FOSTERING COMPETITION IN ASEAN

OECD Competition Assessment Reviews

PHILIPPINES

LOGISTICS SECTOR

BETTER POLICIES FOR BETTER LIVES

UK Government

ASSOCIATION OF SOUTHEAST ASIAN NATIONS

OECD Competition Assessment Reviews: Logistics Sector in the Philippines

2020

Foreword

Southeast Asia, one of the fastest growing regions in the world, has benefited from a broad embrace of 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.

The *OECD Competition Assessment Reviews: Logistics Sector in the Philippines*, 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 the Philippines in the *OECD Competitive Neutrality Reviews: Small-Package Delivery Services in the Philippines*.

The OECD assessment was conducted in consultation with the Philippine authorities and local stakeholders, and with the support of the ASEAN Secretariat and the UK Prosperity Fund (UK Government). The assessment prioritises 96 pieces of legislation and identifies 76 regulatory barriers where changes could be made to foster greater competition in the logistics sector. This is especially important for the Philippines where logistics currently accounts for about 4% of the country's GDP. This report offers policy recommendations that can help the Philippine government address structural and regulatory shortcomings in this sector.

These structural reforms have become even more pressing as the Philippine economy is expected to contract by 7.3% in 2020 (compared to a growth rate of 6% in 2019) due to the COVID-19 pandemic, with containment measures severely affecting key economic activities such as exports and tourism. These policy recommendations contribute to reforms that can help the Philippine 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 Philippine government, as well as the ASEAN Secretariat and the UK Prosperity Fund (UK Government), on their efforts to lift regulatory barriers to competition and to improve the business environment. The OECD looks forward to continuing and broadening its co-operation with ASEAN to further support its reforms to the benefit of its citizens.

Greg Medcraft

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- Anti-Red Tape Authority
- Bureau of Customs
- Bureau of Immigration
- Department of Information and Communications Technology – Postal Regulation Department (DICT – PRD)
- Department of Trade and Industry
- Department of Transportation
- Metropolitan Manila Development Authority
- National Economic Development Authority
- Philippine Postal Corporation
- Philippine Ports Authority
- The Board of Investments
- Cebu Ports Authority (Freedom of Information Office)
- Department of Interior and Local Government
- Philippine Economic Zone Authority
- The Department of Public Works and Highways.

The following trade associations and private companies were interviewed:

- Confederation of Truckers Association of the Philippines
- Philippines Interisland Shipping Association
- Supply Chain Management Association of the Philippines
- LBC.

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

Antonio Capobianco, Acting Head of the OECD Competition Division, Federica Maiorano, Senior Competition Expert, Olaf Merck and Raimonds Aronietis at the International Transport Forum (ITF), and Stephen Thomsen and Fernando Mistura at the OECD Investment Division provided valuable comments throughout the process and on the final report.

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

This report contributes to ACAP Outcome 4.1.2 (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:

- Freight transportation, including transport by road, inland waterways and maritime, and rail.
- Freight forwarding.
- Warehousing.
- Small-package delivery services.
- Value-added services.

The current report is part of a series of 10 similar assessments, one for each ASEAN Member State.

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Acronyms and abbreviations

3PL	Third-party logistics
ACAP	ASEAN Competition Action Plan
AEC	ASEAN Economic Community
AEGC	ASEAN Expert 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 on Multimodal Transport
AFAS	ASEAN Framework Agreement on Services
AMS	ASEAN member state
ASEAN	Association of Southeast Asian Nations
ASPBI	Annual Survey of Philippine Business and Industry
ARTA	Anti-Red Tape Authority
ASEC	ASEAN Secretariat
BAC	Bids and Awards Committee
BBA	Break-bulk agents
BBB	Build! Build! Build! government infrastructure programme
BOI	Board of Investment
CAGR	Compound annual growth rate
CAT	Competition Assessment Toolkit
CC	Cargo consolidators
CPA	Cebu Ports Authority
CPC	Certificate of public convenience
DICT	Department of Communications and Information Technology
DOTr	Department of Transportation
DTI	Department of Trade and Industry
FDI	Foreign direct investment
GATS	General Agreement on Trade in Services, World Trade Organization treaty
GDP	Gross domestic product
GNI	Gross national income
GVA	Gross value added
IFF	International freight forwarders
ISIC	International Standard Industrial Classification of All Economic Activities
LGU	Local government unit
LPI	World Bank Logistics Performance Index
LTO	Land Transport Office
LTFRB	Land Transportation Franchising and Regulatory Board
MARINA	Maritime Industry Authority
MC	Memorandum Circular
MFP	Multifactor productivity
MMDA	Metropolitan Manila Development Authority
MTO	Multimodal transport operator
NEDA	National Economic Development Authority
OICA	International Organization of Motor Vehicle Manufacturers
PBRIS	Philippine Business Regulation Information System
PCA	Prioritised competition assessment
PCC	Philippine Competition Commission
PCG	Philippine Coast Guard
PEZA	Philippine Economic Zone Authority
PPA	Philippine Port Authority
PMR	Product market regulation

PPP	Public-private partnership
PRD	Postal Regulation Department, DICT
PSA	Philippines Statistics Authority
PSIC	Philippine Standard Industrial Classification
PTMRF	Port Terminal Management Regulatory Framework
RFINL	Regular Foreign Investment Negative List
SME	Small- and medium-sized enterprises
SOE	State-owned enterprise
SEZ	Special economic zone
SBMA	Subic Bay Metropolitan Authority
TEU	Twenty-foot equivalent
TESDA	Technical Education and Skills Development Authority
TPL	Third-party logistics
UNCTAD	United Nations Conference on Trade and Development
WGI	Worldwide Governance Indicators
WTPD	Water Transport Planning Division, Department of Transportation

Units of measure

g	gramme
kg	kilogramme
t	tonne
km	kilometre
m^2	square metre

Executive summary

Main economic characteristics of the logistics sector in the Philippines

The market size of the logistics transport services sector is approximately USD 11 billion; it has an 4% share to total GDP in the Philippines. Road transport accounts for 40% of freight transport revenue, while maritime transport accounts for 35%. The cost of logistics to sales remains high in the Philippines at approximately 27%, for example, compared to other ASEAN peers, such as Indonesia (21%), Viet Nam (16%) and Thailand (11%). The Department of Trade and Industry (DTI) has noted that three of the Philippines' biggest logistics performance issues are delays in customs processes, congestion and delivery delays in cargo. On a global level, the Philippines ranks 60 in the World Bank's Logistics Performance Index (LPI). According to the LPI, customs and timeliness appear to be the two most challenging areas for the Philippines, while the country also scores at the lower end for infrastructure and logistics competence. The Philippines' strength is in international shipments, supported by the government policy of creating a strong shipping industry. The *Philippine Development Plan 2011-2016* recognised that inadequate infrastructure and resulting poor logistics network are critical constraints to investment and growth. Various recent infrastructure projects under the government's Build! Build! Build! (BBB) investment programmes are likely to further improve the quality of infrastructure and the overall logistics performance of the Philippines.

Key recommendations by sub-sector

The report makes 76 recommendations on specific legal provisions that should be removed or amended. The main recommendations are summarised below.

Road freight transport

1. Issue clear guidelines on the application requirements for road freight transport licences. Certain evidentiary requirements should be revised, such as the provision of a haulage contract and proof of garage.
2. Implement the online database or system established so the Land Transport Office (LTO) can undertake the CPC confirmation process directly without having to consult other authorities.
3. Make all licences and permits required for trucks for hire available through a single application to a single agency. Separate processes to obtain port-related activity permits should be removed.
4. Introduce roadworthiness standards for trucks with a transition period for current market operators, rather than implementing the ban on vehicles, which are more than 15 years old.
5. A national authority, such as the Department of Transportation (DOTr) should supervise fees charged by local government units (LGU) and publish an annual report detailing all authorised fees. Alternatively, national legislation that explicitly prohibits LGUs from raising additional pass-through fees should be introduced.

Maritime freight transport

1. Structural separation between the regulatory, operational and commercial functions of the Philippines Port Authority (PPA) and of regional port authorities such as the Cebu Ports Authority (CPA), should be ensured.

2. Authorities should make it easier for pilots to obtain multiple licences and so work across pilotage districts. Foreign equity limits should be relaxed for the provision of port services and the awarding of contracts.
3. The framework for the regulation of port charges by the port authorities, notably PPA, should be revised in order to separate its revenue gathering functions from its regulatory activities.
4. Maritime authorities should work together to remove any overlapping requirements, for example, safety-certificate requirements.
5. MARINA's power to intervene in domestic shipping rates should be removed.
6. MARINA's ability to establish and proscribe domestic shipping routes or to require the provision of shipping services should be based only on safety considerations or apply in times of national emergency.
7. Visa requirements for foreign crews should be clarified and the duration of the required visa extended. Nationality requirements for crew should also be revised.
8. Operators should be allowed to carry out repairs, alterations and fulfil any dry-docking requirements in overseas shipyards that impose equivalent standards to those required in the Philippines. There should be no compulsory association requirement for shipyards.

Freight forwarding

1. Responsibilities should be concentrated so that a single ministry regulates all freight forwarders regardless of their mode of transport.
2. Shipping lines should be explicitly allowed to establish freight-forwarding businesses.
3. Memorandum Circular (MC) No.01 Series of 2005, which prescribes indicative rates and charges for freight-forwarding services, should be repealed.
4. The requirement for minimum share capital specific to each type of freight-forwarding activity should be removed and the general regime for commercial companies applied.
5. Annual reporting for freight forwarders should be considered, instead of quarterly or bi-annual reporting.
6. Accreditation of freight forwarding on a national level should be allowed and removal of the requirement for branch offices should be considered. The authorisation procedure for individual branches of freight forwarders should be removed or all physical offices should be permitted to be accredited in one application.

Small-package delivery services

1. Foreign participation in the market for express-delivery services should be allowed.
2. Minimum prices for postal services including small packages and letters should be removed. If not, DICT should at least increase transparency around the mechanism used to calculate minimum rates.
3. Every applicant for courier services that fulfils stated conditions should be granted a new licence.

Horizontal and others

1. Freight transportation and logistics should no longer be classified as public utilities. As a consequence, this will remove the 40% foreign equity limitation on these sectors.
2. Freight transportation and logistics should be removed from those sectors included in the definition of "public services" in the Public Service Act and the requirement to obtain a certificate of public convenience (CPC) should be removed. If freight transport and logistics were to continue to be

classified as public services, remove the economic-needs test from the requirements to obtain a CPC.

3. Each logistics authority should publish the complete list of legislation it administers on its website. Authorities should revise legislation to include new amendments or alternatively, list the main legislation and then provide links to any amendments. Every piece of legislation should include subsequent amendments so that all legislation has a consolidated, updated version. Ensure that regulations are published on the Philippine Business Regulations Information System (PBRIS), which will soon be launched by the Anti Red Tape Authority (ARTA).
4. The digitalisation of all application procedures for logistics-related authorisations should continue and online applications should be allowed.
5. The requirement for 100% Filipino executive and managing officers in public utilities should be eased to allow a higher percentage of foreigners in high managerial positions, in order to attract foreign investment. Restrictions based upon citizenship should be replaced by residency requirements.
6. Where foreigners are allowed to participate in procurement processes, national preferences should be eliminated to ensure that the most competitive bid is chosen. If necessary, a transition period could be implemented.
7. All minimum capital requirements should be removed. Alternatively, the minimum capital requirements for foreign investors should be amended to align them with domestic requirements.

International agreements

TradeNet, the Philippines' National Single Window, should be activated and made operational as soon as possible.

1 Introduction

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.

An OECD team has been conducting 10 competition assessments of laws and regulations across the 10 ASEAN member states (AMS), as well as an overall study for the ASEAN region. It worked in close co-ordination with the ASEAN Secretariat (ASEC), the ASEAN Expert Group on Competition (AEGC), as well as with the responsible authorities within each AMS, in particular the respective competition authorities. For the Philippines, the analysis was carried out with the support of the Philippine Competition Commission (PCC) and funded by the UK Prosperity Fund (UK Government).

The following study covers the first component of the project, the competition assessment of laws and regulation in the logistics sector in the Philippines.

1.2. Introduction to the logistics sector

Logistics is commonly defined as the process of planning, implementing, and controlling procedures for the efficient and effective transportation and storage of goods including services, and related information from the point of origin to the point of consumption for the purpose of conforming to customer requirements. This definition includes inbound, outbound, internal, and external movements (Mangan and Lalwani, 2016, p. 9[1]).

Logistics is also defined as the process of strategically managing the procurement, movement and storage of materials, parts and finished inventory (and the related information flows) through the organisation and its marketing channels in such a way that current and future profitability are maximised through the cost-effective fulfilment of orders (Christopher, 2016, p. 2[2]).

Standardised shipping containers – commonly known as TEU – are now a fundamental feature of all major national and international transport modes. They can be stacked on board a ship, allowing efficient use of space and improved cargo handling. Containerisation makes intermodal freight transport possible, enabling the uncomplicated movement of goods in bulk from one transport mode to another. Containerisation allows a large number of small packages to be consolidated into a large single unit. This usually reduces handling costs by simplifying transport and transfer, for instance from one mode of transport to the other or upon arrival at the final destination.

Logistics is a cluster of activities, with each area involving a range of different actors and services. This project will focus on five subsectors of logistics,[1] namely:

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

The exact scope of the logistic sector was agreed with the ASEAN Secretariat and each AMS in the context of the ASEAN Experts Group on Competition (AEGC).

The report does not cover issues of customs or air freight transport.

1.2.1. Freight Cargo Transport

Freight transportation is usually split into five principal modes: road, water, rail, air, and pipeline. This project will cover only road, water and rail. Transport by air is only a small percentage of overall freight transport in the ASEAN region; in the Philippines, for example, air freight transport accounted for only 25% of logistics revenues in 2017 (Ken Research, September 2018, p. 42[3]). Also, transport by air raises a set of different questions, which are often regulated in bilateral or multilateral agreements.

Road freight transport

The road freight transport sector refers to the transportation of goods between economic enterprises and between enterprises and consumers, including bulk goods and goods requiring special handling, such as refrigerated and dangerous goods. The laws covering road transport usually distinguish between transport for own-account (such as freight transportation between establishments belonging to the same firm) and for hire or reward. Road freight transportation continues to be the dominant mode in many countries, including the Philippines. Fixed costs are low as the physical transport infrastructure such as motorways is usually in place through public funding, as are variable costs such as fuel and maintenance, road use and congestion charges. Road is often the most suitable or efficient mode of transport since it allows door-to-door transport without cargo transfers between distinct vehicles, which results in lower costs for senders and recipients, as well as in reduced risks of loss or damage that may arise when moving cargo.

Inland waterway and maritime freight transport

Water freight transport refers to goods transported on waterways by using various means including boats, steamers, barges and ships both within and outside the country. Inland waterway transport uses waterways such as rivers or canals, while maritime transport uses the sea to link a large number of origin and destination points, either within the country's territorial waters – for instance, within an archipelago or coastal trading – which is known as cabotage, or more commonly, to other countries[2] (OECD, 2016, p. 141[4]). Of the world's international trade, 90 % is transported by sea as maritime transportation is ideal for high-volume cargo that is not necessarily time sensitive or has long lead times for delivery (Rushton, Croucher and Baker, 2017, p. 447[5]). While fixed costs – including vessels, handling equipment and terminals – can be high, variable costs are low due to economies of scale based on large volumes of freight (Mangan and Lalwani, 2016, p. 105[1]).

At the global level, 60% of the goods by value moved by sea are carried by liner vessels. Shipping liners are carriers providing shipping services to shippers on fixed routes with regular schedules between ports[3] (International Transport Forum, 2018, p. 10[6]). In the past, shipping lines were often organised in conferences, formal groups of lines operating on specific routes in a specific geographic zone that set common freight rates and regulated their capacity. This practice has been under scrutiny in certain regions of the world (such as the European Union)[4] and its relevance has decreased in the last decades, mostly as a result of the United States 1998 Ocean Shipping Reform Act and the repeal of the EU block exemption for liner shipping conferences in 2006 (International Transport Forum, 2018, p. 11[6]).

Ports used in maritime and inland waterway transport serve as infrastructure to a wide range of customers including freight shippers, ferry operators and private boats. One of the main functions of ports is to facilitate domestic and international trade of goods, often on a large scale. Most ports have extensive infrastructure including quays, roads, rail tracks, areas for storage and stacking, repair facilities, as well as fences or walls to secure the port. In addition, ports include superstructures constructed above the main infrastructure, which comprise terminal buildings, warehouses and cargo-handling equipment, such as lifting cranes and pumps. Major shipping lines usually organise their services as hub-and-spoke networks with hubs centred on large container ports.

The main ports in the Philippines are the Port of Manila, Port of Subic Bay, Port of Batangas, Port of Davao, Port of Iloilo and the Port of Cebu.

Typical port services likely include:

- **Cargo handling.** This service involves both cargo-loading operations commonly known as stevedoring and marshalling services such as storage, assembly and sorting of cargo. Charges for cargo handling will vary from port to port and by the type of cargo handled. Not all ports are capable of handling all type of cargo and some ports, such as crude oil terminals, are established to handle one type of cargo only.
- **Pilotage.** This is a specialised service provided by pilots with local knowledge who assist ship commanders in navigating and manoeuvring their vessels inside the port area. Maritime pilots tend to be navigation experts with highly developed skills (often former captains) and specialised knowledge about the particular navigation conditions of a port, such as tide, direction of wind and depth of the sea. These skills enable them to manoeuvre ships through the narrow channels of a port, to reduce heavy vessels' speed, and to avoid dangerous areas.
- **Towage.** The service of moving ships within the port using tugboats, small but powerful vessels used to assist much larger ships to manoeuvre in limited space. Tugboats are capable of both pushing and towing vessels.

Other services include bunkering (fuel supply) and the provision of water and electricity.

Certain shipping services, as well as shipping-related activities taking place in ports, are provided by the port administration under monopoly conditions, while others are subject to competition. In certain geographic regions, strong competition exists between ports and other service providers inside ports (OECD, 2018[7]). In others, however, enhancing competition can be difficult, especially when ports are local natural monopolies with limited space and so subject to heavy national regulations. The state of port competition needs to be assessed in the context of ports facing global shipping alliances with strong bargaining power, especially since certain shipping sectors such as container shipping have recently become far more concentrated (International Transport Forum, 2018[6]; OECD, 2018, p. 181[7]).

Rail freight transport

Rail freight refers to freight, cargo or goods transported by railways, but does not include parcels or baggage transport services associated with railway passenger services. Fixed costs for rail tend to be high due to expensive infrastructure requirements such as locomotives, wagons, tracks and facilities such as freight terminals; variable costs, however, are mostly low (Mangan and Lalwani, 2016, p. 105[1]). The OECD has stated that regulatory authorities must ensure the development of competition in the provision of services and non-discriminatory access to the infrastructure, while providing for the correct incentives for investments in the network to be made, ensuring the satisfaction of public-service needs, and safeguarding consumer rights (OECD, 2018, p. 158[7]). There is currently no freight transportation by rail in the Philippines.

1.2.2. Freight forwarding

Freight forwarding is the organisation and transportation of items including ancillary activities such as customs clearance, warehousing, and ground services on behalf of customers. Unlike providers of cargo transport services, freight forwarders do not generally own any part of the network they use and normally hire transportation capacity from third parties. Freight forwarders instead specialise in arranging storage and shipping of merchandise on behalf of shippers. They usually provide a full range of services such as tracking inland transportation, preparation of shipping and export documents, booking cargo space, negotiating freight charges, freight consolidation, cargo insurance, and filing of insurance claims. Other services include arranging order collection from the point of origin to the shipping port, customs clearance, and final delivery to the destination, as well as providing the different costs associated with different modes and destinations (Rushton, Croucher and Baker, 2017, p. 444[5]).

Foreign companies, such as DHL, UPS and FedEx have a strong position in Philippines's freight-forwarding market.

1.2.3. Warehousing, small-package delivery services, and value-added services

Warehousing encompasses the storage of goods in non-bonded warehouses or bonded warehouses in which dutiable goods may be stored, manipulated or undergo manufacturing operations without payment of duty. The construction of new warehouses is limited by a lack of land in central locations.

Small-package delivery refers to the delivery of small packages from a pick-up location to a drop-off location. These services can include express or deferred delivery, both domestically and internationally, and by any mode of transport, including multi-modal transport. A separate report analyses possible distortions to competition for postal services related to SOEs, and as such will not be covered here. This report covers only those delivery services that affect both SOEs and private companies.

Value-added logistics are services related to physical activities, including quality-control services, packing and packaging, labelling and tagging, configuration and customisation, and assembly and kitting.

1.3. Benefits of competition

The Philippine Competition Act (PCA), the country's first comprehensive legal framework law on competition policy, came into effect on 8 August 2015. The Philippine Competition Commission (PCC), an independent quasi-judicial body mandated to implement Philippine competition policy, was established on 1 February 2016.

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

- are unclear, meaning they lack transparency or 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[8]; Blundell, 1999[9]; Griffith, Harrison and Simpson, 2006[10]). 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 company policy affects macro-economic outcomes" (OECD, 2014[11]). 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.[5] 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)[6] (Fournier, 2015[12]; Fournier, 2015[13]). By fostering growth, more flexible PMR can help the sustainability of public debt.

A particularly large body of evidence points to the productivity gains of more flexible PMR. At a company and industry level, restrictive PMR is associated with lower multifactor productivity (MFP) levels.[7] (Nicoletti and Scarpetta, 2003[14]; Arnold, Nicoletti and Scarpetta, 2011[15]) The result also holds at an aggregate level (Égert, 2017[16]). [8] 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[17]).[9] Specifically, a large part of the impact on productivity is due to investment in research and development (Cette, Lopez and Mairesse, 2013[18]). Moreover, lowering regulatory barriers in network industries can have a significant impact on exports (Daude and Maisoneuve, 2018[19]).

Innovation and investment in knowledge-based capital, such as computerised information and intellectual property rights (IPRs), are also negatively affected by stricter PMR (Andrews and Criscuolo, 2013[20]; Andrews and Westmore, 2014[21]). A number of studies show that competitive pressure, as measured by lower regulatory barriers (for example, lower entry costs to a market) encourages firms in services sectors, such as retail and road transport, to adopt digital technologies, including cloud computing (Andrews, Nicoletti and Timiliotis, 2018[22]). 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 (Westmore, 2013[23]; Égert, 2017[16]).[10]

Greater flexibility can also lead to higher employment. Cahuc and Karmarz 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[24]). [11] A 10-year, 18-country OECD study concluded that small firms five years old or less on average contribute about 42% to job creation (Criscuolo, Gal and Menon, 2014[25]). 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[26]).

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.[12]

Finally, a 2018 study looked at the impact of PMR on the persistence of profits over the long term. 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 (Eklund and Lappi, 2018[27]).

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[16]). [13]

Recent empirical research suggests that increased market competition can have a positive effect on gender discrimination and gender equality (Pike, 2018[28]; Cooke, 2018[29]). 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 will also address laws that specifically hinder the involvement of women in the logistics business, resulting in the creation of anti-competitive barriers. Such laws could indeed 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 (women).

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.

1.4. Introduction to the Philippines[14]

The Philippines is an archipelago of 7 641 islands in the Philippine Sea and West Philippine Sea. Its islands are gathered into three main groups: Luzon, Visayas and Mindanao. Luzon is the largest island group and home to the capital, Manila.

The Philippines has a population of 106.6 million and has been growing steadily since the 1960s. The country's 2018 annual population growth rate was 1.4%.[15] The Philippine Statistics Authority (PSA) estimates the Philippines population at 107.9 million in the second quarter of 2019, with GDP per capita growing by 3.8%.

The PSA put the Philippines' labour force at 43.7 million and its unemployment rate at 5.2% in January 2019. The workforce was estimated to be 61.3% male and 38.7% female. Over half of employed persons work in the services sector (58.1%, an increase from 55.9% in 2018) (Philippine Statistics Authority, 2019[30]).

1.4.1. GDP and economic growth

In 2018, the Philippines had a GDP of USD 330.91 billion, making it the fifth largest economy in terms of GDP in ASEAN after Indonesia, Thailand, Malaysia and Singapore (World Bank, 2019[31]).

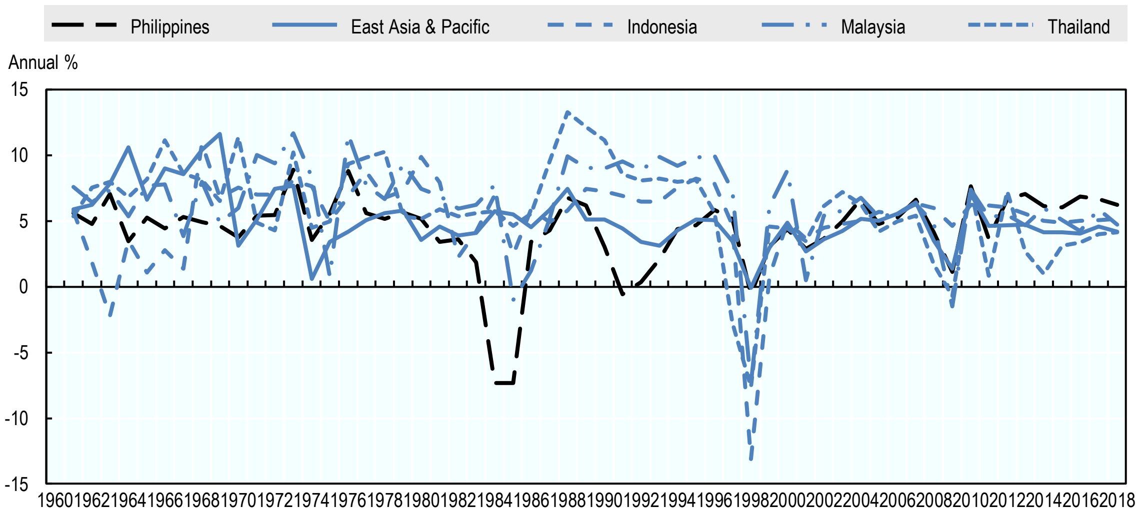
In the same year, the Philippines recorded a GDP growth rate of 6.2%.[16] GDP growth in the second quarter of 2019 was 5.5%,[17] driven by "trade and repair of motor vehicles, motorcycles, personal and household goods; manufacturing; and other services". According to the World Bank, the Philippines' average annual growth rate was 6.3% between 2010-2017, a substantial increase from the 4.5% average between 2000-2009.[18] The OECD's medium-term economic outlook (2020-24 average) for the Philippines forecasts GDP growth of 6.2% (OECD, 2019, p. 160[32]).

The Asia Development Bank (ADB) has flagged that the Philippines economic growth will contract by 7.3% in 2020 because of the COVID-19 epidemic but that recovery is expected in 2021. In 2019, the recorded GDP growth rate was 6%, while the 2021 GDP growth forecast is 6.5% (Asian Development Bank, 2020[1]).

In 2017, the World Bank classified the Philippines as a lower-middle income country with a per capita gross national income (GNI) of USD 3 660, but it expects it to become an upper income country (USD 3 896-12 055) in the near future (World Bank, 2019[34]).

Figure 1.1 shows the Philippine GDP growth rate since 1961 compared to selected ASEAN countries; the country's overall GDP growth rate has changed significantly over time. The Philippines experienced several recessions during this period, caused by political crises, the Asian financial crisis (1997-1999) and the global financial crisis (2007-2008). This is similar to the pattern seen in other economies in the region, as shown in Figure 1.1. In addition to international, regional and domestic crises, natural disasters have also had a negative impact on the Philippines' economic stability.[19]

Figure 1.1. Annual percentage GDP growth rate in selected ASEAN economies, 1960-2018



Source: World Bank, https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=ID-MY-PH-TH-VN-Z4 (accessed December 2019).

The Philippines is heavily dependent on exports and imports, and so on a functioning logistics sector. In 2018, the value of the Philippines exports of goods and services was nearly USD 105 billion or 31.7% of GDP.[20]

1.4.2. Sectoral contributions to GDP growth and the importance of services

In 2018, services accounted for 57.8% of total GDP, industry accounted for 34.1%, and agriculture, hunting, forestry and fishing for 8.1%.

The services industry recorded the economy's highest growth rate (6.8%), followed by the industry sector (6.7%), and agriculture, hunting, forestry and fishing (0.9%). Table 1.1 shows those sub-industries, highlighted by the PSA, which recorded high growth in 2018.

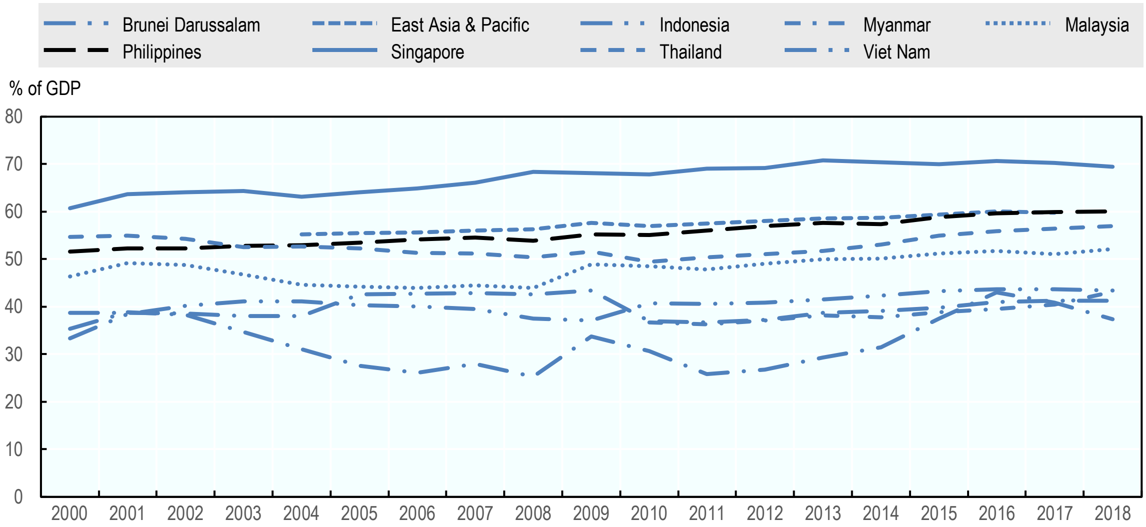
Table 1.1. Sub-industries showing substantial growth in 2018

Sub-sector	Growth rate (%)
Public administration and defence; compulsory social security	15.2
Construction	14.9
Other services	7.7
Electricity, gas and water supply	5.5
Transport, storage and communication	5.4

Source: Philippine Statistic Authority, https://psa.gov.ph/regional-accounts/grdp/highlights.

According to the *OECD Investment Policy Reviews: Philippines 2016*, strong economic growth over the past decade (except during the global financial crisis) was driven by market reforms initiated in the early 1990s, with partial liberalisation in key sectors such as telecommunications and transport, and privatisation and deregulation in the water and oil sectors. This encouraged the development of manufacturing and services including electronics, business-process outsourcing and information technology (OECD, 2016[33]). The OECD has noted the bias in structural reform towards services and how the services sector has driven and continues to drive economic growth in the Philippines (OECD, 2016, p. 40[33]). In 2018, the value added of services as a percentage of GDP was 60%,[21] the second highest in Southeast Asia, after Singapore, as seen in Figure 1.2. According to the PSA, the services sector grew by 7.1% in the second quarter of 2019.[22]

Figure 1.2. Services (value-added) as a percentage of GDP in ASEAN countries (2000-2018)



Source: World Bank, https://data.worldbank.org/indicator/NV.SRV.TOTL.ZS?locations=BN-Z4-ID-MM-MY-PH-SG-TH-VN

The importance of the services sector for the Philippines economy is mirrored across ASEAN economies. In 2012, the Asian Development Bank (ADB) noted substantial increases in the contribution of services to GDP for the period between 2000 to 2007 (Park and Shin, 2012, p. 35[36]). In 2016, services accounted for 73% of ASEAN inward FDI stock,[23] a level similar to OECD countries as a whole (70% in 2015) and to global trends (OECD, 2019, p. 27[37]). More generally, the continued growth rate in services is also the result of an ASEAN-wide strategy of strengthening co-operation among member countries under the ASEAN Framework Agreement on Services (AFAS).[24] This agreement was signed by the region's finance ministers on 15 December 1995, during the fifth ASEAN summit, in Bangkok, Thailand. AFAS recognises the growing economic importance of services and the need to enhance and strengthen trade in services within ASEAN. It provides an important legal platform that empowers members to open their markets to foreign competition incrementally, while also giving national treatment to service suppliers from ASEAN countries. All AFAS rules are consistent with international rules for trade in services, as set out in the WTO's General Agreement on Trade in Services (GATS). Under this framework agreement, all member countries are required to proceed with commonly agreed liberalisation programmes, with the goal of removing restrictions to trade in services and boosting ASEAN services-based economies (OECD, 2018, p. 99[38]).

1.4.3. Business environment

The World Economic Forum's *Global Competitiveness Report 2019*, based upon its Global Competitiveness Index (GCI), ranks the Philippines 114 out of 141 surveyed economies in terms of the extent of market dominance. The continuing effects of the introduction of a new competition law in 2015 are likely to improve the situation substantially over the coming years. The Philippines does rank relatively well for domestic competition (78 in 2019), ranking 6 among ASEAN member states behind Singapore (2), Malaysia (11), Indonesia (45), Viet Nam (64), and Thailand (65), but ahead of Brunei Darussalam (81), Lao PDR (94), and Cambodia (107).[25]

The report places the Philippines at 64 out of 141 countries in terms of global competitiveness. As seen in Table 1.2, when compared to its ASEAN peers, it ranks only above Viet Nam (67), Cambodia (106) and Lao PDR (113). The country has dropped eight places in the 2019 rankings (after a high ranking of 56 in 2017), with its score of 61.9, a drop of -0.3 (World Economic Forum, 2019[39]).

Table 1.2. Global Competitiveness Index rankings of ASEAN countries, 2019

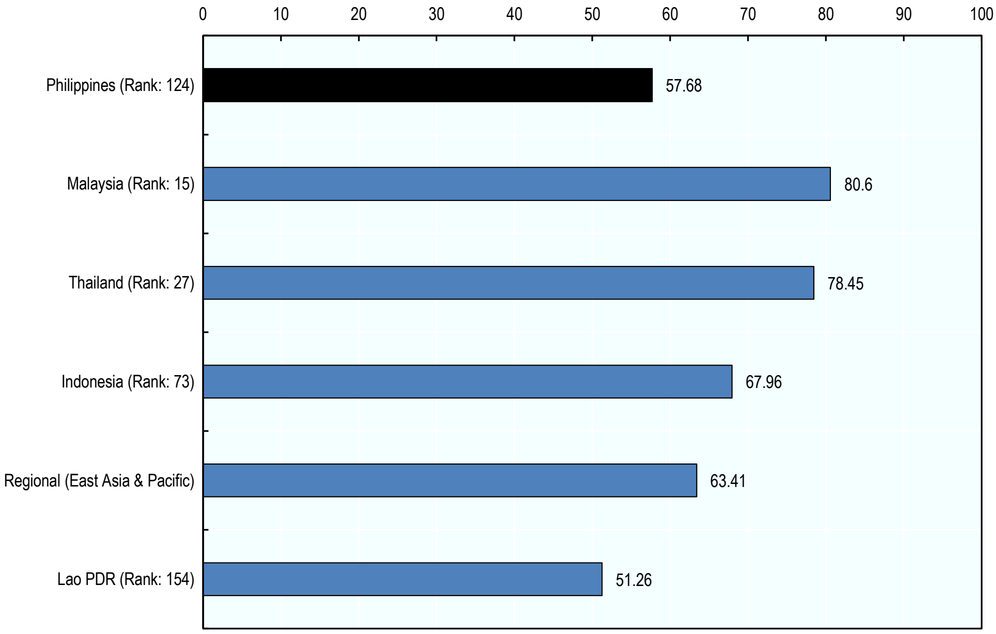
Overall ranking	Country
1	Singapore
27	Malaysia
40	Thailand
50	Indonesia
56	Brunei Darussalam
64	Philippines
67	Viet Nam
106	Cambodia
113	Lao PDR
N/A	Myanmar

Source: World Economic Forum, *The Global Competitiveness Report* 2019, www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf.

