be submitted to the MCI and reducing the time to complete the application process. The OECD understands, however, that there are still issues with the implementation of these initiatives. In addition, logistics providers do not currently have full access to online application processes when applying for sector-specific licences and accreditations, and are often required to submit hard-copy applications with the relevant agency for each authorisation.
- **Malaysia.** Similarly, logistics providers do not currently have full access to online application processes when applying for licences and accreditations and often need to submit hard-copy applications to different agencies for each authorisation. From stakeholder interviews, the OECD understands that most agencies in Malaysia are in the process of introducing electronic application systems.
- **Philippines.** Different standards are applied and implemented by different agencies; for example, national and local bodies in the Philippines have different standards for overweight and overloading regulations for trucks. Trucks for hire are required to obtain licences and authorisations from more than six national and local agencies, such as the Land Transportation Office (vehicle registration); Land Transportation Franchising and Regulatory Board (Certificate of Public Convenience); local government units (mayoral permits); Bureau of Customs; Philippine Ports Authority; and if relevant, the Philippine Economic Zone Authority. Logistics providers do not currently have full access to online application procedures for licences and accreditations, and not all licences, permits or authorisations can be applied for online. Market participants are often required to submit hard-copy applications with the relevant agency for each authorisation.
- **Thailand.** Logistics providers cannot currently apply online for all licences and accreditations. Certain authorisations, such as road freight transport licences, require applicants to submit hard-copy applications with the relevant agency.

Harm to competition. Beyond their impact on individual businesses, administrative burdens can have broader impacts on consumers, and economic productivity more generally. Where they impose costs on potential entrants they may reduce competition, discouraging smaller operators from entering the market. Heavy or unclear administrative procedures can indirectly favour larger players with the resources to obtain professional compliance assistance, operate more sophisticated record-keeping operations and cover compliance costs. This could particularly discourage enterprises operated by individuals from vulnerable groups or disadvantaged regions who may not have sufficient financing to cover additional compliance costs. Added costs incurred by businesses may be passed on to consumers, who may also be harmed by more limited innovation and less market contestability.

Box 7.2. Administrative simplification and systematic regulation reviews

The OECD recommends that governments schedule reviews “to assess all significant regulation systematically over time, enhance consistency and coherence of the regulatory stock, reduce unnecessary regulatory burdens and ensure that significant potential unintended consequences of regulation are identified” (OECD, 2012^[69]).

Administrative burden-reduction programmes seek to make administrative processes more responsive, transparent, and efficient, while making services and access to services quicker and more effective. As efforts to reduce administrative burden tend to require reviewing and consolidating laws and regulations, a “whole-of-government” approach is usually taken.

Simplex + and e.Portugal.gov.pt, Portugal

Simplex, Portugal’s successful simplification programme was first launched in 2006. In 2016, the government launched Simplex+, which aimed to reduce administrative burdens and improve the quality of regulations (OECD, 2019, p. 15^[105]).

ePortugal.gov.pt is an online public-services portal for over 1 000 essential government services, providing information, guidance and services for citizens and businesses, as well as detailed guidance for professionals and specific groups such as employees, migrants and others, as well as information on government and policy. Using a life-event approach, services are offered by 590 entities, from the central government (17 ministries), local government, and private entities.

Administrative Burden Reduction Programme, United Kingdom

In 2005, the United Kingdom launched a five-year Administrative Burden Reduction Programme (ABRP), co-ordinated by the Better Regulation Executive, to reduce administrative burdens, remove out-of-date regulations, and make transactions easier for businesses and the third sector, such as charities, voluntary-sector organisations and social enterprises. Using the Standard Cost Model to measure the costs of the administrative burdens imposed by each department, 304 “simplification measures” – which included changes to legislation, publication of guidance or the creation of web-based tools – were introduced. These measures resulted in annual net savings to businesses and the third sector of more than GBP 3.5 billion (United Kingdom Department for Business, Innovation, and Skills, 2010^[106]).

Points of Single Contact, European Union

Following good administrative practice at the European Community and national level, Directive No. 2006/123/EC pursued administrative simplification to eliminate delays and costs arising from unnecessary or excessively complex and burdensome procedures, duplication of procedures, “red tape” in submitting documents, authorities’ arbitrary use of powers, authorisations’ limited duration of validity, and disproportionate fees and penalties. The Directive also mandated the creation of e-government portals called Points of Single Contact (PSC), which provide: “information on procedures and formalities, contact details of the competent authorities, conditions for access to public registers and databases and information concerning available remedies and the contact details of associations and organisations from which providers or recipients can obtain practical assistance” (Article 51). PSCs have been required in all EU member states since 2009.

Source: (OECD, 2018^[103]) (OECD, 2012^[69]) (OECD, 2020^[104]) (European Parliament and of the Council, 2006^[107]).

For logistics providers, specifically, the lack of digitalisation increases costs as they are required to submit a different hard-copy application to the relevant agency for each authorisation. It may also slow down the processing of applications, resulting in delayed entry by new market players. In some member states, however, limited Internet access may limit the positive impact of digitalisation and online applications on market entry and competition.

Policy suggestions. The OECD offers three principles for consideration, based on its country-level reviews.

1. Licences and permits required for a single logistics operation should be grouped into a single application to a single point of contact. If available, take advantage of the opportunities offered by information technology and one-stop shops for licences, permits, and other procedural requirements to streamline logistics licence applications. Allow online applications and the continuation of digitalisation of all application procedures for logistics-related authorisations, noting that non-online options for filing applications should be maintained for those who cannot access the internet.
2. Remove any inconsistencies between regulations on the same subject, such as technical regulations, issued by different authorities.
3. Use robust analytical tools to measure the impact of regulatory decisions on citizens and businesses, including undertaking *ex ante* impact assessments of regulatory proposals to gauge their impact on the market entry, especially for SMEs, and use *ex post* review to evaluate and amend the regulatory decisions as needed.

7.2. Access to legislation

In general, a basic requirement for improving the quality of a regulatory framework is legislation that is accessible and organised in a user-friendly manner so that all rules and regulations enforced by agencies are clear and publicly available (see Box 7.3). Market participants need to have full transparency of those rules and regulations that apply to them. Government authorities should ensure that there is an up-to-date version of the legislation and guidelines they administer on their website and on the official government legal database. Importantly, this means that any amendments to a piece of legislation should be included in a new consolidated version (or alternatively be provided as a link) and obsolete legislation should be marked as such. While amending public legal databases can be costly and time-consuming, it should be a long-term goal for all ASEAN member states.

ASEAN has made efforts in facilitating access to legislation through single points of contacts. For example, it has created an ASEAN Trade Repository acting as a single point of access to all trade-related information of AMS.⁹⁹ This repository is connected to a series of interoperable national trade repositories providing and maintaining up-to-date information. Despite these efforts, when conducting its competition assessment review, the OECD has found a number of issues analysed more in detail below.

Box 7.3. OECD recommendations on open government

The 2012 OECD Recommendation of the Council on Regulatory Policy and Governance includes a recommendation to adhere to principles of open government. This includes transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those it interests and affects. It also involves providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and gathering high-quality supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.

One key component of open government is that regulations should be easily accessible to the public. A complete and up-to-date legislative and regulatory online database should be freely available to the public in a searchable format and with a user-friendly interface.

Source: (OECD, 2012^[69]).

Description of the obstacle. In the course of its review, the OECD has identified several examples where logistics legislation is not easily accessible or where it is not organised in a user-friendly manner. Key issues include: 1) some logistics legislation is not published, so market participants are obliged to contact authorities to access legislation or to verify its content; 2) copies of some logistics legislation is only available after a request to authorities; 3) implementing guidelines for general logistics legislation not being publicly available; 4) repealed or obsolete laws not removed from legislation or databases and so appear to be in force; 5) legislation is scattered across different websites or sources, and is not available in a single database; and 6) some legislation is not accessible in a machine-readable or searchable electronic format, or available to copy or download.

- **Brunei Darussalam.** The Attorney General's Chambers' website is the main location for finding Brunei Darussalam legislation. On the site, amendments to legislation are not always incorporated into the original piece of legislation, while many pieces of legislation are in an unsearchable format.
- **Cambodia.** There is no comprehensive database for all legislation (notably secondary legislation or "Prakas") currently in force. In addition, specifically for the logistics sector, there is no primary legislation for sea, inland waterways, and ports and these sectors are currently governed by other legal instruments such as decrees, sub-decrees, regulations and guidelines. Draft laws covering these sectors are being drafted in a process has been ongoing in some cases for more than ten years (World Bank, 2018^[108]); these draft laws are not publicly available.
- **Lao PDR.** The 2012 Law on Making Legislation requires all national and local regulations to be made available on the official gazette website (www.laoofficialgazette.gov.la). However, the law is yet to be fully implemented and some laws remain inaccessible. Certain regulations are vague or contradictory, with provisions often diverging, overlapping or contradicting one another (US Department of State, 2020^[109]).
- **Myanmar.** The *Gazette of the Republic of the Union of Myanmar* is mandated to publish weekly compilations of issued rules, laws, notifications, procedures, acts, and directives; this does not appear to happen consistently. Amendments to legislation are not always incorporated into the original piece of legislation. The OECD also found a number of old and possibly obsolete regulations and rules including the Post Office Act and the Ports Act. Not removing (or labelling) these obsolete regulations from the online government legal databases creates legal uncertainty and ambiguity, which could have a negative impact on potential entry and investment in the sector.
- **Philippines.** The Official Government Gazette website contains certain pieces of legislation no longer in force, but not marked as such. Also, as amendments to legislation are not incorporated

into the original piece of legislation, market participants must already know about a particular amendment before searching for it. Further, some legislation is simply not published. For example, certain logistics-related rules and regulations are unavailable because they are currently “under review” by the relevant agency, even if the legislation itself is still in force and being applied by the agency in question.

- **Thailand.** Online legal databases, such as the Office of the Council of State’s legislative database, are not easily accessible. Certain legislation appearing in the databases are not amended despite being modified by subsequent pieces of legislation. For example, the Land Transport Act has been amended several times, but the OECD has been unable to locate an updated, consolidated version.