According to the 2017-2018 GCI, the most problematic factors for doing business in the Philippines included inefficient government bureaucracies and inadequate supply of infrastructure. The index also classifies countries by stage of development and classified the Philippines as "being in transition" from stage 1 ("factor driven) to stage 2 ("efficiency driven") (World Economic Forum, 2017-18, p. 320[40]). Other ASEAN countries in the same classification include Brunei Darussalam and Viet Nam. The Philippines, the Index continued, "could make large gains in competitiveness at a relatively lower cost by improving their performance in infrastructure, health and education" (World Economic Forum, 2017-18[40]). The Philippines' current performance in logistics-related infrastructure is discussed in Chapter 2: Economic Overview.

Finally, the World Bank's *Doing Business 2019* report ranks the Philippines 124 out of 190 surveyed economies for ease of doing business (World Bank Group, 2019[41]). Globally, New Zealand, Singapore and Denmark are the top three performers, while in the ASEAN region, after Singapore, the top performer is Malaysia (15), followed by Thailand (27) and Brunei Darussalam (55).[26]

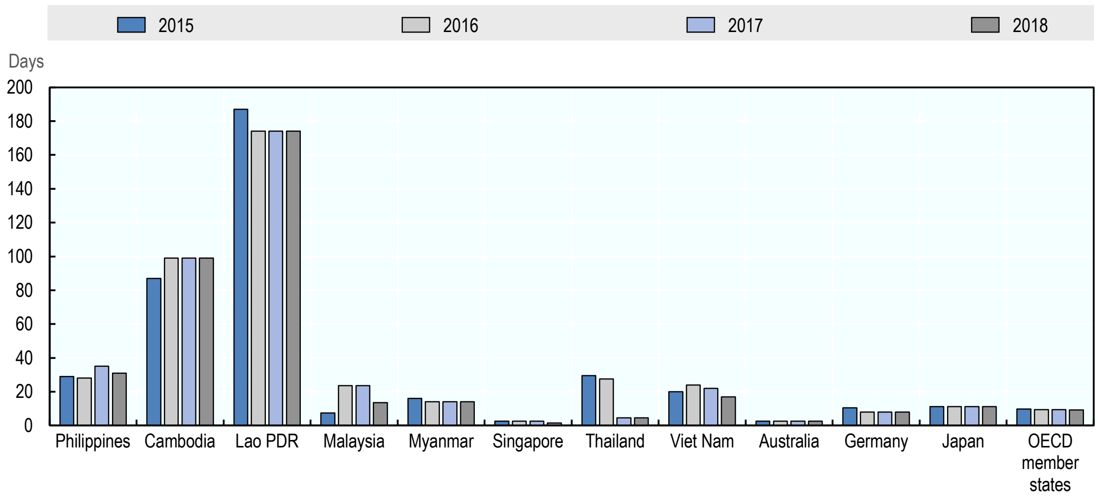
Figure 1.3. Ease of Doing Business Score



Source: World Bank Group, *Doing Business 2019*, www.doingbusiness.org/content/dam/doingBusiness/media/Annua-Reports/English/DB2019-report_web-version.pdf

Among the factors used to judge the ease of doing business in a country, the World Bank considers the time required to acquire property and open a new business (regulations for the latter can generally affect market entry). As shown in Figure 1.4 since 2015, almost all ASEAN member states have significantly reduced the amount of time needed to start a business. In the Philippines, it still requires 31 calendar days, only a small improvement from the 35 days needed in 2017, and far above the OECD average of 9.2 days. Other ASEAN countries have lower rates, such as, Singapore (2 days), Thailand (5 days) and Brunei Darussalam (6 days).

Figure 1.4. Time required to start a business (days)



Source: World Bank World Development Indicators, https://data.worldbank.org/indicator/IC.REG.DURS?end=2018&locations=TH-PH-BN-AU-MY-VN-MM-KH-LA-DE-JP-SG-OE&start=2018&view=bar

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Notes

[1] For those subsectors, see, for instance, EC merger case COMP/M.7630 – *Fedex / TNT Express* of 8 January 2016, EC merger case COMP/M.6570 – *UPS/ TNT Express* of 30 January 2013.

[2] The separation between inland waterway transport and maritime transport is not always clear-cut, as shown, for instance, in Viet Nam by the overlap of responsibilities between the Vietnam Inland Waterways Administration (VIWA) and the Vietnam Maritime Administration (VINAMARINE).

[3] For further information about liner shipping, see, www.worldshipping.org/about-the-industry/how-liner-shipping-works.

[4] See European Commission, Case AT.39850, *Container Shipping*, closed with commitments on 7 July 2016.

[5] 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 in 1998 an economy-wide indicator set of PMR (Nicoletti et al., (1999[43]); this indicator was updated in 2003, 2008 and 2013.

[6] Fournier et al. (2015[12]) 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[13]) 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.

[7] Arnold, Nicoletti and Scarpetta (2011[15]) 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' MFP.

[8] Égert (2017[16]) investigated the drivers of aggregate MFP in a sample of 30 OECD countries over a 30-year period.

[9] 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.

[10] Égert (2017[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.

[11] 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.

[12] Using the OECD's summary index of PMR in seven non-manufacturing industries in the energy, telecoms and transport sectors, Causa et al. (2015[42]) 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".

[13] Multi-factor productivity (MFP) is a measure of the "efficiency with which labour and capital inputs are used together in the production process" (see https://data.oecd.org/lprdty/multifactor-productivity.htm).

[14] The information in the report is updated as of December 2019, when the report was completed. GDP growth forecasts have been updated to reflect the impact of COVID-19.

[15] See https://data.worldbank.org/indicator/SP.POP.GROW?locations=PH.

[16]See https://psa.gov.ph/regional-accounts/grdp/highlights.

[17] As of September 2019.

[18] See www.worldbank.org/en/country/philippines/overview.

[19] See *OECD Investment Policy Reviews: Philippines* (2016, p. 38[33]): "A major earthquake hit the central and northern Philippines in 1990, followed by the volcanic eruption of Mt. Pinatubo in 1991 which was severe enough to cause a contraction that year."

[20] World Bank, Exports of Goods and Services (% of GDP), https://data.worldbank.org/indicator/NE.EXP.GNFS.ZS.

[21] See https://data.worldbank.org/indicator/NV.SRV.TOTL.ZS?locations=PH.

[22] See https://psa.gov.ph/nap-press-release.

[23] According to the OECD: "The inward FDI stock is the value of foreign investors' equity in and net loans to enterprises resident in the reporting economy. FDI stocks are measured in USD and as a share of GDP." (https://data.oecd.org/fdi/fdi-stocks.htm).

[24] The ASEAN Framework Agreement on Services was signed in Bangkok on 15 December 1995; see: https://asean.org/?static_post=asean-framework-agreement-on-services.

[25] World Economic Forum, *The Global Competitivness Report 2019*, www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf. Myanmar was not ranked in the 2019 report.

[26] For the full list of countries with their respective rankings, see www.doingbusiness.org/en/rankings.

2 Economic overview of the logistics sector in the Philippines

The logistics sector is crucial for the development of any economy, as it connects firms to both domestic and international opportunities (World Bank, 2018[1]). As a large contributor to GDP and having an impact on most economic activities, a well-developed logistics network is fundamental to a country's productivity and growth.

In 2016, ASEAN recognised the importance of connectivity and logistics for its overall economy by adopting the *Master Plan on ASEAN Connectivity 2025*, which aims to strengthen ASEAN competitiveness through enhanced trade routes and supply-chain efficiency.[1]

As a major component of the logistics sector, freight transport plays an important role in enhancing economic productivity and growth, and promoting consumer welfare. The movement of freight within a country and across borders improves the integration of national and international markets, fostering competition and specialisation. It can also aid development by connecting remote regions to centres of economic activity, allowing consumers to benefit from a wider variety of products and services, while spreading technological advancements across the country and internationally.

Similarly to other ASEAN member States, the Philippines will suffer from the socio-economic impact of the Covid-19 outbreak. The Asian Development Bank explains that the Philippines is one of the economies that "relied more heavily on stay-at-home policies and workplace and school closures, and kept them in place for longer periods" (Asian Development Bank, 2020, p. 5[1]). The pandemic has resulted in the disruption of supply chains and limited the flows of trade and investment. Logistics companies have been affected by operational constraints (delivery delays, congestion and higher freight rates) and a lower demand in certain sectors. The Philippine Statistics Authority (PSA) recorded a significant decline in the GVA of the transportation and storage sector in the first two quarters of 2020.[2] In the second quarter of 2020, the PSA recorded an overall sector contraction of 59.2%. Air transport, water transport and land transport showed the most significant contractions, with contractions of 98.3%, 72.8% and 65.5% respectively. Warehousing and storage showed a smaller decrease, recording a contraction of 20.4% while postal and courier services increased by 6.6% (Philippine Statistics Authority, 2020[2]).[3]

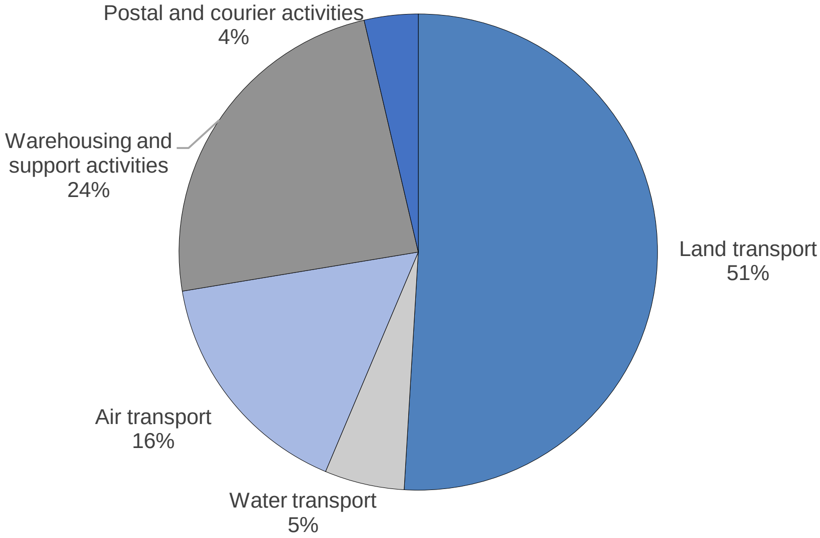
In the official Philippine Standard Industrial Classification (PSIC) code, the logistics sector is included in "transportation and storage", as the PSIC currently has no specific sector classified as "logistics".

2.1. Transportation and storage sector: Key figures

2.1.1. Gross value added

According to the PSA, the transportation and storage sector had gross value added (GVA) of PHP 742 105 million in 2019,[4] including passenger transportation.

Figure 2.1. Gross value added of Philippine transportation and storage sector (PHP million), 2019



Source: Philippine Statistics Authority, GVA in Transportation and Storage (2000-2019) (At Constant 2018 Prices, as of April 30, 2020) https://psa.gov.ph/national-accounts/base-2018/data-series

PSA statistics show that the transportation and storage sector grew at an average of 6% from 2018 to 2019. The sub-sectors of land transport grew by 3%, water transport by 5%, warehousing and support activities by 9% and postal and courier services by 4%.

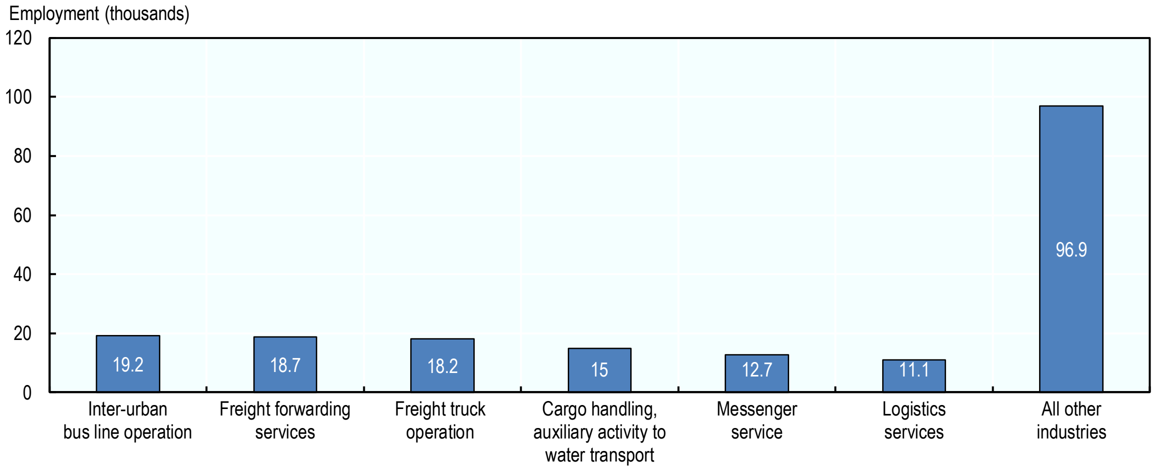
2.1.2. Number of companies in the transportation and storage sector

According to the 2017 ASPBI, 2 804 establishments are operating in the transportation and storage sector, including passenger services. Largest sub-sectors include “support activities for transportation” (1,334 companies), “other land transport” (748 companies), “transport via buses” (285 companies) and “warehousing and storage” (125 companies). The 2016 ASPBI recorded a total of 2 860 establishments and provided an industry break-down, which was more in line with the logistics categories analysed in this competition assessment. In 2016, the highest number of establishments were in the freight-forwarding sector (600 or 21% of the total), while the freight truck haulage sector had 580 establishments (20.3%).

2.1.3. Employment in the transportation and storage sector

In 2017, 195 373 people were employed in the sector, an increase of 1.9% from the 191 817 in 2016. According to the 2016 ASPBI, 18 700 people were employed in the freight-forwarding sector, 18 200 in freight truck operations, and 15 000 in cargo handling/other activities relating to water transport (see Figure 2.2).

Figure 2.2. Employment in the transportation and storage industry, by sub-sector



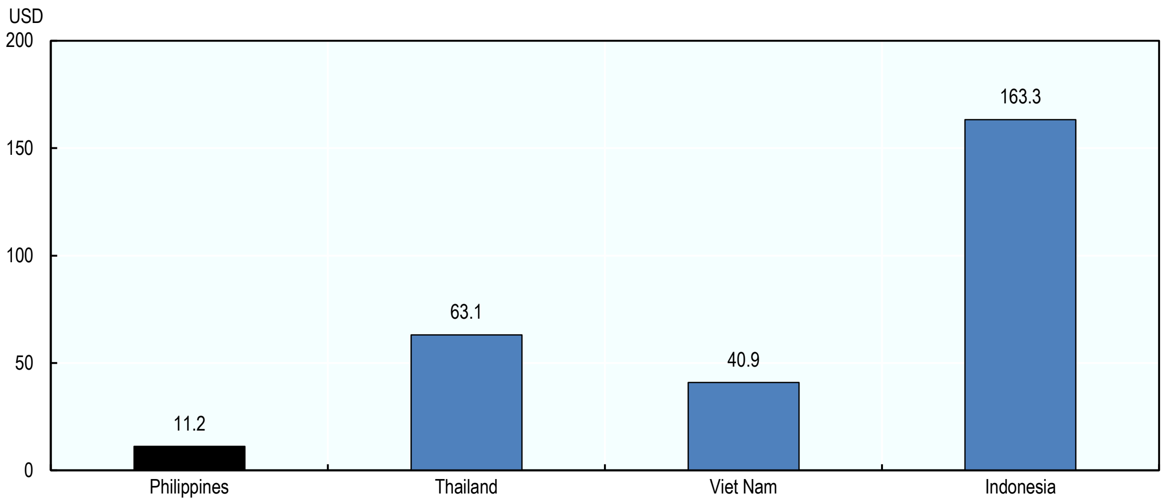
Source: Annual Survey of Philippine Business and Industry (ASPBI), 2016.

DTI figures from 2018 showed that logistics transport services in particular employed approximately 150 000 people (Department of Trade and Industry, 2018, p. 9[2]).

2.1.4. Turnover

Although official PSA statistics do not quantify the value of the Philippine logistics and warehousing market sector, according to independent consultancies in 2016 it was worth USD 11.2 billion (see Figure 2.3).

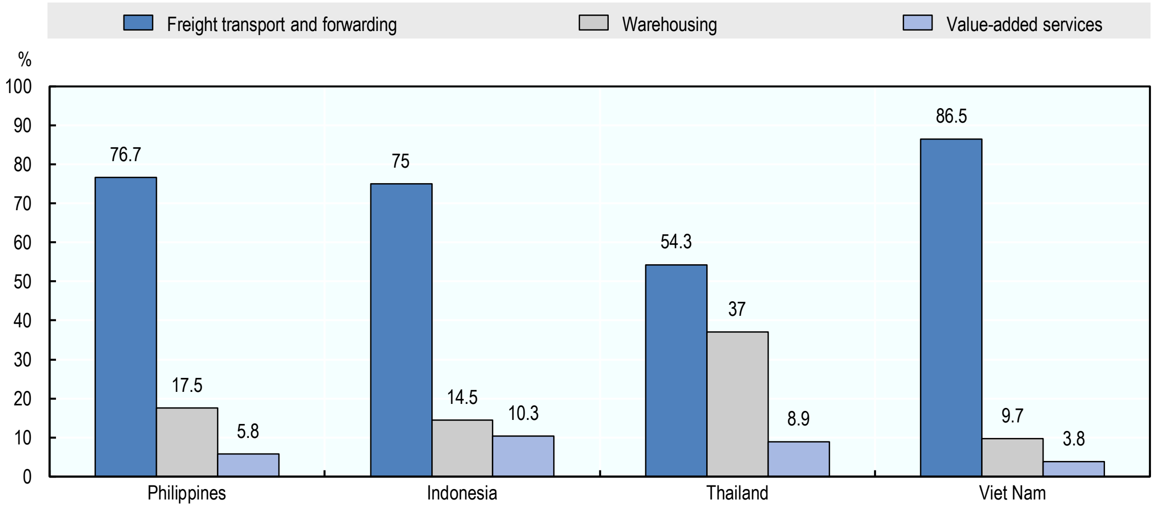
Figure 2.3. Comparison of logistics and warehousing market size (USD billion), 2016



Source: Ken Research (2018[3]), *Thailand Logistics and Warehousing Market Outlook to 2022 - By Freight Forwarding, Express Logistics, E-commerce Logistics and Warehousing Services (Industrial/Retail Freight, Container Freight, Cold Storage, Agricultural and Others), Third Party Logistic*.

In terms of logistic revenues, in 2017, 76.7% were from freight transport and forwarding, 17.5% from warehousing, and 5.8% from value-added services (see Figure 2.4).

Figure 2.4. Revenues by logistics segment, 2017



Note: Data for Indonesia are from 2016.

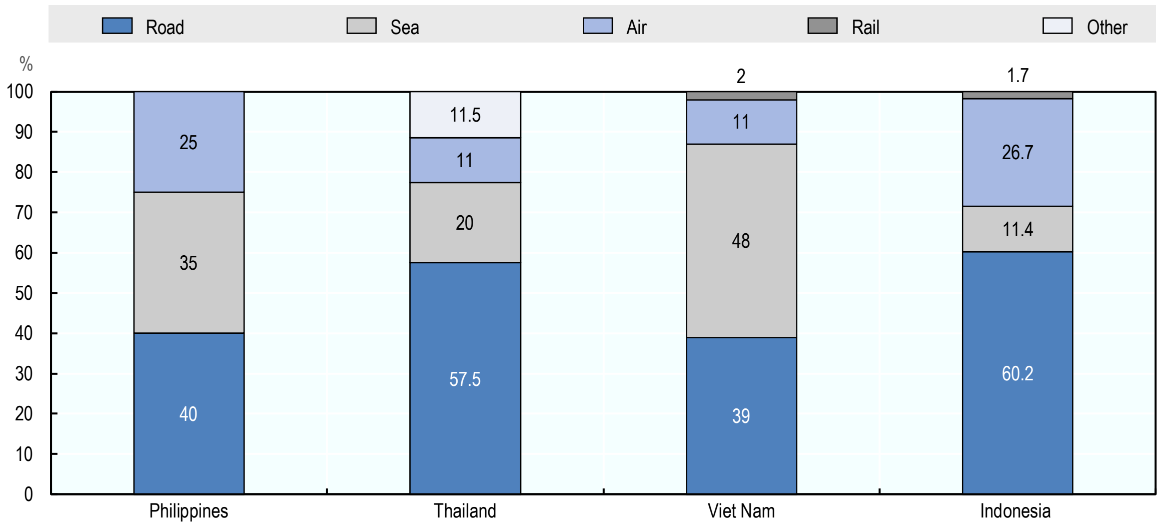
Source: Ken Research (2018[4]), *Thailand Logistics and Warehousing Market Outlook to 2022 - By Freight Forwarding, Express Logistics, E-commerce Logistics and Warehousing Services (Industrial/Retail Freight, Container Freight, Cold Storage, Agricultural and Others), Third Party Logistic*.

2.2. Modes of freight transport: Road, maritime and rail

As an archipelago, the Philippines relies on maritime transport to move goods in both domestic and foreign markets; road transport is mainly used to move goods to and from ports and within each island (Department of Trade and Industry, 2018, p. 10[2]).

In terms of revenue, road transport has the highest share (40%) in the domestic logistics market, and accounts for 58% of domestic cargo traffic in volume (Asia Development Bank, 2012, p. 1[5]). Maritime transport is second for revenue with 35% (see Figure 2.5). Foreign investment in transport operations and services is limited and according to the DTI, “domestic transport service providers dominate the industry” (Department of Trade and Industry, 2018, p. 9[2]).

Figure 2.5. Freight segments by revenue, 2017



Note: The source does not define what "other" includes.
Source: Ken Research (2018[4]), *Thailand Logistics and Warehousing Market Outlook to 2022 - By Freight Forwarding, Express Logistics, E-commerce Logistics and Warehousing Services (Industrial/Retail Freight, Container Freight, Cold Storage, Agricultural and Others), Third Party Logistic*.

2.2.1. Road freight transport

Road transport has the advantage of allowing door-to-door transportation without cargo transfers between vehicles; this reduces costs for senders and recipients, as well as risks of loss or damage that might arise during transit. Generally, even when other modes of transport such as rail transport are used, the "first-mile" and "last-mile" transport still needs to be carried out by road in order to reach the sender and recipient.

The importance of road freight transport in the Philippines is demonstrated by the constantly increasing number of commercial-vehicle registrations. According to the 2018 annual report of the Land Transport Office (LTO), there was an annual average increase of 11.95% in vehicle registrations from 2016-2018 (Land Transport Office, 2018, p. 3[6]). According to DTI, 56% of registered commercial vehicles operate on the country's largest island, Luzon (Department of Trade and Industry, 2018, p. 10[2]). As shown in Table 2.1, 448 684 trucks were registered by the LTO in the Philippines in 2018, an increase from 430 576 in 2017, of which 12% were new trucks. Private trucks make up approximately 90% of the total truck fleet, while for-hire trucks make up 8% and government trucks 2%.

Table 2.1. Number of trucks in the Philippines, 2017 and 2018

	New		Renewal		Total	
	2017	2018	2017	2018	2017	2018
Government	749	1 384	8 525	8 740	9 274	10 124
Private	56 847	50 587	3323 247	3350 954	380 094	401 532
For-hire	0*	0*	41 115	36 850	41 115	36 850
Total	**57 596**	**51 971**	**372 887**	**396 544**	**430 483**	**448 506**

Note: * Interviews with LTFRB have confirmed that these figures of zero are untrue and that new registrations were issued.
Source: PPA, Port Operations and Services Department (2018 and 2017).

The length of the Philippines road network is 210 229 kilometres, of which 32 633 kilometres (15%) are categorised as national roads and managed by the Department of Public Works and Highways (DPWH) (Department of Trade and Industry, 2018, p. 10[2]). While the quality of the Philippine road network is improving, much development and upgrade work is required, especially for roads not managed by DPWH. Overall, only 30% of roads in the Philippines are paved, although 88.6% of roads managed at the national level are paved. According to DTI, "municipal roads have a low paved ratio of 35%, while city roads have a paved ratio of 62%" (Department of Trade and Industry, 2018, p. 10[2]).

Public policy and infrastructure play a major role in the development of road freight transportation. There has been and continues to be significant public investment in road infrastructure projects, but DTI has highlighted difficulties when responsibility lies with local government units (LGU) due to limited resources and capacity to implement projects (Department of Trade and Industry, 2018, p. 10[2]). [5]

The Philippine market for freight transport by road is "characterised by a large number of small firms providing basic transportation services" (World Bank, 2018, p. 10[7]). According to market participants, such as the Confederation of Truckers Association of the Philippines, the average truck in the Philippines is over 15 years old. DTI estimates that 80-90% of trucks on Philippine roads are more than 15 years old or at least second-hand (Department of Trade and Industry, 2018, p. 10[2]). According to data from PPA (see Table 2.1), there were no new registrations for trucks for hire in 2017 or 2018; however, interviews with the LTFRB confirmed that new registrations were in fact issued in 2017 and 2018.

2.2.2. Maritime freight transport

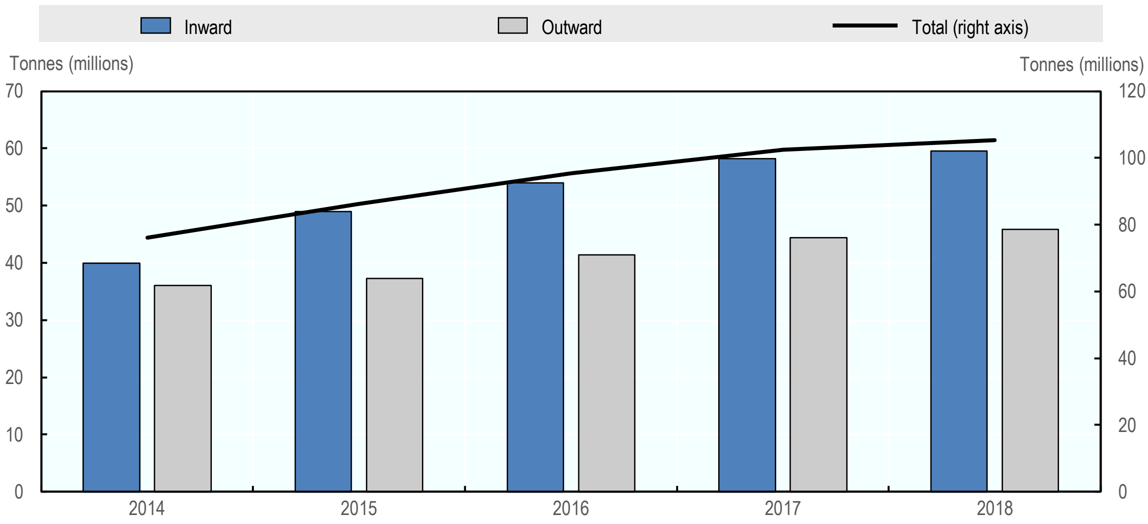
As a large archipelago made up of 7 641 islands, the Philippines relies heavily on maritime transport, yet the country's domestic shipping industry is characterised by "high costs, low quality of service and a poor safety record" (World Bank, 2014, p. 4[8]).

From January to December 2018, the Maritime Industry Authority (MARINA) issued 1 614 certificates of public convenience (CPC), the licence that allows operators to engage in domestic shipping. According to the authority's 2018 report, *Highlights of Accomplishment*, CPC issuances include "new issuances, renewal/extension, amendment and exemption" (Maritime Industry Authority, 2018, p. 23[9]). The report also states that: "The number of issued ship registration certificates from January to December 2018 tallied up to a total of 13 571, which displays an increase of 21.09% from the previous year's total of 11 207 certificates issued." (Maritime Industry Authority, 2018, p. 21[9]). According to the most recent available sectoral statistics contained in MARINA's 2014-2018 Statistical Report, in 2018, there were 2037 domestic operating cargo vessels in the Philippines. This included 1807 solid vessels and 230 liquid vessels. The average age of these vessels was 20.42 years (Maritime Industry Authority, 2019, p. 4[10]).

In 2014, World Bank data showed that between 2008 and 2013, the Philippine ports and shipping sectors accounted for 0.2 percent of gross value added to Philippines GDP. It also notes that employment in the sectors was estimated at 57 000 in 2013, 18,000 being formally employed (World Bank, 2014, p. 20[8]).

From 2012 to 2018, there was a steady increase in both inward and outward cargo throughput in the Philippines, as shown in Figure 2.6.

Figure 2.6. Domestic cargo throughput, in tonnes



Source: MARINA, Maritime Industry Authority Statistical Report 2014-2018, p. 21, https://marina.gov.ph/wp-content/uploads/2019/12/Statistical-Report-2018.pdf, accessed on 23 July 2020.

Main market operators

"Few operators serve most shipping routes" in the domestic market, according to the World Bank, "with more than 40 percent of routes served by a single operator" (World Bank, 2018, p. 11[7]). It explained that, "of the 54 primary routes for which data was obtained […] over 40% were served by a single operator. A further third were served by just two operators, and less than one quarter were served by 3 or more competitors" (World Bank, 2014, p. 4[8]). The World Bank concluded that the "threat of potential entry is often the major force disciplining market behavior" and "in the absence of regulatory and legislative barriers, the threat of entry is likely to be real and constant" (World Bank, 2014, p. 5[8]).

Cost of domestic shipping

The cost of domestic shipping is high relative to other ASEAN archipelago countries such as Malaysia and Indonesia, with the World Bank concluding in 2014 that the average port-to-port cost per nautical mile in the Philippines was USD 1.47, higher than Indonesia's USD 0.77 and Malaysia's UDS 1.36 (World Bank, 2014, pp. 22-23[8]). It also stated that it was "more expensive to transport goods between 2 Philippine ports than between 2 Philippine ports via an international port" (World Bank, 2014, p. 4[8]).

Safety

In 2014, the Philippines had the worst casualty rate (ratio of total casualties to total fleet size) in the ASEAN region, 40% higher than second-placed Indonesia (World Bank, 2014, p. 26[8]). In 2018, according to statistics from the Philippine Coast Guard (PCG), there were 302 maritime incidents or accidents reported and 31 casualties or bodies recovered (Maritime Industry Authority, 2019, p. 20[10]). This is lower than in 2016, when the PCG recorded 707 maritime incidents or accidents and 211 causalities. (Maritime Industry Authority, 2016, p. 23[11]).

2.2.3. Maritime: International shipping market

In 2018, according to MARINA, the Philippine-registered overseas fleet was made up of 103 ships, 2 of which were owned and 101 of which were bareboat chartered (Maritime Industry Authority, 2019, p. 25[10]).

This is a decrease from 2016, when MARINA recorded a fleet of 119 ships, 1 of which was owned and 118 bareboat chartered (Maritime Industry Authority, 2016, p. 28[11]). In 2018, the Philippines' overseas fleet contained ships offering five different types of services, as shown in Table 2.2. In 2016, the Philippines overseas operating fleet also provided dry cargo and container carrier services.

Table 2.2. Number of overseas operating fleet by type of service, 2016 and 2018

Type of service	2016	2018
General cargo	27	24
Bulk carrier	63	53
Tanker	17	20
Livestock carrier	7	4
Dry cargo	1	-
Container carrier	2	-
Multi-purpose/dry cargo	2	1
Total	119	103

Source: MARINA, Annual Report on Basic Maritime Statistics 2012-2016, https://marina.gov.ph:1443/reports/statistical/statistical%20report%202012-2016_final.pdf.

In 2018, 563 Philippine overseas shipping companies – those allowed to operate in international waters – were accredited by MARINA (Maritime Industry Authority, 2019, p. 24[10]).[6] This is a slight increase compared to 2016, where there were 530 accredited shipping companies (Maritime Industry Authority, 2019, p. 24[10]). [7] The top 10 overseas shipping companies by tonnage are shown in Table 2.3. Foreign cargo throughput increased at about 3.7% per annum from 2014 to 2018, reaching 155.6 million tonnes in 2018.

Table 2.3. Top 10 overseas shipping companies, as of December 2018, by tonnage

	Company name	Tonnage (total GRT)
1	Sagana Shipping	280 619
2	Seafarers Shipping	265 416
3	Sea Queen Shipping Corporation	260 516
4	Victoria Ship Management	259 548
5	Filscan Shipping	170 890
6	St. Vincent Shipping	142 566
7	Viking International Carriers	138 644
8	Vintex Shipping Phils. Corporation	101 281
9	Amethyst Shipping Company	80 725
10	Sinbanali Shipping	26 220

Source: MARINA, Statistical Report 2014-2018, page 32, https://marina.gov.ph/wp-content/uploads/2019/12/Statistical-Report-2018.pdf

2.2.4. Rail

State-owned enterprise Philippine National Railways (PNR) is the only operator of rail transportation and railway infrastructure in the Philippines (World Bank, 2018, p. 51[7]). PNR does not currently provide freight transportation services, only passenger transport. According to the World Bank, "the presence of a monopolistic SOE, paired with lack of separation between the operation of infrastructure and the provision of services (actual transportation of passengers or freight in inter-urban rail) remain key constraints for further development" (World Bank, 2018, p. 11[7]).

According to the DTI's *National Logistics Masterplan Roadmap 2017-2022*, freight transportation services by rail were offered until 1974, then briefly again in 2010 (Department of Trade and Industry, 2018, p. 10[2]). The report notes that PNR has 478 kilometres of rail track on the island of Luzon, only 218 kilometres of which are in use today for passenger transport, and that only 20 of PNR's 165 stations are in use, the majority of which are located in the Mega Manila area (Department of Trade and Industry, 2018, p. 10[2]).

2.3. Freight forwarding, warehousing and small-package delivery

2.3.1. Freight forwarding

Freight forwarders are regulated by different agencies according to the mode of transport used. Freight forwarders are regulated by the DTI (for sea-based transport) and the Department of Transport (DOTr, for air). Tables 2.4 and 2.5 show how the maritime freight-forwarding market is fragmented and consists of a large number of small players.[8]

2.3.2. Maritime freight forwarders

Maritime freight forwarders are accredited by the DTI's Fair Trade and Enforcement Bureau (DTI-FTEB). In 2018, 633 companies were accredited as maritime freight forwarders.

Table 2.4. Number of maritime freight forwarders accredited by DTI-FTEB, 2014-2019

Year	Number of companies
2014	573
2015	630
2016	670
2017	677
2018	633
2019	774

Source: DTI-FTEB Statistics on Sea Freight Forwarders 2014-2018, https://observatory.dti.gov.ph/?p=508. The 2019 data represents the number of DTI- FTEB accredited freight forwarders as of 30 November 2019, https://dtiwebfiles.s3-ap-southeast-1.amazonaws.com/FTEB-BLAD/Accredited+SFFs/FTEB_List+of+Accredited+NVOCC%2C+IFF+and+DFFs_30November2019.pdf.

Large freight-forwarding businesses operating in the Philippines include LBC Express, DHL Express, DHL Global Forwarding, Schenker Philippines, Panalpina World Transport and Nippon Express Philippines.[9] Most of the companies accredited are either small businesses (with turnover between PHP 3 million and 15 million) or medium-sized businesses (between PHP 15 million and 100 million).

Table 2.5. Number of freight forwarders by size of assets, 2014-2018

Business type (by asset)	2014	2015	2016	2017	2018
Micro (<PHP 3M)	83	98	99	85	71
Small (PHP3M-<15M)	300	314	340	343	317
Medium (PHP15M-<100M)	130	139	152	170	164
Large (>PHP 100M)	60	79	79	79	81
Total	573	630	670	677	633

Source: DTI-FTEB Statistics on Sea Freight Forwarders 2014-2018, https://observatory.dti.gov.ph/?p=508.

2.3.3. Warehousing

There is no general legal framework for the regulation of warehousing in the Philippines. According to the PSA's 2016 Annual Survey of Philippine Business and Industry (ASPBI), the storage and warehousing sector had 143 establishments. Most (57%) were general purpose warehouses, but a significant number (17%) were cold storage warehouses and only 5% were bonded warehouses. The 2017 ASPBI noted 126 establishments, but did not provide a detailed breakdown on the different types of warehouses.

2.3.4. Small-package delivery and postal services

The Philippine market for small-package delivery services is open to competition and contains large domestic and international operators, as well as a large number of informal companies. The PSA's 2016 ASPBI recorded a combined value of PHP 18.7 billion for the sectors of postal activities, private postal service, and messenger service. The total value added for these sectors was just under PHP 6 billion.

According to a World Bank report, 88 companies operate in the courier-services market and there is one company operating in the basic letter and parcel delivery market (World Bank, 2018, p. 51[7]). The PSA's 2017 survey noted 91 courier establishments with 6 940 employees, but did not record any statistics for "postal activities". As of 1 December 2019, DICT lists 110 authorised private express and "messengerial delivery services" (PEMEDES) or courier service providers on its website.[10]

Third-party logistics companies (3PLs), including both local and regional players (mainly on Luzon Island), are active in the market and focus on domestic B2C express-delivery services. These include iSend, GrabExpess, GoMoto, Cliqnship, JRS Express, Back Arrow Express, LBC Express, 2Go Supply Chain, Ninja Van, CheckMeOut, and Del Asia.[11] According to PHLPOST's *Roadmap to 2020*, the 3PL market had a total revenue of PHP 82.37 billion in 2012, with the main 3PL firms being Fast Logistics Group (31%), Li & Fung (19%), Synovvate Logistics (15.2%), DHL Supply Chain (12.5%) National Marine Corporation (10%), Lorenzo Shipping (6.5%) and others (5.8%) (Philippine Postal Corportation, 2016[12]).

Although no official statistics exist for domestic express-delivery services, market participants have told the OECD that the main players are: 1) JRS Express (with a market share of approximately 30%); 2) LBC Express (approximately 20%); 3) PHLPost (approximately 15%); 4) Lalamove; and 5) GrabExpess. In the B2B segment, DHL is the largest operator, while LBC Express's extensive network allows it to dominate deliveries to remote areas.[12]

For international express-delivery services, the global companies – DHL,[13] FedEx/TNT and UPS – dominate the market with a combined market share of approximately 94% in the Philippines.[14]

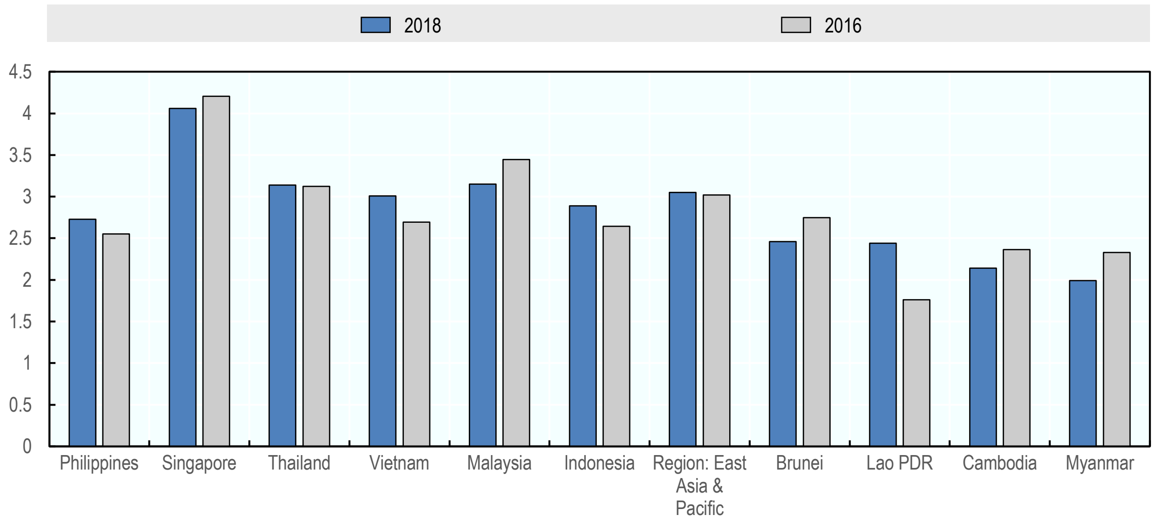
PHLPost has the largest network in the Philippines with 3 offices of exchange, 9 mail-distribution centres, 62 sub-distribution centres, and 1 355 post offices.[15] LBC Express, which is number two in the market, has 13 distribution centres and 280 hubs, and continues to increase its presence, particularly in emerging towns. LBC Express operates mainly land and air transport, using a fleet of more than 1 500 trucks, as well as “nautical highways” that use road transport and roll-on roll-off (ro-ro) vessels.

2.4. Infrastructure

The World Bank’s Logistics Performance Index regularly collects data from global operators about the quality of trade and transport-related infrastructure to provide an aggregate indicator across 160 countries. This captures logistics professionals’ perceptions of a country’s quality of trade- and transport-related infrastructure, including ports, railways, roads and information technology. The index ranges from one (very low quality) to five (very high quality).

In 2018, the average quality of trade and transport-related infrastructure in the East Asia and Pacific region was 3.05. As seen in Figure 2.7, only three countries in ASEAN (Malaysia, Singapore and Thailand) score above this average, with Singapore the region’s best performer at 4.06.

Figure 2.7. Quality of trade and transport-related infrastructure



Source: World Bank, Logistic Performance Index Surveys, https://lpi.worldbank.org.

The quality of infrastructure in different ASEAN countries varies widely and, as seen in Table 2.6, the Philippines lags behind its ASEAN peers. It is the worst performer in all logistics-related infrastructure categories, with an overall rating of 97, except for port infrastructure where it ranks above Lao PDR and quality of railway where it ranks above Cambodia (World Economic Forum, 2017-18, p. 238[13]).

The *Philippine Development Plan 2017-22* (PDP) stresses the inadequacy of infrastructure, notably in transport, telecommunications, energy, health, education, water supply and sanitation (National Economic and Development Authority, 2017[14]). According to the OECD, progress has been made towards addressing infrastructure gaps, but in order to meet the demand for infrastructure in the Philippines and a target of 7% GDP growth between 2017-22, considerable capital and a more efficient utilisation of available financial resources will be necessary (OECD, 2018, p. 161[15]).

Table 2.6. Comparative analysis of infrastructure quality across ASEAN nations

Infrastructure type	Philippines	Malaysia	Lao PDR	Brunei Darussalam	Cambodia	Thailand	Viet Nam	Indonesia	Singapore
Road	**104**	23	94	33	99	59	92	64	2
Railway	**91**	14	N/A	N/A	94	72	59	30	4
Port	**114**	20	127	74	81	63	82	72	2

Source: World Economic Forum, *Global Competitiveness Report 2017-2018*, www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017–2018.pdf. No data are available for Myanmar.

These needs have seen government infrastructure spending increase significantly in recent years. Between 2011 to 2015, it averaged 2.7% of GDP, but rose to 5.1% in 2016 (OECD, 2018, p. 161[15]). This is in large part due to the current government's introduction of the Philippine's largest ever infrastructure plan, known as Build! Build! Build! (BBB). This aims to increase public spending on infrastructure to around 7.3% of GDP by the end of its current mandate, a plan expected to cost between PHP 8 trillion to 9 trillion between 2016 to 2022.[16]

According to the Department of Finance, infrastructure spending for the first 10 months of 2018 was PHP 665.1 billion, PHP 222.5 billion or 50.3% more than for the same period in 2017.[17]

2.4.1. Ports

There are approximately 436 ports in the Philippines, owned and operated by both public and private entities (Department of Trade and Industry, 2018, p. 14[2]). The Philippine Ports Authority (PPA) is broadly responsible for the majority of ports in the Philippines, with 88 public ports and 238 private ports under its jurisdiction.[18] Major ports managed by PPA include the Ports of Manila, Subic Bay, Batangas, Davao, and Iloilo. Several independent port authorities (IPAs) and economic zones are not governed by PPA, including Cebu Ports Authority (CPA), which manages the major Philippine port of Cebu, Cagayan Economic Zone Authority (CEZA), Poro Point Management Corporation (PPMC), Subic Bay Metropolitan Authority (SBMA), PHIVIDEC Industrial Authority (PIA), and Regional Ports Management Authority (RPMA) (Department of Trade and Industry, 2018, p. 14[2]).

According to DTI, cargo traffic is largely concentrated in these major ports, as well as at Mindanao Container Terminal (MCT) and Davao International Container Terminal (DICT). These ports operate as both international and domestic ports except for DICT, which is only an international port (Department of Trade and Industry, 2018, p. 15[2]).

The Port of Manila is a major global port in terms of volume and in 2018, was the 30th largest container port in the world.[19] According to Lloyd's List, its throughput growth of 5.7% in 2017 was caused by "an aggressive infrastructure push".[20] According to DTI, Manila Port handled 62% of the Philippine's container traffic and 72% of total foreign container traffic in 2014 (Department of Trade and Industry, 2018, p. 15[2]).

Port operations in many government-owned ports are managed by 119 private terminal operators; the largest is International Container Terminal Services (ICTSI), which operates Manila International Container Terminal (MICT) (Department of Trade and Industry, 2018, p. 14[2]).

International trade and international price comparison

The Philippines has experienced growth in both exports and imports of transport services from 2005 to 2018, as shown in Table 2.7.

Table 2.7. Philippine's total trade in transport services, in USD millions, 2005-2018

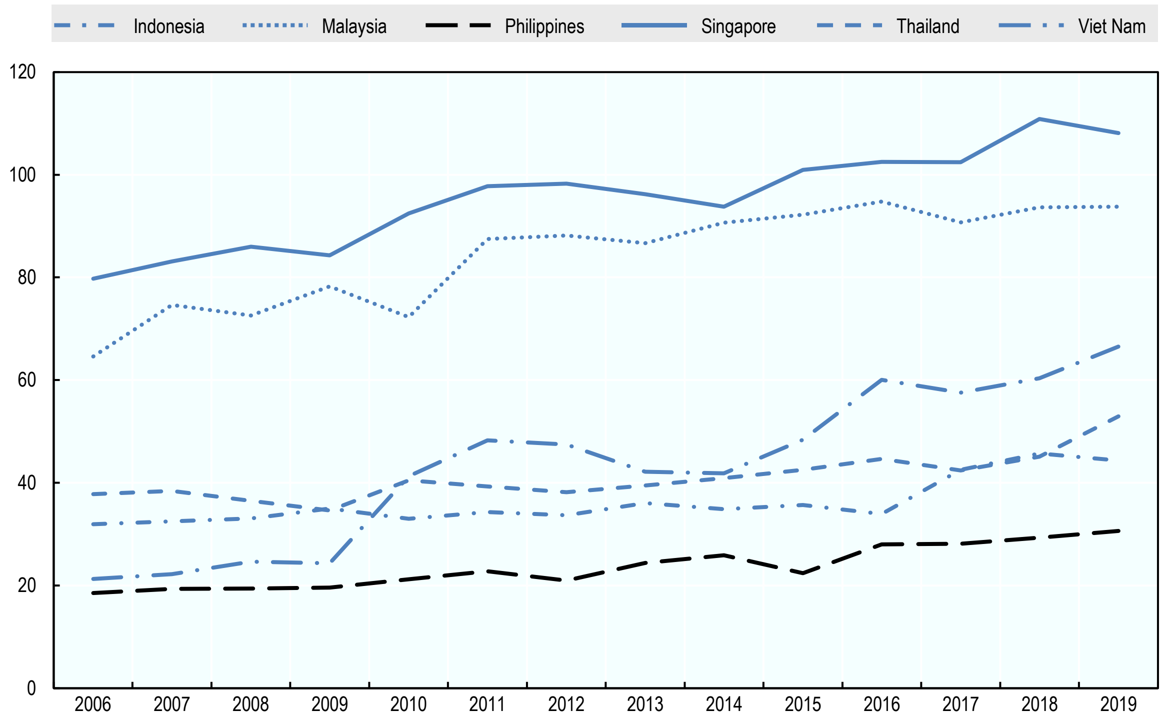
Transport services	2005	2010	2015	2018
Exports	937	1 347	1 934	2 683
Imports	2 198	3 321	3 856	5 305
Trade balance	-1 261	-1 974	-1 922	-2 622

Source: UNCTADStat, https://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/608/index.html. Statistics presented correspond to the 6th edition of *IMF Balance of Payments and International Investment Position Manual*, 2009 (BPM6).

The connectivity index for the Philippines and other comparable ASEAN countries shows countries' levels of integration into the global liner shipping networks.[21] According to UNCTADStat data (see Figure 2.8), since 2006, the Philippines's connectivity index has been increasing, passing from 18.5 in 2006 to 30.63 in 2019. It remains far lower than other large ASEAN countries such as Indonesia (44.36 in 2019) or Malaysia (93.80 in 2019), however.

Figure 2.8. Annual liner shipping connectivity index

Maximum, 2006 = 100

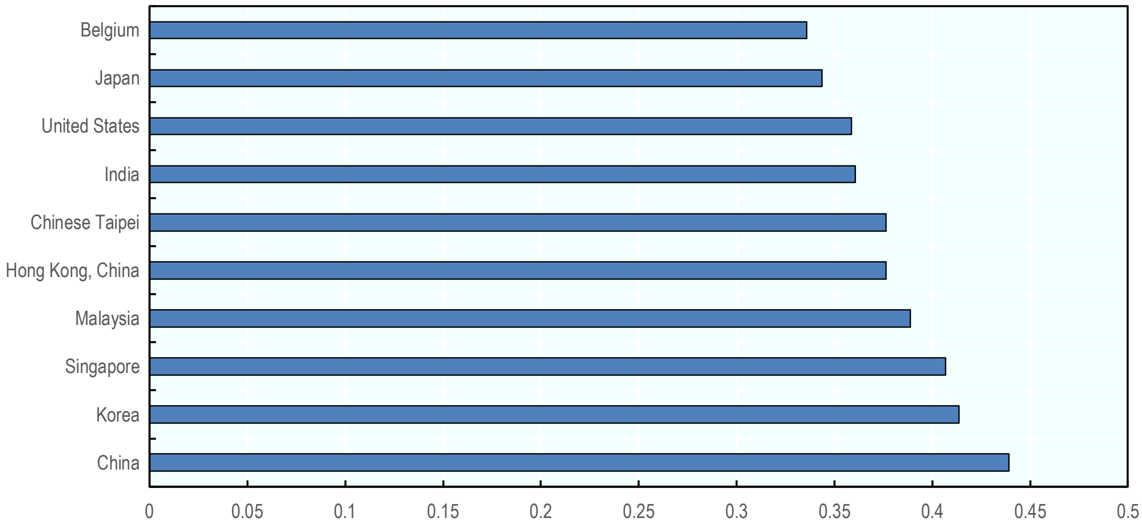


Source: UNCTADStat, generated from data provided by MDS Transmodal, https://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx?IF_ActivePath=P%2C11%2C45&sCS_ChosenLang=en.

Figure 2.9 uses UNCTADSTAT's Liner Shipping Bilateral Connectivity Index (LSBCI) to show the countries to which the Philippines had the most bilateral connections in 2019.[22] The five most connected countries include People's Republic of China, Singapore, Korea, Malaysia and Hong Kong, China. Literature has empirically shown a close relationship between bilateral maritime liner shipping connectivity and exports in containerised goods and how a lack of a direct maritime connection with a country results in lower export values (Fugazza and Hoffmann, 2017[16]).

Figure 2.9. The Philippines' Liner Shipping Bilateral Connectivity Index

0 = minimum, 1 = maximum, 2019



Source: UNCTADStat, https://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx?IF_ActivePath=P%2C11%2C45&sCS_ChosenLang=en.

2.5. Main issues in the logistics sector

Efficiency in the logistics sector can be measured in a variety of ways. This assessment uses a number of international and national indicators, including the World Bank's Logistics Performance Index (LPI), the Logistics Efficiency Indicator (LEI) of the Philippine Department of Trade and Industry (DTI), and other measurements such as logistics costs to sales.

2.5.1. World LPI ranking

Box 2.1. World Bank Logistics Performance Index

The World Bank Logistics Performance Index (LPI) benchmarks countries' performances in the logistics sector from 1 – lowest – to 5 – highest – to create an overall LPI index that allows for worldwide, regional and income-group country comparison.

The LPI uses the weighted average of a country's scores meeting six key criteria.

1. Efficiency – speed, simplicity and predictability – of clearance processes by border-control agencies, including customs.

2. Quality of trade- and transport-related infrastructure.
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 arriving within the scheduled or expected delivery time.

Source: World Bank (2018[1]), *Connecting to Compete, the Logistics Performance Index Report*.

In 2018, the latest year available, Philippines was ranked 60 in the Logistics Performance Index (LPI) (see Table 2.8), an improvement on 2016 (71), but lower than 2010 (44).

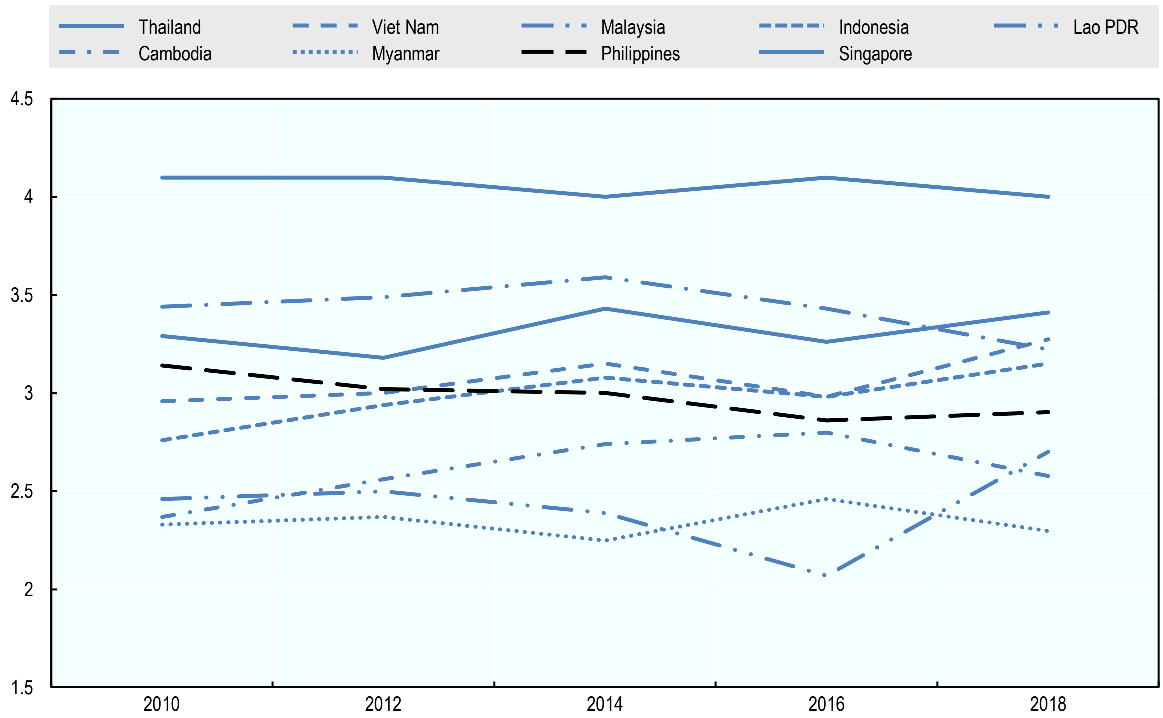
Table 2.8. LPI rankings, 2018

Ranking	Country
1	Germany
2	Sweden
3	Belgium
4	Austria
5	Japan
6	Netherlands
7	Singapore
8	Denmark
9	United Kingdom
10	Finland
[...]	
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), Logistics Performance Index, pp.11-13, https://openknowledge.worldbank.org/bitstream/handle/10986/29971/LPI2018.pdf.

Figure 2.10 shows the changes in the overall LPI score of ASEAN countries between 2010 and 2018; the Philippines is sixth. As noted in Box 2.1, the LPI score ranges between 1 (lowest) and 5 (highest). Within the LPI, the Philippines' two biggest challenges appear to be customs and timeliness, but it also scores poorly for infrastructure and logistics competence. Its score for tracking and tracing remains below Viet Nam for this sub-indicator, but its ranking (57) is an improvement on its LPI average (60). The Philippines does, however, score relatively well for international shipments, ranking 37 on the global LPI and fourth in the ASEAN region.[23]

Figure 2.10. LPI Score of ASEAN countries, 2010-2018



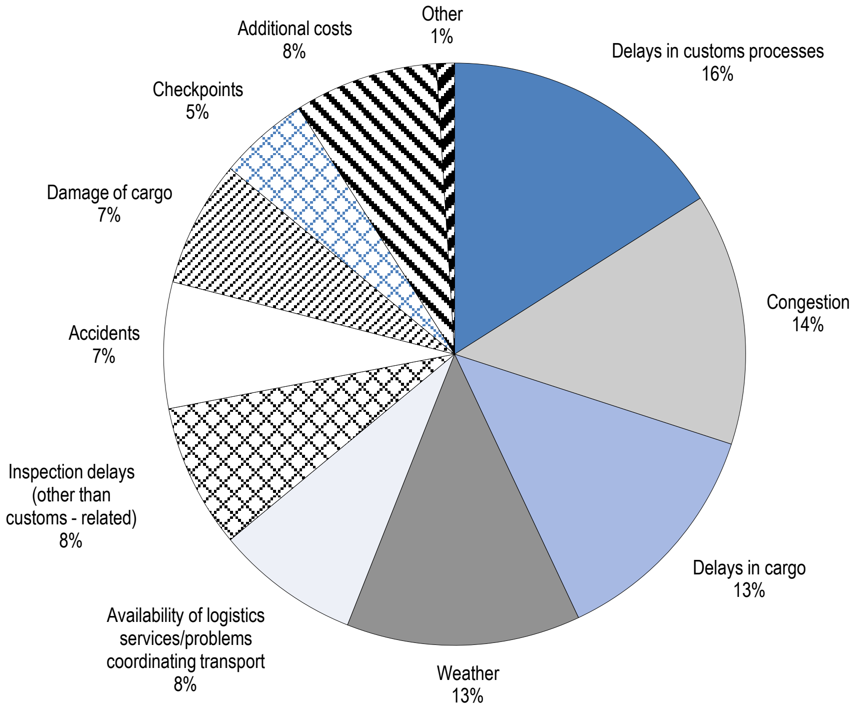
Note: Data for Brunei Darussalam are only available for 2016-2018 so are therefore not included in the figure.
Source: World Bank LPI 2018, https://lpi.worldbank.org

2.5.2. DTI's Logistic Efficiency Indicator

In 2017, the Department of Trade and Industry's Competitiveness Bureau launched a Logistic Efficiency Indicator (LEI) Assessment Project, in co-operation with the World Bank and certain Philippine government agencies. The LEI does not benchmark with other countries, but rather highlights issues within the Philippines logistics sector, collecting data from domestic manufactures and service providers. The main issues with logistics performance in the Philippines that have been highlighted by stakeholders in the LEI survey are shown in Figure 2.11, notably delays in customs processes, congestion, delays in cargo and weather.

DTI has also launched a Logistics Observatory, an online logistics-performance data portal.[24] The Logistics Observatory platform was developed by the DTI-Competitiveness Bureau in partnership with World Bank-IFC.

Figure 2.11. Most common logistics performance issues in the Philippines



Source: R. Banomyong, "The Importance of Measuring Philippines Logistics Performance", PowerPoint presentation, p. 40, http://observatory.dti.gov.ph/?p=148.

2.5.3. Logistics costs to sales

Three main metrics are used to measure logistics costs on the macro level: 1) percentage of (aggregated) sales or turnover; 2) percentage comparison with the GDP level; and 3) absolute costs (Ojala, 2012, p. 9[17]). The OECD defines sales as operating revenues less rebates, discount, returns and sales taxes on consumers. According to the DTI, logistics' costs account for 24% to 53% of domestic wholesale prices of goods.[25] Information collected as part of DTI's LEI noted that the average logistics cost to sales in the Philippines is 27.16%, a figure broken down in Table 2.9 (Department of Trade and Industry, 2017[18]).

Table 2.9. Philippine logistics costs to sales, 2017

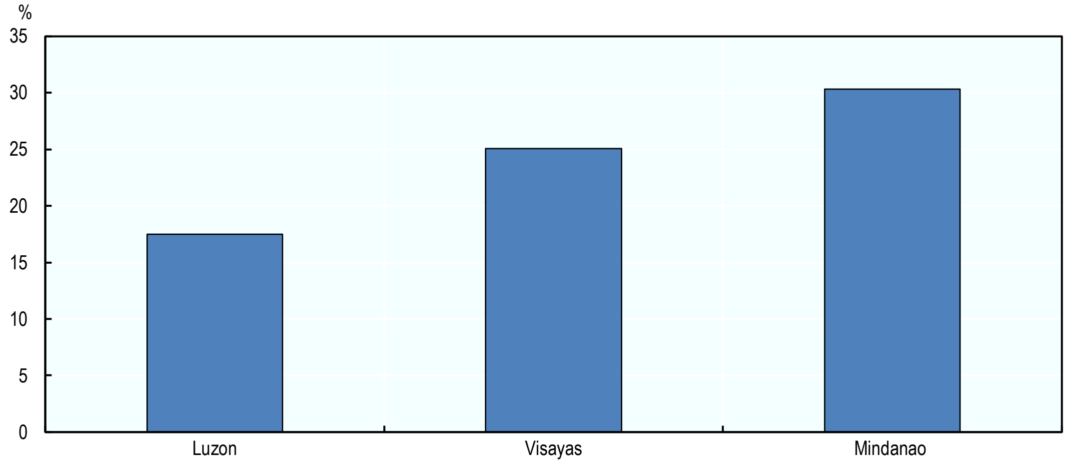
Logistics component	Percentage cost to sales (%)
Transport	10.71
Warehousing	5.20
Carrying Inventory	8.78
Logistics administration	2.47
Total	27.16

Source: R. Banomyong, "The Importance of Measuring Philippines Logistics Performance", PowerPoint presentation, p. 40, http://observatory.dti.gov.ph/?p=148 .

2.5.4. Logistics costs to sales by region

Variations in the logistics costs to sales are seen for the three main island groups, Luzon, Visayas and Mindanao. As seen in Figure 2.12, the logistics costs to sales in Mindanao (30.3%), for example, is much higher than in Luzon (17.4%).

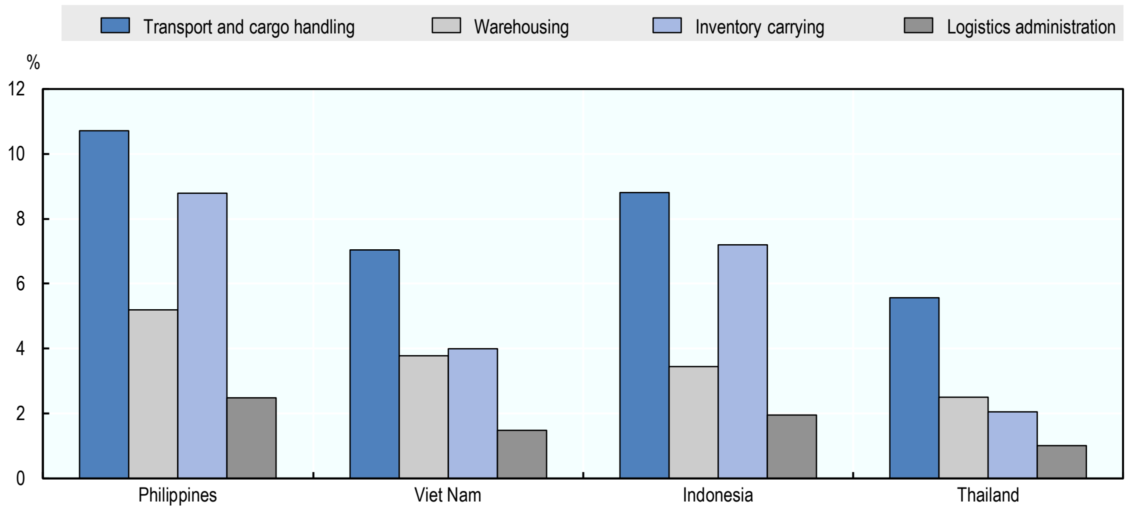
Figure 2.12. Logistics cost to sales by region



Source: R. Banomyong, "The Importance of Measuring Philippines Logistics Performance", http://observatory.dti.gov.ph/?p=148.

Logistics costs to sales are high in the Philippines (27%) compared to other ASEAN countries, such as Indonesia (21%), Viet Nam (16%) and Thailand (11%). As seen in Figure 2.13, the cost of each logistics component is far higher in the Philippines when compared to these other ASEAN countries.

Figure 2.13. Logistics costs (by logistics component) to sales in the Philippines, Viet Nam, Indonesia and Thailand



Source: R. Banomyong, "The Importance of Measuring Philippines Logistics Performance", http://observatory.dti.gov.ph/?p=148.

2.5.5. In-house and outsourced activities

According to a survey conducted as part of DTI's LEI, 51% of logistic activities in the Philippines are carried out in-house and 49% outsourced (Department of Trade and Industry, 2017[18]). This is comparable to Indonesia, but different to Viet Nam where 32% of logistics activities are performed in-house and 68% outsourced. In the Philippines, warehousing, inventory management, logistics IT systems and value-added services are mostly in-house activities, while outsourced logistics activities are generally traditional logistics activities, including domestic transport, domestic freight forwarding, international transport and customs brokerage (Department of Trade and Industry, 2017[18]).

2.6. Market dynamics and developments

2.6.1. National plans and road maps

In 2011, the National Economic and Development Authority (NEDA) published the *Philippine Development Plan 2011-2016*, which recognised that inadequate infrastructure and the resulting poor logistics network were critical constraints to investment and growth.[26] In 2015, NEDA commissioned a nationwide study on the aspirations, values, and principles of the Filipino people. The study, *AmBisyon Natin 2040* (*Our Ambition 2040*), established priority sectors, such as "transport manufacturing" and "connectivity – transport systems", that aim to have a direct impact on the goal of creating a predominantly middle-class society by 2040.[27] In 2017, the government launched the *Philippine Development Plan 2017-2022,*[28] which acknowledged that much remained to be done: "Spending on infrastructure has to be intensified while addressing persistent issues and challenges hampering implementation."[29]

Current large infrastructure projects include the BBB programme, which aims to increase public spending on infrastructure to around 7.3% of GDP by the end of the current administration and is expected to cost between PHP 8 trillion to PHP 9 trillion between 2016 to 2022.[30]

In relation to logistics specifically, DTI and the National Competitiveness Council (NCC) released a *National Logistics Masterplan 2017-2022*, which detailed the state of logistics in the Philippines and presented key recommendations (Department of Trade and Industry, 2018[2]). It presented four main goals, which are to enhance: 1) trade and investment; 2) connectivity; 3) logistics resiliency; and 4) regional development. It provided for four focus areas that would enable the Philippines to work towards the outcomes: 1) infrastructure development; 2) policy framework; 3) regulatory regime; and 4) institution building (Department of Trade and Industry, 2018, p. 5[2]). The masterplan proposed that it would be implemented by a Transport, Infrastructure and Trade Logistics Task Force. As of November 2019, however, no taskforce or implementation plan exists and according to DTI it is not planned.

In 2019, MARINA launched the ten-year *Maritime Industry Development Plan 2019-2028* with the goal of "accelerating the achievement of a nationally integrated and globally competitive maritime industry."[31]

In relation to e-commerce, DTI has launched the *Philippine E-Commerce Roadmap 2016-2020*, which "presents the Philippines' strategic plans, policies, and other support measures to harness the benefits of e-commerce for the country" (Department of Trade & Industry Philippines, 2016, p. 26[19]).

2.6.2. Logistics and transport services as "public utilities" and "public services"

Logistics and freight transport services are interpreted as "public utilities" in the Philippines. The concept of "public utilities" is referred to in the 1987 Constitution, yet it provides no definition. "Public utilities" have however been interpreted as "public services", which are defined under section 13b of the Public Service Act (PSA). The Supreme Court in the Philippines has defined "public utilities" in various decisions. For example, in *National Power Corporation v. Court of Appeals, et al, G. R. No. 112702, 26 September 1997*, the court defined public utilities as "a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service (citing 64 AM. JUR. 549, cited as footnote 1 in Albano v. Reyes, G. R. No. 83551, 11 July 1989). The term implies public use and service. In *KMU v. Garcia (G. R. No. 115381, 23 December 1994)*, the court defined public utilities as privately owned and operated businesses whose services are essential to the general public. They are enterprises which specially cater to the needs of the public for their comfort and convenience.

Relevantly, the 1987 Constitution limits foreign ownership of public utilities to 40%. The provision follows the Philippine First clause, the policy of giving preference to qualified Filipinos in the granting of rights, privileges and concessions covering the national economy and patrimony. The purpose of the citizenship requirement is to prevent foreigners from assuming control of public utilities as this could be detrimental to the national interest. This specific provision implements an overriding economic goal of the 1987 Constitution: to conserve and develop the nation's patrimony and ensure a self-reliant and independent national economy effectively controlled by Filipinos. This was highlighted in the case of *Gamboa v. Teves, G.R. No. 176579, 28 July 2011*.