Harm to competition. Difficulties in accessing logistics legislation creates legal uncertainty and increases costs for actual and potential market participants. Having conflicting, outdated or ineffective regulations in the body of legislation creates legal uncertainty that could have a negative impact on entry and investment in the sector. Legal uncertainty raises costs as logistics providers and consumers are required to undertake additional work to understand the applicable legal framework at a specific point in time.

International experience provides examples of good practices in this respect (see Box 7.4).

Box 7.4 Legal databases in Singapore, Australia and the United Kingdom

Singapore Statutes Online

In Singapore, the Attorney-General’s Chambers provides a free service called Singapore Statutes Online (SSO; <https://sso.agc.gov.sg>), which consists of a complete list of current and historical versions of legislation, including revised editions.

Federal Register of Legislation, Australia

In Australia, all federal laws are published on the Federal Register of Legislation website (www.legislations.gov.au). The latest consolidated version of the legislation is clearly marked as “In force – Latest version”. Users are able to “View Series” to see all versions of the legislation in question and can easily find any amending acts. Users can easily see previous versions to understand which law was applicable at which time, and see any amendments and their date. The website also links to related bills.

Legislation.gov.uk, United Kingdom

The website www.legislation.gov.uk lists changes to legislation, including repeals, amendments and other effects, such as modifications and commencement information, made by subsequent legislation. The lists are updated generally within two weeks of new legislation being published.

Source: Singapore Statutes Online; Federal Register of Legislation, www.legislation.gov.au; legislation.gov.uk, www.legislation.gov.uk.

Policy suggestions. The OECD offers three principles for consideration, based on its country-level reviews.

1. Publish all primary and secondary legislation in a single database. Alternatively, or until this is implemented, each logistics authority should publish a complete list of legislation it administers on its website along with its status. Obsolete legislation should be marked as such.
2. Update all logistics legislation in the database to include new amendments allowing stakeholders to access consolidated versions of relevant legislation. Alternatively, or until this is implemented, publish the original version of legislation with links to any amendments.
3. Ensure that databases and legal texts are electronically searchable.

7.3. Initiatives to improve regulatory quality

To improve regulatory quality, the OECD recognises the need for governments to undertake a comprehensive programme that includes systematically reviewing the stock of regulations, to ensure their efficiency and effectiveness, and to lower the regulatory costs for citizens and businesses, integrating Regulatory Impact Assessment (RIA) into the process for the formulation of new regulatory proposals, and employing opportunities of information technology and one-stop shops for licences, permits, and other procedural requirements (OECD, 2012^[69]).

The OECD takes note of ongoing initiatives undertaken by ASEAN member states to reduce administrative burdens, lower compliance costs, simplify regulations, and improve the regulatory quality of logistics legislation in the region.

- All ten member states have introduced one-stop shops as a single-entry point for registering businesses and obtaining information, certification, and permits (OECD, 2018^[103]).
- **Cambodia.** Cambodia has developed and installed ICT systems to allow certain administrative processes, such as registration and fee payments, to be carried out online. The maintenance of these systems does remain a challenge, however.¹⁰⁰ The country has also introduced several databases containing laws, decrees, and sub-decrees (OECD, 2018^[103]).
- **Indonesia** has implemented reforms to improve the ease of doing business in the country. For example, the establishment of regional one-stop integrated service centres and the Online Single Submission (OSS) licensing system, an online platform centralising applications for business licences and permits (World Bank, 2019^[110]). While not yet fully operational throughout Indonesia, the OSS is well positioned to increase efficiency in business operations (OECD, 2020^[111]).
- **Lao PDR.** The country established the Lao Services Portal, an official government website that “provides the necessary regulatory information relating to Trade in Services and Investment in Lao PDR”.¹⁰¹ The website, managed by the Ministry of Industry and Commerce and the Department of Foreign Trade Policy, summarises primary and secondary regulations, and administrative requirements for different business operations. However, much information is missing and the full texts of certain regulations remain unavailable to the public.
- **Malaysia.** A special task force called Pasukan Petugas Khas Pemudahcara Perniagaan (PEMUDAH) aims to support businesses by driving the implementation of good regulatory practices and helping strengthen discussions with the public sector. In addition to taking an active role in the regulatory process, PEMUDAH also holds monthly meetings with the public to discuss initiatives to enhance the country’s business environment (OECD, 2018^[103]).
- **Philippines.** In 2016, the Presidential Communications Operations Office launched the Freedom of Information (FOI) program, which allowed citizens to request information from different government agencies about government transactions and operations using the FOI portal.¹⁰² The Anti-Red Tape Authority (ARTA) is developing the online Philippine Business Regulations Information System (PBRIS) with a view to improving access to legislation. The system will store online all business-related regulations from all government agencies, and is expected to eliminate the need to access each agency’s website for sector-specific regulations. The site is theoretically online,¹⁰³ yet it remains inaccessible to the public due to the ongoing development of additional features.¹⁰⁴ Moreover, Senate Bill No. 1751 proposes the creation of an online repository of different Philippine laws, rules, and regulations with versions translated into the country’s vernacular languages and dialects (Philippines, 2020^[112]).
- **Singapore.** Singapore’s Pro-Enterprise Panel is a public-private body whose aim is to promote a pro-enterprise culture in the public sector and facilitate greater co-operation between different authorities, and between the authorities and private entities. The panel also provides companies

with a one-stop portal to submit their suggestions on how to create a more pro-business environment.¹⁰⁵

- **Viet Nam.** The country has undertaken several waves of regulatory reforms involving the stocktaking and publishing of regulations, reducing and simplifying business requirements, and creating the National Public Service Portal for public-service delivery (Phan, 2020^[113]). The National Service Portal offers 2 700 administrative services (Vietnamnet Global, 2020^[114]). Viet Nam maintains a searchable online legal database, Legal Normative Documents, which contains national laws and local legal documents for the capital city and all provinces.

7.3.1. Competition assessment of laws and regulations

Following OECD's 2009 Recommendation on Competition Assessment (OECD, 2019^[115]), a number of countries have adopted some form of competition assessment to identify unnecessary restraints on market activities and develop alternative, less restrictive measures that still achieve government policy objectives. This can form part of a country's wider regulatory assessment within their general regulatory review framework (see Box 7.5).¹⁰⁶ Several ASEAN member states have likewise undertaken initiatives concerning the competition assessment of laws and regulations:

- **Indonesia.** As provided in the Indonesian competition authority's Guidance on Competition Policy Assessment Checklist,¹⁰⁷ the authority has an advocacy role in relation to the "law and regulatory policy" of the central government and the local government "from the perspective of competition" and can "provide advice in the form of revision, annulment and/or revocation" of policies that conflict with competition principles (Indonesia Competition Commission, 2016, p. 6^[116]). The authority likewise has the right to review proposed and existing regulations for anticompetitive provisions (Indonesia Competition Commission, 2016^[116]). The methodology used draws on the OECD Competition Assessment Toolkit.
- **Philippines.** In July 2020, the National Economic and Development Authority and the Philippine Competition Commission issued Joint Memorandum Circular No. 01-2020 that prescribed guidelines on the adoption and implementation of a National Competition Policy (NCP). This would require all government agencies to review regulations to determine if they restrict competition or render undue advantage to some firms (National Economic and Development Authority and PCC, 2020^[117]).
- **Malaysia.** The National Policy for the Development and Implementation of Regulations requires ministries drafting a new law or regulation to perform a regulatory impact assessment (RIA) that includes an assessment of the impact on various policy variables, such as competition policy (Government of Malaysia, 2013^[118]).

Box 7.5. Best practices in national regulatory assessments

National Competition Policy and National Reform Agenda, Australia

During the National Competition Policy, Australia's ten-year "landmark microeconomic reform program", the federal government and all state and territorial governments were required to identify, review, and if necessary, amend existing legislation that restricted competition. In addition to reviewing existing legislation, the federal government also undertook to provide evidence that new legislation restricting competition was consistent with the guiding review and reform principle.

The initiative was set up following an independent inquiry into a national competition policy, commonly referred to as the Hilmer Report. The National Competition Council issued six assessment reports during the programme, which ran from 1995 to 2005, monitoring the policy's achievement of key

objectives; these included structural reform of public monopolies; implementation of early reforms to standardise transport regulations across all states and territories; adoption of legislation review programs to reduce costs to business through the repeal of obsolete or unjustified legislation; and application of reforms to local government businesses.

In 2005, the Council of Australian Governments (COAG) noted that the measures implemented through the National Competition Policy had been “pivotal in boosting the competitiveness and growth of the Australian economy”.¹⁰⁸ During the reforms, Australian per capita income rose from 16th in the OECD to 8th.

In February 2006, COAG agreed to continue competition and regulatory reform through the National Reform Agenda.

Competition assessment in Korea’s Regulatory Impact Assessment

In 2008, Korea made competition assessments a requirement in the preparation of new regulations and ordered agencies to comply with the following process.

1. A government body submits a draft regulation to the Regulatory Reform Committee (RRC) for regulatory impact analysis.
2. RRC sends it to the Korea Fair Trade Commission (KFTC) for competition assessment.
3. KFTC conducts a competition assessment on the draft regulation through a two-step, preliminary and in-depth assessment process and reports the result back to RRC.
4. RRC takes into consideration KFTC’s final competition assessment when reviewing the concerned regulation and, if the regulation is anticompetitive, makes a decision to revise or withdraw it. After the RRC’s decision, the original government body submits the modified draft regulation to the National Assembly (OECD, 2019^[119]).

Source: (National Competition Council, 1997^[120]) (Council of Australian Governments, 2005^[121]) (OECD, 2019^[119]).

8 Benefits of lifting regulatory barriers to competition

8.1. Introduction

The OECD's recommendations address specific restrictions identified in ASEAN legislation. Their impact is directly linked to lifting the identified restrictions and to the consequent positive effect on competition in the relevant ASEAN logistics sub-sector or in the logistics sector as a whole.

In order to illustrate the benefits arising from lowering regulatory barriers to competition, the OECD has attempted to quantify their impact. Whenever revenue figures for a logistics sub-sector were available, the OECD adopted the following steps for each ASEAN member state.