There is a current government-wide initiative to amend the PSA to narrow the definition of "public utility"; this would involve amendments to the PSA and to the Regular Foreign Investment Negative List (RFINL),[32] which covers investment areas or activities that are open to or limited for foreign investors.

In March 2017, the Philippine Competition Commission's (PCC) national review of competition policy recommended that restrictions on foreign participation in the transportation sector be lifted and the initiative to amend the PSA was included in the legislative agenda stated in the *Philippine Development Plan 2017-2022* (OECD, 2018, p. 161[15]).

In July 2019, Senate Bill No. 13 and House Bill No. 78 were filed in the Senate and House of Representatives. Both bills propose that public utilities be limited to a person or entity who or which "operates, manages and controls for public use any of the following: distribution of electricity, transmission of electricity and water pipeline distribution system or sewerage pipeline system".[33] There has been amendments of this kind in the past. The Electric Power Industry Reform Act (EPIRA) for example, expressly provided that the supply of electricity to the contestable market would not be considered a public utility.

2.6.3. Competitiveness of the sector: World Bank findings

The World Bank has noted a high level of concentration in the Philippine transportation and storage sector, noting that, when considered in a static setting, more than 95% of the investigated markets would be categorised as highly concentrated according to Herfindahl-Hirschman Index (HHI) thresholds. (World Bank, 2018[43]) The report recognises that while these markets are often highly concentrated, market characteristics should make competition be generally feasible in areas such as freight forwarding and cargo handling (World Bank, 2018, p. 20[7]). It further noted that 90% of "transport/storage markets" have a price-cost margin (PCM) of more than 40 percent, a measure of market power (World Bank, 2018, p. 24[7]). The report finally noted that there are 15 transport and storage markets in the Philippines, which have a single operator and that while some of these markets may be "naturally prone to concentration", competition would be viable in many of them, notably road freight transport, grain warehousing and inland freight water transport (World Bank, 2018, p. 25[7]). It concluded that "the fact that the markets with high concentration and PCMs would usually be considered contestable may be an indication that certain market rules and regulations hinder competition" (World Bank, 2018, p. 27[7]).

Table 2.10. Price Cost Margin of Philippine transportation and storage markets with only one firm in operation

Transportation and storage markets	PCM (%)
Inland freight water transport	97.1
Grain warehouses	95.6
Freight transport operation, by road	92.2
International air passenger transport	91.4
Bus transportation	91.4
Ocean passenger transport	86.8
Non-scheduled air freight transport	83.9
Urban and suburban railway transport	83.8
Non-containerised cargo-handling, auxiliary activity to land transport	77.5
Renting of ship with operator	76.4
Urban or suburban passenger land transport, except by railway or bus	73.9
Private postal service	52.6
Postal activities	49.7
Pipeline transport	28.4
Inter-urban passenger railway transport	N/A

Source: World Bank, *Fostering Competition in the Philippines: The Challenges of Restrictive Regulations*, p.26, www.worldbank.org/en/country/philippines/publication/fostering-competition-in-the-philippines-the-challenge-of-restrictive-regulation.

2.7. Key stakeholders

2.7.1. Department of Transportation (DOTr)

The Department of Transportation (DOTr) is the “primary policy, planning, programming, coordinating, implementing and administrative entity of the executive branch of the government on the promotion, development and regulation of a dependable and coordinated network of transportation systems, as well as in the fast, safe, efficient and reliable transportation services”.[34] Sectoral offices of the DOTr relevant to this report include the Land Transport Office (LTO), the Land Transportation Franchising and Regulatory Board (LTFRB) for road transport, and the Philippine Coast Guard (PCG) for maritime transport. Relevant agencies attached to DOTr include the Philippine Ports Authority (PPA), the Cebu Ports Authority (CPA), and the Maritime Industry Authority (MARINA).

2.7.2. Relevant sectoral offices: Road

Land Transport Office (LTO). Its responsibilities include registration of motor vehicles and issuance of licence plates and driving licences, as well as collecting registration-related fees and fines and penalties for motor vehicles. As of 31 December 2018, according to the Commission on Audit, the LTO has 3 532 authorised personnel and its total current authorised appropriations amount to over PHP 3.6 billion.

Land Transportation Franchising and Regulatory Board (LTFRB). The board issues licenses and permits (including Certificates of Public Convenience (CPC)) for the operation of public land transportation services, and provides rules and regulations for their operation. The LTFRB’s total budget for 2019 is just under PHP 500 million and, as of 31 December 2018, it had 328 permanent staff members.

2.7.3. Relevant attached agencies: Maritime

Maritime Industry Authority (MARINA). Overseeing the promotion and development of the maritime industry, and the regulation of shipping enterprises, MARINA is involved in the four main sectors of the maritime industry: domestic shipping; overseas shipping; shipbuilding and ship repair; and maritime labour. It registers domestic and international vessels and issues licenses, including CPC. It is also involved in the enforcement of maritime law and oversees both coastal freight transport and inland water freight transport. As of 31 December 2018, it had 1 293 employees; its 2019 budget was PHP 930 million.

Philippine Ports Authority (PPA). It is in charge of the development, regulation, financing and operation of the majority of Philippine seaports. PPA is a government-owned and -controlled corporation (GOCC). PPA's mandate is "to establish, develop, regulate, manage and operate a rationalized national port system in support of trade and national development".[35] It has 1 883 employees. In 2018, PPA's total income amounted to PHP 17.49 billion and total expenses were recorded as PHP 9.47 billion.[36]

Cebu Ports Authority (CPA). With similar functions to the PPA, CPA is in charge of the development, regulation, financing and operation of ports located in Cebu Province.

2.7.4. Other logistics-related government agencies

Philippine Economic Zone Authority (PEZA). Republic Act No. 7916, as amended by Republic Act No. 8748 (otherwise known as the Special Economic Zone Act of 1995) established PEZA as the authority for the administration and regulation of Special Economic Zones (SEZ), with the exception of certain economic zones managed and regulated by independent authorities, such as the Subic Bay Metropolitan Authority (SBMA). PEZA also oversees privately owned and operated economic zones. Its approved corporate operating budget for the 2018 fiscal year was PHP 4.06 billion.[37]

Department of Trade and Industry (DTI). The regulator of sea freight forwarders for logistics services, DTI has a workforce of 3 209 and a 2019 budget of PHP 18.7 billion in 2019.[38]

Department of Information and Communications Technology (DICT). In 2015, the Republic Act No. 10844 (DICT Act) created the DICT and transferred the power and authority to regulate courier services to the Postal Regulation Division of DICT (DICT-PRD). Until 2015, the Department of Transportation and Communications (DOTC) had the power and authority to regulate courier services under Section 25 of the Postal Service Act and Presidential Decree No. 240.[39] DICT has 1 425 employees and a 2019 budget of PHP 4.71 billion.

Anti-Red Tape Authority (ARTA). The authority is tasked with implementing Republic Act No. 11032, the Ease of Doing Business and Efficient Government Service Delivery Act of 2018. The act aims to streamline government systems and procedures to improve competitiveness and simplify doing business in the Philippines. According to RA 10032, Section 29 (enabling law), ARTA's initial funding is PHP 300 million; as of 28 August 2019, the authority currently had 208 available employment positions.

Metropolitan Manila Development Authority (MMDA). The authority was established under Republic Act No. 7924 on 1 March 1995 with the role of planning, monitoring and co-ordinating functions, and exercising regulatory and supervisory powers over the delivery of metro-wide services within Metro Manila in co-ordination with relevant local government units (LGU). Transport and traffic management is, for example, one of the Metro-wide service areas in MMDA's jurisdiction. In December 2018, the authority had 10 079 staff; for fiscal year 2017 its total budget was PHP 7.32 billion.

2.7.5. State-owned enterprises (SOE)

In the Philippines, state-owned enterprises (SOE) are referred to as "government-owned or controlled corporations" (GOCC). Under the GOCC Governance Act 2011, GOCC are defined as "any agency organized as a stock or nonstock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock".[40] A minimum government ownership (50% + 1 of outstanding capital) qualifies entities as GOCC.

For the purposes of this assessment, alongside PPA (mentioned above) the other relevant SOE active in the logistics sector is PHLPost.

Philippine Postal Corporation (PHLPost) is a GOCC established in 1992 by the Postal Service Act, under the direct jurisdiction of the Office of the President.[41] PHLPost operates in three business areas: 1) mail services (mail, letter post and parcel post); 2) express and logistics services (express post, logistics and warehousing services); and 3) payment and retail services (retail collection services, postal identification cards, sale of philatelic stamps and merchandise).[42] PHLPOST is the designated postal operator of the Universal Postal Service obligations in the Philippines. Following a 2013 Rationalisation Plan,[43] PHLPost employees fell from 12 727 positions (of which 9 979 were filled) to 7 676 positions (of which 7 043 are filled). In 2017, PHLPost's revenue was PHP 3 536 million. Almost half of this (48%) was generated through domestic ordinary and registered mail delivery services. Express and logistics services accounted for 32% of its total revenue.[44]

2.7.6. Main trade associations

The main trade associations active in the Philippine logistics sector are:

1. Supply Chain Management Association of the Philippines (SCMAP)
2. Association of International Shipping Lines (AISL)
3. Port Users Confederation (PUC)
4. Federation of Forwarders Association in the Philippines (FEDFAP)
5. Filipino Shipowners Association (FSA)
6. Confederation of Truckers Association of the Philippines (CTAP).

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Department of Trade and Industry (2017), "Manufacturing Logistics Performance Philippines", *The Importance of Measuring Philippines Logistics Performance*, http://121.58.230.12/?page_id=420 (accessed on August 2019). [18]

Fugazza, M. and J. Hoffmann (2017), "Liner shipping connectivity as determinant of trade", *Journal of Shipping and Trade*, https://doi.org/10.1186/s41072-017-0019-5. [16]

Ken Research (2018), *Thailand Logistics and Warehousing Market Outlook to 2022 - By Freight Forwarding, Express Logistics, E-commerce Logistics and Warehousing Services (Industrial/Retail Freight, Container Freight, Cold Storage, Agricultural and Others), Third Party Logistic*. [4]

Ken Research (2018), *Thailand Logistics and Warehousing Market Outlook to 2022 - By Freight Forwarding, Express Logistics, E-commerce Logistics and Warehousing Services (Industrial/Retail Freight, Container Freight, Cold Storage, Agricultural and Others), Third Party Logistic*. [3]

Land Transport Office (2018), *Annual Report*. [6]

Maritime Industry Authority (2019), *Statistical Report 2014-2018*, https://marina.gov.ph/wp-content/uploads/2019/12/Statistical-Report-2018.pdf. [10]

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Maritime Industry Authority (2016), *MARINA Statistic Report (2012-2016)*. [11]

National Economic and Development Authority (2017), *Philippine Development Plan 2017-2022*. [14]

OECD (2018), *Economic Outlook for Southeast Asia, China and India*. [15]

Ojala, R. (2012), *Measurement of National-Level Logistics Costs and Performance*, https://www.itf-oecd.org/sites/default/files/docs/dp201204.pdf. [17]

Philippine Postal Corportation (2016), *Roadmap to 2020*, https://www.phlpost.gov.ph/files/transparency/PPAs%202016.pdf. [12]

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World Bank (2014), *Enchancing Competitive Conditions and Competitiveness of the Philippines domestic shipping*. [8]

World Economic Forum (2017-18), *The Global Competitiveness Report*. [13]

Notes

[1] The 2025 *Master Plan* is the second after the *Master Plan on ASEAN Connectivity 2010*; for the full text, see https://asean.org/storage/2016/09/Master-Plan-on-ASEAN-Connectivity-20251.pdf.

[2] This includes passenger transport.

[3] Growth rates, at Constant 2018 prices.

[4] At constant 2018 prices. See Philippine Statistics Authority, GVA in Transportation and Storage (2000-2019) (At Constant 2018 Prices, as of April 30, 2020) https://psa.gov.ph/national-accounts/base-2018/data-series

[5] According to DTI, only 20% of an LGU's budget – or its internal revenue allotment (IRA) – can be allocated to infrastructure development.

[6] Of these, 62 were accredited under Memorandum Circular 181 and 466 under Memorandum Circular 186. Memorandum Circular 181 provides for the accreditation of shipping companies operating in international waters. According to MARINA, Memorandum Circular 186 promotes the "growth and development of maritime-related activities in order to contribute to the country's economic progress".

[7] Of these, 64 were accredited under Memorandum Circular 181 and 466 under Memorandum Circular 186. Memorandum Circular 181 provides for the accreditation of shipping companies operating in international waters. According to MARINA, Memorandum Circular 186 promotes the "growth and development of maritime-related activities in order to contribute to the country's economic progress".

[8] As this competition assessment excludes air freight, it does not analyse the air freight-forwarding sector.

[9] According to a Sector Review by the Development Academy of the Philippines (2017). Annex A, DAP (2017): *Philippine Logistics Industry Regulatory Review*, Modernizing Government Regulations Program, Development Academy of the Philippines, p. 24.

[10] See https://dict.gov.ph/list-of-authorized-pemedes-or-courier-service-providers-2019.

[11] See www.sulit.ph/blog/11-same-day-delivery-couriers-in-the-philippines.

[12] B2B accounts for 40% of LBC Express's business. The company also offers warehousing space to customers including Samsung and Sony.

[13] DHL now operates in different segments with three subsidiaries: DHL Global, DHL Supply (B2B) and DHL Express (domestic). In stakeholder interviews, DHL and LBC Express explained that they have

entered into a formal partnership in which LBC Express delivers in the domestic markets where DHL is not present and DHL delivers overseas on behalf of LBC Express.

[14] PHLPost, *Roadmap to 2020*, www.phlpost.gov.ph/files/transparency/PHLPost%20Roadmap.pdf.

[15] PHLPost, *Roadmap to 2020*.

[16] See http://cpbrd.congress.gov.ph/2012-06-30-13-06-51/2012-06-30-13-36-50/982-ff2019-07-build-build-build-bbb-program.

[17] See, for example, www.dof.gov.ph/index.php/yearender-dof-ensures-funding-for-build-build-build-projects.

[18] Based on 2014 PPA Port Statistics.

[19] See https://lloydslist.maritimeintelligence.informa.com/one-hundred-container-ports-2018.

[20] See https://lloydslist.maritimeintelligence.informa.com/LL1123490/30-Manila-Philippines.

[21] UNCTAD explains that the current version of the index is based upon six components: 1) the number of scheduled ship calls per week in a country; 2) total deployed annual capacity in twenty-foot-equivalent units (TEU) offered 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 TEU 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.

[22] UNCTADSTAT's Liner Shipping Bilateral Connectivity Index (LSBCI) comprises five components: 1) the number of transhipments 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 on services that connect country A to country B; and 5) the size of the largest ships on the weakest route connecting country A to country B. For more details on LSBCI methodology, see, https://unctadstat.unctad.org/wds/TableViewer/summary.aspx?ReportId=96618.

[23]See https://lpi.worldbank.org/international/scorecard/radar/254/C/PHL/2018/C/SGP/2018/C/MYS/2018/C/THA/2018/C/IDN/2018/C/BRN/2018/C/MMR/2018/C/LAO/2018/C/KHM/2018/C/VNM/2018. The Philippines lies behind Singapore, Thailand and Malaysia for international shipping.

[24] See http://observatory.dti.gov.ph/

[25] See http://industry.gov.ph/dti-outlines-measures-to-develop-logistics-industry-in-ph/ .

[26] National Economic and Development Authority (2011), *Philippine Development Plan 2011-2016*, Chapter 5: Accelerating Infrastructure Development, www.officialgazette.gov.ph/2011/05/27/philippine-development-plan-2011-2016.

[27] See http://2040.neda.gov.ph/about-ambisyon-natin-2040.

[28] National Economic and Development Authority (2017), *Philippine Development Plan 2017-2022*, www.neda.gov.ph/wp-content/uploads/2018/01/Abridged-PDP-2017-2022_Updated-as-of-01052018.pdf.

[29] *Philippine Development Plan 2017-2022*, p. 38.

[30] See http://cpbrd.congress.gov.ph/2012-06-30-13-06-51/2012-06-30-13-36-50/982-ff2019-07-build-build-build-bbb-program.

[31] See https://marina.gov.ph/philippines-maritime-industry-development-plan-midp-2019-2028.

[32] The list is split into two sections, A and B. According to List A: "Foreign ownership is limited by mandate of the constitution and specific laws" to 40% equity; operation of public utilities is also listed. Specific

sectors are not listed, simply those covered by the "public utilities" definition, but as freight transport and logistics are currently considered public utilities, they are subject to the List A 40% foreign-equity restriction.

[33] See www.congress.gov.ph/legisdocs/basic_18/HB00078.pdf and www.senate.gov.ph/lisdata/3022927058!.pdf.

[34] See http://dotr.gov.ph/2014-09-02-05-01-41.html.

[35] See www.ppa.com.ph/content/citizen's-charter-ppa.

[36] Philippine Ports Authority, *A New Look Towards Progress: Annual Report 2018*, www.ppa.com.ph/sites/default/files/transparency_docs/PPA_AR_2018_SF.pdf, p. 16.

[37] See https://drive.google.com/file/d/1tvfve35rYI590cHb-zVS2fczF2TlWDcq/view.

[38] See www.dbm.gov.ph/wp-content/uploads/GAA/GAA2019/VolumeI/DTI/DTI.pdf.

[39] Republic Act No. 7354 (Postal Service Act or Charter). The Civil Aeronautics Board (CAB) regulates air transport and the Department of Transportation (DIT) regulates land and sea transport.

[40] Section 3(o) of Republic Act No. 10149 (GOCC Governance Act of 2011). GOCC were originally defined in Presidential Decree No. 2029 (Defining Government-Owned or Controlled Corporations and Identifying their Role in National Development) and Executive Order No. 64 Executive Order No. 292 (Administrative Code of 1987) refers to corporations in which the government owns at least 51% of the capital stock. For certain purposes, GOCC may also include: 1) financial institutions or corporations in which the government directly or indirectly owns the majority of the capital stock (government financial institutions, GFI); and 2) instrumentalities or agencies of the government vested with special functions and endowed with some corporate powers (government instrumentalities with corporate powers, GICP); and 3) government corporate entities (GCE), such as the Philippines Port Authority (PPA).

[41] PHLPost (2018), *PHLPost Roadmap to 2020*, www.phlpost.gov.ph/files/transparency/PHLPost%20Roadmap.pdf, p. 9.

[42] PHLPost (2018), *Performance Report: 2017 Highlights of Accomplishments*, www.phlpost.gov.ph/files/corporate_governance/Annual%20Report%202017%20Highlights%20only.pdf, p. 6.

[43] GCG MO No. 2012-21.

[44] PHLPOST (2017), *PHLPOST 2017 Performance Report – 2017 Highlights of Accomplishments*, http://www.phlpost.gov.ph/files/corporate_governance/Annual%20Report%202017%20Highlights%20only.pdf

3 Overview of legislation in the logistic sector in the Philippines

The OECD has identified 96 pieces of legislation related to the logistics sector, including international agreements, codes, acts, decrees, ministerial and departmental regulations and orders, guidelines and citizen's charters.

Table 3.1 Number of screened pieces of legislation, restrictions and recommendations

Sector		Legislation analysed	Restrictions found	Recommendations
Freight transport	Road	21	16	15
	Railway	0	0	0
	Maritime	56	47	38
Freight forwarding		6	11	7
Warehouses		2*	4	0
Small-package delivery		3	5	4
Horizontal/others		7	11	11
International agreements		1	1	1
Total		**96**	**95**	**76**

Note: * There is no legal framework for the warehouse sector. Relevant legislation includes those classed as "Horizontal/others".
Source: OECD assessment-project team.

A summary of the pieces of legislation reviewed by the OECD, the number of barriers identified, and the recommendations made in this report are summarised below, while all barriers and recommendations are set out in the Annex**.**

3.1. Road freight transport

The main pieces of legislation affecting freight transport by road are issued by the Department of Transportation, the Land Transport Office (LTO) and the Land Transportation Franchising and Regulatory Board (LTFRB). The main LTO legislation includes RA 4136, the Land Transportation and Traffic Code of the Philippines. The main LTFRB legislation analysed includes the 2017 Citizens' Charter and the 2011 Revised Rules of Practice and Procedure. Key horizontal legislation includes the Public Service Act (Commonwealth Act No. 146) and the Local Government Code (RA 7160).

The OECD has identified 16 competition restrictions and makes 15 recommendations concerning the following topics:

- The treatment of road freight transport as a public utility, which restricts foreign equity.
- The requirement of a certificate of public convenience (CPC) for road freight transport.
- The licensing regime for trucks for hire.
- Garage and equipment requirements for truck operators.
- Roadworthiness standards and overloading schemes.
- Local government unit pass-through fees and tolls.
- Other topics such as road bans and local office requirements for trucking companies.

3.1.1. Road freight transport as a public utility and public service

Foreign equity restrictions

Description of the obstacle. The Philippine constitution imposes an equity restriction on foreign investment in "public utilities" by imposing a 60/40 nationality requirement on their ownership. Only Philippine citizens, or associations or corporations whose capital is owned 60% by Filipinos can be granted a franchise, certificate or authorisation to operate a public utility. "Public utility" is neither defined 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.

The PSA defines "public services" and explains which types require certificates of public convenience (CPC) and other permissions to operate in the Philippines (PSA, Section 13b). According to this definition and as interpreted by the Supreme Court of the Philippines, 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. Public service providers require a CPC to operate under the PSA. In order to obtain a CPC, foreign equity is limited to 40%.

Harm to competition. Road transportation is interpreted as a "public utility" and so as required by the constitution at least 60% of road-transportation companies must be owned by Filipinos, with foreign ownership limited to 40%. This foreign-equity restriction is again present in the PSA, which limits foreign ownership to 40% for companies wishing to obtain a CPC, a certificate required to provide a "public service". These foreign equity restrictions are barriers to entry for foreign firms, preventing or making it more difficult for them to enter the market, and so favouring national operators. This limits the number of suppliers in the market and potentially more efficient foreign firms.

Policymakers' objective. The foreign-equity restriction limits foreign participation in the Philippine road-transportation market and promotes the ownership of Philippine road freight transportation companies. The 1987 Philippine constitution adopts a policy of giving preference to qualified Filipinos in the granting of rights, privileges and concessions covering the national economy and patrimony (Section 10, the "Philippine First" clause). "Public utilities" are seen as services essential to the general public that involve a public-interest element. The purpose of the citizenship requirement is to prevent foreigners from assuming control of public utilities as this is regarded as potentially detrimental to the national interest. This specific provision implements an overriding economic goal of the 1987 Constitution: to conserve and develop the patrimony (as set out in the Preamble) and ensure a self-reliant and independent national economy effectively controlled by Filipinos (Section 19).

As discussed in the Economic Overview of the logistics sector in the Philippines, there are moves to remove road transportation from the definition of public utilities. Subject to any new requirements, this would mean that there would be no foreign-equity restrictions on road infrastructure and services imposed by or derived from the Constitution. Further, if road transportation were not considered a "public service" under the PSA, the foreign equity restriction imposed by the related licencing requirement (the CPC) would no longer exist. This would increase competition in the sector. Several bills amending the PSA have been filed in Congress to redefine public utilities. The proposed definition does not include logistics and freight transportation. The most recent, Senate Bill No. 13 and House Bill 78, filed in July 2019, provide, for example, the following exclusive list of public utilities: transmission of electricity, distribution of electricity, water works, and sewerage systems. The PCC submitted two position papers (21 February 2016 and 2 March 2016) to the House of Representatives, supporting the limited definition outlined in an earlier version of the bill filed in Congress (Senate Bill No. 1754).

International comparison. In Australia, up to 100% foreign equity is allowed in road freight transport, but transport is defined as a “sensitive business”, which allows the government to review foreign investment proposals in the sector against the “national interest” on a case-by-case basis. There are also thresholds for screening with foreign persons required to receive approval before acquiring a substantial interest (over 20%) in an Australian entity valued above AUD 261 million.[1] Research suggests that most OECD countries do not consider road freight transport as a “public utility” or equivalent.

Recommendation. Road freight transport should not be considered a public utility. The Public Service Act should be amended to reflect this, inserting a list of public utilities in the Act, which does not include road freight transport. Road freight transportation should then be removed from the list of public services under the PSA so that road freight transport operators are no longer required to obtain a CPC. Subject to any additional sector-specific restrictions or screening requirements that may be imposed, this would mean that foreigners could own up to 100% of road freight transportation companies.

If any foreign equity limits were to remain, the OECD recommends one of the following three options:

1. Progressively relax foreign-equity limits with the long-term goal of permitting up to 100% foreign ownership. A first step may be to implement changes that move towards the 70% target laid out in the ASEAN Framework Agreement on Services (AFAS) for ASEAN member-owned entities providing road transport services. This could then be extended to non-ASEAN nationals. In the long term, the Philippines may consider full liberalisation by allowing 100% foreign ownership of road-transportation services.
2. Relax foreign-equity limits on a reciprocal basis, allowing full foreign ownership by nationals of countries that allow Filipinos to hold 100% shares in a company.
3. Allow 100% foreign ownership, while introducing a screening system of FDI in cases where the proposed investment passes a certain value threshold (such as in Australia) or when it affects specific sensitive sectors.

Certificate of public convenience (CPC) for road-transportation operators

Description of the obstacle. As road transportation is classified as a “public service”, owners and operators of land (and rail) transportation facilities and services are required to obtain a specific licence: a certificate of public convenience (CPC). This is obtained from the Department of Transportation’s Land Transportation Franchising and Regulatory Board (LTFRB).

Harm to competition. The requirement to obtain a CPC restricts entry as it creates an entry barrier that may reduce the number of operators in the market.

Policymakers’ objective. The CPC requirement ensures that applicants wishing to operate a “public service” are properly scrutinised. According to stakeholders, if road freight transportation is still classified as a “public service”, but not a “public utility”, as outlined in the restriction above, the CPC requirement may still exist. Section 6 of SB 13, the new bill seeking to amend the Public Service Act, proposes to maintain the requirement for a public service to secure “a valid and subsisting certificate or authorization for the operation of a public service from the appropriate administrative agency” but deletes the reference to the CPC requirement.

International comparison. In most OECD countries, operators need to obtain a specific licence or permit from the government or regulatory agency to establish a national road freight business but this is not linked to a "public service" like classification. In the UK, for example, hauliers are required to obtain an operator's licence for vehicles weighing more than 3.5 tonnes. Licences are valid as long as a continuation fee is paid every five years and the operator continues to operate within the terms of the licence. Additional permits may be required for specific activities such as, for example, the carriage of dangerous goods or goods that require sanitary checks. The general licence does not include criteria, such as an economic needs test that are required by the CPC in the Philippines.

Recommendation. Road freight transport should not be classified as a "public service". As a consequence, the CPC requirement would be removed. The CPC requirement may need to be replaced by a licensing process for road freight transport to guarantee that services provided by the operators are of a certain standard. This should be a standard operating licence, similar to those issued in other countries, such as the UK, where operators of trucks over a certain weight, are required to obtain an operating permit.

Economic needs test for CPC

Description of the obstacle. Operators of road freight transportation or trucks for hire are required to obtain a CPC to operate. To be issued with a CPC, an applicant must satisfy various requirements and submit a number of documents to the Land Transportation Franchising and Regulatory Board (LTFRB); these include a requirement to prove the public need for the service. A truck-for-hire operator is also required to show a notarised haulage contract that shows its area of operation, the number of units needing authorisation, the duration of any contract, as well as proof that it has sufficient garage space. It must also provide various permits or "authorities" to operate, including the authority to operate in ports. The OECD's understands that the LTFRB then undertakes an economic needs test on the basis of the documents submitted.

Harm to competition. Requiring a new entrant to the road freight transportation market to have a haulage contract, a garage, all vehicles and corresponding comprehensive insurance before they have the right to operate, significantly raises the cost of entry and decreases the likely number of suppliers. It appears risky for an applicant to conclude a haulage contract, buy or lease a garage, and prove the existence of all vehicles *before* obtaining permission to operate as despite this there is no guarantee that it will be granted a licence, and so could incur unrecoverable costs.

Policymakers' objective. The granting of a CPC for trucks for hire involves a so-called economic-needs test that sees the LTFRB making a judgement on the economic need for the proposed service, according to the evidence provided by the applicant. The requirement for a haulage contract forms part of this test. To the best of the OECD's knowledge, there are no further regulations or guidelines explaining the economic-needs test. The requirement for a garage is likely required, in part, to avoid traffic congestion. For example, it is provided in the Citizen's Charter that trucks for hire entering Metro Manila need to show "proof of garage or authority to use garage within Metro Manila to avoid traffic congestion".

International comparison. No country in the top 20 of the World Bank's Logistics Performance Index, including Australia, Singapore and Germany, requires a CPC equivalent, nor is there any licensing requirement that involves an economic-need test.

Recommendation. The OECD recommends one of three options.

1. Remove the economic-needs test for the CPC application process. Whether or not the services proposed by an applicant are required should be determined by the market and not by the LTFRB.
2. Remove the requirement to provide documentary evidence of a haulage contract and garage before a CPC or prior provisional licence is granted. Such evidence, if at all required, should only be required after the licence is granted or after the applicant has started its business.

3. Issue clear guidelines about the application requirements.

Garage requirements

Description of the obstacle. To obtain a CPC for a trucks-for-hire transport service, applicants are required to provide several documents, including a sketch or dimensions of their garage and the corresponding contract or lease. Article 2 of Memorandum Circular No. 2017-027 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. It also requires that at least 1 mechanic and 1 assistant be available for every 10 vehicles.

Harm to competition. New entrants must own or hold a lease on a garage before they have the right to operate. This requirement seems excessive and overly burdensome and may prevent new players from entering the market as it significantly raises the cost of entry and requires operators to invest before being guaranteed a permanent operating licence. The garage requirement itself may prevent smaller players from entering the market. The requirement to have a mechanic and an assistant available in each garage, indicates that this work cannot be outsourced or that there is a limit on outsourcing.

Policymakers’ objective. There are likely two policy objectives. First, the requirement to own or rent a garage is likely aimed at preventing traffic congestion, and second, the specific requirements for each garage likely aim to ensure proper maintenance of vehicles and so improve safety.

Recommendation. Remove the garage requirement for obtaining a CPC for a trucks-for-hire transport service. Applicants should only be required to show proof of sufficient parking space, to prevent traffic congestion. Freight vehicles do not need their own maintenance garages as they are already required to comply with roadworthiness standards, and should therefore be able to outsource any repair and maintenance work.

Renewal of motor-vehicle registration

Description of the obstacle. The LTO requires that the motor-vehicle registration for trucks for hire vehicles be renewed annually. One of the requirements set out in the Citizens’ Charter for renewing the registration of for-hire motor vehicles is that owners must provide a vehicle’s “franchise confirmation”. This is issued by the LTFRB, which must “confirm” that the applicant holds a CPC in order for the LTO to grant the authorisation. The OECD understands that the applicant must first obtain confirmation from the LTFRB of its CPC and then provide this information to the LTO in its application for renewal. DOTr Department Order No. 2010-18 (Creation of Franchise Confirmation Uploading Facility) mandates the establishment of an online database of LTFRB franchisees, available to LTO for confirmation purposes. The OECD has been unable to confirm independently whether this database has been fully implemented, but it has been told by LTFRB staff that it does exist.

Harm to competition. The requirement for trucks for hire to renew their motor-vehicle registration annually is an administrative burden, specifically, the requirement for applicants to obtain confirmation of the vehicle’s CPC from a separate agency (LTFRB).

Policymakers’ objective. To ensure that the applicant continues to hold a valid CPC and is therefore still eligible to operate as a truck for hire.

Recommendation. The OECD supports the initiative mandated under DOTr Department Order No. 2010-18. This should be implemented so that an online database or system is established to allow the LTO to undertake the CPC confirmation process directly without the need for the applicant to consult LTFRB separately. The OECD supports the initiative mandated under DOTr Department Order No. 2010-18.

3.1.2. Operating licences for trucks for hire and for garages

Permits for port-related services

Description of the obstacle. Trucks for hire are required to obtain an annual permit from the PPA if they wish to provide services for port-related transportation. Currently, trucks for hire are required to obtain licences and authorisations from the LTO (vehicle registration), LTFRB (CPC), LGU (mayoral permits), Bureau of Customs, PPA, and, if relevant, the PEZA.

Harm to competition. The requirement to obtain a separate permit from PPA in order to provide port-related transportation constitutes a barrier to entry. Truck-for-hire companies cannot quickly respond to demand from port businesses if they do not have this PPA permit. Permits restrict entry into the market, and so can limit the number of suppliers and increase entry costs for potential entrants.

Policymakers' objective. The aim of this provision is to control port activities and safety. After consultation, stakeholders appear to agree that it would be preferable to combine all licencing processes and permits into a single licence.

Recommendation. The OECD recommends the following measures.

1. Separate port-related activity permits should be removed. Any considerations of port safety and control should be taken in account in the general licencing process if the applicant wishes to operate in ports (the applicant should make this declaration in its application).
2. All licences and permits required for trucks for hire should be grouped into a single application to a single agency.

Accreditation of trucks for Philippine Economic Zones (PEZ)

Description of the obstacle. Truck-for-hire companies are required to be registered with and have accreditation from PEZA to be able to carry out business with PEZA-registered entities within a PEZ. This is done with PEZA Service Registration Unit.

Harm to competition. The requirement to be accredited with and licensed by PEZA in order to do business with PEZ-based businesses constitutes a barrier to entry. Truck-for-hire companies cannot quickly respond to demand from PEZ-based businesses if they are not already registered with PEZA. Permits can restrict entry into the market, limit the number of suppliers, and increase entry costs for potential entrants.

Policymakers' objective. The provision for the registration and accreditation of truck-for-hire vehicles and companies working with PEZ-based companies is likely required to control activities in the PEZ and ensure that such companies are aware of their obligations when working there (see, RA 7916, and the Rules and Regulation adopted by PEZA). Stakeholders agree that replacing the need for several licencing processes and permits with a single licence would be preferable.

Recommendation. The OECD recommends the following measures.

1. Separate PEZ-related activity registration and accreditation requirements should be removed. Accreditation and registration for operation in PEZ should be taken into account during the general licensing process (if desired by the applicant).
2. All licences and permits required for trucks for hire should be grouped into a single application to a single agency.

3.1.3. Roadworthiness standards and overloading scheme

Roadworthiness standards

Description of the obstacle. The Philippines does not currently have clear implemented standards and rules for vehicle roadworthiness and market participants have complained about the absence of inspection facilities. The Implementing Rules and Regulations of Republic Act No. 8749 or the Philippine Clean Air Act of 1999 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, this programme is currently being implemented.

Harm to competition. The current lack of roadworthiness standards and rules may cause uncertainty and deter market entry.

Policymakers' objective. The introduction of new roadworthiness standards and the establishment of mobile MVI units is aimed at ensuring road safety. Government stakeholders claim that in 2019, the DOTr, LTO and the LTFRB launched initiatives to establish procedures for testing the roadworthiness of public-utility vehicles. The OECD understands that the LTO plans to procure 26 MVI units, while the DOTr is currently drafting implementing rules and regulations for the accreditation of private companies to run MVI facilities. This reform relates to the ban on trucks for hire that are more than 15 years old.

International comparison. Most OECD countries, including Germany, Singapore, and Australia have roadworthiness standards, which are set out in legislation or guidelines

Recommendation. The OECD recommends that roadworthiness standards should be introduced and implemented, with a transition period for current market operators.

Ban on older trucks

Description of the obstacle. Trucks aged over 15 years are banned from the market for trucks for hire as they are not able to obtain a CPC. According to MC 2018-007, the LTFRB has decided that from 30 June 2020, it will no longer renew CPCs for existing trucks for hire; it already no longer awards new CPCs to trucks aged over 15 years. CPCs are usually valid for five years, and until recently if a truck was approaching 15 years, LTFRB's practice was to renew the CPC for one year. The LTFRB issued MC 2018-007 (Non-acceptance of applications for TH services with units more than 15 years old pursuant to Department Order no. 2017-009), which extends the moratorium so that trucks for hire with existing CPCs and pending applications will not need to comply until 30 June 2020.

Harm to competition. The age limit removes companies from the market that use trucks aged over 15 years. This could potentially affect smaller competitors unable to invest in fleet renewal. Currently, new entrants and incumbents are treated differently: entrants who apply for a CPC are not allowed to use a truck aged over 15 years, but those with existing CPCs can. This discriminates in favour of incumbents. The OECD notes, however, that this discrimination will end on 30 June 2020 when the new roadworthiness rules come into force. If the roadworthiness certificate is indeed implemented instead of the maximum-age requirement, it will eliminate competitors whose vehicles do not meet the required roadworthiness standards.

Policymakers' objective. The initiative was implemented to address safety and environmental concerns. MC 2017-009 states that the "roadworthiness of bus type or truck for hire units cannot be determined with sufficient accuracy which is vital in ensuring the safety and convenience of our commuting public". According to Confederation of Truckers Association of the Philippines (CTAP), smaller competitors in the truck-for-hire market use units more than 15 years old. CTAP also explained that most trucks in the Philippines are bought second-hand, imported from overseas (notably from Japan), and then refurbished in the Philippines. Statistics cited in the National Logistics Masterplan show that at the time the report was published, more than 80% of trucks on the road were more than 15 years old (Department of Trade and Industry, 2018, p. 10[1]).

International comparison. There is no maximum age for trucks in Thailand or Malaysia, but both countries have roadworthiness standards. In the European Union, according to the European Commission, the age of commercial vehicles varies according to the type of activity. Newer vehicles are generally used for long distances and international road haulage. The needs of local markets and national transport are typically served by older, cheaper vehicles. The rationale for using newer vehicles in international transport include their lower fuel consumption and lower tolls due to features that reduce environmental impact; they also need to be replaced more often as they quickly reach high mileages. The EU average age of light commercial vehicles (LCV) is about 11 years, which increases to 12 years for heavy commercial vehicles (HCV). The youngest fleets are those of Luxembourg, France and Denmark, while the oldest are those of Estonia, Poland and Greece. Variations on the average age of HCV range from 6.6 years in Luxembourg to 18.8 in Greece. LCV are generally newer: on average 10.9 years old, with a minimum of 6.3 (Luxembourg) and a maximum of 17.1 (Greece). Among EU27 freight transporters, 17.5% of road haulage is done by vehicles over 10 years of age (OECD, 2019, p. 168[2]).

Recommendation. Rather than implementing the ban on vehicles, which are more than 15 years old, the OECD recommends the introduction of roadworthiness standards as soon as possible. Such standards should address both environmental and safety concerns. Given the importance of the policy objective, truck operators may need a transition period to comply with the new standards. Direct subsidies could be used to encourage the renewal of fleets with compliant vehicles. These should be applied in an open, transparent and non-discriminatory manner.

Differing standards about overloading

Description of the obstacle. Stakeholders have stated that different standards are applied and implemented by different agencies – for example, by national and local bodies – in relation to the overweight and overloading scheme for trucks. The national anti-overloading scheme – RA 8794 (1999), An Act Imposing a Motor-Vehicle User Charge on Owners of All Types of Motor Vehicles and for Other Purposes – foresees a maximum allowable vehicle gross weight (GVW). Introduced in 2000, it is overseen by the Department of Public Works and Highways (DPWH). Currently, there is a moratorium on the enforcement of the scheme for category 12-2 trucks, which are semi-trailers with three axles on towing trucks and two axles on trailers, and 12-3 trucks, which are trucks with three axles on their trailers and used mainly to deliver shipping containers. Stakeholders have stated that the moratorium on 12-2 and 12-3 trucks was introduced because the majority of such trucks would not be compliant with weight restrictions. Stakeholders have explained that the moratorium has been extended several times. According to an article on cargo-shipping website Port Calls, CTAP has claimed that 80% of containers coming from the Manila port "could no longer be transported" if the moratorium was lifted.[2] Stakeholders also claim that the Metropolitan Manila Development Authority (MMDA) has additional rules that differ from DPHW's.

Harm to competition. The presence of a continually extended moratorium for some truck categories may deter new entry into the market as it is both a source of uncertainty for market participants and favours incumbents. Also, different standards implemented by DPWH and MMDA could cause confusion and uncertainty for market participants about which regulations to follow.

Policymakers' objective. This provision aims to provide for and ensure the adequate maintenance of national and provincial roads, as well as minimising air pollution from motor vehicles. Another policy objective is to ensure the safety of passengers and other road users, and to prevent road accidents.

International comparison. In Thailand and Malaysia, weight standards are imposed by a single agency.

Recommendation. The OECD recommends two measures.

1. Harmonise relevant rules and regulations for the overweight and overloading scheme for trucks and organise the issuance of rules by a single agency.
2. For the anti-overloading law implemented by DPWH, the rules for categories 12-2 and 12-3 trucks should either be revised in consultation with industry or the moratorium should be lifted.

3.1.4. LGU fees and road tolls

Pass-through fees

Description of the obstacle. According to market participants, some LGUs administer pass-through fees. Different fees are charged for trucks providing transport services passing through each LGU. To the best of the OECD's knowledge, such fees are regulated only at a local level and no national legislation exists to harmonise or allocate them. Also, only certain stakeholders seem to face pass-through fees when carrying out trucking operations, which suggests inconsistent application of fees by LGUs.

Harm to competition. The existence and inconsistent application of pass-through fees by municipalities may restrict the geographical flow of goods, reducing the number of suppliers interested in commercialising their products in different parts of the Philippines. Trucks transporting goods may potentially be subject to several pass-through fees in order to move their products from the point of production to the point of sale. This makes products more expensive and puts the manufacturer at a competitive disadvantage against producers that commercialise their products only in their production area. Furthermore, pass-through fees are an administrative burden and increase the cost of doing business. This may reduce the number of suppliers in a region and potentially allow certain suppliers to exercise market power and increase prices.

Policymakers' objective. The Department of the Interior and Local Government (DILG) has explained that by imposing pass-through fees, LGUs are incorrectly exercising their powers under Section 129 of the LGC ("power to create sources of revenue"). The DILG has explained that LGUs cannot use Section 129 for implementing such pass-through fees because such fees are exempt under Section 133 (e) of the LGC. This explains that the imposition of taxes, fees and charges upon goods carried into or out of, or passing through, the territorial jurisdiction of LGUs is not allowed.

International comparison. Local pass-through fees do not appear to be implemented in other ASEAN countries, including Malaysia, Brunei Darussalam, Thailand, Viet Nam and Indonesia.

Recommendation. The OECD recommends two alternative options.

1. A national authority, such as DOTr should supervise LGU fees and publish an annual report detailing all authorised fees. It should also remind municipalities whenever necessary about their lack of authorisation to raise additional pass-through fees.
2. Introduce national legislation that explicitly prohibits municipalities from raising additional pass-through fees.

Toll fees

Description of the obstacle. Under this section, an LGU may impose tolls (as opposed to pass-through fees mentioned above) on trucks using roads that it has funded or constructed. Some stakeholders have complained about a lack of transparency in how the fees are calculated and imposed. Section 155 of the Local Government Code (LGC) does not provide a maximum amount that an LGU may charge as a toll.

Harm to competition. The lack of transparency, unlimited nature of fees, and the inconsistent application of fees and charges by LGUs, may lead to excessive costs for market participants. The lack of a unified toll system adds unpredictability and increases the cost of doing business.

Policymakers' objective. The provision provides an LGU with a source of funds for the maintenance, upkeep and other related services for infrastructure it has constructed or which it oversees. It promotes the policy of local-government autonomy and ensures infrastructure investment and maintenance. According to stakeholders, a recently released Joint Memorandum Circular 2019-01 of DILG and DOF provides the direct fixed costs and variable costs that can be considered in calculating fees. The OECD has not been able to confirm the implementation of this MC, however. Section 6.5.3.3 provides that the Department of Finance, through the BLGF shall regularly monitor the fees and charges imposed by LGUs through the DOF BLGF online portal, and shall ensure that the schedule and analysis of rates are regularly published online and readily available to different stakeholders and the general public.

International comparison. Similar fees do not seem to be imposed in other ASEAN countries including Malaysia, Brunei Darussalam, Thailand and Viet Nam. Tolls are not imposed by local governments on public highways in Germany or in Australia. The 2016 *OECD Competition Assessment Review: Romania* noted the existence of tolls and found that they were not levied in a transparent manner and may have led to uncertainty and discrimination against certain operators. In that case, the OECD did not recommend the removal of local road tolls, rather the introduction by the Romanian government of an appropriate legal framework to ensure transparency and efficiency of the payment system with toll rates published on the websites of relevant ministries and the creation of an online payment system.

Recommendation. The OECD recommends that the Department of Transportation (DOTr) or other relevant authority initiate a national framework, requiring LGUs to provide clear guidelines for the imposition of these tolls. They must also adopt a transparent means of determining the basis for such tolls, and this information should then be published on the relevant websites. DOTr or another relevant authority should encourage the Department of the Interior and Local Government (DILG) and LGUs to adopt measures that will allow road users to pay a one-time toll per journey (of an amount transparently determined) that will be distributed internally among affected LGUs. Enforcement of toll payment could be achieved, for example, through a CCTV system, which records the plate of each vehicle entering and exiting an area. A national authority, such as the Department of Finance could oversee the system. A limit on the amount that can be charged by each LGU should also be enforced.

3.1.5. Other topics

Conflicting road bans

Description of the obstacle. In certain areas of the Philippines, such as in Metro Manila, trucks are only allowed to operate at certain times of the day. The OECD understands from stakeholders that this truck ban is implemented by a number of agencies, including MMDA, LGUs, and the DPWH, and that these different bans can conflict. Outside Manila, LGUs have separate truck-ban ordinances for their jurisdictions.

Harm to competition. Different bans cause confusion and uncertainty, deterring market entry. If bans differ significantly, truckers are prevented from operating for substantial parts of the day.

Policymakers' objective. The OECD understands that truck bans were introduced to deal with congestion issues, particularly in Metro Manila.

International comparison. Most OECD countries and many ASEAN countries, including Viet Nam, Malaysia and Thailand, have truck bans. However, in general, these bans are administered by a single agency.

Recommendation. The OECD recommends various measures to be applied alternatively or cumulatively.

1. Concentrate responsibility for issuing truck bans with a single authority.
2. Introduce a mechanism to increase co-ordination between different agencies and so help avoid contradictory decisions.

3. Increase transparency of information, for example, by introducing an online interface that shows all truck bans implemented by authorities.

3.2. Maritime freight transport

The main pieces of legislation analysed that affect the maritime freight transport sector relate to domestic shipping and cabotage, dry-docking requirements, incentive schemes, marine professions, and the operation of ports.

The main legislation administered by Maritime Industry Authority (MARINA) is Republic Act No. 9295 on the Domestic Shipping Development Act of 2004 (An Act Promoting the Development of the Philippine Domestic Shipping, Shipbuilding, Ship Repair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines, and for Other Purposes), which is to be read together with the Implementing Rules and Regulations (IRR) to RA 9295, revised in 2014 and 2009.

The OECD team identified 47 regulations, which contained restrictive provisions, and made 38 recommendations concerning the following topics, relating to maritime or inland waterway freight transport.

1. Barriers arising from the institutional framework for ports.
2. Permits and authorisations to carry out certain businesses in the maritime transport sector and in ports.
3. Price regulation.
4. Foreign-equity restrictions when conducting certain activities.
5. Pioneer status schemes.
6. Restrictions on operations in domestic shipping and ports.
7. Barriers concerning ship crews and marine professions.
8. Repairs and alterations.

3.2.1. Barriers arising from the institutional framework

Overlap of regulatory and operational functions of the PPA

Description of the obstacle. The multiple functions of the Philippine Ports Authority (PPA) as a port developer, maintainer, regulator and service provider could lead to conflicts of interest. For example, PPA engages in revenue-generating activities as the developer and owner of its ports and their facilities, while also leasing these facilities to private service providers for which it receives revenues and holds the power to impose fee rates and other charges. In addition to these usage fees, PPA also receives a share of the revenues of these private service providers. As the Republic Act 7656 requires Government-Owned and Controlled Corporations (GOCC) to remit at least 50% of their annual net earnings to the government as dividends, PPA has an incentive to maximise revenues from its operations, while also being the regulator of port operations and those of private service providers. Stakeholders have complained that these conflicts of interest in PPA's functions has led to high port charges, inefficient port operations and low service levels.

Harm to competition. PPA is offering port services, while also being responsible for regulating and monitoring those same services. A real or perceived conflict of interest may exist. This conflict of interest might lead to excessive fees, as well as a possible competitive advantage over competitors.

Policymakers' objective. PPA's declared policy concerning its current role and functions is to implement an integrated programme for the planning, development, financing and operation of ports or port districts for the entire country. The OECD recognises that PPA has already begun taking the initiative and making an effort to address conflicts of interest, for example, by holding public hearings on rate increases. In September 2019, House Bill 4317 was filed before the House of Representatives; it seeks to reform the administration of ports in the Philippines and provides for the separation of PPA's regulatory, commercial and development functions. The proposal is to transfer PPA's regulatory functions to MARINA and create a new corporation, PHILPORTS, to run the commercial and development functions. The bill aims to "avoid the conflict of interest arising from regulatory agencies vested in both regulatory and development or commercial functions". It explains that "under no circumstances should a regulatory agency benefit from its own regulation and/or use its own regulatory powers to protect itself from competition at the expense of public interest" (Section 2, HB 4317).

As explained in the OECD's *Best Practice Principles for Regulatory Policy*, regulatory integrity is of upmost importance: "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. A high level of integrity improves outcomes of the regulatory decisions." (OECD, 2014, p. 47[3]). It is important to create an independent and structurally separate body. When clarifying the roles of future regulators and involved agencies, reference should be made to the principles of role clarity; for example, under "functions": "Regulators should not be assigned conflicting or competing functions or goals. The assignment of potentially conflicting functions to any regulator should only occur if there is a clear public benefit in combining these functions and the risks of conflict can be managed effectively" (OECD, 2014, p. 30[3]).

The World Bank's *Port Reform Toolkit* provides a guide to policymakers on undertaking sustainable and well-considered port reforms (World Bank, 2016[4]). It provides that, "to avoid conflicts of interest, the law should explicitly regulate the powers and duties of the port authority in relation to private operators with respect to investments and share participation." It also states that: "generally, it is undesirable for a public port authority to be directly involved in terminal operations. A port law may explicitly prohibit a port authority from providing cargo-handling services. A further step to avoid conflict of interest issues would be to prohibit a port authority from being a shareholder in a terminal operating company located in its port area."

Recommendation. Enact HB 4317, which will ensure the separation of PPA's functions, avoid conflicts of interest, and ensure that PPA is incentivised to develop, modernise and expand its ports.

Conflict of interest: Cebu Ports Authority

Description of the obstacle. Like PPA, Cebu Ports Authority (CPA) has a dual role as an operator and regulator of ports. It has management and operational functions, as well as revenue-raising powers. Like the PPA, the CPA also has broad powers and excessive discretion.

Harm to competition. Like the PPA, the actual or potential overlap between the CPA's regulatory and operational functions may create real or perceived conflicts of interest. For example, there is a financial incentive for the CPA to approve increases in rates as this increases revenue.

Policymakers' objective. The provision aims to integrate and co-ordinate the planning, development, construction and operations of all ports and port facilities within CPA's territorial jurisdiction.

Recommendation. Any reform of PPA's regulatory and commercial functions should also apply to CPA, as well as for any other port authority with the same structure.

3.2.2. Permits and authorisations

CPC requirement: documentary requirements

Description of the obstacle. IRR 2014 (to RA 9295) details the documentary requirements for a CPC application to MARINA. One of the requirements is to provide a feasibility study or document that shows probable "economic and beneficial effect" to the port, province or region that the shipper proposes to serve. There are no further criteria on what this study must contain. The study is procured and paid for by the applicant.

Harm to competition. The lack of clear criteria for "economic and beneficial effect" may lead to bias, for example, in favour of incumbents or domestic players (if foreign players were allowed to apply for a CPC) who know how applications are treated "in practice". In general, the lack of clear criteria makes the test subjective and open to bias.

Policymakers' objective. The consideration of the "economic and beneficial effect" supports the economic development of Philippine ports and provinces.

Recommendations. The OECD recommends one of two options.

1. Freight transport and logistics should no longer classified as "public services". The PSA should be amended to reflect this. As a consequence, a CPC would no longer be necessary.
2. If a CPC continues to be required, the policy of requiring an economic feasibility study seems reasonable if the criteria for economic and beneficial effects are clearly defined. Further, in order to ensure maximum objectivity of the study, it should be procured for an agreed amount by MARINA as the decision maker, or by the applicant under clear criteria, and paid for by the applicant.

CPC requirement: incumbent opposition

Description of the obstacle. When an applicant applies for a CPC, interested parties, notably incumbents, have a limited right to oppose the application. Potential opponents are made aware of the CPC application because the applicant is required to publish its notice for hearing. If there is opposition, MARINA's time frame for making the decision is extended from 10 to 30 days. This gives the decision maker 20 additional days.

Harm to competition. Opposing parties, such as incumbents, can delay the decision-making process, slowing market entry, as any opposition gives MARINA 20 extra days (and potentially longer, if the issues are complicated or the records voluminous) to make its decision on a CPC application. Furthermore, any opposition filed will likely raise costs for the applicant as they will need to spend time and money considering and responding to the opposition. MARINA clarified that the opposition process is rarely used and only as an aid to evaluate an application's merits. Stakeholders expressed uncertainty about which issues opponents could raise and the extent to which MARINA takes opposing views into consideration, however. Such uncertainties favour incumbents as they are already operating in the market (having passed the CPC process) giving them better knowledge about what to expect than new (or potential) market participants.

Policymakers' objective. The purpose of the opposition process is to aid MARINA in the evaluation of the merits of an application or petition. This is because a CPC application is considered a quasi-judicial (rather than a simple administrative process) giving MARINA the right to determine any opposition and its merits. According to stakeholders, the opportunity for opponents to intervene is present in all other CPC applications as it stems from the application of Section 16a of the Public Service Act, which explains that CPC applications are subject to the notice and hearing process in a quasi-judicial application process. MARINA has explained that the opposition process brings new facts to the attention of the authority regarding the suitability of the applicant as a public-service provider. The likely policy rationale is to ensure that new entrants fully meet the requirements. However, it is questionable how and why a competitor would be in a position to present such information.

Recommendation. If maritime freight transportation were no longer considered as a "public service", operators would no longer need a CPC and so this rule would be removed. In that case, another licensing process may replace the CPC process, which could also include an opposition process. If this were to occur, the OECD would recommend one of two options.

1. Incumbents should not be able to oppose the CPC (or equivalent) application process.
2. If opposition remains possible, it should not substantially delay the process, with a maximum additional time of 10 days (the time frame for making a decision in the absence of opposition).

If the opposition process is removed, the publication requirement could likely also be removed unless another need for publication is shown.

CPC requirement: public-interest test

Description of the obstacle. RA 9295 contains the specific requirements for MARINA to grant a CPC, notably, that the applicant must prove that its activities will promote the public interest. MARINA has the power to issue a CPC to a qualified domestic ship operator, taking into consideration the economic and beneficial effect that the proposed services might have on the port province or region it proposes to serve, and 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. There is also a requirement to state the proposed route or at least, the intended services. Section 10(10) of RA 9295 provides MARINA with the broad discretion to "determine the impact which any new service shall have on the locality it will serve". This power is not implemented in any regulation or rule.

Harm to competition. When assessing whether there is need for a shipping service, MARINA enjoys wide discretion in determining the "economic and beneficial effect the proposed services should have on the port or province and the financial capacity of the domestic ship operator in accordance with standards set by government regulation". This might lead to discrimination between competitors. Furthermore, the requirement for shippers to state a fixed route at the time of application might limit competition in that a shipping company cannot easily respond to demand and adjust its market behaviour if it is obliged to serve only the route specified in the CPC.

Policymakers' objective. Consideration of the "economic and beneficial effect" supports the economic development of Philippine ports and provinces. There are no further regulations that specify what those terms cover. It is likely that MARINA's broad discretion is to ensure it can support the economic development of Philippine ports, markets and provinces.

Recommendation. If the Public Service Act is amended so that transport and logistics services are no longer considered as public utilities and CPCs are no longer required for public services, this provision could be removed. If shipping remains a public utility or if still classified as a public service and a CPC continues to be required, guidelines should detail the criteria used to judge economic development and how discretion is exercised.

CPC requirement: roll-on roll-off vessels with missionary status

Description of the obstacle. Section 1 of EO No. 170 s.2003 defines roll-on roll-off (ro-ro) operations as "the method of loading and discharging of self-powered vehicles, such as cars, and trucks, on their own wheels by their owners or drivers between vessel and shore via a ramp" and a ro-ro vessel as "a ship type or design duly approved for Ro-Ro operations". In obtaining missionary route operator status, a ro-ro operator has access to several advantages in return for offering a new route or routes that help increase the Philippine network of ro-ro services. A domestic ship-owner or operator operating a ro-ro vessel can be granted missionary route operator status if the relevant requirements are fulfilled. In addition to these, a missionary route operator is also required to apply for a CPC. One of the three main requirements for obtaining a CPC, according to the 1987 Philippine Constitution, is that such authorisations shall only be granted to citizens of the Philippines or a company with 60% of its stock or paid-up capital belonging to citizens of the Philippines. In requiring the applicant to be a domestic ship-owner or operator, the 60% equity requirement is already imposed. It is therefore likely that the CPC requirement is in place so that the applicant needs to prove its financial capacity and that its activities will promote the public interest. These criteria are already considered in the application for ro-ro missionary status.

Harm to competition. Missionary-route status ships are given full protection of their investment and a 50% discount in fees. Given that the 60% equity requirement is required because the circular only applies to domestic ship-owners, operators, and that, the two other CPC criteria – financial standing and public interest – are considered in the circular, the additional authorisation of a CPC presents a double requirement.

Policymakers' objective. The CPC requirement reinforces the classification of ro-ro vessels with missionary status as public services and public utilities.

Recommendation. Remove requirement for ro-ro vessels with missionary status to hold a CPC as defined under this circular.

3.2.3. Price regulation

Regulation of port charges by PPA

Description of the obstacle. PPA regulates port charges, including cargo-handling charges, and collects revenue from these same charges, meaning it benefits from any rate increase as it receives a share of port revenues. It currently collects 10% for domestic cargo-handling rates and 20% for international cargo-handling rates, as well as revenue from other services such as towing. Rate increases are approved by PPA after an internal hearing process, after which neither the Ministry of Transport nor the president has final approval. The 2016 report *OECD Investment Policy Reviews: Philippines* states that the PPA "has little incentive to promote competition and has used its regulatory powers to protect its ports from competition delaying or not issuing permits to construct and operate private ports".[3]This conflict of interest harms competition and disadvantages competitors such as private port operators.

Harm to competition. There is a conflict of interest in PPA's role as it has a financial incentive to approve rate increases as this generates more revenue for itself. PPA might not be completely objective in determining rates when a port-service provider requests approval for an increase in the rates it charges its customers.

Policymakers' objective. The policy aims to implement an integrated programme for the planning, development, financing and operation of ports or port districts for the entire country. If the HB 8005 bill separating the regulatory and commercial functions of PPA is passed, it would address the issues noted. Indeed, Section 3(g) explicitly states that the newly created entity, PHILPORTS, shall only collect port fees and dues duly approved by MARINA and that it shall not "share from cargo-handling revenues and/or any service providers contracted by PHILPORTS". The OECD fully supports these proposed changes.

Recommendation. HB 8005 should be enacted. If HB 8005 is not passed, the OECD would recommend the separation of PPA's revenue-generating activities from its regulatory activities. PPA could retain its operational and revenue-generating functions over the ports, but regulatory functions should be transferred to another agency to ensure independence. For example, MARINA or another Department of Transport (DOTr) agency could approve rates. Alternatively, if PPA is to make a recommendation on rates, final approval should be carried out by a separate agency. Also, LOI 1005-A should be rescinded so that PPA no longer obtains a percentage of revenue from these port-service providers.

Domestic shipping rates: MARINA's power to intervene

Description of the obstacle. While Section 11 of the RA 9295 allows domestic shipping operators to establish their own domestic shipping rates, MARINA may continue to exercise "regulatory intervention where it is established after due process that public interest needs to be protected and safeguarded". Systems and procedures for regulatory intervention are outlined in IRR (to RA 9295) 2014, Section 8. Section 10(12) explains that MARINA has the possibility to intervene to ensure reasonable stability of freight rates. There are no further conditions or related guidelines. MARINA has exercised this power of intervention on several occasions, ordering domestic shipping companies to adjust their cargo and passenger rates due to the decrease in oil prices in the domestic and global markets.

Harm to competition. "Intervene" is not further defined in Section 8 of the 2014 IRR and the provision appears to allow MARINA to intervene and fix prices based on a complaint or even on its own initiative. The gives MARINA broad discretion, which may result in discrimination.

Policymakers' objective. This provision reflects the deregulation of the domestic shipping industry, which saw MARINA intervention likely included to protect the domestic industry and consumers from high shipping rates post-liberalisation. Market participants have claimed that domestic shipping rates have risen, but it is not clear whether this is market driven or caused by anticompetitive practices.

Recommendation. The OECD recommends one of the following two options:

1. Remove MARINA's ability to intervene and allow the market to set domestic shipping rates.
2. If MARINA's ability to intervene is maintained, guidelines should set out as to when interventions are allowed by defining and providing permitted examples. Intervention should be limited to exceptional circumstances.

3.2.4. Foreign-equity restrictions

Alongside its objective of creating a single regional market, ASEAN has set the goal of establishing a single shipping market in order to boost the cross-border provision of shipping services within the region.[4] Nevertheless, the measures currently being mapped out for achieving that single shipping market have not included liberalising cabotage. The *OECD Glossary of Statistical Terms* (OECD, 2008) defines cabotage in the maritime context as: "Sea transport between two ports (a port of loading/embarkment and a port of unloading/disembarkment) located in the same country, irrespective of the country in which the seagoing vessel is registered." In *Economic Outlook for Southeast Asia, China and India 2016*, the OECD observed that, "most countries in the region practise cabotage which prohibits foreign registered ships from operating domestically"; these restrictions are among the main obstacles to the creation of an ASEAN single shipping market (OECD, 2016, p. 166[5]). Cabotage may reduce competition and could make farmers and firms less competitive internationally due to higher transport costs.

Cabotage restrictions under RA 9295

Description of the obstacle. Foreign vessels are prohibited from engaging in domestic shipping or cabotage in the Philippines. Aside from special rules relating to the carriage of imports and exports, foreign vessels cannot engage in cabotage without a special permit. Section 6 of RA 9295 explains that "no foreign vessel shall be allowed to transport domestic cargo between ports or places within Philippine territorial waters, except upon the grant of a special permit".

Harm to competition. The prohibition on foreign vessels transporting domestic cargo between ports in the Philippines prevents those firms from entering the national shipping market. A special permit granting an exception may be obtained by foreigners from MARINA, but its scope is limited. Foreign firms are therefore generally unable to participate in the domestic shipping market. According to market participants, cabotage restrictions may contribute to the accumulation of empty containers in certain ports and the shortage of containers in others due to inefficient allocation of resources. This amplifies trade-imbalance issues.

Policymakers' objective. The legislation seeks to support the Philippine domestic shipping industry, promoting the ownership of vessels operating under the Philippine flag. *Rethinking Maritime Cabotage for Improved Connectivity*, a 2017 United Nations Conference on Trade and Development (UNCTAD) report (UNCTAD, 2017[6]), explains that cabotage restrictions once had a security objective, but that today the policy objective is aimed more at "building supply-side capacity in shipping to derive revenue and employment benefits".

Box 3.1. Cabotage regimes around the world

Many countries including OECD countries have strict rules on cabotage while others have liberalised or partially liberalised their domestic shipping sectors. For example, in the European Union, cabotage restrictions were lifted in 1993 by Council Regulation No. 3577/92/EEC, creating a free market in maritime transport services within the EU. A 2014 European Commission report assessing the developments between 2001 and 2010, before and after all restrictions were lifted, concludes, however, that removing maritime cabotage market-access barriers has not led to a significant increase in the number of operators.[1]Similar to one of the Philippines current cabotage exemptions (import and exports can be transported within the Philippines by foreign ships), New Zealand introduced partial cabotage liberalisation in 1994 in order to increase competition and ensure high-quality shipping services. International vessels visiting New Zealand were allowed to deliver imports or pick up exports within New Zealand. As a result of those reforms, coastal freight rates dropped by 20-25% between 1994 and 2000. National carriers were, however, able to keep the vast majority of the market, although they also had to reduce their rates. Upon review of this reform, the government decided not to reintroduce cabotage restrictions (UNCTAD, 2017, p. 21[6]). In Mexico, although only Mexican shipping companies are allowed to provide cabotage services, the Communications and Transport Secretary can issue temporary licences allowing foreign vessels to be used by Mexican companies if suitable Mexican vessels are unavailable or if public interest so requires.

Most ASEAN member states appear to have general restrictions on cabotage, but do allow exceptions in the case of strong demand. Malaysia, for example, removed cabotage restrictions for the states of Sabah and Sarawak in 2017 due to insufficient vessels for the carriage of goods from Eastern Malaysia. In its *Economic Outlook for Southeast Asia, China and India 2018*, the OECD noted that: "Generally, 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 cabotage restrictions, while other ASEAN countries continue to do so" (OECD, 2018, p. 100[7]).

Note: 1. See UNCTAD
(2017), "Rethinking maritime cabotage for improved connectivity", https://unctad.org/en/PublicationsLibrary/dtltlb2017d1_en.pdf.

Recommendation. The OECD recommends one of the following three options.

1. In co-operation with other ASEAN countries, introduce an ASEAN-wide cabotage policy similar to the EU, whereby ASEAN operators are treated as national operators and can provide services in other ASEAN countries.
2. Amend the cabotage law with a further amendment to the 2015 exemption to allow foreign ships to carry 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. This could possibly be based on reciprocity arrangements or as a first step between ASEAN members.

3. Allow international ships to operate in the domestic shipping market on specific routes for which there is demand, by introducing a broader special permit.

Exceptions to cabotage restrictions under RA 9295

Description of the obstacle. The Implementing Rules and Regulations (IRR) 2014 to RA 9295 provide the main exception to the general rule that foreign vessels cannot engage in domestic shipping. These provisions provide for the granting of a special permit, which allows foreign ships to operate within Philippine territory, when there is no available and suitable domestic ship equipped to provide the required specialised service. The IRR provides that the special permit is issued on a month-to-month basis or on a bi-monthly basis and can have a duration of no more than three months. By granting the special permit and in determining its period of operation, account should be taken of a vessel's likely role in the country's economic development. MARINA will check whether available and suitable domestic ships are offered by Philippine shipping associations. If so, the application for a special permit is denied. The IRR provides a long list of documents that must be submitted to apply for the domestic permit.

Harm to competition. Foreign ships are allowed to operate in the Philippine territory only if no domestic ship is available to provide the required specialised service, which prioritises domestic companies. The requirements for this exception seem excessive, especially the number of documents required. Further, it may be difficult for applicants to foresee whether they will be granted a special permit due to MARINA's broad discretion.

Policymakers' objective. The exception implements the cabotage policy in the Philippines. It supports the Philippine domestic shipping industry, promoting the ownership of vessels operated under the Philippine flag. The legislation suggests that the special permit is specifically intended for specialised vessels, such as those used for oil-exploration projects, which are not normally part of the domestic fleet. However, a short permit will not incentivise applicants. For regular liner services, operators are unlikely to change their route planning every few months depending on whether they have the permit or not.

International comparison. Some countries have more generous exemptions for certain ship types, such as oil tankers. For example, in Australia, under the Coastal Trading (Revitalising Australian Shipping) Act 2012 (Part 4, Division 2, section 35), Australia may grant temporary licences to foreign-flagged vessels; these are valid for a limited number of voyages in a 12-month period. The licence is granted over a longer period (even though the number of voyages is restricted) and subject to ministerial discretion.

Recommendation. Re-evaluate how to improve the process of obtaining a special permit, including a reassessment of the duration of permits – currently too short – as well as required documents, removing redundant requirements and simplifying and streamlining the process. Guidelines should be introduced to provide applicants more legal certainty. Finally, a more specific yet more generous exemption could be considered.

Foreign-equity restrictions

Description of the obstacle. A CPC is an authorisation necessary when operating a "public service" in the Philippines. One of the three main requirements for obtaining a CPC according to Section 16a of the Public Service Act (PSA) is that they shall only be granted to citizens of the Philippines or a company whose stock or paid-up capital belongs at least 60% to citizens of the Philippines. Maritime freight transport services are currently classed as "public services", based upon the definition set out in Section 13b of the Public Service Act (PSA).

Supreme Court decisions have interpreted that "public services" are interchangeable with "public utilities". The Constitution limits the operation of public utilities to citizens of the Philippines or a company whose stock or paid-up capital belongs at least 60% to citizens of the Philippines. The 60-40 equity requirement for maritime freight transport is thus imposed by both the Constitution and the PSA's CPC requirement.

Harm to competition. The 60% equity requirement limits foreign participation in the Philippine shipping market and makes it more difficult for foreigners to provide these services.

Policymakers' objective. Public utilities are considered as services essential to the public and which involve a public-interest element. The CPC requirements likely exist to ensure control over who operates a public service by ensuring that applicants wishing to operate a public service are properly scrutinised. CPCs are granted by agencies authorised by law (such as MARINA and LTFRB) to determine that the operation of the service and the authorisation to do business will promote the public interests in a proper and suitable manner (PSA, Section 15 and Section 16[a]).

Recommendation. Maritime freight transport should no longer be interpreted as a public utility. The PSA and any other legislation implementing this interpretation should be amended to reflect this. Maritime freight transport should then be removed from the list of public services under the PSA so that maritime freight transport operators are no longer required to obtain a CPC. Subject to any additional sector-specific restrictions or screening requirements that are imposed, this would mean that foreigners could own up to 100% of maritime freight transportation companies.