1. The OECD assessed whether its recommendations in the relevant sub-sector concerned provisions being enforced by the authorities and that thus were likely to have an impact, based on information collected during the project.
2. For those recommendations satisfying the above criterion, the OECD considered whether the recommendations would have been expected to have an impact on either consumers through lower prices or economic activity in terms of greater efficiency and additional revenue. The majority of the recommendations are expected to increase consumer benefits through lower prices.¹⁰⁹
3. The methodology described in Annex 1 was applied with estimates calculated using assumptions described in the sections below.

If a number of restrictions identified in the project were lifted, the OECD estimates a conservative benefit for the ASEAN economy of between USD 4 billion to USD 4.1 billion per year or 0.004% combined GDP for impacted ASEAN member states. This amount is the sum of the estimated positive effects on consumer surplus in the ASEAN logistic sector as a result of removing current regulatory barriers to competition.

For a variety of reasons, these figures are likely to underestimate the actual impact of fully implementing all the recommendations made in the ASEAN Competition Assessment Project. First, it was not possible to quantify the effects of all individual recommendations in all member states, due to insufficient data or because of the nature of the regulatory change. Second, the estimates do not account for the benefits to the business environment arising from improving the quality of legislation, for instance, by implementing recommendations to streamline the body of legislation and to provide businesses more guidance and clarity. Third, the estimation framework focuses on the impact on consumer welfare, which is the standard approach followed by most competition authorities and which is embedded in the OECD Competition Assessment Toolkit.¹¹⁰ Other benefits, such as increased employment, lower barriers to entry for SMEs, and improved cross-border trade are not included in this estimate.

In addition to these sector-specific impacts, full implementation of the OECD's recommendations is expected to deliver positive long-term effects on FDI stock in the logistics sector (see Section 8.5.1); cross-border trade (see Section 8.3.2); SMEs and employment (see Section 8.5.3); and gender equality (see Section 8.5.4).

Table 8.1. Summary of estimated benefits, USD million

| Sub-sector level | Benefits – higher range | Benefits – lower range | Key recommendations driving the quantified benefits |
|------------------|-------------------------|------------------------|---|
| Road | 747 | 756 | Ease of entry requirements |
| Maritime | 2 595 | 2 678 | Cabotage deregulation and opening pilotage services to competitive tender |
| Rail | 101 | 102 | Separation of vertically integrated incumbent |
| Warehouses | | | Removal of minimum-size requirements |
| All logistics | 564 | 564 | FDI liberalisation |
| Total | 4 007 | 4 102 | |

Note: The estimate of the impact on FDI rely on a point estimate from (Mistura and Roulet, 2019^[122]), so no interval is provided.

Source: OECD analysis.

The cumulative and long-term impact of lifting the restrictions identified in the ASEAN logistic sector should not be underestimated. However, this Competition Assessment Project focuses on laws and regulations in the logistics sector, not enforcement. Changes in regulation can only have an impact if that regulation is then enforced. The direct benefits of lifting regulatory restrictions are limited when regulation is not enforced.

An indirect benefit of streamlining the body of legislation in this sector by fully implementing the OECD recommendations is that it will positively affect the ability of businesses, including SMEs, to compete and grow in the longer term.

8.2. Benefits at sub-sector level in ASEAN

8.2.1. Benefits in road freight transport

The OECD's series of recommendations to make licensing requirements and operational constraints in road freight transport less burdensome (see Chapter 3)¹¹¹ will have the following expected economic benefits.

- A potential increase in market entry by reducing the barriers to entry and administrative burdens associated with licensing requirements.¹¹² For instance, recommendations include the removal of an economic-needs test in the licensing application process and the requirement to own, rather than simply lease, a parking lot.
- An increase in efficiency through a reduction in operational constraints, which will cut transport costs per freight unit. For instance, recommendations for clarifying road-worthiness criteria.
- A reduction in potential market exits by healthy competitors through increases in the flexibility of operators to adjust their fleet size to market conditions. For instance, recommendations include the removal of minimum fleet size requirements.

As a result, the sub-sector is expected to become more competitive and efficient, leading to lower prices for road freight transport users.

Information on revenues in this logistics sub-sector and the expected impact on prices can be used to estimate the likely impact on users. More specifically, following the methodology in the *OECD Competition Assessment Toolkit 3: Operational Manual* (see, Annex 8.A), the benefits for road freight transport users from lower prices can be calculated as follows:

$$Benefit = \left(\rho + \frac{1}{2} |\varepsilon| \rho^2 \right) * R$$

Where ρ is the percentage change in average prices, $|\varepsilon|$ is the absolute value of the elasticity of demand, and R is the revenue from road freight transport

In 2019, the total revenue from the provision of road freight transport was USD 46.44 billion for the three ASEAN member states in which the recommendations are expected to have a noticeable impact and data are available.¹¹³ To consider the likely impact of increased competition and efficiency in each of the three countries, the OECD relies on its knowledge of the sector to make a conservative assumption that the impact on prices will be 5% (high) or 1% (low), depending on the country.

Two assumptions on the elasticity of demand for road freight transport are adopted. First, a low elasticity of demand (-0.5) and a medium elasticity of demand (-1.5). Such assumptions are based on the OECD knowledge of the sector and empirical studies on freight transport price elasticity (Oum, Waters and Yong, 1990^[123]), (Beuthe, Jourquin and Rietveld, 2014^[124]), (Kremers, Nijkamp and Piet, 2020^[125]). These studies show different price elasticities in freight transport ranging from -0.4 to -1.6. Such variation is mainly due to the different data and methodologies used, which influence the price demand elasticity in transport. The OECD uses -0.5 and -1.5 as its demand elasticity assumptions, both of which are within the range reported in empirical studies.

The annual benefit to road freight users from a decrease in freight rates following increased competition between providers (potential or active) is estimated to be between USD 747 million and USD 756 million a year for the three ASEAN member states for which benefits were quantified, depending on whether demand is assumed to be less or more elastic.

8.2.2. Benefits in maritime freight transport

Cabotage

The OECD has recommended lifting cabotage restrictions to allow foreign vessels to transport domestic cargo between ports within the same country. This recommendation represents a significant change. Allowing foreign maritime service providers to enter the domestic shipping market by lifting cabotage restrictions is expected to increase competition between foreign and domestic freight transport providers and to bring the following benefits.

- Decreased costs for users who would no longer be limited to using domestic transport services, possibly reducing the operational cost for shippers, freight rates and so positively affecting trade.
- Potentially improved quality of logistics services and stronger links to global trade lanes (UNCTAD, 2017^[55]); this, in turn, can have a positive impact on efficiency in supply chains and connectivity.

Box 8.1 provides estimates of the benefits that arose after cabotage restrictions were lifted in New Zealand and the possible economic benefits in the US if cabotage laws were to be removed. It aims to illustrate the possible economic benefits that can arise from lifting cabotage restrictions, in particular reduced maritime freight rates.

Information on maritime-sector revenues and expected impact on prices can be used to estimate the likely impact on users. More specifically, the benefits for maritime freight transport users from lower rates can be calculated using formula set out in Annex 8.A.

Box 8.1. Cabotage reform in New Zealand and in the United States

Economic effects of cabotage deregulation in New Zealand

New Zealand also introduced cabotage liberalisation in 1994 in order to increase competition. Following the reform, international vessels visiting New Zealand were allowed to deliver imports or pick up exports. As a result, prices dropped by 20-25% between 1994 and 2000. National carriers were however able to retain control of the vast majority of the market, although they were forced to reduce rates. In 2000, upon review of this reform, the government decided not to re-introduce cabotage restrictions (UNCTAD, 2017, p. 23^[55]).

Possible economic effects of removing cabotage laws in the United States

First passed in 1920, the United State Merchant Marine Act (Jones Act) remains one of the most restrictive examples of cabotage laws in the world. The most comprehensive economic study of the possible economic effects of removing the Jones Act was published by the US International Trade Commission in 2002. It estimated that the economy-wide effect of removing the Jones Act would be a welfare gain of approximately USD 1.32 billion, which might also be understood as the annual reduction in real national income imposed by the Jones Act. A primary reason for the large gain in welfare is the estimated 22% cost reduction of currently restricted cabotage services. A 2013 study found coastal water transport in the US would be about 60% cheaper, and that cabotage users would stand to gain over USD 500 million per year if the Jones Act was reformed.

Source: (UNCTAD, 2017^[55]) (US International Trade Commission, 2002^[126]) (Lewis, 2013^[127]).

In 2019, the total revenue from the provision of maritime freight transport was approximately USD 49.84 billion for the five ASEAN member states in which the recommendations are expected to have a noticeable impact and where data are available.¹¹⁴ To consider the likely impact of increased international competition in each of the countries, the OECD relies on its knowledge of the sector and previous studies on the impact of cabotage deregulation on freight rates (see Box 8.1) to make a conservative assumption of the positive impact of cabotage deregulation on maritime freight rates of 5%.

In the absence of empirical elasticity estimates for the five relevant countries, two different assumptions on the elasticity of demand for maritime freight transport are adopted: 1) a low elasticity of demand (-0.5); and 2) a medium elasticity of demand (-1.5). Such assumptions are based on the OECD knowledge of the sector and empirical studies on freight transport price elasticity (Oum, Waters and Yong, 1990^[123]), (Beuthe, Jourquin and Rietveld, 2014^[124]), (Kremers, Nijkamp and Piet, 2020^[125]).

The annual benefit to maritime freight users from a decrease in freight rates following increased competition between international and domestic providers – potential or active – is estimated to be between USD 2.6 billion and USD 2.7 billion a year for the countries for which benefits were quantified, depending on whether demand is assumed to be less or more elastic.

Pilotage services

The OECD recommends limiting direct provision of pilotage services by port authorities to when the private sector shows no manifest interest in providing the services or when an authority does not have the capacity to run tenders. The private sector's lack of interest should be re-evaluated on a regular basis, in order to make sure that direct provision is not unduly restricting entry. In doing so, competition between (potential) providers will be introduced at the tender stage, which should enable the selection of the most suitable supplier, and therefore promote investment, innovation and lower prices for port users (OECD, 2014^[63]).

Making pilotage contestable is expected to have the effect of lowering fees for users and potentially increasing the attractiveness of the ports to cargo shipping companies. Implementing competitive tenders may also improve the quality of the service offered, for example, by reducing waiting times.

While the potential quality and improvements in services is difficult to measure,¹¹⁵ information on the revenues of the sub-sector and the anticipated impact on pilotage fees can be used to estimate the likely benefits to users. More specifically, the benefits for cargo shippers from lower fees can be calculated using the formula in Annex 8.A where p is the percentage in average pilotage fees as a result of opening up the market to entry by other operators; $|e|$ is the absolute value of the elasticity of demand; and R is the revenue from pilotage.

In 2018, total revenue from the provision of pilotage services in ASEAN member states impacted by this recommendation¹¹⁶ is estimated at about USD 10 million.¹¹⁷ To consider the impact of competitive tendering for the market on pilotage fees, the OECD relies on studies on the impact of competitive tendering on prices and the project team's analysis of the extent to which the recommendation would be expected to create user benefits through lower prices.

A 2007 study by the European Conference of Ministers of Transport on competitive tendering of rail services found that the special regional authorities responsible for planning, managing, and procuring regional rail transport in Germany realised savings of 20% after following tender procedures.¹¹⁸ Similarly, a review of pilotage services in Portuguese ports in 2018, which were being provided solely by the port authority, also revealed a price differential of between 20% and 50% higher when compared to the cost of pilotage in other European countries.¹¹⁹ Given the differences between piloting services in European ports and piloting services in some ASEAN ports, the project team made a conservative assumption of the impact on prices from opening the ASEAN market to competitive tendering of 5%.

The annual benefits to port pilotage users in ASEAN countries impacted (and where data is available) by the OECD recommendation is estimated between USD 505 000 and USD 530 000 depending on whether demand is assumed to be less or more elastic. The estimated benefits result from a reduction in piloting fees following increased competition between providers (potential or active).

8.2.3. Benefits in rail freight transport

The OECD has made recommendations to separate vertically integrated companies that act as both operators of the rail network and freight transport service providers, and to improve the legal conditions for third-party access to existing rail infrastructure controlled by the competing incumbent. As explained in Section 5.1.1, the OECD recommends one of the following options: 1) accounting separation with separate accounts for the infrastructure and the freight businesses; 2) functional separation with separate entities under the same ownership; or 3) ownership separation. These recommendations aim to encourage entry (or the threat of potential entry) to increase effective competition and potentially lead to lower prices and better service quality.

Information about rail-sector revenues and the expected impact on prices can be used to estimate the likely impact on users. More specifically, the benefits for rail freight transport users from lower rates can be calculated using formula set out in Annex to this chapter.

In 2019, total revenue from the provision of rail freight transport was approximately USD 3.33 billion in the two ASEAN member states¹²⁰ in which the recommendations are expected to have a noticeable impact and where revenue data are available. To consider the likely impact of increased international competition, the OECD relied on its knowledge of the sector and previous studies on the impact of separating vertically integrated companies.

Evidence on the impact of railway sector reform, including separation, is mixed (see, Chapter 5 for examples of different railway reforms). In 2018, UNECE noted that post-liberalisation the EU rail freight market “remains heavily concentrated and characterized by a low number of newcomers and the persistence of large market shares of incumbent operators” (UNECE, 2018, p. 40^[75]). Certain studies have found that increased levels of separation and privatisation are not associated with lower prices, mainly because state-owned operators can charge subsidised railway fares. However, other studies conclude that there have been improvements in efficiency and that customer satisfaction and quality have improved following the opening of the railway industry (UNECE, 2018, pp. 53,54^[75]).

In view of these studies, the project team has made a conservative assumption of 3% for the impact on rail freight rates of all types of separation of vertically integrated companies.

Two different assumptions about the elasticity of demand for rail freight transport are used: 1) a low elasticity of demand (-0.5); and 2) a medium elasticity of demand (-1.5). Such assumptions are based on OECD knowledge of the sector and empirical studies on freight transport price elasticity (Oum, Waters and Yong, 1990^[123]), (Beuthe, Jourquin and Rietveld, 2014^[124]), (Kremers, Nijkamp and Piet, 2020^[125]).

The separation of rail operators from freight transport service providers, and increased third-party access to existing rail infrastructure and the resulting decrease in freight rates following increased competition is estimated to bring an annual benefit to rail freight users of between USD 100 million and USD 102 million for the countries for which benefits were quantified, depending on whether demand is assumed to be less elastic or more elastic respectively.

8.3. Benefits for foreign direct investment in logistics

The OECD has made a recommendation to enhance liberalisation efforts in the transport sector (see Chapter 6), which remains partly off limits to foreign investors, holding back potential economy-wide productivity gains. It is anticipated to benefit ASEAN countries by increasing inward foreign direct investment (FDI) stocks. This is expected to lead to job creation, transfer of know-how and innovation, increasing productivity, and economic growth.

While the benefits of increased employment, innovation, productivity and growth are difficult to measure given data limitations, an OECD study has helped estimate the benefits of increased FDI from liberalisation in the transport sector (Mistura and Roulet, 2019^[122]). Shedding light on the potential costs in terms of forgone investment of maintaining statutory barriers to FDI and suggesting significant and sizeable effects of FDI liberalisation, it estimates that introducing reforms that lead to a 10% reduction in the level of FDI restrictiveness – as measured by the OECD FDI Regulatory Restrictiveness Index – could increase bilateral FDI inward stocks by an average of 2.1% annually. The strongest effect comes from reducing foreign-equity limitations, denoting its relatively greater importance as a statutory barrier to investors. Foreign investment screening policies are also found to significantly curb FDI, albeit to a much lesser extent. The effect of FDI restrictions is also estimated to be greater for foreign investment in the service sector (which includes transport services).

In 2019, the logistical sector’s FDI inward investment stock in ASEAN was USD 27 billion (UNCTAD, 2019^[128]).¹²¹ Based on the assumption that the OECD recommendation will reduce the OECD FDI Restrictiveness Index by 10%, the estimates by (Mistura and Roulet, 2019^[122]) would translate into USD 564 million in increased FDI inward stock.

Moreover, the effect of FDI restrictions is likely to extend beyond its targeted sector-scope. Restrictions on FDI in service sectors play an important role in the competitiveness of both services and manufacturing sectors. OECD work in this area shows that the value created by services as intermediate inputs represents over 30% of the value added of manufactured goods (Nordes and Kim, 2013^[129]). Improving performance in services therefore becomes even more important for developing an internationally competitive economy.

Limited competition in services sectors, including limits on foreign participation, negatively affect the productivity of manufacturing firms (OECD, 2018_[130]).

Finally, the gain in real GDP of reducing barriers to trade and FDI restrictions to the global average has been estimated at 17% of GDP or more in the medium-to-long term, of which nearly five or more percentage points is attributable to FDI liberalisation (IMF, 2018_[131]).

8.4. Benefits for cross-border trade

The OECD's recommendations are aimed at making markets more competitive, reducing non-tariff barriers to trade and, when applicable, harmonising regulations across countries to facilitate trade.

Although the OECD has not been able to quantify in monetary terms the anticipated benefits in cross-border trade due to data limitations, an OECD study from July 2020 provides an indication of the potential benefits in terms of reduction in trade for transport services (Benz and Jaax, 2020_[26]).¹²²

The study, which covers 46 countries, including Malaysia and Thailand, shows that transport barriers, as measured by the OECD Services Trade Restrictiveness Index (STRI), are strongly associated with lower service trade. The results are that trade costs remain high. Expressed as percentages of total trade value or ad valorem equivalents (AVE), average costs of regulatory barriers to cross-border trade stand at around 60% for transport services. In the case of Malaysia and Thailand, the costs of regulatory barriers to transport cross-border trade stand at 79.1% and 151.7% respectively for transport services. AVEs must be interpreted as the percentage point reduction of trade costs corresponding to a reduction of the OECD STRI from its current level to zero (Benz and Jaax, 2020_[26]).¹²³

8.5. Economy-wide benefits

8.5.1. Benefits for small- and medium-sized enterprises, start-ups and employment

The OECD's recommendations are expected to benefit small- and medium-sized enterprises (SMEs) by ensuring that all SMEs have equal access to markets and by promoting dynamic competition. The recommendations aim to remove unnecessary administrative barriers that may distort competition, reduce information asymmetries, and promote easy entry procedures.

While the OECD is unable to quantify such benefits, SMEs, including micro enterprises are integral to the economic development and growth of all ASEAN member states as they constitute the largest number of businesses in the region and contribute significantly to its labour force. According to ASEAN data, SMEs account for the vast majority of total enterprises in ASEAN member states and between 52% and 98% of total employment. The contribution of these enterprises to each member states' GDP is between 30% and 53% and the contribution of SMEs to exports is between 10% and 30%.¹²⁴ SMEs are important in terms of income and employment generation and their development is fundamental to achieving long-term sustainable economic growth and to narrowing the development gap.

In addition, start-ups have emerged as key drivers of economic growth and job creation, and are often a catalyst for radical innovation. In 2016, young firms accounted for about 20% of employment, but created almost half of new jobs on average across OECD countries (Calvino, Criscuolo and Menon, 2016_[132]) and innovation by young firms contributes significantly to aggregate productivity growth, accounting for half of it in the US (Klenov and Li, 2020_[133]). Although the OECD has no specific estimates for ASEAN member states, the average impact across OECD economies helps to illustrate that the impact of start-ups on an economy is not to be underestimated.

Lifting regulatory barriers to competition is expected to contribute to unlocking the potential of SMEs and start-ups and to generate economic growth in member states.

8.5.2. Benefits for gender equality

The ASEAN legislation review has identified a few examples of regulations restricting women's economic activity in logistics, such as the exclusion of women from employment in the transport sector. Such discriminatory restrictions can be interpreted as anti-competitive regulations under the OECD's Competition Assessment Toolkit.

While female labour participation is high in the ASEAN region compared to the OECD average, the jobs women perform tend to be low value-added, informal and significantly less well-paid. Female labour participation in the region tends to be driven by economic necessity rather than opportunity (OECD, 2017, p. 16_[134]). Similarly, female entrepreneurship in ASEAN tends to be concentrated in less profitable sectors, such as agriculture and specialised services, such as beauty and catering. The OECD has highlighted the difference in businesses owned by females and males, in terms of size, productivity and profit. Customs and social norms that reinforce gender stereotypes are major limiting factors for female entrepreneurship in the region (OECD, 2017, p. 17_[134]).