3.2.5. Pioneer status schemes

Incentives for domestic shipping operators: pioneer status

Description of the obstacle. Under MARINA Circular No. 2015-04, MARINA can grant pioneer status and special incentives to domestic shipping operators that introduce new ships meeting the standards imposed by the International Association of Classification Societies (IACS). Pioneer status gives shippers certain incentives. The first provides protection of investment and for liners, route protection. This grants a shipper with pioneer status exclusive rights to provide the service on a certain route by preventing the deployment of any additional vessels on the route for a period of six years. An exception to this rule applies if MARINA determines that a route requires additional vessels, however, even then a pioneer-status operator is given the opportunity to fill that demand first "without prejudice to applications by ship-owners/operators offering IACS-classed brand-new or newly constructed vessels". The second incentive is priority in CPC approval. The third is that pioneer-status vessels are subject to only 50% of fees and charges for applications and licences. The fourth is that they have access to dedicated ramps and berths when fulfilling dry-docking requirements.

Harm to competition. The first incentive, which grants exclusive rights for certain routes, prevents competition in the market for the provision of shipping services on a set route. It establishes an exclusive right to operate for one company, which could lead to monopoly pricing. The other incentives might amount to discrimination between companies enjoying pioneer status and their competitors.

Policymakers' objective. MARINA Circular No. 2015-04 was issued to encourage the modernisation, improvement and upgrade of the domestic merchant fleet. By encouraging internationally classed vessels and new vessels, safety and efficiency of services should be improved. The domestic maritime industry in the Philippines is characterised as having poor safety standards. In its 2015 report, *Philippine Economic Update: Making Growth Work for the Poor*, the World Bank noted: "In the East Asia region, the Philippines has the highest absolute casualty rate, which is 40 percent higher than the second-ranked country, Indonesia. On average, there are 228 ships involved in accidents and 303 casualties per year in the Philippines." The annual world average for ship accidents is 32 and 60 casualties. Further, the average age of vessels in the Philippines is 30 years, compared to a global average of 22 years. The Philippine Competition Commission (PCC) undertook a competition assessment of this incentive scheme and shared its recommendations with the OECD in early 2019. Its overview revealed that the incentive scheme has attracted mainly passenger-transport operators; only one cargo operator has pioneer status. In summary, the PCC made three recommendations:

1. Evaluate other measures that MARINA can implement to ensure quality and safety of vessels, which do not require IACS-classification to be granted pioneer status.
2. Evaluate new methods to allow non-pioneer-status operators who wish to enter or expand operations on pioneer-status routes.
3. Review the implementation of the provision of special ramp and berthing facilities as in practice, such facilities are not accessible to competitors.

Recommendation. The OECD agrees with PCC's recommendation to re-evaluate the special ramp and berthing facilities incentive, given how it currently works in practice. In addition, the OECD recommends one of three options.

1. No additional action. The policymakers' objective of improving safety and efficiency justifies the competition restrictions. The OECD does however recommend that no extension of pioneer status should be granted beyond the initial six-year term for such special rights.
2. Implement the other PCC recommendations to evaluate other measures that MARINA can implement to ensure quality and safety of vessels that do not necessarily require IACS-classed vessels for pioneer status and for non-pioneer-status operators that wish to enter or expand operations on pioneer-status routes.
3. Alternatively, regulations could be implemented that specify stricter security standards (equivalent to IACS), but without the need to purchase new ships and without the granting of pioneer status. New legislation requiring stricter security standards would, however, need to include a sufficiently long transition period (for example, 10 years) to allow market players to adapt to new standards. Direct subsidies for a limited time could be used to encourage compliance as an option.

3.2.6. Restrictions on the operation of ports

Pilotage: determination of the maximum number of pilots in each port

Description of the obstacle. The Philippine Ports Authority (PPA) determines the maximum number of pilots in each pilotage district. The maximum number of pilots can be increased or decreased by the PPA's general manager to respond to the service needs of a district. Each district has its own numbers of pilots, as determined (and changed) by PPA. For example, in the Cagayan de Oro pilotage district, there are eight pilot positions. The OECD notes that currently PPA is the sole provider of pilotage services, but attempts are being made to reform the system.

Harm to competition*.* This provision restricts the number of pilots able to provide services. This might create a shortage and might lead to higher costs for pilotage services.

Policymakers' objective. The provision assumes that the PPA is in the best position to determine the number of pilots required in a pilotage district.

Recommendation. The current provision imposing a cap on the authorised number of pilots for each district should be removed. The law should not impose a maximum number of pilots for each port, but instead require a minimum service level, such as a maximum waiting time for pilots to board a ship. This should be required as part of a tendering process for pilotage services. Each pilotage company should make its own assessment and its decision regarding the number of pilots necessary to reach the required service level.

Pilotage: pilotage licences

Description of the obstacle. MARINA regulates the pilotage profession and the licensing of pilots. Executive Order 125/125-A (1987) gives MARINA the power to issue licences to qualified harbour pilots, who can then be appointed by PPA, which announces the roster of regular harbour pilots for each pilotage district in an operational Memorandum Circular (MC). “Harbour pilot” refers to a “master duly licensed by MARINA and appointed by the Philippine Ports Authority (PPA) to act as a pilot in a specific pilotage district in the Philippines”. “Harbour pilot licence” refers to the privilege and qualifications granted to a person for the practice of pilotage in a specific pilotage area or district of the country. “Pilotage area or district” refers to a “navigable area specified as such by PPA and named after its principal port, the navigation of which requires a harbour pilot”. If a pilot wishes to work across pilotage districts, specific licences must be obtained for each pilotage district.

Harm to competition. The requirement of a specific licence for each different pilotage district prevents pilots from easily working across districts. This is a geographical barrier and may reduce the number of pilots able to work in each port, potentially allowing pilots to exercise market power and increase prices.

Policymakers’ objective. It is important that pilots have specific knowledge of a port or maritime area and so understandable that they are not able to work across ports with a single licence. The objective is likely to ensure safety.

Recommendation. The individual licensing requirements seem reasonable given the policy objective of ensuring pilots have specific knowledge of the port where they are licensed to practice. Nevertheless, the OECD recommends the authorities make it easier for pilots to work across pilotage districts and areas and to obtain multiple licences in order to avoid shortages and ensure that the geographical flow of such services is not unnecessarily restricted.

Provision of port services: awarding of contracts

Description of the obstacle. Under Section 17 of PPA Administrative Order No. 12-2018, the awarding of contracts for port services under the Port Terminal Management Regulatory Framework (PTMRF) is conducted through public bidding by the Bids and Awards Committee (BAC), which is formed by PPA. Only Filipino citizens or entities with at least 60% Philippine equity can join the public bidding.

Harm to competition. The exclusion of foreign firms from the public bidding process limits the number of potential market players. This eliminates potentially lower-cost offers from foreign firms.

Policymakers’ objective. The provision aims to promote the participation of Philippine firms in the bidding process by restricting access to contracts under the Port Terminal Management Regulatory Framework to domestic suppliers. Foreign investment is prohibited above 40% equity participation in a company.

International comparison. The OECD Guidelines for Fighting Bid Rigging in Public Procurement recommend that, in general, a tender process should be designed so that it maximises the potential participation of genuinely competitive bids, and reduces constraints on foreign participation in procurement whenever possible. In the European Union, the European Commission generally advocates open international public-procurement markets and grants market access to its public procurement markets for certain goods and services to non-EU countries. In Australia, the public-procurement framework is non-discriminatory and procurement regulation explicitly prohibits discrimination against foreign suppliers, meaning that all potential government suppliers must be treated equitably. The ASEAN Framework Agreement on Services (AFAS) is an ASEAN-wide strategy of strengthening co-operation among member countries under which all countries are required to move towards commonly agreed liberalisation programmes, with the view to removing restrictions to trade in services and boosting ASEAN services-based economies. The initial target is 70% ASEAN foreign-ownership in concerned entities.

Recommendation. Progressively relax foreign-equity limits with the long-term goal of allowing 100% foreign-owned firms to participate in bidding processes. A first step might be to implement changes that move towards the ASEAN Framework Agreement on Services (AFAS) target of 70% ASEAN foreign-ownership in entities providing port services, before extending it to non-ASEAN nationals. In the long term, the Philippines, may consider full liberalisation by allowing 100% foreign-owned port service providers to participate in the bidding process.

3.2.7. Restrictions on the operation of domestic shipping

MARINA’s broad discretion to revoke licences

Description of the obstacle. The relevant provision allows MARINA to “modify, suspend or revoke at any time upon notice and hearing any certificate, licence or accreditation it may have issued to any domestic ship operator”. “Notice and hearing” are not further defined, however. The provision states that: “Any action to modify, suspend or revoke any certificate, license or accreditation of a domestic ship operator is governed by MARINA Revised Rules of Procedure issued in 2014”. The conditions for modifying or suspending the authorisation are not explained further.

Harm to competition. MARINA has broad discretion, which may result in discrimination, deter new entrants and increase costs for existing players.

Policymakers’ objective. Subject to certain fairness considerations (upon notice and hearing), MARINA has broad discretion to determine a domestic shipper’s appropriateness to provide its services.

Recommendation. Guidelines should be drafted that clearly outline MARINA’s powers of revocation, particularly those for revoking authorisations. The circumstances under which authorisations could be revoked should be defined by the legislator to ensure consistency of decisions to give companies clarity about how and on what grounds this could occur.

MARINA’s power to establish and prescribe routes

Description of the obstacle. Section 4 of RA 9295 gives MARINA the power to establish and proscribe domestic ship operators’ routes, zones or areas of operations. Routes are usually part of the conditions of any CPC granted to domestic shipping operators. Section 4 of MARINA’s Rules of Practice and Procedure (RPP) state that an applicant must state “the route that it proposes to serve” in its CPC application. The route must indicate the exact location of the ports of origin and destination. However, neither the nature of how routes are set nor MARINA’s influence on the route-setting process is clear.

Harm to competition. Requiring approval of a set route upon which the operator is allowed to operate limits its ability to adapt to changing market conditions and new opportunities, particularly given the difficulty of changing any set route through an amendment to the CPC application. Depending on how route setting works in practice, the rule could discriminate against certain participants if they are forced to follow a route they no longer wish to follow. According to PCC, this may lead to underuse of some routes in practice. The route-setting process may create geographic barriers, and limit the number of service providers in certain areas.

Policymakers’ objective. It is likely that routes are approved by MARINA for safety and security reasons, and to ensure proper supervision of domestic shipping.

Recommendation. MARINA should only be able to “establish and prescribe routes” for safety reasons. The ability to establish or proscribe routes for other general public-interest reasons or because a company already services a route should no longer be sufficient reason to prevent changes.

MARINA’s power to require the provision of shipping services

Description of the obstacle. MARINA can require a domestic shipping provider to provide services, if necessary for the development of an area, emergency reasons or in the public interest. The OECD has not been able to locate any regulations that specify under which conditions domestic operators can be required to provide services and if and how much compensation is provided.

Harm to competition. Forcing a company to provide services might create discrimination between competitors. Requiring a company to provide certain services creates associated opportunity costs.

Policymakers' objective. The provision likely aims to protect the national interest and allows MARINA to assess whether current shipping services meet the country's development and public-interest needs.

Recommendation. The legislation should be amended so that MARINA is no longer able to require ship operators to provide any services for development or for the public interest. MARINA should only be able to require domestic shipping companies to provide services in situations of national emergency, such as for emergency sealifts. Guidelines should clarify when this is this case and under which conditions services may be required (including appropriate compensation). In all other cases, any shipping operator providing services for MARINA or another party should do so subject to negotiation or a public procurement procedure.

MARINA's discretion: carriage of government cargo

Description of the obstacle. Under Section 12 of RA 9295, MARINA has the power to force domestic shippers to transport government mail and other government cargo "on mutually agreed terms" and operations must give "preferential, negotiated conditions" for the carriage of this cargo. No related issuances setting out more specific guidelines for the implementation of this provision exist. The OECD could not find out how this provision works in practice – whether preferential terms are actually given and how they compare with market rates – as it does not have access to the contracts agreed between the government and shipping companies.

Harm to competition. Shippers forced to take government cargo are not able to use this space to engage in other commercial activities, limiting their ability to provide services to other parties. Shippers must also carry out the service on preferential conditions, which might lead to discrimination between competitors.

Policymakers' objective. Based upon one stakeholder's opinion, the policy objective is likely to ensure that government mail and cargo are transported under preferential conditions.

Recommendation. MARINA should only be able to force companies to take government mail and cargo in a situation of national emergency. In that case, conditions should be clearly set out in guidelines. In other situations, carriage of government cargo should be subject to negotiation and, when appropriate, public procurement procedures.

MARINA's discretion: creation of specialised rules for monopolised routes

Description of the obstacle. Section 13 of RA 9295 states that MARINA can create special rules for monopolised routes, but the text of the provision is unclear as to the exact nature of these rules. "Monopolised route" is defined in Section 3 of the act and refers to a route or link served either by only one franchised operator, a group of franchised operators beneficially owned by a single individual, a family or corporation, or a cartel, which results in the absence of competition or lack of effective competition. For example, Section 13 of RA 9295 2014 IRR provides that MARINA shall ensure the rates charged for monopolised routes are just and equitable to sustain a service, taking into consideration the economic and beneficial effect that a service may have upon the port, province, island or region it proposes to serve, the volume of available passengers and cargo, the level and quality of service offered by the ship operator, and the available port facilities and terminal handling services. The standards of service provided must be in accordance with relevant MARINA rules and regulations relative to service standards. The OECD has not been able to locate any guidelines that explain the implementation of this provision.

Harm to competition. It is unclear how this provision is applied in practice, especially the methods used by MARINA to ensure the rates charged are just and equitable, while taking into account the considerations listed. It is also unclear whether MARINA actually sets maximum prices and enforces them in practice. If it does, this would greatly reduce any incentive to innovate or improve the service.

Policymakers' objective. Control of maximum prices may serve as a counterweight to a lack of alternatives on a monopolised route. Price regulation is likely used to protect passengers on monopolised routes by preventing a monopolist from abusing its dominant position on the specific route.

Recommendation. Grant additional permits whenever possible to reduce the number of monopoly routes. Continue allowing MARINA to impose maximum prices for monopoly routes.

3.2.8. Barriers concerning ship crews and marine professions

Foreign crews: visa requirements

Description of the obstacle. To enter the Philippines, foreign crew members require a 9(c) visa, which has a maximum duration of three months. The Philippines Department of Foreign Affairs (DFA) – Office of Consular Affairs has stated that the guidelines, which contain the requirements for 9(c) visa applications, as well as the maximum duration of such visas, are neither published nor released to the public. According to DFA, it distributes these guidelines internally to Philippine embassies, which then post the relevant information on their websites.

Harm to competition. The need for a visa is a regulatory burden. The short duration of the visa – maximum of 3 months – also means that the application process needs to be regularly repeated. Further, the lack of transparency and access to the relevant guidelines (even if available through the relevant embassy) may create legal uncertainty and increase costs for actual and potential market participants.

Policymakers' objective. The OECD has not identified a policy objective for the short length of the visa and lack of published guidelines.

International comparison. In the OECD Services Trade Restrictiveness Index (which measures trade barriers in services) the number of days allowed for a foreign-crew visa ranges from 15 days to 36 months, but in many countries, seafarers are exempt from such visa requirements. For example, in Australia, the duration of a crew visa is 36 months. Multiple entries are allowed for these maritime crew visas.

Recommendation. Extend the duration of the 9(c) visa and make the visa guidelines publicly available on the DFA website.

3.2.9. Nationality of crew for Philippine-registered shipping vessels

Description of the obstacle. A nationality requirement for the crews of Philippine-registered shipping vessels, both domestic and international, is outlined in various MARINA Memorandum Circulars (MC). These MC provide that all ships shall be completely manned by Filipino crews, but foreign crew may be allowed upon approval by the MARINA. MC 2017-04 provides that all ships shall be completely manned with Filipino officers and crew and no foreign officer shall be allowed, except as supernumerary and as provided for in any other regulations. While Republic Act 8544 (Philippine Merchant Marine Officers Act of 1998), as amended by Republic Act 10635, provides for a system of recognition of foreign qualifications, this applies only to the recognition of the professional licence of a foreign marine officer permitted to work on Philippine-registered vessels in the absence of an available or equally qualified Filipino marine officer. Philippine-flagged ships registered under MARINA Circular 102 s. 2003 for international voyages must be completely crewed by Filipinos.

Harm to competition. The provisions prevent market participants from hiring foreign workers, which is especially an issue when there is a shortage of qualified workers. Stakeholders have confirmed that is the case, as firms are prevented from supplying the market due to lack of eligible workers.

Policymakers' objective. The crew requirements support the national labour market and seek to ensure Filipino citizens acquire necessary skills.

International comparison. In other countries, management is often restricted to nationals while crew are not subject to nationality requirements. For example, in Denmark, only the captain of a ship must be a Danish or EU citizen; there is no nationality requirement for other crew members. Likewise, in Germany, only the captain of German-flagged merchant ships has to be an EU/EEA citizen. For other officers, there is a requirement to have one EU/EEA citizen officer only for ships of more than 8 000 gross tonnes. In Malaysia, there is no restriction on a crew member's nationality if the ship manager or ship-management company operating the ship is incorporated in Malaysia.

Recommendation. The OECD recommends one of two options.

1. Remove the nationality requirements. If necessary, keep them for key positions, such as captain.
2. Conduct annual surveys of supply and demand for crews and, in the case of shortages, allow exemptions from the nationality requirement.

3.2.10. Marine professions: Reservation to nationals

Description of the obstacle. The Regular Foreign Investment Negative List (RFINL) covers areas or activities where foreign investment is limited – explaining any investment thresholds for foreign investment in particular sectors – or sectors reserved for Filipino nationals. There are two lists.

- List A: foreign ownership is limited by mandate of the constitution and specific laws.
- List B: foreign ownership is limited for reasons of security, defence, risk to health and morals and protection of small- and medium-sized enterprises.

Under List A, in the category No Foreign Equity, paragraph 2 – "practice of professions" – two maritime professions, marine deck officers and marine engine officers, are listed. ("Practice of a profession" is explained in footnote 2: "Section 1(b) of Professional Regulation Commission Resolution No. 2012-668 defines 'practice of a profession' as an 'activity/undertaking rendered by a registered and licensed professional or a holder of a Special Temporary Permit as defined in the scope of practice of a professional regulatory law'.") This provision results in a complete ban on foreigners working as marine deck officers and marine engine officers.

Harm to competition. This provision restricts access to the market for foreign workers. The provision may limit choice or create an artificial scarcity of workers that raises prices for shipping companies.

Policymakers' objective. The policy intent behind List A is to give effect to the foreign equity restrictions outlined in the 1987 Philippine Constitution and to provide certainty to investors. In terms of professions, no foreigners are allowed to practice certain professions, including, for example, X-ray technology, criminology, law and relevantly for these purposes, marine deck officer and marine engine officers. These professions were added in the 11th current version of the RFIL, which came into force on 16 November 2018. These professions were therefore only recently restricted to Filipinos. The OECD has not been able to determine why these professions were added.

Recommendation. The OECD recommends one of three options.

1. Remove restrictions and allow foreigners to engage in these marine professions.
2. Conduct annual surveys of supply and demand for these professions and, in the case of shortages, allow exemptions from the nationality requirement.
3. If foreign participation must be restricted, the professions of marine deck officers and marine engine officers should be listed in the Annex on Professions, where it is stated that foreigners are allowed to practice the following professions in the Philippines "provided that their home country allows Filipinos to be admitted to the practice of these professions".

3.2.11. Repairs and alterations

Obligation to undertake repairs and alterations of ships in the Philippines

Description of the obstacle. “Ship repair” is defined in Presidential Decree No. 1221 (IRR) 1999 as the “overhaul, repair improvement, alternation of the hull, machineries, equipment outfits and components of all types of watercrafts”. Ships may be required to be dry-docked in order for repairs to be carried out. With limited exceptions, the decree requires Philippine-owned and/or registered vessels to undertake all repairs and alterations in the Philippines, in MARINA-registered shipyards. Fines can be levied if this requirement is not followed.

Harm to competition. This provision contains a double restriction. It bans potential market participants not registered with MARINA and eliminates competition from overseas providers. This reduces competition in the Philippine market for repairs and increases costs for Philippine-owned and registered vessels. Stakeholders have highlighted that it can be far cheaper to have repairs carried out overseas than in the Philippines.

Policymakers’ objective. The recital to Presidential Decree No. 1221 explains that the requirement to undertake repairs in MARINA registered shipyards in the Philippines is necessary:

1. for the “promotion and maintenance of the Philippine ship-repair industry”, and to “enhance domestic capability for ship repair and maintenance”
2. to ensure the conservation of the country’s foreign-exchange reserves, as “repairs undertaken abroad entail payment in foreign currency, thereby resulting to [sic] the depletion of the country’s foreign exchange reserves”.

The need to conserve foreign-exchange reserves is reiterated in the introduction to the IRR of the decree. This may no longer be a central consideration in the requirement to carry out repairs in the Philippines. Today, it is more likely that the main reasons include safety and quality control, as well as the promotion of the Philippine ship-repair industry.

International comparison. The OECD has found no similar restriction in other ASEAN countries such as Thailand, Brunei Darussalam, Malaysia, Indonesia and Viet Nam. Ship-owners in these ASEAN countries are free to carry out repairs outside their country.

Recommendation. Allow repairs to be carried out overseas, removing the requirement to carry out repairs at a MARINA-approved shipyards in the Philippines. This permission might be accompanied by regulations that impose equivalent standards on overseas shipyards (for example, compliance with accepted international standards). To maintain standards of quality control and safety MARINA should, however, continue to require shipyards in the Philippines to register, in line with international standards.

3.2.12. Obligation to dry-dock in the Philippines when carrying out repairs and alterations

Description of the obstacle. As mentioned above, with limited exceptions, Section 2 of Presidential Decree No. 1221 requires Philippine-owned and/or registered vessels to undertake all repairs and alterations in the Philippines, in MARINA-registered shipyards. Fines apply if this requirement is not followed. “Dry-docking” is defined in MC 152 1999 (Amendments to Specific Regulations on Inspection, Dry-docking and Statutory Certificates) as “a condition in which a ship is taken out of water for cleaning and repair of her hull and its parts such as rudder, propeller, sea valves and sea chests, among others”. Dry-docking is different to general repairs, but ships may need to be dry-docked in order for repairs to be carried out.

Harm to competition. This provision contains a double restriction. It bans potential market participants not registered with MARINA and eliminates competition from overseas providers. This reduces competition in the Philippine market for dry-docking and increases costs for Philippine-owned and registered vessels. The World Bank's 2015 *Philippine Economic Update: Making Growth Work for the Poor* (World Bank, 2015, p. 65[8]) noted that: "Dry docking outside the country can be up to 70 percent cheaper for large vessels. In fact, even if transportation costs are factored in, it would still be cheaper to dry-dock a vessel outside the country." Stakeholders also confirm that it can be far cheaper to carry out repairs overseas than in the Philippines.

Policymakers' objective. The recital to Presidential Decree 1221 explains that the requirement to undertake ship repair and maintenance in MARINA-registered shipyards in the Philippines is necessary in order to:

1. promote and maintain the Philippine ship-repair industry, ensuring domestic capability for ship repair and maintenance
2. ensure the conservation of the country's foreign-exchange reserves, as "repairs undertaken abroad entail payment in foreign currency, thereby resulting to [sic] the depletion of the country's foreign exchange reserves".

The need to conserve foreign exchange reserves is reiterated in the introduction to the IRR of the decree. This may however no longer be a main consideration for the requirement to dry-dock in the Philippines at MARINA-registered shipyards. Today, it is more likely that the main reasons include safety and quality control, as well as the promotion of the Philippine ship-repair industry.

International comparison. The OECD has found no similar restriction in Thailand, Brunei Darussalam, Malaysia, and Viet Nam. Ship-owners in these ASEAN countries are free to carry out their dry-docking obligations outside their country.

Recommendation. Allow dry-docking to be carried out overseas, removing the requirement to dry-dock at a MARINA-approved shipyard in the Philippines. This permission might be accompanied by regulations that impose equivalent standards on overseas shipyards (for example, compliance with accepted international standards). To continue standards of quality control and safety, however, MARINA should continue to require registration of shipyards in the Philippines, in line with international standards.

3.2.13. Compulsory shipyard association membership

Description of the obstacle. Any entity that is engaged in or intends to engage in shipbuilding must be properly registered and have been issued a certificate of registration by MARINA (MC 2018-02). A shipyard must be an existing member of a "MARINA-recognised shipyard association" prior to the issuance of a new MARINA licence as a shipyard or renewal of an expired licence. If not yet a member, it should submit proof that it has a pending application for membership in such an association.

Harm to competition. Requiring a shipyard to be a member of an approved association increases the cost of doing business.

Policymakers' objective. According to MARINA's Shipyard Regulations Service, membership in a MARINA-recognised shipyard association was introduced to create a public consultation mechanism between the government and the shipbuilding and ship-repair (SBSR) sector. This policy objective is not reflected in law or in a MARINA issuance.

Recommendation. Remove association requirement. Market participants should be free to choose whether to become a member of the association.

3.3. Freight forwarding

The main piece of legislation for the accreditation of freight forwarders is Philippine Shippers' Bureau Administrative Order 06-2005.

3.3.1. Permits and authorisations

Regulation of different freight forwarding modes by different ministries

Description of the obstacle. Freight forwarders are regulated by different ministries according to the mode of transport used. The Department of Trade and Industry (DTI) regulates freight forwarders for maritime transport and the Department of Transportation (DOTr) for air transport. Industry stakeholders have told the OECD that they would prefer all freight forwarders to be regulated by a single ministry.

Harm to competition. Having different regulators accrediting freight forwarders according to their mode of transport may increase costs for businesses if they undertake both maritime and air-based freight forwarding.

Policymakers' objective. It is unclear why two different bodies regulate freight forwarding.

International comparison. Maritime and air-based freight forwarders are regulated by separate departments in other ASEAN countries (for example, in Thailand and Malaysia), but within the same ministry.

Recommendation. The OECD recommends that freight forwarders should be regulated by the same ministry, even if by different departments.

Accreditation of shipping lines as freight forwarders

Description of the obstacle. Accreditation is required from the DTI to act as a maritime freight forwarder in the Philippines, but market participants have complained that in practice DTI does not accredit shipping lines as freight forwarders. The OECD has found no provision upon which this practice could be based, which means that there is no legislative authority to deny shipping lines accreditation as freight forwarders.

Harm to competition. Banning certain market participants from freight-forwarding services limits access to the market. Shipping lines, for example, are potential competitors. The ban also prevents vertical forward integration.

Policymakers' objective. The OECD has been unable to find any legal basis for this practice. It might, however, be in place to prevent forward integration and shipping lines leveraging their market power into the freight-forwarding market. According to DTI, accreditation is only granted to non-vessel-operating common carriers (NVOCC). Common carrier operators are classified as vessel-operating common carrier (VOCC). The DTI explains that: "shipping lines that apply as sea freight forwarders under the category of NVOCCs are denied accreditation because the very nature of their operation is totally inconsistent with the concept of an NVOCC. As the name suggests, an NVOCC does not own or operate a vessel or a ship to transport its clients' cargo." DTI explained that: "shipping lines have undue advantages over traditional forwarding operators, such as managing and operating their own ocean-going vessels, maintaining their own marketing and sales staff and logistical facilities."

International comparison. In many ASEAN countries, such as Viet Nam and Thailand, shipping lines are active in the freight-forwarding market.

Recommendations. The OECD recommends explicitly allowing shipping lines and more widely, VOCCs to set up freight-forwarding businesses.

Guidance on rates

Description of the obstacle. Memorandum Circular No. 01 s. 2005 prescribes indicative rates and charges 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).

Harm to competition. The rates are provided as "guidance" and it is not clear what this means in practice. There is the danger that companies orient themselves accordingly, which may lead to price co-ordination.

Policymakers' objective. The recital of the memorandum explains that "standardised services, rates and charges will enhance competition and encourage improved quality of service among freight forwarders" and that "there is a need to standardise the services, rates and charges in the freight-forwarding industry in order to protect the interests of shippers and importers, as well as to prevent indiscriminate charging within the industry". According to DTI, the Philippine Shippers' Bureau introduced this MC because of a request from officers of the Philippine International Sea Freight Forwarders Association (PISFA; since 2017, the association has been known as the Philippine Multimodal Transport and Logistics Association, PMTLAI). The MC standardised the terminology for services rendered and rates charged by the freight forwarders. It was intended as a guide for freight forwarders and as a protection for shippers from discriminatory and exorbitant charges made by the freight forwarders.

Recommendation. Remove guidance on rates.

3.3.2. Restrictions on operations

Minimum capital requirements for freight forwarders

Description of the obstacle. International freight forwarders face higher minimum capital requirements (PHP 2 million) than domestic freight forwarders (PHP 250 000), while NVOCC have a minimum-capital requirement of PHP 4 million. An international freight forwarder is defined by Philippine law as: a "local entity that acts as a cargo intermediary and facilitates transport of goods on behalf of its client without assuming the role of a carrier. It can also perform other forwarding services, such as booking cargo space, negotiating freight rates, preparing documents, advancing freight payments, providing packing/crating trucking and warehousing, engaging as an agent/representative of a foreign non-vessel operating common carrier (NVOCC)/cargo consolidator named in a master bill of lading as consignee of a consolidated shipment, and other related undertakings." A domestic freight forwarder is defined as: an "entity that facilitates and provides the transport of cargo and distribution of goods within the Philippines on behalf of its client." An NVOCC is defined as: an "entity, without owning or operating a vessel, providing a point to point service which may include several modes of transport and/or undertakes groupage of less than container load (LCL) shipments and issuing a corresponding transport document."

Harm to competition. The high minimum capital requirement raises the cost of entry in the market, discouraging potential entrants (especially smaller and foreign firms), which may reduce the number of market participants over time.

Policymakers' objective. It is unclear why the Philippines has such high capital requirements for freight forwarders and why the minimum capital requirements change depending on the types of freight forwarders, especially in relation to foreign NVOCCs. It is possibly implemented to protect consumers and creditors from risky and potentially insolvent businesses. By requiring investors to lock in a minimum amount of capital upfront, investors are likely to be more cautious about undertaking commercial opportunities. In other OECD competition assessments, such as *Competition Assessment Reviews: Tunisia* (OECD, 2019, p. 210[2]) and the OECD *Investment Reviews* series,[5] it has been noted that minimum capital requirements increase the cost of accessing the market and prevent operators from choosing a lower amount of share capital, even if this would be more suitable for the scale of their business. This particularly affects small-scale operators, operators that wish to provide services of lower value or range, and new companies. In general, 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, and not the assets available to cover debts and operating costs. In its report *Doing Business 2014: Why are minimum capital requirements a concern for entrepreneurs?*, the World Bank concluded that minimum capital requirements protect neither consumers nor investors and are rather associated with reduced access to financing for SMEs and a lower number of new companies in the formal sector (World Bank, 2014[9]). Commercial bank guarantees and insurance contracts are a better instrument for managing counterparty risks, and therefore should be the focus of any regulation seeking to promote a set minimum level of business certainty for users of maritime services. Changes to the legislative framework for these services in the Philippines would be better to address the policy objective of minimum capital requirements

International comparison. In Greece and France, for example, there is no minimum capital requirement for ship-classification companies, cargo-handling companies, charter-agent companies and freight-forwarding companies. Instead, legislators commonly impose minimum professional insurance coverage. In the OECD *Competition Assessment Reviews: Portugal*, the OECD recommended that Portuguese authorities remove minimum capital requirements imposed on cargo-handling operators, towing operators, freight forwarders and shipping agents in order to promote market entry and operational efficiency (OECD, 2018[10]). By lifting these financial criteria, market players can better adapt and reinvest their capital, increasing their competitiveness and promoting lower prices for consumers.

Recommendation. The OECD recommends to remove of requirements for a minimum share capital specific to the type of freight-forwarding activity and to apply the general regime regarding commercial companies.

Requirement to have a physical office

Description of the obstacle. Freight-forwarding companies are required to have a physical office in each area where the company wishes to do business. This is in addition to the general requirements of the Securities and Exchange Commission, which applies to all companies not only freight forwarders. First, the Securities and Exchange Commission requires a company to have a physical office before its certificate of registration as a company is approved (this applies to all companies, not only freight forwarders). In addition to this, in order to apply to the Department of Trade and Industry (DTI) for the specific accreditation to be a freight forwarder, the business must have an office in each area where it wishes to do business. In order to obtain this DTI accreditation, the applicant must comply with local-authority requirements, including the physical office requirements. Finally, to be accredited as a freight forwarder, the applicant must also file a copy of a mayoral permit, issued by the local government unit (LGU) in the area in which the applicant wishes to carry out its freight-forwarding business activities. The Local Government Code (LGC) provides that a business cannot operate within a city or LGU without a mayoral permit (otherwise known as the local business permit). In order to obtain a permit, an applicant is required to show that it has a physical office within the relevant LGU area. It can be required to submit copies of the lease contracts and photographs of the location to the local authority. The specific requirements of each LGU are contained in separate local ordinances.

Harm to competition. The requirement to have an office in each area where a freight-forwarding business wishes to operate substantially increases costs and may deter new market entrants. Freight forwarders act as intermediaries and so the requirement to have physical offices may be unnecessary.

Policymakers' objective. The objective of this requirement is not stated in the administrative order. Stakeholders explained that the physical office serves as a point of contact for regulatory authorities. In Philippine legal procedures, for example, a physical office is required for the service of summons. Also, a physical office enables easier verification of business operations and ensures access by Filipino law enforcement, if necessary. As a general policy, the Local Government Code (LGC) decentralises investment promotion and gives LGUs autonomy in this area. Businesses must work with LGUs in order to register and operate a business within the relevant local area. However, according to World Bank's *Doing Business 2019*, setting up a business in the Philippines is difficult with the country ranking 124 out of 189 (World Bank Group, 2019[11]). The role of LGUs and their significant independence is reported to increase these difficulties. Foreign investors may seek to operate only in special economic zones in order to avoid dealing with LGUs.

International comparison. It is a common practice internationally to require a business to have a physical office or commercial address when registering a business. For example, Malaysia requires an office or business address linked to the business licence, while Brunei Darussalam requires a single office. In Thailand, there is no multiple office requirement for freight forwarders, although multimodal transport operators do need a permit for each office.

Recommendation. The OECD recommends that accreditation for freight forwarders in the Philippines should be on a national level and only one mayoral permit should be required, in order to be accredited. Consequently, the applicant should only need to show proof of a single physical office in the Philippines.

Accreditation requirement for each physical office

Description of the obstacle. Freight forwarders must obtain separate accreditation for each branch office.

Harm to competition. The requirement to accredit each branch office substantially increases costs and may deter new entrants into the market.

Policymakers' objective. It is unclear why each branch office requires accreditation and why each one cannot simply be listed in the main application. The DTI has explained that the accreditation of freight forwarders in the Philippines was actually initiated by the industry in early 1980s because it saw the importance and benefit of official government recognition for companies, especially when dealing with foreign counterparts. At present, the DTI is reviewing the guidelines with the aim of streamlining requirements and is considering extending the validity of accreditation to three years from the current one year. The proposal of extending the accreditation of the main office to a company's branch offices is also under consideration.