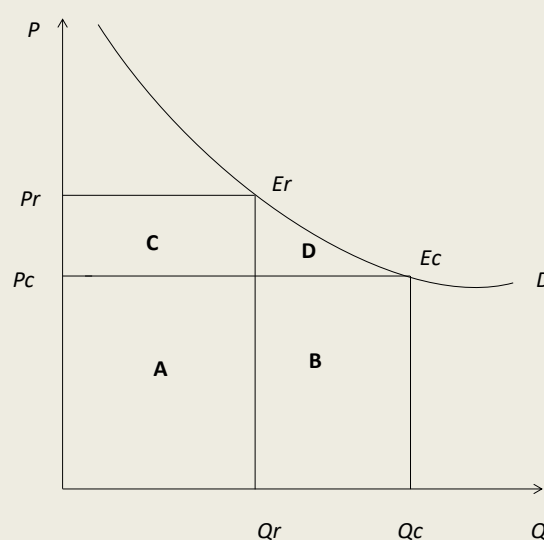
Competition policy can be a way to address gender equality.¹²⁵ For example, lowering regulatory barriers to competition and improving the business environment will benefit entrepreneurship, including for female entrepreneurs. In addition to its social benefits, improvements in women's entrepreneurship and participation in the labour force increase economic growth, income equality and productivity. Studies have shown that the gender gap causes an average loss of 15% to GDP across the world (Cuberes and Teignier, 2016_[135]). In East and Southern Asia (excluding People's Republic of China), gains would be particularly significant and the removal of gender bias could increase GDP by 30% compared with a business-as-usual scenario (McKinsey Global Institute, 2015_[27]).

Annex 8.A. Methodology to estimate consumer benefits

Annex Box 8.A.1. Measuring changes in consumer surplus

The effects of changing regulations can be examined as movements from one point on the demand curve to another. For regulations that have the effect of limiting supply or raising price, an estimate of consumer benefit or harm from the change from one equilibrium to another can be calculated. Graphically, the change is illustrated for a constant elasticity demand curve. E_r shows the equilibrium with the restrictive regulation, E_c shows the equilibrium point with the competitive regulation. The competitive equilibrium is different from the restrictive regulation equilibrium in two important ways: lower price and higher quantity. These properties are a well-known result from many models of competition.

Annex Figure 8.A.1. Changes in consumer surplus



Under the assumption of constant elasticity of demand the equation for consumer benefit is:

$$CB = C + D \approx (P_r - P_c)Q_r + \frac{1}{2} (P_r - P_c)(Q_c - Q_r)$$

Where price changes are expected, a basic formula for a standard measure of consumer benefit from eliminating the restriction is:

$$CB = \left(\rho + \frac{1}{2} \epsilon \rho^2 \right) R_r$$

Where CB : standard measure of consumer harm; ρ : percentage change in price related to restriction; R : sector revenue; and ϵ : demand elasticity. When elasticity is not known, a relatively standard assumption is that $|\epsilon| = 2$. This value corresponds to more elastic demand than in a monopoly market, but less than the perfectly elastic demand in a competitive market. Under this assumption, the expression above simplifies to:

$$CB = (\rho + \rho^2) R_r$$

Source: (OECD, 2019_[119]).

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Notes

¹ The methodology followed in this project is consistent with the product market regulations (PMR) index developed by the OECD. To measure a country's regulatory stance and track progress of reforms over time, the OECD developed an economy-wide indicator set of PMR in 1998 (Nicoletti and Scarpetta, 2003^[7]); this indicator was updated in 2003, 2008 and 2013.

² Fournier et al. (2015^[5]) find that national regulations, as measured by the economy-wide PMR index, have a negative impact on exports and reduce trade intensity (defined as trade divided by GDP). Differences in regulations between countries also reduce trade intensity. For example, convergence of PMR among EU member states would increase trade intensity within the European Union by more than 10%. Fournier (2015^[6]) studied the impact of heterogeneous PMR in OECD countries and concluded that lowering regulatory divergence by 20% would increase FDI by about 15% on average across OECD countries. He investigated specific components of the PMR index and found that command-and-control regulations and measures protecting incumbents (such as antitrust exemptions, entry barriers for networks and services) are especially harmful in reducing cross-border investments.

³ Arnold, Nicoletti and Scarpetta (2011^[8]) analysed firm-level data in 10 countries from 1998 to 2004 using the OECD's PMR index at industry level, and found that more stringent PMR reduces firms' multi-factor productivity (MFP).

⁴ Égert (2017^[9]) investigated the drivers of aggregate MFP in a sample of 30 OECD countries over a 30-year period.

⁵ The study of 15 countries and 20 sectors from 1985 to 2007 estimated the effect of regulation of upstream service sectors on downstream productivity growth. The productivity frontier refers to the most productive countries and sectors in the sample. The farther a sector is from the frontier, the less productive it is.

⁶ Égert (2018^[16]) investigated the link between product and labour-market regulations with investment (capital stock) using a panel of 32 OECD countries from 1985 to 2013.

⁷ Employment growth in the road transport sector in France increased from 1.2% a year between 1981 and 1985 to 5.2% a year between 1986 and 1990. Between 1976 and 2001, total employment in the sector doubled, from 170 000 to 340 000.

⁸ Using the OECD's summary index of PMR in seven non-manufacturing industries in the energy, telecoms and transport sectors, Causa et al. (2016^[20]) found stringent PMR had a negative impact on household disposable income. This result held both on average and across the income distribution, and led to greater inequality. The authors noted that lower regulatory barriers to competition would "tend to boost household incomes and reduce income inequality, pointing to potential policy synergies between efficiency and equity objectives".

⁹ Multi-factor productivity (MFP) is a measure of the "efficiency with which labour and capital inputs are used together in the production process" (<https://data.oecd.org/lprdy/multifactor-productivity.htm>).

¹⁰ ATISA was signed by ASEAN economic ministers in Jakarta on 7 October 2020. The agreement will supersede AFAS after 5 years for all member states, except Viet Nam (7 years) and Cambodia, Lao PDR and Myanmar (13 years).

¹¹ This report will however not address any such barriers in the small-package delivery services sector as these are covered in the companion report, *OECD Competitive Neutrality Reviews: Small Package Delivery Services in ASEAN*.

¹² The forecast refers to Southeast Asia, which includes Timor-Leste in addition to the ten ASEAN member states.

¹³ ASEAN Expert Group on Competition (AEGC) released a “Joint Statement in Response to the Coronavirus Disease (COVID-19) Pandemic”; see <https://asean.org/storage/2020/06/AEGC-Joint-Statement-in-Response-to-COVID-19-9June20-FINAL.pdf>.

¹⁴ ASEAN (12 November 2020), “ASEAN Comprehensive Recovery and Its Implementation Plan”, <https://asean.org/asean-comprehensive-recovery-framework-implementation-plan>.

¹⁵ In 2004, member states signed the ASEAN Framework Agreement of the Integration of Priority Sectors. The framework identified 11 priority sectors, namely agro-based products, air travel, automotive, e-ASEAN, electronics, fisheries, healthcare, rubber-based products, textiles and apparels, tourism, and wood-based products. In 2006, noting the expansion of the ASEAN logistics market, ASEAN economic ministers decided to include logistics as the twelfth priority sector for economic integration.

¹⁶ ESCAP Survey on Freight Transport Policy Responses to COVID-19 (July 2020), <https://www.unescap.org/covid19/policy-responses>.

¹⁷ World Bank database and United Nations Economic Commission for Europe Statistical Database <https://w3.unece.org/PXWeb/en>.

¹⁸ UNCTAD explains that the current version of the Liner Shipping Connectivity Index is based on six components: 1) the number of scheduled ship calls a week in a country; 2) total deployed annual capacity in TEUs in a country; 3) the number of regular liner-shipping services from and to a country; 4) the number of liner-shipping companies that provide services from and to a country; 5) the average size in TEUs of the ships deployed by the scheduled service with the largest average vessel size; and 6) the number of other countries that are connected to a country through direct liner-shipping services.

¹⁹ The Liner Shipping Bilateral Connectivity Index (LSBCI) has five components: 1) the number of transshipments required to get from country A to country B; 2) the number of direct connections common to both country A and B; 3) the geometric mean of the number of direct connections of country A and of country B; 4) the level of competition in services that connect country A to country B; 5) the size of the largest ships on the weakest route connecting country A to country B. For a more detailed methodology, see <https://unctadstat.unctad.org/wds/TableViewer/summary.aspx?ReportId=96618>.

²⁰ For more information on currently applicable liner shipping block exemptions in the world, see *OECD Competition Assessment Reviews: Logistics Sector in Singapore* (2021).

²¹ See www.adb.org/sites/default/files/publication/29294/gms-cbta-instruments-history.pdf.

²² See <http://agreement.asean.org/>.

²³ See <http://agreement.asean.org/>.

²⁴ See <https://assist.asean.org/en/home>.

²⁵ Article 22 states the general principle, while Article 23 refers to the quotas and Protocol 3 provides further specifications. The criteria for cross-border licences are listed in Annex 9.

²⁶ Article 9(2) provides that the type and quantity of road vehicles to be used for transit transport is specified in Protocol 3 and shall be discussed from time to time between the contracting parties. For the full text of Protocol 3, see <https://acts.asean.org/Publication/Legal-Framework/afafgit-protocol-3-types-and-quantity-road-vehicles>.

²⁷ This was agreed in the 15th ASEAN Transport Minister Meeting on 10 December 2009 in Hanoi, Viet Nam.

²⁸ Article 9, AFAFIST.

²⁹ The trade zones are Tachilek, Myawady, Kawthoung, Myeik, Htikhee, Mawtaung, and Maesai.

³⁰ Article 8, Road Traffic (Licensing of Motor Vehicles and Trailers) Regulations (2013) and Article 96, Road Traffic Act (Chapter 68).

³¹ See Section 3.3 on Operational constraints.

³² Article 2, Memorandum Circular No. 2017-027.