Recommendation. The OECD recommends one of the following options:

1. Remove the authorisation procedure for branches.
2. Allow all offices to be accredited in one application, which would entail extending a main office's accreditation to all branches.

3.4. Warehouses

There is no general legal framework for the warehouse sector and there is no single government regulator. There are different applicable laws and regulations based on the type of activity and the entity operating the warehouse.

Customs bonded warehouses (CBW) are governed by the Bureau of Customs under the Customs Modernization and Tariff Act (RA 10863) and Bureau of Customs Administrative Order (CAO) No. 13-2019. Warehouses located in economic zones are governed by the Philippine Economic Zone Authority (PEZA),[6] an office attached to the Department of Trade and Industry under RA 7916 (as amended by RA 8748) and it's implementing rules.

Horizontal legislation is also relevant to the warehousing sector, especially in relation to foreign investment, including the 1987 Constitution and the Omnibus Investments Code of 1987 (Executive Order No. 226), as amended by Republic Act No. 8756. There are specific rules that regulate the warehousing of certain goods, such as rice. The OECD has not considered these specific regulations in its analysis. It identified six restrictive regulations for warehouses, but made no recommendations as the restrictions were justified by the policymakers' objective. For further details, please see Annex B.

3.5. Small-package delivery services

The main legislation affecting the small-package delivery service (SPDS) sector is the Republic Act No. 7354 ("Postal Service Act"). The requirements for granting a license are contained in DOTC's Department Circular No. 2001-01, which was later adopted by DICT through Department Order No. 2017-001 (the original licensing guidelines). The OECD understands that the earlier orders are no longer available to the public as the specific licensing requirements are currently under review.[7]

The OECD team identified five restrictive regulations in the SPDS sector and made four recommendations concerning participation in the market, minimum prices and creating a level playing field for all market participants.

3.5.1. Restrictions on foreign equity for express delivery services

Description of the obstacle. According to the Department of Information and Communications Technology (DICT), one of the registration requirements to provide express delivery services in the Philippines is a citizenship requirement allowing only Filipinos for single proprietorships, and imposes at least 60% Filipino ownership for legal persons. The OECD has been unable to verify whether this requirement will exist in the new rules currently under preparation (and not yet publicly available), but this requirement is likely linked to the classification of this activity (express transportation) as a public service and public utility and so will be subject to the 60% foreign ownership requirement.

Harm to competition. The provision favouring national operators is a barrier to foreign companies wishing to invest or operate in the Philippines.

Policymakers' objective. The foreign-equity restrictions limit foreign participation in the Filipino private courier service market.

Recommendation. Allow foreign participation in the market for express delivery services. If this requirement is linked to the interpretation of express delivery as a public service, the Public Service Act should also be amended.

3.5.2. Minimum prices for postal services

Description of the obstacle. The Postal Regulation Department (PRD) of DICT sets minimum rates for postal services including minimum rates for the delivery of small packages and letters. Maximum prices are not regulated. DOTC Circular No. 2001-01, currently under evaluation by DICT, describes the process for the calculation of minimum rates. DICT-PRD has stated that a revised regulation – likely to maintain the minimum-rates mechanism – would be released during the first half of 2019; to date, this regulation has not been made available. DICT-PRD told the OECD that it calculates the minimum rates "in co-ordination with PHLPost, the National Economic Development Authority (NEDA) and the Philippine Central Bank (Bangko Sentral ng Pilipinas)". In practice, these rates are determined by PHLPost and formally approved by DICT-PRD. They were last revised in 2014. Licensed service providers must comply with them and DICT-PRD can conduct inspections to monitor compliance.

Harm to competition. The imposition of minimum rates reduces productivity, efficiency and innovation by limiting sellers' ability to set their own prices for postal services and by preventing low-cost suppliers who may provide better value to consumers entering the market. Further, prices are currently set by a single market player (PHLPost).

Policymakers' objective. Minimum rates aim to protect PHLPost's market share as DICT claims to have "a duty to protect PHLPost". According to certain market participants, without these rates, PHLPost might not survive. PHLPost is already seen as uncompetitive, due to its inefficient systems and an incapacity to meet consumer expectations in terms of speed and quality of service provided.

International comparison. Viet Nam has a minimum-rates regime. In Australia, prices for postal services are unregulated and any requirement to notify prices applies only to ordinary letter services.

Recommendation. The OECD recommends two possible options.

1. Minimum prices for postal services including small packages and letters should be removed.
2. In the new Ministerial Circular currently under consultation, DICT should increase transparency around the mechanism used to calculate minimum rates, including the rationale for both the services and products covered by such minimum rates. Minimum rates should be based upon independent regulatory assessments, rather than on PHLPost's input.

3.5.3. Licences for courier services

Description of the obstacle. DICT is responsible for approving licences for courier services, but, along with its predecessor, has granted no new licences to small-package delivery service operators since 2006. This is the result of an unofficial moratorium introduced in 2006, and prolonged under DICT's authority beyond the "transition period".[8]

Harm to competition. DICT's suspension of the processing and approval of new licences prevents new players from entering the market.

Policymakers' objective. The initial moratorium appears to have been implemented due to the change of supervisory agency,[9] as well as the existence of a large number of licences in the Philippines at that time (according to DICT, between 130 and 200 licences). As a result, in practice, many licences that were granted to now "dormant companies" are traded on a secondary market, even though they are not transferable. In addition, approximately 50 to 70 players are operating without a licence. As of 1 December 2019, DICT has an online list of 110 authorized private express and "messengerial" delivery service (PEMEDES) or courier service providers.[10]

Recommendation. Grant new licences to every applicant for courier services that fulfils stated conditions.

3.5.4. Circumvention of legal requirement by some players in courier market

Description of the obstacle. Stakeholders claim that certain courier operators circumvent the requirement to operate with a licence. This seems to be especially the case with start-ups, new market entrants, and new delivery services operating in the e-commerce sector. DICT-PRD can issue cease-and-desist orders against service providers operating without a licence (Section 26 Postal Act). Stakeholders mentioned that even if operators are found not to have a licence, fines are not sufficiently high to deter this behaviour. Stakeholders explained that this is especially true for large companies.

Harm to competition. Unlicensed market players operating in the market will have lower costs compared to those who are going through the extensive and burdensome process of obtaining all the required accreditations and licences.

Policymakers' objective. As mentioned above, there is an informal moratorium on the granting of new licences.

Recommendation. The OECD recommends three cumulative recommendations for reaching level playing field for all market participants in the courier service market.

1. DICT should grant new licences to applicants who fulfil the stated requirements.

2. The fines for operating without the required licences should be increased.
3. The policing of companies operating in the market and enforcement actions should be strengthened.

3.6. Horizontal and others

The key pieces of legislation affecting the logistics sector horizontally are the Foreign Investment Act of 1991 (RA No. 7042); the Omnibus Investment Code 1987; the EO.No.65 promulgating the Eleventh Regular Foreign Investment List; Local Government Code; Public Service Act 1936; and the 1987 Constitution.

The OECD team identified the 11 restrictive regulations and made the 11 recommendations, concerning the following topics:

1. access to legislation, including the availability of online databases
2. foreign investment
3. the existence of minimum capital requirements
4. public procurement.

3.6.1. Access to legislation and regulatory quality

A clear regulatory framework is essential for competition as it reduces compliance costs and facilitates the entry of new players. Indeed, the codification, regular update and publication of legislation in the logistics sector is particularly beneficial for new entrants unfamiliar with national provisions, and small competitors, for whom compliance costs and administrative burdens are relatively more important than for larger companies.[11]

Access to legislation

Description of the obstacle. Access to logistics legislation is not organised in a user-friendly way. For example, on the Official Government Gazette website, certain pieces of legislation, which are no longer in force are not marked as such. Also, amendments to legislation are not incorporated into the original piece of legislation so market participants must already know about a particular amendment before searching for it. Further, some legislation is simply not published. Such shortcomings are reflected in the World Bank's Worldwide Governance Indicators shown in Figure 3.1. The regulatory quality estimate indicator captures the perception of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development. The Philippines score shows room for improvement, as revealed by the gap with both ASEAN member states (such as Brunei Darussalam, Singapore, Malaysia, and Thailand) and OECD countries (including Australia, Germany, and Japan).

Harm to competition. Difficulties in accessing logistics legislation creates legal uncertainty and increases costs for actual and potential market participants. It may also deter market entry.

Policymakers' objective. The OECD understands from stakeholders that certain logistics-related rules and regulations may not be available 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. The Anti-Red Tape Authority (ARTA) has stated that to make access to regulations more convenient for business owners and the public, "all business-related and business-affecting regulations from all government agencies will be stored on the online Philippine Business Regulations Information System (PBRIS). There will be no need to access each agency's website for its sector-specific regulations."

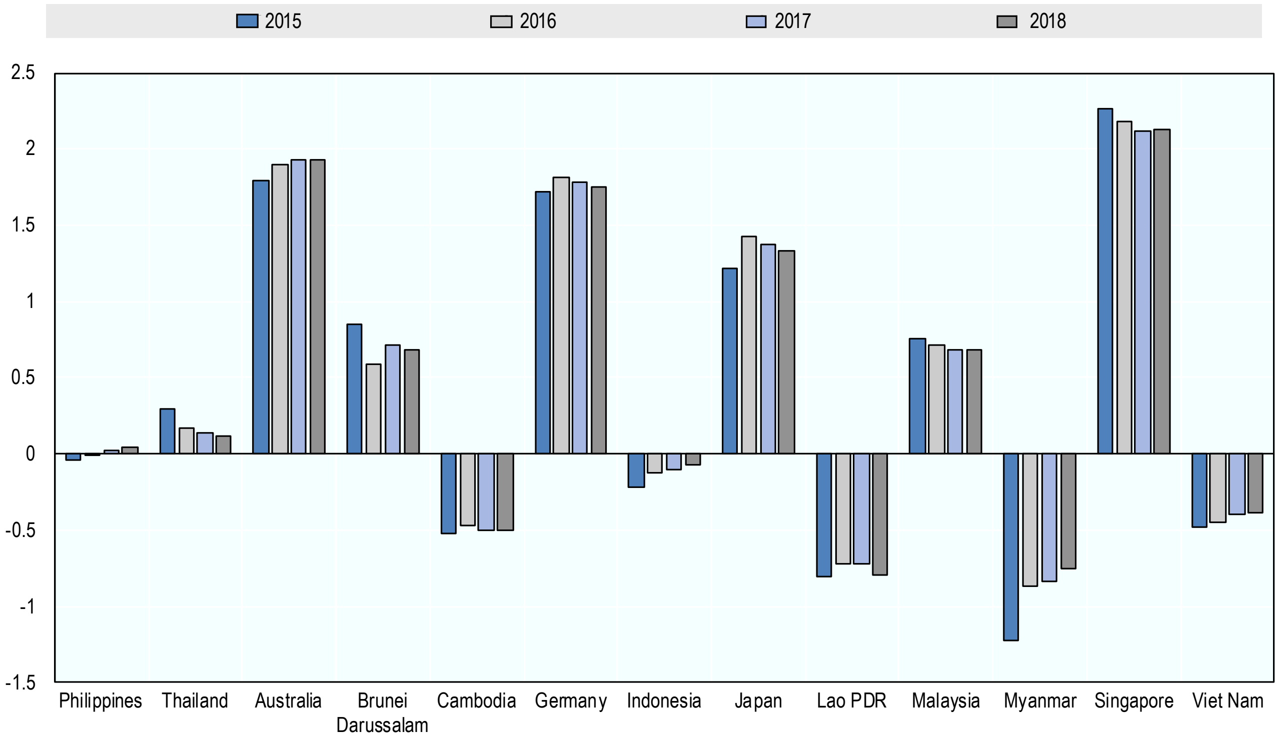
ARTA is mandated to "ensure the dissemination of and public access to information on regulatory management system and changes in laws and regulations relevant to the public by establishing the Philippine Business Regulations Information System", a web-based platform providing accessible information on business regulations issued by the Philippine government. Pursuant to this mandate, the Competitiveness Bureau of the Department of Trade and Industry, acting as the temporary secretariat of ARTA, launched the alpha version of PBRIS on 12 December 2018. Its primary function is to provide a centralised database of all business-related regulations issued by all offices and agencies of the Philippine government. The PBRIS is in theory accessible at pbris.arta.gov.ph, yet it remains inaccessible to the public due to ongoing development. The authorities hope to begin public access to the database by early 2020.

International comparison. In 2016, the Portuguese government launched the Simplex+ and the Revoga+ programmes, which aim to reduce administrative burdens and improve the quality of regulations. The Unilex project foresees that: "all new draft regulations are subject to a legislative consolidation test, and when possible new proposals for consolidation and unification of related legislation are adopted" (OECD, 2018, p. 35[10]). The Simplex+ I aims to reduce the legislative stock by identifying and repealing outdated and non-relevant legislation. In Singapore, the Attorney General's Chambers provide a free service called Singapore Statutes Online (SSO), which consists of a complete list of current and historical versions of legislation, including revised editions of pieces of legislation. In Australia, all national laws are published on the National Register of Legislation website. The latest consolidated version of the legislation is clearly marked as "in force – latest version". Users are able to "View series" to show all versions of the legislation in question and can also easily find any amending acts. Users can easily identify legislation currently in force, refer to previous versions (to know which law applied at a particular time), and can see which and when amendments were made. There are also links to related bills.

Recommendation. The OECD has four recommendations.

1. Authorities should revise all logistics legislation to include new amendments so that stakeholders can access a consolidated version of the relevant legislation. Alternatively, or until this is implemented, list the original version of legislation and then provide a link to any amendments.
2. Each logistics authority should publish the complete list of legislation it administers on its website along with the status of the legislation; any obsolete legislation should be marked as such.
3. Publish all regulations on the Philippine Business Regulations Information System (PBRIS).
4. Ensure updates are made on the Official Government Gazette website.

Figure 3.1. Regulatory quality estimate



Note: Lowest = -2.5; highest = 2.5.
Source: World Bank's Worldwide Governance Indicators.

Box 3.2. 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 process – 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 outcomes, which should be 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 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 economic, environmental and social effects into account
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.

Source: OECD, Recommendation of the Council on Improving the Quality of Government Regulation, https://legalinstruments.oecd.org/public/doc/128/128.en.pdf.

Box 3.3. World Bank's Worldwide Governance Indicators: The Regulatory Quality Estimate

The Worldwide Governance Indicators (WGI) aim to capture different aspects of governance across 200 countries. They include indicators on:

1. voice and accountability
2. political stability and absence of violence
3. governance effectiveness
4. regulatory quality
5. rule of law
6. control of corruption.

As data are based on a wide variety of sources, for each indicator researchers have used a statistical methodology known as an unobserved components model to standardise data and provide an aggregate indicator of governance as a weighted average of variables. This reflects possible imprecisions in measuring governance.

Regarding specifically the Regulatory Quality (RQ) indicator, it aims to capture "perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development". A country's score is an aggregate indicator, ranging from -2.5 (lowest score) to 2.5 (highest score).

Source: Kaufmann, D., A. Kraay & M. Mastruzzi (2011), "The Worldwide Governance Indicators: Methodology and Analytical Issues", Hague Journal of the Rule of Law, 3:220, www.dx.doi.org/10.1017/S1876404511200046.

3.6.2. Online digital applications

Description of the obstacle. 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 required to submit hard-copy applications with the relevant agency for each authorisation.

Harm to competition. The lack of digitalisation increases costs for logistics providers as they are required to compile a different hard-copy application for each authorisation and provide this to the relevant agency.

Policymakers' objective. The use of online application forms, for example, for licences facilitates the effective delivery of services, allows sharing of data across agencies, and ensures better data organisation.

Following stakeholder interviews, the OECD understands that most agencies are in the process of introducing electronic application-filing procedures. Project Repeal – the Philippine government's anti-red-tape initiative – has encouraged the digitalisation of all government functions.

International comparison. The majority of OECD countries allow online application procedures for transport- and logistics-related licences and authorisations. In the UK, a user-friendly online procedure for transport-operator licences (with fees payable online by credit card) is available, even if it remains possible to file a hard-copy application by post. Decisions are usually issued within seven weeks for online application and nine weeks for postal applications.

Recommendation. The OECD recommends allowing online applications and the continuation of digitalisation of all application procedures for logistics-related authorisations.

3.6.3. Limitation on foreign direct investment in the transport and logistics sector

Description of the obstacle. The Philippine constitution restricts foreign direct investment (FDI) in public utilities, imposing a 60/40 nationality requirement on the ownership of public utilities (known as an equity restriction). While "public utility" is defined neither in the Constitution nor the Public Service Act (PSA) 1936, the PSA does define public services and explains which types of public services require certificates of public convenience (CPC) to operate in the Philippines. Currently, logistics and transport services are classified as "public services" which are consequently interpreted as "public utilities".

Harm to competition. The provision is a barrier to foreign companies wanting to invest or operate in businesses that could be defined as public utilities in the Philippines, and so favours national operators.

Policymakers' objective. The 1987 Constitution adopts a policy of preferential treatment for qualified Filipinos in the granting of rights, privileges and concessions covering the national economy and patrimony (Philippine First Clause). The Constitution provides that authorisation for the operation of public utilities should only be granted to citizens of the Philippines or to corporations or associations whose capital is at least 60% owned by Filipinos. "Public utilities" have been interpreted as services essential to the general public and which involve a public-interest element. The purpose of the citizenship requirement is to prevent foreigners from assuming control of public utilities as this could be detrimental to the national interest. This specific provision implements an overriding economic goal of the 1987 Constitution: to conserve and develop the nation's patrimony and ensure a self-reliant and independent national economy effectively controlled by Filipinos.

International comparison. In Australia, there are no special foreign equity limits for logistics services. Logistics and transport are not considered "public utilities" and 100% foreign control is allowed. Transport is considered a "sensitive" sector, however, which creates a threshold (AUD 261 million) over which screening of the investor by the foreign investment review board occurs. This threshold is higher (AUD 1 134 million) for investors from countries with which Australia has FTA commitments and which are acquiring a substantial interest (at least 20%) in an Australian entity; this applies to investors from Chile, China, Japan, Korea, New Zealand, Singapore and the United States. Where required, foreign investment proposals are reviewed against the national interest on a case-by-case basis. The 1995 ASEAN Framework Agreement on Services (AFAS) provides a legal framework for each member state to liberalise services progressively and aims to eliminate restrictions to trade in services among ASEAN countries substantially. The ultimate objective is to allow ASEAN nationals to hold up to 70% equity participation in entities providing services. The Philippines has not yet implemented the liberalisation commitments regarding logistics.

Recommendation. Amend the PSA to exclude logistics and transport from public services. Remove provisions in any transport or logistics legislation that specify foreign equity requirements, due to the classification of the relevant transport or logistics services as public utilities. If logistics and transport are no longer considered public utilities, up to 100% foreign ownership would become possible. While full liberalisation is preferable, if the Philippines were to decide to implement foreign-equity restrictions in the sector, the OECD would recommend the progressive relaxation of foreign-equity limits towards the long-term goal of allowing up to 100% foreign ownership. A first step may be to implement the agreed changes towards the AFAS target of allowing 70% ASEAN foreign ownership in entities providing logistics services and then extending it to non-ASEAN nationals. In the long term, the Philippines should consider full liberalisation by allowing 100% foreign-ownership in entities providing logistics services.

3.6.4. CPC requirement for transport and logistics operators

Description of the obstacle. As mentioned in the restriction above and in sector-specific legislation, the Philippine Constitution restricts FDI in public utilities, imposing a Philippine ownership requirement for public utilities. This equity restriction means only Filipino citizens or associations or corporations whose capital is held 60% by Filipinos can be granted a franchise, certificate or authorisation to operate a public utility. Owners and operators for public land and rail transportation facilities and services are also required to obtain a CPC from the Department of Transportation's Land Transportation Franchising Regulatory Board (LTFRB), while maritime operators are required to obtain a CPC from MARINA because these services are classed as "public services". According to sections 15 and 16(a) of the PSA, CPC are granted by agencies authorised by law, such as the Maritime Industry Authority (MARINA) and LTFRB, to determine that the service and the business authorisation will promote the public interest in a proper and suitable manner.

Harm to competition. As logistics and freight transportation are defined as "public utilities" and "public services", operators require a CPC to operate, which restricts entry. CPC application processes are also lengthy and likely delay entry.

Policymakers' objective. "Public utilities" are services essential to the general public involving a public-interest element. Licencing requirements likely exist to ensure control over the operation of important public services and ensure that applicants are properly scrutinised. Bills amending the 1936 PSA have been filed in Congress, including HB 78 and SB 13, aim to remove logistics and freight transportation from the list of public utilities; none of these bills has been passed. Project Repeal, a Philippine government regulatory reform initiative, has recommended that the sector should not be considered as a public utility.

International comparison. In Australia, for example, logistics and transport are not considered public utilities. Transport is considered a "sensitive" business, however, creating a threshold for screening by the foreign investment review board (AUD 261 million) for countries with whom Australia does not have FTA commitments (otherwise, it is set at AUD 1.134 million).

Recommendation. The OECD recommends amending the PSA and any other relevant legislation to exclude logistics and freight transport as public utilities and public services. Remove any transport or logistics legislation dealing with the exact requirement and consequences of logistics and transport being a public utility and public service. Operators would then no longer to be required to obtain a CPC. A licensing procedure for such services, such as a general operational licence, would then need to be introduced to guarantee security of services.

3.6.5. Regular Foreign Investment Negative List

Description of the obstacle. The Regular Foreign Investment Negative List (RFINL) gives the investment threshold for foreign investment in specific sectors. It implements the constitutional restrictions on foreign investment. According to RFINL A: "Foreign ownership is limited by mandate of the constitution and specific laws" to 40% equity; operation of public utilities is also listed. Specific sectors are not listed, simply those covered by the "public utilities" definition. As freight transport and logistics are currently considered public utilities, they are subject to the RFINL A 40% foreign-equity restriction.

Harm to competition. As logistics and freight transportation are considered "public utilities", they are subject to foreign-equity restrictions of 40%. This is a barrier to entry for foreign firms, and so favours national operators. Also, the fact that restrictions are listed in different legislation and regulations negatively impacts foreign investors' ability to assess the investment regime and the impact on their businesses and adds to administrative costs. The lack of transparency also means that investors are required to search for information, which increases costs.

Policymakers' objective. This provision likely aims to protect national businesses not ready to compete with foreigners and to allow them to reach a certain level of competitiveness before the market is opened to foreigners. The RFINL sets out investment areas or activities that are open to foreign investors or reserved to Filipino nationals.

Recommendation. The OECD recommends that the RFINL should be amended to exclude freight transport and logistics from the definition of "public utilities", following their exclusion as public services under the PSA, as discussed above.

3.6.6. Limitation on foreign executives and directors

Description of the obstacle. All executives and managing directors of a public utility must be Filipinos. The number of non-Filipinos on the boards of directors of corporations or associations engaging in partially nationalised activities are restricted. Examples of sectors considered as partially nationalised activities are advertising (30% limit on foreign ownership), public utilities (40% limit), and those listed in the 11th RFINL with a specified percentage allowed for foreign ownership. Wholly nationalised industries are those for which 100% Filipino ownership is required, such as mass media. Under Article XII, Section 11 of the Constitution, foreigners may be allowed as directors of a partially nationalised industry, but only up to the extent of their equity participation. For example, in a five-member board, a public utility with 40% foreign ownership can have two foreigners sitting on the board. For wholly nationalised industries, directors must be 100% Filipino as no foreign ownership is allowed. An additional restriction is that all executive and managing officers of a public utility must be Filipino citizens. This is independent of any foreign ownership.

Harm to competition. The provision is related to the general 60/40 foreign equity restriction and limits who companies can appoint as their executives and managing directors. This may mean that the most qualified or suitable candidate cannot be appointed as companies must discriminate based on nationality. This would likely restrict foreign investment as investors often want to be represented in the highest leadership positions of a company.

Policymakers' objective. The Constitution adopts a state policy of giving preference to qualified Filipinos in the granting of rights, privileges and concessions covering the national economy and patrimony. The state is also mandated to regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

International comparison. In Brunei Darussalam, one of the two directors of a company or, where there are more than two, at least two, shall be "ordinarily resident" in Brunei, but are not required to be Brunei nationals. Guidelines provide that an ordinarily resident is a person physically present or employed (other than as a company director) in Brunei Darussalam for at least 183 days in the year preceding the assessment. In Australia, there is no rule that the majority of the board of directors of a company must be Australian nationals, nor that managing directors must reside in Australia or be Australian nationals (Part 2D.3 Section 201J, Corporations Act, 2001). However, if a company only has one director, he or she must ordinarily reside in Australia. If a company has more than one director, at least one or two of the directors (two in the case of public companies) must ordinarily reside in Australia, but there is no majority requirement (Part 2D.3, Section 201A).

Recommendation. The requirement of 100% Filipino executive and managing officers in public utilities should be eased to allow the possibility of hiring foreigners in high managerial positions in order to attract foreign investment. Restrictions based upon citizenship should be replaced by residency requirements.

3.6.7. Preference for domestic firms in public bidding

Description of the obstacle. Where foreigners are allowed to participate in public bidding, domestic firms are preferred with contracts awarded to the lowest domestic bidder provided its bid is no more than 15% in excess of a foreign bid.

Harm to competition. The provision discriminates against foreign bidders, and so prevents market entry.

Policymakers' objective. The provision favours national firms and so encourages their development. In line with the Constitution, which provides for the "promotion of Filipino labour, domestic materials, and locally produced goods", the Republic Act No. 9184, has a general principle of preferring "Filipino nationals in the award of government procurement contracts".

Recommendation. Eliminate preference for nationals where foreigners are allowed to participate in procurement processes to ensure that the most competitive bid is chosen. If necessary, implement a transition period. Direct subsidies could be considered if the aim is to help and develop national industries.

3.6.8. Minimum-capital requirements

Description of the obstacle. Generally, foreign investors face a minimum-capital requirement of USD 200 000, although there is a lower requirement of USD 100 000 for investors bringing technology or employing more than 50 workers. Foreign-owned companies that export more than 60% of their output or domestic purchases are exempt from these capital requirements. Section 12 of the Revised Corporation Code (RA 11232) provides that "stock corporations" are not required to have minimum capital stock, except as otherwise provided by special law.

Harm to competition. The high minimum-capital requirements for foreign investors, raises the cost of entry in the market, discouraging potential entrants (especially smaller foreign firms), which may reduce the number of participants over time. Foreign firms face high capital requirements and so a higher barrier to entry than domestic firms, which amounts to discrimination.

Policymakers' objective. The high capital requirements for foreign firms may be in place to promote local SMEs. Further, the capital requirements are likely implemented to protect consumers and creditors from risky and potentially insolvent businesses. By requiring investors to lock in upfront a minimum amount of capital, investors were expected to be more cautious about undertaking commercial opportunities. These requirements are most likely to affect non-capital-intensive industries, such as the services industries.

International comparison. *OECD Investment Policy Reviews: Philippines 2016* notes that the minimum capital requirement of USD 200 000: "is substantially greater than capital requirements for both domestic and foreign investors in OECD countries and large developing economies, such as China, Indonesia, India and Russia. The Philippines clearly stands out as an outlier in this respect, including compared to countries with similar income per capita levels." The PCC noted that: "credit recovery can be protected through measures other than minimum capital requirements." Australia, for example, imposes no general minimum-capital requirements for foreign investors.

Recommendation. The OECD recommends aligning the minimum capital requirements for foreign investors with those of domestic investors.

3.6.9. No single dedicated investment law

Description of the obstacle. The Philippines has no single, dedicated investment law that comprehensively governs both domestic and foreign investment. Numerous other laws and regulations apply to investment activities, be they sectoral or with a more general scope, which creates a complex web of numerous, sometimes overlapping laws. The two main pieces of legislation are the Omnibus Investment Code 1987 and the Foreign Investment Act 1991. They are complementary, but their consolidation could improve transparency and clarity of the legislation governing investment.

Harm to competition. Difficulties in accessing investment legislation creates legal uncertainty and increases costs for actual and potential market participants.

Policymakers' objective. The majority of ASEAN member states have adopted a single dedicated investment law. During stakeholder consultation, the PCC agreed that such an investment law should be implemented for coherence and easy access, improving efficiency, lowering costs and even possibly decreasing uncertainties and risk when investing in the Philippines. It explained that infant industries, SMEs, and start-ups would likely thrive in this environment, which would nurture entrants and promote competition. ARTA explained to the OECD that it will include foreign investment as a classification in the PBRIS, so as to provide foreign investors easy access to regulations that affect their businesses.

Recommendation. Implement a single dedicated investment law. Any restrictions on foreign investment should be easily accessible, so that even if foreign investment restrictions are governed by different laws or regulations, investors should be able to go to a single place to see all applicable foreign investment restrictions in their sector. Such transparency will encourage investment. The OECD supports the inclusion of foreign investment in the PBRIS.

3.7. International agreements

The Philippines has concluded a number of multilateral agreements with other countries on international road transport; it is a co-signatory of the Geneva Convention on Road Traffic (1949), the Protocol on Road Signs and Signals (1949), and the Intergovernmental Agreement on the Asian Highway Network (2016).

In relation to maritime transport, the Philippines is a signatory to various conventions of the International Maritime Organization. In 2012, the Philippines signed the Agreement on Maritime Transport between the Governments of the Member Countries of the Association of Southeast Asian Nations and the Government of the People's Republic of China.[12] The agreement applies to the international maritime cargo and passenger transport between the ports of the ASEAN member states and China and requires each contracting party to grant the vessels of the other contracting party, their crew members, passengers and cargoes on board the treatment no less favourable than that granted to vessels of a third country in regard to access to ports open to international maritime traffic; stays and departures in ports; use of port facilities for cargoes and passengers transport, as well as regarding the access to any services and other facilities available in ports; and the collection of fees and port charges.

In addition to such international agreements, the Philippines has signed several ASEAN-wide regional agreements. There are three ASEAN framework agreements on transport facilitation: the ASEAN Framework Agreement on the Facilitation of Goods in Transit (AFAFGIT), the ASEAN Framework Agreement on Multimodal Transport (AFAMT), and the ASEAN Framework Agreement on the Facilitation of Inter-State Transport (AFAFIST).

In 2004, the heads of state and governments of all ASEAN countries signed the ASEAN Framework Agreement for the Integration of Priority Sectors.[13] The purpose of the agreement was to identify measures, with precise timelines, that would enable the progressive and systematic integration of such priority sectors within ASEAN. From the outset, logistics was not, however, included within the 11 priority sectors.[14] In 2006, the ASEAN Economic Ministers decided to add logistics as the 12th priority sector and developed a

Roadmap for the Integration of Logistics Services, adopted in 2007, and which included specific measures to create an ASEAN single market "by strengthening ASEAN economic integration through liberalisation and facilitation measures in the area of logistics services".[15]

Alongside the need for the Philippines to implement its obligations under regional and international agreements, the OECD team identified one specific recommendation, concerning the national single window initiative, TradeNet.

3.7.1. National single window

Description of the obstacle. Under the current system, operators involved in cross-border transactions are required to apply for import permits with different organisations. Most applications must still made in person and not electronically. TradeNet aims to allow operators to submit a single electronic application, but is yet to be implemented.

Harm to competition. The requirement to apply for various import permits with different organisations is an administrative burden and places the Philippines at a competitive disadvantage (due to increased costs) compared to other countries where electronic applications and single windows exist for customs procedures.

Policymakers' objective. According to stakeholders, the ASEAN Single Window Agreement for customs services (in force 9 December 2005, ratified 1 August 2017) has yet to be implemented but was pilot tested in May 2019. The ASEAN Single Window (ASW) is a regional initiative connecting and integrating National Single Window (NSW) policies of ASEAN member states. Its objective is to expedite cargo clearance and promote ASEAN economic integration by enabling the electronic exchange of border documents between ASEAN member states. TradeNet is its Philippine equivalent.

International comparison. Indonesia, Malaysia, Singapore and Thailand are now using the ASW to exchange electronic certificates of origin. Once the Protocol for the Legal Framework to Implement the ASEAN Single Window is fully ratified, electronic certificates will be used for assigning preferential tariff rates under the ASEAN Trade in Goods Agreement (ATIGA) and further expedite the customs clearance of goods between ASEAN member states participating in ASW.

Recommendation. Activate TradeNet and make it operational as soon as possible.

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[2] See www.portcalls.com/ctap-suggests-ways-antioverloading-law-viable/.

[3] See page 236 of the *OECD Investment Policy Reviews: Philippines* report

[4] See, in particular, speakers' interventions at the 37th meeting of the ASEAN Maritime Transport Working Group. For a summary, see https://safety4sea.com/asean-called-to-cooperate-for-the-establishment-of-a-single-shipping-market.

[5] See, for example, *OECD Investment Policy Reviews: Lao PDR* (2017), www.oecd.org/investment/countryreviews.htm.

[6] According to PEZA's list of activities eligible for PEZA Registration and Incentives, "logistics and warehousing services" refer to the "(a) operation of a warehouse facility for the storage, deposit, safekeeping of goods for Philippine Economic Zone Authority (PEZA)-registered Economic Zone Export Manufacturing Enterprises, and or (b) importation or local sourcing of raw materials, semi-finished goods for resale to – or for packing/covering (including marking/labelling) cutting or altering to customers' specification, mounting and/or packaging into kits or marketable lots for subsequent sale to PEZA-registered Export Manufacturing Enterprises for use in their export manufacturing activities, or for direct export, or for consignment to PEZA-registered Export Manufacturing Enterprises and eventual export. Eligible firms shall qualify for registration as 'Economic Zone Logistics Services Enterprise'."

[7] DOTC Circular No. 2001-01 (Rules and Regulations in the Processing, Hearing and Adjudication of Applications for Authority to Operate Private Express and/or Messenger Delivery Service, and in Investigation of Complaints in connection with the Operation of such Services). As of December 2019, consultations on the revision of the postal service rules were ongoing. See https://dict.gov.ph/extension-notice-conduct-of-consultations-on-revising-and-updating-the-postal-service-rules-and-regulations.

[8] Section 19 of the DICT Act prescribed a transition period of six months; this should have expired on 23 November 2016.

[9] Until 2015, the Department of Transportation and Communications (DOTC) had the power and authority to regulate courier services under Section 25 of the Postal Service Act and Presidential Decree No. 240. In 2015, the DICT Act created the Department of Information and Communications Technology (DICT) and transferred the power and authority to regulate courier services to the Postal Regulation Division of DICT (DICT-PRD).

[10] See https://dict.gov.ph/list-of-authorized-pemedes-or-courier-service-providers-2019/.

[11] OECD Regulatory Policy Outlook 2015 (p.219) defines 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 and storage, but NOT including the capital costs of measures taken to comply with the regulations, nor the costs to the public sector of administering the regulations."

[12] See https://asean.org/?static_post=agreement-on-maritime-transport-between-the-governments-of-the-member-countries-of-the-association-of-southeast-asian-nations-and-the-government-of-the-people-s-republic-of-china.

[13] For the full text of the agreement, see www.parliament.go.th/aseanrelated_law/files/file_20170808165335_txtattactEN_.pdf.