³³ Article 4(1), Land Transport Act B.E. 2522 (1979).

³⁴ See OECD (2001_[48]). Generally, several factors combine to reduce the presence of economies of scale. First, the maximum size of road vehicles is often limited by regulation (given the status of the infrastructure, or based on considerations of safety, noise and emissions). This maximum size is not large relative to the flows of goods on most routes. Second, road freight services are primarily purchased by firms and corporations. The flows of goods between firms are much more concentrated than the flows of goods between individuals or between firms and individuals. Third, the flows of goods between firms are often less time-sensitive than the transportation of passengers (depending upon the products, delays of 24 hours or more may be tolerated without incurring high costs). Since the scales of flows over a typical route and timeframe are large relative to the efficient vehicle size, the economies of scale on most routes are minimal.

³⁵ In Viet Nam, pursuant to Decree No. 86/2014/ND-CP, in order to provide goods transport services in containers, or services using vehicles, trailers or semi-trailers to transport goods beyond a 300-kilometre distance, operators need to own a minimum number of vehicles as specified in their licence application, as follows: 1) 10 or more if the head office is in one of the “centrally run cities”; 2) 5 or more if the head office is located in other localities; 3) 3 or more if the head office is located in poor districts.

³⁶ See SPAD’s (now APAD) Licensing Policy Guidelines. See <https://www.apad.gov.my/index.php/en/source-of-information/guideline/garis-panduan-kenderaan-barangan>.

³⁷ The Implementing Rules and Regulations of Republic Act No. 8749 or the 1998 Philippine Clean Air Act required the DOTC (now DOTr) and the LTO to conduct vehicle tests “utilizing the Motor Vehicle Inspection Station (MVIS) or its duly authorized and accredited inspection centers consistent with the R.A. 7394 otherwise known as the Consumer Act of the Philippines within sixty (60) days prior to date of registration”. While these tests are limited to emission standards, the resulting certificate is nevertheless proof of a vehicle’s roadworthiness and therefore its ability to operate in the Philippines. According to stakeholders, the Department of Transportation (DOTr) and the Land Transportation Office (LTO) are currently

authorizing Private Motor Vehicle Inspection Centers (PMVICs) to conduct motor vehicle roadworthiness and emission inspection, which is one of the requirements for the renewal of motor vehicle registration. Recently, the LTO issued Memorandum Circular No. 2020-225 and 2020-2030 declaring opening of additional PMVICs in different locations in the country, in addition to the previously awarded sites, including 111 sites to cater heavy duty motor vehicle inspection, as contained in the LTO MC 2020-2030.

³⁸ See Minister of Transportation Regulation No. 133/2015 concerning Periodical Testing of Motorised Vehicles, Article 4(3), https://jdih.dephub.go.id/assets/uudocs/permen/2015/PM_133_Tahun_2015.pdf.

³⁹ See Minister of Transportation Regulation No. 133/2015, Article 4(5).

⁴⁰ Co-operation on the ASSM began in the 1990s, with ASEAN Plan of Action in Transport and Communications and successor plans of action in 1996-1998. They were followed by a similar agenda for 1999-2004 and then several sectoral plans of action: the ASEAN Transport Action Plan (2005-2010), ASEAN Strategic Transport Plan (2011-2015); and ASEAN Transport Strategic Plan (KLTPSP, 2016-2025). In 2007, member states adopted the Roadmap Towards an Integrated and Competitive Maritime Transport in ASEAN. It featured strategic actions and measures to boost the capacity, capability and competitiveness of the maritime sector in the region. Its objectives included the promotion of competition in all shipping markets and the creation of an integrated ASSM with little restriction on the movement of vessels and the provision of shipping services in the region. This objective was to be achieved through a progressive integration and harmonisation of regulatory requirements and commercial practices “to ensure that competition takes place on equitable terms and conditions”. The ASSM was also one of the objectives of the Master Plan on ASEAN Connectivity 2010-2015 and an implementation framework that was endorsed at the 2014 ASEAN Transport Meeting in Myanmar. The current KLTPSP includes several specific objectives, including the development of an efficient and integrated inland waterway transport network, the enhancement of navigation systems and security measures, and the formulation of specific policy initiatives and recommendations to develop strategic maritime transport logistics. These objectives are in line with the broader target set in the ASEAN Economic Community Blueprint of ensuring the free flow of trade in services with no restrictions on ASEAN services suppliers’ provision of services and the establishment of companies in other member states. In particular, it allowed ASEAN equity participation of 70% by 2010 for the four priority services sectors, including logistics. So far, no member state has met the target of allowing 70% ASEAN ownership in all maritime services.

⁴¹ UNCTADstat, “Container port throughput”, <https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=13321>.

⁴² These concepts are not defined in any rules or guidelines giving MARINA broad discretion in its assessments.

⁴³ See Republic Act No. 9295, *An Act Promoting the Development of Philippine Domestic Shipping, Shipbuilding, Ship Repair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in The Philippines, and for Other Purposes*. In the Philippines, this requirement stems from the classification of maritime freight services as a “public service”, which requires a specific licence called a certificate of public convenience (CPC).

⁴⁴ In Indonesia, in order to obtain a maritime transportation business licence, a company is required to own an Indonesian-flagged vessel of a minimum 175 gross tonnage (GT). Individual Indonesian citizens or business entities can create joint-venture sea transportation companies with foreign sea transportation companies or foreign legal entities or foreign nationals. Such companies must have at least one vessel of a minimum 5 000 GT with an Indonesian citizen as captain.

⁴⁵ This includes China, United States and European Union countries. There is no such requirement for vessel ownership in, for example, France (Code des transports, article L5411-1 and article L5411-2) or Greece (Law No. 959/1979 on Shipping Companies).

⁴⁶ Global Ship Lease (2019), “Our Industry”, www.globalshiplease.com/industry-overview (accessed 20 August 2020).

⁴⁷ These port models are set out in the *OECD Competition Assessment Reviews Portugal: Volume I – Inland and maritime transports and ports* (OECD, 2018, p. 188^[49]) using information from World Bank (2007, p. 85^[56]).

⁴⁸ The most common port services include cargo-handling, towage, pilotage and ancillary services. **Cargo-handling** involves both cargo-loading operations (known as stevedoring) and marshalling services, such as storage, assembly and sorting of cargo. **Towage** is the service of moving vessels in the port area using tugboats. **Piloting** is a specialised service provided by pilots with local knowledge, who assist ship commanders navigating and manoeuvring the vessels inside the port area. **Ancillary services** include a wide range of services, such as the provision of water and electricity, bunkering (supply of fuel), waste reception and security.

⁴⁹ The Myanmar Port Authority (MPA) has discretion to hold a tender or to accept unsolicited proposals to develop international port terminals. In Indonesia, Article 37 of Ministry of Transportation Regulation No. 15/2015 states that in non-commercial ports, the terminal and other port facilities are operated by the port operator unit but may be carried out by port business entities (PBE) – business entities with “business activities specifically in the field of terminal business and other port facilities” – upon agreement.

⁵⁰ Long concession contracts are common worldwide in the port sector; according to the ITF, port of container-terminals concessions, for example, have an average duration of 32.5 years. Moreover, data collected by Notteboom in 2008 showed that around 90% of the biggest terminal projects in Europe were awarded for a period of 30 to 65 years (OECD, 2018, p. 199^[49]).

⁵¹ This requirement is set out in Republic Act No. 7656, An Act Requiring Government-Owned or -Controlled Corporations to Declare Dividends Under Certain Conditions to the National Government, and for Other Purposes.

⁵² See House Bill 4317, which proposes an “Act separating the regulatory and commercial functions of the Philippine Ports Authority (PPA) by converting it into Philippine Ports Corporation for development, management and operation of public ports within its system and transferring the regulatory functions to the Maritime Industry Authority (MARINA)”. The bill aims to “avoid the conflict of interest arising from regulatory agencies vested with both regulatory and development or commercial functions”. It explains that: “under no circumstance should a regulatory agency benefit from its own regulation and/or use its regulatory powers to protect itself from competition at the expense of public interest” (Section 2, HB 4317). See https://congress.gov.ph/legisdocs/basic_18/HB04317.pdf For its operational functions, Article 6 of the Port Authority of Thailand Act, B.E. 2494 provides that Port Authority of Thailand (PAT) can carry out business in each of its ports “relating or incidental to port undertakings” and conduct “port undertakings in the interest of the state and the public”, while Article 9 provides that it can operate port services directly.

⁵³ For its operational functions, Article 6 of the Port Authority of Thailand Act, B.E. 2494 provides that Port Authority of Thailand (PAT) can carry out business in each of its ports “relating or incidental to port undertakings” and conduct “port undertakings in the interest of the state and the public”, while Article 9 provides that it can operate port services directly.

⁵⁴ In Thailand, the Council of Ministers sets a framework of minimum and maximum charges for port services, which applies to the five ports in Thailand, which are under the PAT (Bangkok Port, Laem Chabang Port, Regional Ports are Chiang Saen Commercial Port Chiang Khong Port and Ranong Port). As noted above, PAT could, in theory, set the tariffs for all service providers “within the Authority Area”. However, the Marine Department clarified that, notwithstanding the wording of the law, private operators within PAT’s ports set their own rates, provided they are also within the minimum-maximum framework.

⁵⁵ As port authorities can often regulate the prices of other service providers, this incentive to set higher charges for port users could hold also when there is competition between the port authority and other service providers.

⁵⁶ The World Bank made a more general point about the power to set fees in a 2018 report, *Promoting Open and Competitive Markets in Road Freight and Logistics Services*: “Regulators typically charge a fixed or percentage fee for their regulatory role, which is meant to cover the costs derived from monitoring the market and regulating it. A conflict of interest may arise, however, if the regulator depends significantly on the collection of fees in order to operate” (World Bank, 2018, p. 40^[60]).

⁵⁷ In Cambodia, the Ministry of Economy and Finance has the power to set port tariffs. In Sihanoukville Port, for example, the port authority, which is an SOE, can change these tariffs with permission from its board of directors, which contains representatives of Cambodian ministries.

⁵⁸ In Viet Nam, the government provides a framework and a port operator can choose to raise or reduce tariffs within this maximum-minimum range. The operator must still obtain approval of its port tariffs from the Ministry of Transport, however, with VINAMARINE providing final approval. This approval process is carried out for charges for containers, pilots, port services and tugboats.

⁵⁹ For an example assessment of the impact of an exclusivity arrangement for pilotage services, see ACCC’s determination on the application for authorisation No. A91235 lodged by Brisbane Marine Pilots Pty Ltd in respect of an exclusive pilotage services agreement at the Port of Brisbane, 3 December 2010.

⁶⁰ Italian Antitrust Authority, AS905 – *Technical-and-nautical services and setting of the relevant tariffs in Italian ports*, Report dated 14 December 2011, in Bull. No. 1/2012, p. 30-onwards.

⁶¹ Brunei Darussalam Maritime and Port Authority Order, Section 81(5).

⁶² Decision No. 34/2003/QD-TTg of the Prime Minister on the establishment of Vietnam Railways Corporation, articles 1 and 2.

⁶³ More generally, there would be a case for wholesale regulation if the upstream firm has market power, even if it is not vertically integrated.

⁶⁴ These are regulated firms that are or may in the future be operating simultaneously in a non-competitive activity and a potentially competitive complementary activity.

⁶⁵ Under Law No. 23/2007 on Rail Transportation, a new entrant may use existing tracks by co-operating with the infrastructure operator or by building its own track(s) that connect with, intersect with or separate existing tracks. Although not stated in the legislation, stakeholders have confirmed that a business entity is able to apply for a licence from the Director-General of Railways to operate rail freight transport services.

⁶⁶ In Myanmar, railway companies can enter into agreements with other railway organisations to use their railway infrastructure, with the approval of the Central Supervisory Board. See Sections 53 and 54 of the

Railway Transport Service Law. In Indonesia, while there is no rule guiding access, Ministry of Transport Regulation No. 62/2013 on Cost Calculation Guidelines on Use of the State Railway Infrastructure does provides guidelines for calculating costs for the use of railway infrastructure.

⁶⁷ The regulation takes into account a judgement by the Court of Justice of the European Union on the calculation of direct costs incurred when operating the train service; see *European Commission v Republic of Poland*, C-512/10, ECLI:EU:C:2013:338, paragraphs 82, 83 and 84.

⁶⁸ See https://asean.org/storage/2019/11/Implementation-Framework-AFAMT_FINAL.pdf.

⁶⁹ See *Covid-19 recover guidelines for resilient and sustainable international freight transport connectivity in ASEAN*, ASEAN Secretariat, February 2021.

⁷⁰ According to the World Bank Doing Business indicator, some ASEAN member states do not rank very favourably based on the quality of their land administration systems. This is the case for instance for Brunei Darussalam (144), Cambodia (129) and Myanmar (125).

⁷¹ Article 62, Law No. 54/2014/QH13.

⁷² See MIDA, *Malaysia: Investment in the Services Sector, Booklet 4: Logistics Services*, p. 3. The dimensions are measured in feet: 50 000 feet and 20 000 feet. An internal customs standing order (Order 53) regulates these minimum space requirements for public bonded warehouses.

⁷³ ASEANStatsDataPortal, <https://data.aseanstats.org/fdi-by-sources-and-sectors>.

⁷⁴ See Chapter 1 of this report.

⁷⁵ ATISA was signed by ASEAN economic ministers in Jakarta on 7 October 2020. For the final, signed agreement, see <https://asean.org/storage/2012/05/ATISA-signed-scanned.pdf>.

⁷⁶ In Indonesia, the Negative Investment List is provided in Regulation No. 44/2016 on the List of Business Fields that are closed to and open with Conditions to Investment. The negative list of investments is divided into three categories: 1) businesses closed to investments; 2) businesses only open to Indonesian SMEs; and 3) businesses open with conditions, such as maximum percentage of foreign ownership. The Negative Investment List limits foreign equity to 49% for cargo land transportation, special cargo land transportation and multimodal transportation.

⁷⁷ In Thailand, the Ministerial Regulation No. 8, B.E. 2540 states that a crew must be to 50% Thai.

⁷⁸ In the Philippines, “public utility” is defined neither in the constitution nor in the Public Service Act 1936 (PSA). The Supreme Court of the Philippines has considered that “public utilities” are “public services” and the terms are used interchangeably. Road transportation is considered a “public utility” and a “public service”. Market participants have explained that road transportation includes road freight transportation and therefore includes commercial hauliers or trucks for hire.

⁷⁹ Protocol to Implement the Tenth Package of Commitments Under the ASEAN Framework Agreement on Services, <https://asean.org/storage/2012/05/AFAS-10.pdf>.

⁸⁰ For the full list of annexes, see <https://cil.nus.edu.sg/databasecil/2018-protocol-to-implement-the-tenth-package-of-commitments-under-the-asean-framework-agreement-on-services/>.

⁸¹ The exchange rates used are the official exchange rates for the year 2019 from the World Bank, available at <https://data.worldbank.org/indicator/PA.NUS.FCRF> (USD 1 = BND 1.4, LAK 8 679, MYR 4.1, PHP 51.8, THB 31 and VND 23 050).

⁸² The legal basis for this requirement provides the amount in US dollars, not in Philippine pesos; see Article 2, Section 8, Republic Act No. 7042/1991 (Foreign Investments Act), <https://boi.gov.ph/r-a-7042-foreign-investments-act-of-1991>.

⁸³ Thailand's Foreign Business Act B.E. 2542/1999 includes three annexes containing lists of business activities that are subject to specific requirements only applying to foreigners. One of these is a minimum capital requirement of THB 3 million for foreigners.

⁸⁴ Article 26, Law on Multimodal Transport 28/NA/2012.

⁸⁵ The pricing guidance implements Article 18(2) of the 2009 Postal Law, which explains that the tariff shall be determined by postal operators using a cost-based calculation formula.

⁸⁶ Article 82 of the Law on Land Transport (No.24/NA) dated 12 December 2012.

⁸⁷ Section 65D (d) of the Merchant Shipping Ordinance 1952.

⁸⁸ Pursuant to Section 66 of the Land Transport Act B.E. 2518, the licence needed to operate as a road freight forwarder contains restrictions on the rates of freight-forwarding charges.

⁸⁹ An SOE is an enterprise entirely or partly owned by the state; it can be organised in different forms and serve a wide range of functions. Certain countries, including ASEAN member states, use different terms including state-owned companies, state-owned entities, state enterprises, publicly owned corporations, government-linked monopolies (GLMs), or government-linked companies (GLCs). The OECD's definition of an SOE, as defined in the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 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, p. 14_[137]).

⁹⁰ See also ASEAN (2018), *ASEAN Economic Community 2025 Consolidated Strategic Action Plan*, <http://asean.org/storage/2012/05/Updated-AEC-2025-CSAP-14-Aug-2018-final.pdf>.

⁹¹ Article 4, Part 1, Myanmar Merchant Shipping Act (India Act XXI, 1923) does not, "except where explicitly provided, apply to ships belonging to the Government or to ships belonging to any foreign Prince or State and employed otherwise than for profit in the public service of that foreign Prince or State" (www.asianlii.org/mm/legis/code/bmsa1923235.pdf). The OECD does not have additional information on the specific cases in which the Act applies to such vessels. The act was amended by Law Amending the Myanmar Merchant Shipping Act (2007), but does not appear to alter this article.

⁹² See Presidential Notification 1/2017, for the exemption in Myanmar. The Presidential Guidelines (of April 2017) sets out the public-procurement procedures and the OECD understands that the Myanmar government is currently drafting the public procurement law. In the Philippines, the government and a GOCC can simply enter into a simplified "agency-to-agency" contract under the flexibility granted by the

Republic Act No. 9184/2003 (Government Procurement Reform Act, <https://hudcc.gov.ph/sites/default/files/styles/large/public/document/RA%209184.pdf>), and so avoid the general requirement for a public tender; see, Section 53.5 of the 2016 Revised Implementing Rules and Regulations of the Government Procurement Reform Act, www.gppb.gov.ph/laws/laws/RevisedIRR_RA9184.pdf, p. 94.

⁹³ For instance, the OECD Indicators of Product Market Regulation and the World Bank's Ease of Doing Business Rankings capture broader business-environment considerations.

⁹⁴ See www.oecd.org/regreform/regulatory-policy.

⁹⁵ OECD Best Practice Principles for Regulatory Policy: One Stop Shops for Citizens and Business (2020) see <https://doi.org/10.1787/b0b0924e-en>; OECD Overcoming Barriers to Administrative Simplification Strategies: Guidance for Policy Makers (2009), see <http://www.oecd.org/regreform/regulatory-policy/42306414.pdf>; OECD Cutting Red Tape: Why is Administrative Simplification So Complicated? Looking Beyond 2010 (2010), see <https://www.oecd.org/gov/regulatory-policy/cutting-red-tape-why-is-administrative-simplification-so-complicated.htm>.

⁹⁶ Recommendation 3 states: "Ensure that administrative procedures for applying regulations and regulatory decisions are transparent, non-discriminatory, contain an appeal process against individual actions, and do not unduly delay business decisions; ensure that efficient procedures are in place. Ensure that regulatory institutions are accountable and transparent, and include measures to promote integrity". See www.oecd.org/fr/reformereg/34976533.pdf, p. 5.

⁹⁷ Under Recommendation 8 of the 2012 *Recommendation of the Council on Regulatory Policy and Governance*, the OECD recommends that governments: "Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner" (see www.oecd.org/governance/regulatory-policy/49990817.pdf, p. 5).

⁹⁸ Under Recommendation 4 of the 2012 *Recommendation of the Council on Regulatory Policy and Governance*, the OECD recommends that governments: "Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals." (See www.oecd.org/governance/regulatory-policy/49990817.pdf, p. 4).

⁹⁹ See <https://atr.asean.org/>.

¹⁰⁰ The 2018 OECD report on *Good Regulatory Practices to Support Small and Medium Enterprises in Southeast Asia* noted that while development partners support the creation of ICT systems, they eventually become outdated as there is no capacity to maintain them after the development project ends. See (OECD, 2018_[103]).

¹⁰¹ Lao Services Portal, www.laoservicesportal.net.

¹⁰² The Freedom of Information program was established pursuant to Executive Order No. 2, series of 2016 dated 23 July 2016. See <https://www.foi.gov.ph/>.

¹⁰³ When it becomes operational, PBRIS's address will be: www.pbris.arta.gov.ph.

¹⁰⁴ Presentation of Deputy Director General Ernesto Perez during the launch of the OECD Competition Assessment Reviews: Logistics Sector in the Philippines on 29 January 2021. The new version of PBRIS – PBRIS 2.0 – will include an option to subscribe to agencies or sectors based on the interest of users,

public consultation, and access to regulatory impact statements. ARTA plans to launch PBRIS 2.0 in the fourth quarter of 2021.

¹⁰⁵ Pro-Enterprise Panel (PEP), Ministry of Trade and Industry, Singapore, www.mti.gov.sg/PEP/About.

¹⁰⁶ For example, the United Kingdom's Better Regulation Framework for the conduct of RIAs contains a reference to a competition assessment checklist developed by the Competition and Market Authority. See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916918/better-regulation-guidance.pdf.

¹⁰⁷ Based on the Regulation of the Commission for the Supervision of Business Competition Number 4 Year 2015.

¹⁰⁸ "Council of Australian Governments Communiqué 3 June 2005", <http://ncp.ncc.gov.au/docs/Council%20of%20Australian%20Governments%20Meeting%20-%203%20June%202005.pdf>, p. 4.

¹⁰⁹ The impact of some recommendations could not be easily classified under either prices or efficiency, or quantification required additional information, which proved impossible to obtain during the project.

¹¹⁰ See www.oecd.org/daf/competition/COMP_Toolkit_Vol.3_ENG_2019.pdf.

¹¹¹ Recommendation on restrictions on cross-border road transport and their benefits are analysed in Section 3.1.

¹¹² The OECD has defined administrative burdens as: "The costs involved in obtaining, reading and understanding regulations, developing compliance strategies and meeting mandated reporting requirements, including data collection, processing, reporting, storage, but NOT including the capital costs of measures taken to comply with the regulation, nor the costs to the public sector of administering the regulations" (OECD, 2015, p. 219^[19]).

¹¹³ The ASEAN member states where the recommendations on road freight transport are expected to have a noticeable impact and data were available to estimate the benefits are Malaysia, Philippines and Viet Nam.

¹¹⁴ These five ASEAN member states are Indonesia, Malaysia, Philippines, Thailand and Viet Nam.

¹¹⁵ Such improvements can have a monetary value, for example, reducing extra costs of delays as a result of inefficient service provision.

¹¹⁶ Malaysia and Myanmar.

¹¹⁷ In the absence of pilotage revenue data, revenues have been estimated for Malaysia and Myanmar by applying pilotage fees to an average size vessel and then multiplying by the total number of vessels. The OECD uses data on total volume transported, average size of vessels, medium time spent in port (days), and average container capacity from UNCTAD Maritime Data, <https://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx>. The estimated total number of vessels is calculated as total volume divided by the average container carrying capacity per container vessel.

¹¹⁸ This estimation mirrors the analysis in Annex 3.A4, (OECD, 2016^[67]) and Annex 5.A, (OECD, 2018^[49]).

¹¹⁹ See Annex 5.A, (OECD, 2018^[49]).

¹²⁰ The two countries that could benefit are Indonesia and Viet Nam.

¹²¹ Total FDI inward stock was about USD 2 687 888 million in 2019. The share of the FDI inward stock of the logistical sector is assumed to be the same as the average share of FDI inward flows (1%). See (ASEAN, 2019, p. 21_[138]).

¹²² The study relies on information from the OECD Services Trade Restrictiveness Index (STRI) to estimate ad valorem equivalents of service trade barriers for 46 countries using a structural gravity model.

¹²³ The ad valorem equivalents for cross-border trade costs have to be paid for a cross-border service transaction. Consequently, the analysis does not reveal whether services trade liberalisation contributed to a reduction on the prices of imported goods.

¹²⁴ See <https://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/micro-small-and-medium-enterprises/overview/>.

¹²⁵ See C. Pike (2 March 2018), "What's gender got to do with competition policy?", OECD: On the level, <https://oecdonthellevel.com/2018/03/02/whats-gender-got-to-do-with-competition-policy>.

Annex A. Methodology

The ASEAN Competition Assessment Project began in the second half of 2018 and is expected to be completed in 2021. The regional report concludes a series of ten prioritised competition assessments, which were carried out in all ASEAN member states, using the OECD Competition Assessment Toolkit. The country assessments were carried out in batches and followed the stages set out below.

Stage 1: Mapping the sectors

The objective of Stage 1 of the individual country competition assessments was to identify and collect sector-relevant laws and regulations. The main tools used to identify the applicable legislation were online databases, the websites of the relevant authorities and sector specific reports by private or government bodies. Over the course of the project, the lists of legislation were refined, as additional pieces were discovered by the team or issued by the authorities, while other pieces initially identified were found not to be relevant to the sectors or no longer in force. In total, approximately 500 pieces of legislation were identified in the 10 country assessments.

Another important objective of the first stage was the establishment of contact with the market through the main authorities, industry associations and private stakeholders active in the sectors. The OECD team conducted fact-finding missions and met with government and private stakeholders. Interviews with market participants contributed to a better understanding of how the sub-sectors under investigation actually work in practice and helped in the discussion of potential barriers deriving from the legislation. In total over 160 public and private stakeholders contributed to the reports.

Based on those meetings and the discussion on practical problems stakeholders face, and backed up by further research, the OECD team identified the legislation to be prioritised for areas in which *prima facie* barriers to competition existed and an impact on competition could therefore be expected.

Stage 2: Screening of the legislation and selection of provisions for further analysis

The second stage of the individual country competition assessments mainly entailed the screening of the legislation to identify potentially restrictive provisions, as well as providing an economic overview of the relevant sectors.

The legislation collected in Stage 1 was analysed using the framework provided by the OECD *Competition Assessment Toolkit*. This toolkit, developed by the OECD, provides a general methodology for identifying unnecessary obstacles in laws and regulations and developing alternative, less restrictive policies that still achieve government objectives. One of the main elements of the toolkit is a competition-assessment checklist that asks a series of simple questions to screen laws and regulations with the potential to restrain competition unnecessarily.

Following the toolkit's methodology, the OECD compiled a list of all the provisions that answered any of the questions in the checklist positively. The final list consisted of almost 600 provisions across the logistics sector.

The OECD also prepared an extensive economic overview of the logistics sector (and refined it during later stages), covering industry trends and main indicators, such as output, employment and prices, including comparisons with other ASEAN and OECD member countries where relevant. Where possible, these statistics were broken down by sub-sector. The analysis conducted during this stage aimed to furnish background information to better understand the mechanisms of the sector, providing an overall assessment of competition, as well as explaining the important players and authorities.

Box A.1. OECD Competition Assessment checklist

Further competition assessment should be conducted if a piece of legislation answers “yes” to any of the following questions:

A) Limits the number or range of suppliers

This is likely to be the case if the piece of legislation:

1. grants a supplier exclusive rights to provide goods or services
2. establishes a licence, permit or authorisation process as a requirement of operation
3. limits the ability of some types of suppliers to provide a good or service
4. significantly raises the cost of entry or exit by a supplier
5. creates a geographical barrier to the ability of companies to supply goods, services or labour, or invest capital.

B) Limits the ability of suppliers to compete

This is likely to be the case if the piece of legislation:

1. limits sellers' ability to set the prices of goods or services
2. limits the freedom of suppliers to advertise or market their goods or services
3. sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that certain well-informed customers would choose
4. significantly raises the costs of production for some suppliers relative to others, especially by treating incumbents differently from new entrants.

C) Reduces the incentive of suppliers to compete

This may be the case if the piece of legislation:

1. creates a self-regulatory or co-regulatory regime
2. requires or encourages information on supplier outputs, prices, sales or costs to be published
3. exempts the activity of a particular industry or group of suppliers from the operation of general competition law.

D) Limits the choices and information available to customers

This may be the case if the piece of legislation:

1. limits the ability of consumers to decide from whom they purchase
2. reduces the mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers
3. fundamentally changes the information required by buyers to shop effectively.

Source: (OECD, 2019^[119]).

Stage 3: In-depth assessment of the harm to competition

The provisions carried forward to Stage 3 were investigated in order to assess whether they could result in harm to competition. In parallel, the team researched the policy objectives of the selected provisions, so as to better understand the regulation. An additional purpose in identifying the objectives was to prepare alternatives to existing regulations, taking account of the objective of the specific provisions when required, in Stage 4. The objective of policymakers was identified in the recitals of the legislation, when applicable, or through discussions with the relevant public authorities.

The in-depth analysis of harm to competition was carried out qualitatively and involved a variety of tools, including economic analysis and research into the regulations applied in other OECD countries. All provisions were analysed, relying on guidance provided by the OECD's Competition Assessment Toolkit. Exchanges with government experts complemented the analysis by providing crucial information on lawmakers' objectives and the real-life implementation process and effects of the provisions.

Stage 4: Formulation of recommendations

Building on the results of Stage 3, the OECD team developed recommendations for those provisions that were found to restrict competition. It tried to find alternatives that were less restrictive for suppliers, while still aiming to fulfil the policymakers' initial objective. For this process, the team relied on international experience— from the ASEAN region, and European and OECD countries – whenever available. The report was also shared with the OECD International Transport Forum (which also contributed with international experience in the transport sector). In total, the OECD made over 470 recommendations across the 10 ASEAN country reports.

OECD COMPETITION ASSESSMENT REVIEWS: LOGISTICS SECTOR IN ASEAN

Efficient logistics can play a significant role in increasing a country's economic development by facilitating international trade and improving its competitiveness. This report provides an overview of the logistics sector in ASEAN and offers recommendations to lower regulatory barriers to competition. It covers freight transport by land and by water, freight forwarding, warehousing, small parcel delivery and value-added logistics services.

This report and the accompanying “OECD Competitive Neutrality Reviews: Small-Package Delivery Services in ASEAN” 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](https://www.oecd.org/comp-asean).

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