[14] The priority sectors included in the ASEAN Framework Agreement for the Integration of Priority Sectors were: agro-based products, air travel, automotive, e-ASEAN, electronics, fisheries, healthcare, rubber-based products, textiles and apparels, tourism, and wood-based products.

[15] See https://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/services/logistics-services/.

Annex A. Methodology

Stage 1: Mapping the sectors

The objective of Stage 1 of the project, which started in the second half of 2018, 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 Philippine 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, 96 pieces of legislation were identified.

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. In November 2018, the OECD team conducted a fact-finding mission to Manila to meet 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.

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 project 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 Competition Division at 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 team compiled a list of all the provisions that answered any of the questions in the checklist positively. The final list consisted of 95 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. It also analysed summary statistics on the main indicators of the state of competition typically used by competition authorities, especially information on the market shares of the largest players in each sector. 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, 2017.

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*. Interviews 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 preliminary 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 report makes 76 recommendations.

Annex B. Legislation screening

Road freight transport

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
1	LTFRB MC 2017-004 (LTFRB Citizen's Charter), MC 2017-027 Implementing Guidelines for Garages under Department Order No. 2017-011 (Omnibus Franchising Guidelines).	LTFRB MC 2017-004, LTFRB Citizen's Charter pp.31-36.	Road freight operators, also known as trucks for hire, are required to obtain a certificate of public convenience (CPC) to operate. To be issued with a CPC or at first, with a provisional licence, applicants must satisfy various requirements and submit a number of documents to the Land Transportation Franchising and Regulatory Board (LTFRB). Applicants must, for example, prove public need for the service. Trucks for hire are required to show a notarised hauling contract(s) showing their area of operation, the number of units to be authorised and the duration of contract as well as proof of a garage. They must also provide various authorities to operate, including the authority to operate in ports. It is the OECD's understanding that the LTFRB undertakes an economic needs test on the basis of the documents submitted.	Requiring that a new entrant in the road freight operator market already have a hauling contract, a garage, all vehicles and corresponding comprehensive insurance, even before they have the right to operate, significantly raises the cost of entry and decreases the likely number of suppliers. Concluding a hauling contract, buying or leasing a garage and proving the existence of all vehicles before becoming operational may be risky for applicants, given that a licence may not be granted, and this would mean that the applicant would incur costs that cannot be recovered.	The approval of a CPC for trucks for hire involves a so-called economic-needs test, meaning that the LTFRB will make a judgement on the economic need for the proposed service, according to the evidence provided by the applicant. The requirement for a hauling contract forms part of this test. To the best of the OECD's knowledge, there are no further regulations or guidelines explaining the economic-needs test. The requirement for a garage is likely required, in part, to avoid traffic congestion. For example, it is provided in the Citizen's Charter that for trucks-for-hire (TH) entering Metro Manila need to show "proof of garage or authority to use garage within Metro Manila to avoid traffic congestion".	1) Remove the economic-needs test for the CPC application process. Whether or not the services proposed by an applicant are required should be determined by the market and not by the LTFRB. 2) Remove the requirement to provide documentary evidence of a haulage contract and garage before a CPC or prior provisional licence is granted. Such evidence, if at all required, should only be required after the licence is granted or after the applicant has started its business. 3) Issue clear guidelines about the application requirements.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			Further, in order to obtain this licence to operate, an applicant must provide proof of a garage. In summary, before an applicant is authorised to operate as road freight operator, it is required to provide: 1) A valid and existing hauling contract 2) A sketch or the dimensions of the garage and the corresponding contract or lease 3) Proof of existence of all vehicles, by submitting the certificates of registration (CR) and official receipt (OR) of registration (both in the name of the applicant), as well as a chassis stencil and motor numbers. The applicant must have insurance for all units.		International comparison None of the countries in the top 20 of the World Bank's Logistics Performance Index, including Australia, Singapore and Germany, require a CPC equivalent, nor is there any licencing requirement that involves an economic-need test.	
2	Memorandum Circular 2012-022 (Provisional authority), MC 2014-008, MC 2017-006.	For the provisional authority: Memorandum Circular 2012-022 (Article 2,3,4)	In order to apply for a provisional trucks-for-hire "authority" (while waiting to obtain an authority to operate as a road freight operator) the applicant is required to provide the same documents as those required for the trucks-for-hire transport service licence, as the application for a provisional licence must be made at the same time as the application for the actual licence to operate. The applicant is therefore required to provide: 1) a valid and existing haulage contract; 2) a sketch or the dimensions of garage and the corresponding contract or lease. The terms for	Requiring a new entrant to already be in possession of a haulage contract, garage, vehicles and the corresponding comprehensive insurance, before it has the right to operate even provisionally may prevent new operators from entering the market as these requirements significantly raise entry costs. It is also risky for an operator to meet these requirements before becoming fully operational as it may not even be	The award of a permanent CPC licence for trucks for hire involves a test that requires the LTFRB to make a judgement on the economic need for the proposed service, according to the evidence provided by the applicant. The requirement for a haulage contract forms part of this test. To the best of the OECD's knowledge, no further regulations or guidelines explaining the economic-need test exist. The requirement to own or rent a garage is likely aimed at preventing traffic congestion.	1) Remove the economic-need test during the CPC application process. Whether the services proposed by the applicant are required should be determined by the market, not the LTFRB. 2) Remove the requirement to provide documentary evidence of a haulage contract and garage before the issuance of a provisional licence. Such evidence should only be required after the provisional licence has been granted, perhaps by introducing a two-step process, or after the applicant has started its business.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			garage and haulage contract are not defined in Memorandum Circular 2012-022. The applicant must also prove the existence of all vehicles, by submitting their certificates of registration (CR) and official registration receipt (OR), both in the name of the applicant, as well as a stencil of the chassis and motor numbers. The applicant must also have insurance for all units. A provisional licence cannot be obtained if these documents are not provided, according to Article 4 of MC 2014-008.	granted a licence.		3) Issue clear guidelines about any application requirements.
3	Memorandum Circular No. 2017 - 027 Implementing Guidelines for Garages under Department Order No. 2017-011, otherwise known as the Omnibus Franchising Guidelines	Article II	To obtain a CPC for a trucks-for-hire transport service, an applicant is required to provide several documents, including a sketch or dimensions of its garage and the corresponding contract or lease. Article 2 of Memorandum Circular No. 2017-027 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. There is also the requirement that at least 1 assistant and helper be available for every 10 vehicles.	New entrants must own or hold a lease on a garage (which complies with these guidelines) before they have the right to operate; this seems excessive and overly burdensome. Such requirements may prevent new players from entering the market as they significantly raise the cost of entry and require operators to invest heavily before being guaranteed a permanent operating licence. The garage requirement itself may prevent smaller players from entering the market. The OECD	The requirement to own or rent a garage is likely aimed at preventing traffic congestion. The specific requirements for each garage likely aim to ensure proper maintenance of vehicles and so improve safety. During stakeholder consultations, stakeholders citing Section 5 of RA 11032, suggested that the garage requirement, which poses high start-up costs and is a barrier to entry, should be subject to a cost-compliance analysis and highlighted the need to review the corresponding regulations, which it deemed burdensome.	Remove the garage requirement for obtaining a CPC for a trucks-for-hire transport service. Applicants should only be required to show proof of sufficient parking space, to prevent traffic congestion. Freight vehicles do not need their own maintenance garages as they are already required to comply with roadworthiness standards, and should therefore be able to outsource any repair and maintenance work.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
				understands that the mechanic and assistant must be available in each garage, indicating that this work cannot be outsourced (or that there is a limit on such outsourcing).	The Board of Investments (BOI) supported the recommendation to allow the outsourcing of services in order to support new entrants, but stressed that measures should be undertaken to ensure that there is indeed an allocated parking space for the declared vehicles.	
4	Memorandum Circular 2012-022 (as amended by MC 2017-006).	Article 7	A provisional licence to operate a truck business is granted for 3 months and can be extended once for a further 3 months if "compelling reasons or a good cause" can be shown for a further extension (see MC 2017-006). The regulations do not, however, provide the grounds for an extension or any criteria upon which the request is judged. Applicants request the extension and then it "may be allowed". Furthermore, "compelling reasons" and "good cause" in relation to an application for a further extension are not defined. According to market participants the licencing process to be granted a CPC from the LTFRB can take up to 2 years.	Provisional licences can be granted for up to 6 months, but this may not be enough time to receive the permanent licence (which can take up to 2 years). A gap between the expiry of the provisional licence and the grant of the permanent licence could delay market entry. No rules or regulations protect applicants from a situation in which the LTFRB is slow in granting a permanent licence. The OECD understands that the LTFRB's failure to act on a complete application (one for which all documentary requirements have been provided) during the initial and subsequent provisional authority period, could be seen as a "compelling reason" or "good cause". However, given that the terms are not defined and there are no clear	The LTFRB's full board must assess and approve the application. (MC 2012-022). MC 2017-006 increased the extension period to 3 months, from 2 months in the original 2012 MC. Section 9 of the Philippine Shippers' Bureau Administrative Order No. 06 Series of 2005-09 is an example of automatic accreditation in Philippine law. The provision provides that a freight forwarder's "application shall be processed (including approval or denial) within 21 working days reckoned from the date it is deemed filed. After said period if no action has been taken on the application or the processing thereof has not been completed, the application shall be deemed approved and the applicant shall be entitled to the issuance and release of a Certificate of Accreditation upon payment of the Accreditation	Option 1) Maintain the two-stage licencing process: a) an applicant is granted a provisional licence to operate. Applicants then have a period of 4 months to provide any documentary requirements that would be otherwise burdensome to provide at the outset b) once all documents have been received, the LTFRB has a maximum number of days to grant the permanent licence. This should be a statutory time limit and the accompanying legislation should provide for automatic accreditation: once the time limit has passed, the application for permanent licence should be deemed granted. This is in line with a proposal put forward by the BOI, during stakeholder consultation. Option 2) Remove the provisional licence so that applicants only apply for a single and final licence. Strict statutory time limits should be imposed on both parties, for the provision of documents and for the

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
				regulations on this process, the LTFRB seems to have a large amount of discretion, which could lead to discrimination between different market participants. It might also lead to uncertainty as potential new entrants cannot evaluate the time it will take to obtain a licence.	Certificate Fee". Stakeholders explained that if the LTFRB was slow to rule on applications, the RCourt rules of the Philippines provides recourse to a petition for mandamus, which, if granted, will require the public official concerned to act on an application. However, that OECD was informed that this process can take years. The other option available to applicants would be to file an administrative case against the officials involved in the approval process. The OECD was told, however, that this process is not entirely reliable and that in practice, applicants avoid provoking approving authorities. During stakeholder consultation, the BOI proposed that the "request for authority to operate (license) be initially issued with a provisional authority that should be valid for a certain period (e.g. 6 months). The applicant during the said period must prepare/accomplish the documentary requirements (e.g. garage, hauling contract, etc.) within 4 months in order to provide ample time for LTFRB to process/approve the application within the required number of days (21 working days). Otherwise, the application shall	time frame on the decision to grant a licence. Legislation can provide for automatic accreditation when a decision is not made within the statutory time limit *and* the dismissal of an application, if documents are not provided by applicants within a stated time limit. This would increase the efficiency of the process.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
					be deemed approved as provided under Section 9 of the Philippine Shippers' Bureau Administrative Order No. 06 Series of 2005-09. The said section provides that if an application is submitted and the statutory time lapses, the application shall be deemed approved and the applicant shall be entitled to the issuance and release of Certificate of Accreditation upon payment of the Accreditation Certificate Fee.	
5	LTO Memorandum of 29 February 2016, guidelines on the implementation of the 2016 LTO Citizens' Charter	LTO Citizens' Charter, pp.64-66	The LTO requires that the motor-vehicle registration for all vehicles is renewed annually. One of the requirements for renewing the registration of "for hire" motor vehicles is that they must provide the vehicle's "franchise confirmation" (LTO Citizens' Charter, p.64). Franchise confirmation is issued by the LTFRB, which is involved in the motor-vehicle registration process as it must "confirm" that the applicant holds a certificate of public convenience (CPC) in order for the LTO to grant the authorisation. The OECD understands that the applicant must first obtain confirmation from the LTFRB of its CPC and then provide this information to the LTO in its application for renewal. Under the LTFRB Citizens' Charter (see LTFRB Memorandum Circular	The requirement on trucks for hire to renew their motor-vehicle registration annually is an administrative burden, specifically, the requirement for applicants to obtain confirmation of the vehicle's CPC from a separate agency (LTFRB).	The imposition of such an obligation proves that the applicant continues to hold a valid CPC and is therefore still eligible to operate as a truck for hire. DOTr Department Order No. 2010-18 (Creation of Franchise Confirmation Uploading Facility) mandates the establishment of an online database of LTFRB franchisees, available to LTO for confirmation purposes.	The OECD supports the initiative mandated under DOTr Department Order No. 2010-18. This should be implemented so that an online database or system is established to allow the LTO to undertake the CPC confirmation process directly without the need for the applicant to consult LTFRB separately. The OECD supports the initiative mandated under DOTr Department Order No. 2010-18.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			No. 2006-02, as amended by Board Resolution No. 13, Annex "A-1," Series of 2016), a franchise verification report may be obtained from the LTFRB for a fee of PHP 40 and issued 30 minutes to 2 hours after the filing of the relevant application form.			
6	PPA Administrative Order No.08-96 (19.04.1996) as amended by PPA Administrative Order No 07-2013 (27.12.2013)	NA	Trucks for hire are required to obtain an annual permit if they wish to provide services for port-related transportation. Currently, trucks for hire are required to obtain licences and authorisations from the LTO (vehicle registration), LTFRB (CPC), LGU (mayoral permits), Bureau of Customs, PPA, and, if relevant, the PEZA.	The requirement to obtain a permit in order to provide port-related transportation constitutes a barrier to entry. Truck-for-hire companies cannot quickly respond to demand from port businesses if they do not have this permit as they must be registered with PPA. Permits restrict entry into the market, and so can limit the number of suppliers and increase entry costs for potential entrants.	The aim of this provision is to control port activities and safety. After consultation, stakeholders appear to agree that it would be preferable to include all licencing processes and permits into a single licence. ARTA emphasises that it encourages agencies to work together and to take a whole-government approach, pursuant to RA 11032. It explained that Section 13 of RA 11032 mandates that the Department of Information and Communications Technology (DICT) implement an Interconnectivity Infrastructure Development Programme to improve interconnectivity between and among non-governmental authorities (NGA) and local government units (LGU).	1) Separate port-related activity permits should be removed. Any considerations of port safety and control should be taken in account in the general licencing process, if the applicant wishes to operate in ports (the applicant should make this declaration in its application). 2) All licences and permits required for trucks for hire should be grouped into a single application to a single agency.
7	RA 7916	Section 2(p)	Truck-for-hire companies are required to be registered with and have accreditation from PEZA to be able to carry out business with PEZA-registered entities within a Philippine Economic Zone (PEZ).	The requirement to be accredited with and licenced by PEZA in order to do business with PEZ-based businesses constitutes a barrier to entry. Truck-for-	The provision for the registration and accreditation of truck-for-hire vehicles and companies working with PEZ-based companies is likely required in order to control activities in the PEZ and ensure	1) Separate PEZ-related activity registration and accreditation requirements should be removed. Accreditation and registration for operation in PEZ should be taken into account during the general

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			This registration is done with the PEZA Service Registration Unit.	hire companies cannot quickly respond to demand from PEZ-based businesses if they are not already registered with PEZA. Permits can restrict entry into the market, limit the number of suppliers, and increase entry costs for potential entrants.	that such companies are aware of their obligations when working there (see, RA 7916, and the Rules and Regulation adopted by PEZA). Stakeholders agree that instead of having several licencing processes and permits, it would be preferable to include all in a single licence. ARTA emphasised that it encourages agencies to work together and to take a whole-government approach, pursuant to RA 11032.	licensing process (if desired by the applicant). 2) All licences and permits required for trucks for hire should be grouped into a single application to a single agency.
8	Memorandum Circular 2018-007: Non-acceptance of applications for TH Services with units more than 15 years old pursuant to Department Order No 2017-009.	DOTr Dept. Order 2017-009, Section A; LTFRB MC 2018-007	Trucks aged over 15 years are banned from the market for trucks for hire as they are not able to obtain a CPC. According to MC 2018-007, the LTFRB has decided that from 30 June 2020, it will no longer renew CPCs for existing trucks for hire; it already no longer awards new CPCs to trucks aged over 15 years. CPCs are usually valid for five years, and until recently if a truck was approaching 15 years, LTFRB's practice was to renew the CPC for one year. The LTFRB issued MC 2018-007 (Non-acceptance of applications for TH services with units more than 15 years old pursuant to Department Order no. 2017-009), which extends the moratorium so that	The age limit removes from the market companies using trucks more than 15 years old. This could potentially affect smaller competitors unable to invest in the renewal of their fleet. Currently, incumbents and new players are treated differently. New entrants who apply for a CPC are not allowed to use a truck that is more than 15 years old, while those with existing CPCs can. This discriminates in favour of incumbents. The OECD notes, however, that this discrimination will end after	The initiative was implemented to address safety and environmental concerns. In MC 2017-009, it was stated that the "roadworthiness of bus type or truck for hire units cannot be determined with sufficient accuracy which is vital in ensuring the safety and convenience of our commuting public". According to Confederation of Truckers Association of the Philippines (CTAP), most smaller competitors in the truck-for-hire market use units more than 15 years old. CTAP also explained that most trucks in the Philippines are bought second-	Rather than implementing the ban on vehicles more than 15 years old, introduce roadworthiness standards as soon as possible. Such roadworthiness standards should address both environmental and safety concerns. Given the importance of the policy objective, truck operators may need a transition period to comply with the new standards. Direct subsidies could be used to encourage the renewal of fleets with compliant vehicles. These should be applied in an open, transparent and non-discriminatory manner.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			trucks for hire with existing CPCs and pending applications will not need to comply until 30 June 2020. According to news sources, this practice has now been abandoned. The OECD has been unable to confirm this, but does note that the LTFRB has issued MC 2018-007, which extends the moratorium so that trucks for hire with existing CPCs and pending applications will not need to comply until 30 June 2020. Further, the same MC provides for the establishment of motor vehicle inspection units (MVI). The OECD understands that once these are established, the roadworthiness certificate shall form the basis of determining a vehicle's roadworthiness, rather than the age of the vehicle.	the moratorium and the new roadworthiness rules are established. If the roadworthiness certificate is indeed implemented instead of the maximum-age requirement, it will eliminate competitors whose vehicles do not meet the required roadworthiness standards.	hand, imported from overseas (notably from Japan), and then refurbished in the Philippines. Statistics show (see, the National Logistics Masterplan) that more than 80% of trucks on the road are more than 15 years old. The BOI supported this recommendation, during stakeholder consultation. It also explained its support for the use of new trucks or less aged trucks for safety and reliability reasons and suggested this could be done through incentive schemes. Generally, better market-access conditions for "greener" vehicles tend to be efficient in achieving environmental goals. This should take into account the emissions class of the vehicle and not its build year. <u>International comparison</u> There is no maximum age for trucks in Thailand or Malaysia, but both countries have roadworthiness standards. European Union According to the European Commission, the age of commercial vehicles varies according to the type of activity. Newer vehicles are generally used for long distances and	

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
					international road haulage. The needs of local markets and national transport are typically served by older vehicles, which are cheaper. The rationale for using newer vehicles in international transport include their lower fuel consumption, lower tolls due to more environmentally friendly features, and their need for regular replacement as they quickly reach high mileages. The EU average age of light commercial vehicles (LCV) is about 11 years, which increases to 12 years for heavy commercial vehicles (HCV). The youngest fleets are those of Luxembourg, France and Denmark, while the oldest those of Estonia, Poland and Greece. Country variations on the average age of HCV range from 6.6 years in Luxembourg to 18.8 in Greece. LCV are generally newer: on average 10.9 years old, with a minimum of 6.3 (Luxembourg) and a maximum of 17.1 (Greece). Among EU27 freight transporters, 17.5% of road haulage is done by vehicles exceeding 10 years of age.	
9	RA 8794 (1999) (Act Imposing a Motor-Vehicle User Charge on Owners	RA 8794, Section 6; RA 8794 IRR, Section 7 (c)	Stakeholders have stated that different standards are applied and implemented by different agencies – for example, by national and	The presence of a moratorium, that is being continually extended for some truck categories, may	This provision aims to provide for and ensure the adequate maintenance of national and provincial roads, as well as	1) Harmonise relevant rules and regulations and organise the issuance of rules by single agency.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
	of All Types of Motor Vehicles and for Other Purposes); RA 8794 IRR		local bodies – in relation to the overweight and overloading scheme for trucks. The provision foresees a maximum allowable gross vehicle weight (GVW). The national anti-overloading scheme was introduced in 2000 and is implemented by the Department of Public Works and Highways (DPWH). Currently, there is a moratorium on the enforcement of the overloading scheme for category 12-2 trucks (semi-trailers with 3 axles on towing trucks and 2 axles on trailers) and 12-3 trucks (trucks with 3 axles on their trailers, used mainly to deliver shipping containers). Stakeholders have stated that the moratorium on 12-2 and 12-3 trucks was introduced because the majority of such trucks would not be compliant with the weight restrictions. According to an article on cargo-shipping website Port Calls, CTAP has claimed that 80% of containers coming from the Manila port "could no longer be transported" if the moratorium was lifted. Stakeholders claim that the Metropolitan Manila Development Authority (MMDA) has additional rules that differ of those of DPHW. The Competitiveness Bureau's draft logistics masterplan notes that: "MMDA has its own weight	deter new entry into the market as it is a source of uncertainty for market participants and favours incumbents. Different standards implemented by DPWH and MMDA could cause confusion and uncertainty for market participants about which regulations to follow. The Competitiveness Bureau claims in its report on the masterplan that there could be an opportunity for some regulators to "take advantage of and carry out rent seeking actions". This behaviour deters market entry and continual participation.	minimizing air pollution from motor vehicles (RA 8794, IRR, Article I.1) Further, another policy objective is to ensure the safety of passengers and other road users and to prevent road accidents. <u>International comparison</u> In Thailand and Malaysia, weight standards are imposed by a single agency.	2) For the anti-overloading law implemented by DPWH, the rules for categories 12-2 and 12-3 trucks should either be revised in consultation with industry or the moratorium should be lifted.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			limit, which is different to the ones being implemented by LGU and other related traffic bureau." MMDA has the power to "fix, impose and collect fines and penalties for all kinds of violations of traffic rules and regulations" (Section 7(f), RA 7924). Among such traffic rules and regulations are those provided by Rep. Act 4136 (1964) on ensuring that the load carried by a vehicle is within its carrying capacity (Sections 32 and 33, RA 4136).			
10	Lack of regulation	NA	The Philippines does not have clear standards and rules for trucks' roadworthiness. Market participants have complained about the absence of facilities to inspect vehicles' roadworthiness. MC 2018-007 provides for the establishment of motor vehicle inspection units (MVI) and the application of roadworthiness standards. Once these are established, the roadworthiness certificate shall form the basis of determining a vehicle's roadworthiness and therefore its ability to operate in the Philippines.	The lack of roadworthiness standards may cause uncertainty and deter market entry.	Government stakeholders claim that the DOTr, LTO and the LTFRB have recently launched initiatives to establish procedures for roadworthiness tests of public utility vehicles. The OECD understands that the LTO plans to procure 26 mobile inspection units. The DOTr is currently drafting implementing rules and regulations for accreditation of private companies to run motor vehicle inspection units (MVI) facilities. This reform relates to the ban on trucks for hire that are more than 15 years old. International comparison Most countries such as Germany, Singapore, Australia have roadworthiness standards.	Roadworthiness standards should be introduced and implemented, with a transition period for current market operators.

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					As the EU Commission has noted: "A properly maintained and fully functioning vehicle meeting all safety requirements is less likely to be involved in a road accident. Roadworthiness checks not only make sure your vehicle is working properly, they are also important for environmental reasons and for ensuring fair competition in the transport sector."	
11	Local government code, lack of regulation	LGC, Article V (Common Revenue Raising Powers), Section 129	According to market participants, local government units (LGU) (including *barangays*, villages, cities, municipalities, and provinces) administer pass-through fees. There are therefore different fees for trucks passing through each LGU while providing their transport services. To the best of the OECD's knowledge, there is no national legislation harmonising such fees, which are regulated only at a local level. Only certain stakeholders seem to face pass-through fees when carrying out their trucking operations, which might suggest inconsistent application of fees by LGU, or both.	The existence and inconsistent application of pass-through fees by municipalities may restrict the geographical flow of goods, reducing the number of suppliers interested in commercialising their products in different parts of the Philippines. Trucks transporting goods may potentially be subject to several pass-through fees in order to move their products from the point of production to the point of sale. This makes products more expensive and puts the manufacturer at a competitive disadvantage against producers that commercialise their products only in their production area. Furthermore, pass-through fees are an administrative burden and increase the	LGU appears to be incorrectly exercising their power to impose pass-through fees under Section 129 (Power to create sources of revenue) of the LGC. The Department of the Interior and Local Government (DILG) has explained that LGU cannot use Section 129 for implementing such pass-through fees because pass-through fees are exempt, under Section 133 (e) of the LGC, which explains that the imposition of taxes, fees and charges upon goods carried into or out of, or passing through, the territorial jurisdiction of an LGU is not allowed. The OECD understands that on 17 August 2018 the DILG issued a memorandum circular titled *Omnibus Guidelines on the Suspension of LGU Imposition and Collection of Illegal Fees and Taxes Relative to the Transport of Goods and*	1) A national authority, such as DOTr should supervise LGU fees and publish an annual report detailing all authorised fees. It should also remind municipalities whenever necessary about their lack of authorisation to raise additional pass- through fees. 2) Introduce national legislation that explicitly prohibits municipalities from raising additional pass-through fees.

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				cost of doing business. This may reduce the number of suppliers in a region and potentially allow certain suppliers to exercise market power and increase prices.	*Products* (MC 2018-133), which noted that the department continues to receive complaints about the imposition of pass-through fees "in the guise of sticker fee, discharging fee, market fee, toll fee &/or mayor's permit, among others" and encourages LGU to refrain from enforcing an existing ordinance providing for pass-through fees and to repeal any such ordinances. <u>International comparison</u> Local pass-through fees do not appear to be implemented in other ASEAN countries, including Malaysia, Brunei Darussalam, Thailand and Viet Nam.	
12	Local Government Code (LGC)	LGC, Article V (Common Revenue Raising Powers), Section 155	Under this section, an LGU may impose tolls (which are different to pass-through fees mentioned above) on trucks using specific roads that it has funded or constructed. Some stakeholders have complained about a lack of transparency in how the fees are calculated and imposed. Unlike other taxes, fees and charges that an LGU may charge, Section 155 of the LGC does not provide a maximum amount that an LGU may charge as a toll.	The lack of transparency and limits on fees, and the inconsistent application of fees and charges by LGU, may lead to excessive costs for market participants. The lack of a unified toll system adds unpredictability and so to the cost of doing business.	The provision provides an LGU with a source of funds for the maintenance, upkeep and other related services for infrastructure it has constructed or which it oversees. It promotes the policy of local-government autonomy and ensures infrastructure investment and maintenance. According to stakeholders, a recently released Joint Memorandum Circular 2019-01 of DILG and DOF provides the direct fixed costs and variable costs that can be considered in calculating fees. The OECD has not been able to confirm the implementation of this MC,	The OECD recommends that the Department of Transportation (DOTr) or other relevant authority initiate a national framework, requiring LGUs to provide clear guidelines for the imposition of these tolls. They must also adopt a transparent means of determining the basis for such tolls, and this information should then be published on the relevant websites. DOTr or another relevant authority should encourage the Department of the Interior and Local Government (DILG) and LGUs to adopt measures that will allow road users to pay a one-time toll per journey (of an amount transparently

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					however. Section 6.5.3.3 provides that the Department of Finance, through the BLGF shall regularly monitor the fees and charges imposed by LGUs through the DOF BLGF online portal, and shall ensure that the schedule of rates and analysis of such are regularly published online and readily available to different stakeholders and the general public. <u>International comparison</u> Similar fees do not seem to be imposed in other ASEAN countries including Malaysia, Brunei Darussalam, Thailand and Viet Nam. Tolls are not imposed by local governments on public highways in Germany or in Australia. The 2016 *OECD Competition Assessment Review: Romania* noted the existence of tolls and found that they were not levied in a transparent manner and may have led to uncertainty and discrimination against certain operators. In that case, the OECD did not recommend the removal of local road tolls, rather the introduction by the Romanian government of an appropriate legal framework to ensure transparency and efficiency of the payment system with toll rates published on the websites of relevant ministries and the	determined) that will be distributed internally among affected LGUs. Enforcement of toll payment could be achieved, for example, through a CCTV system, which records the plate of each vehicle entering and exiting an area. A national authority, such as the Department of Finance could oversee the system. A limit on the amount that can be charged by each LGU should also be enforced.

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					creation of an online payment system.	
13	MMDA Resolution 3, s 2015, Resolution Re-implementing the Uniform Truck Regulation in Metro Manila except Northern Truck Route.	MMDA Resolution 3, s 2015, Articles 1-5	In certain areas of the Philippines, such as Metro Manila, trucks are only allowed to operate at certain times of the day. This truck ban is implemented by various agencies, for example, in Manila, by the Metropolitan Manila Development Authority (MMDA) and the Department of Public Works and Highways (DPWH).	Truck bans limit the ability of heavy vehicles to provide their services. The bans limit when trucks can operate on roads in the Philippines and so when they can provide their services. The bans may also reduce the usage rate of staff and trucks as they can only be used at certain times. Market participants explained that truckers may start a journey and then be required to stop due to the truck ban, thus increasing the average cost of transport per freight unit.	This provision aims to ensure the free-flow of traffic during peak hours as there is limited road capacity. The bans also aim to reduce pollution. International comparison Truck bans are common worldwide. Other ASEAN nations with truck bans in place include Thailand, Viet Nam and Malaysia.	No recommendation. The policy objectives justify the bans. If necessary, express delivery can be carried out with smaller vehicles.
14	MMDA Resolution 3, s 2015, Resolution Re-implementing the Uniform Truck Regulation in Metro Manila except Northern Truck Route.	MMDA Resolution 3, s 2015, Articles 1-5	In certain areas of the Philippines, such as in Metro Manila, trucks are only allowed to operate at certain times of the day. This truck ban is implemented by, among other agencies, the Metropolitan Manila Development Authority (MMDA). The OECD understands from stakeholders that in addition to this, other agencies have truck bans that conflict with the MMDA truck ban, such as bans implemented by LGU and Department of Public Works and Highways (DPWH). The National Competitiveness Council-led draft National Logistics Masterplan explains that "this causes confusion among shippers and presents an opportunity for some to take advantage and	Different bans cause confusion and uncertainty, deterring market entry. If bans differ significantly, truckers are prevented from operating for substantial parts of the day.	It is the OECD's understanding that truck bans were introduced to deal with congestion issues, especially in Metro Manila. During stakeholder consultation, ARTA suggested co-ordination efforts by concerned agencies in compliance with the principles of the whole-government approach in resolving conflicting and confusing regulations. Ensuring that accurate information is available to the industry in a single place would greatly simplify business operations. Co-ordination of the times of different bans would	1) Concentrate responsibility for issuing road bans to a single authority. 2) Introduce a co-ordination mechanism between different agencies to avoid contradictory decisions. 3) Introduce an online interface that shows all truck bans implemented by authorities.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			perform rent-seeking behaviour". Outside Manila, LGU have separate truck-ban ordinances for those areas within their jurisdictions.		ensure high-efficiency trucking operations, while achieving the bans' objectives. <u>International comparison</u> Like most OECD countries, many other ASEAN countries, including Viet Nam, Malaysia and Thailand, have truck bans. However, in general, these bans are administered by a single agency.	
15	1987 Philippine Constitution, Public Service Act, Commonwealth Act No. 146 (as amended by RA 2677, s 1960). Republic Act 7160 s 1991)	Commonwealth Act No. 146 (as amended by RA 2677, s 1960) section 13(b)	The Philippine constitution imposes an equity restriction on foreign investment in "public utilities" by imposing a 60/40 nationality requirement on their ownership. Only Philippine citizens, or associations or corporations whose capital is owned 60% by Filipinos can be granted a franchise, certificate or authorisation to operate a public utility. "Public utility" is neither defined 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. The PSA defines "public services" and explains which types require certificates of public convenience (CPC) and other permissions to operate in the Philippines (PSA, Section 13b). According to this definition and as interpreted by the Supreme Court of the Philippines,	Road transportation is interpreted as a "public utility" and so as required by the constitution at least 60% of road-transportation companies must be owned by Filipinos, with foreign ownership limited to 40%. This foreign-equity restriction is again present in the PSA, which limits foreign ownership to 40% for companies wishing to obtain a CPC, a certificate required to provide a "public service". These foreign equity restrictions are barriers to entry for foreign firms, preventing or making it more difficult for them to enter the market, and so favouring national operators. This limits the number of suppliers in the market and potentially more efficient foreign firms.	The foreign-equity restriction limits foreign participation in the Philippine road-transportation market and promotes the ownership of Philippine road freight transportation companies. The 1987 Philippine constitution adopts a policy of giving preference to qualified Filipinos in the granting of rights, privileges and concessions covering the national economy and patrimony (Section 10, the "Philippine First" clause). "Public utilities" are seen as services essential to the general public that involve a public-interest element. The purpose of the citizenship requirement is to prevent foreigners from assuming control of public utilities as this is regarded as potentially detrimental to the national interest. This specific provision implements an overriding economic goal of the 1987 Constitution: to conserve	Road freight transport should not be considered a public utility. The Public Service Act should be amended to reflect this, inserting a list of public utilities in the Act, which does not include road freight transport. Road transportation should then be removed from the list of public services under the PSA so that road freight transport operators are no longer required to obtain a CPC. Subject to any additional sector-specific restrictions or screening requirements that may be imposed, this would mean that foreigners could own up to 100% of road freight transportation companies. If any foreign equity limits were to remain, the OECD recommends one of the following three options: 1. Progressively relax foreign-equity limits with the long-term goal of

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			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. Public service providers require a CPC to operate under the PSA. In order to obtain a CPC, foreign equity is limited to 40%.		and develop the patrimony (as set out in the Preamble) and ensure a self-reliant and independent national economy effectively controlled by Filipinos (Section 19). As discussed in the Economic Overview of the logistics sector in the Philippines, there are moves to redefine public utilities and this would clarify that road freight transport is not a public utility. Subject to any new requirements, this would mean that there would be no foreign-equity restrictions on road infrastructure and services imposed by or derived from the Constitution. Further, if road transportation were not considered a "public service" under the PSA, the foreign equity restriction imposed by the related licencing requirement (the CPC) would no longer exist. This would increase competition in the sector. Several bills amending the PSA have been filed in Congress to redefine public utilities. The proposed definition does not include logistics and freight transportation. The most recent, Senate Bill No. 13 and House Bill 78, filed in July 2019, provide, for example, the	permitting up to 100% foreign ownership. A first step may be to implement changes that move towards the 70% target laid out in the ASEAN Framework Agreement on Services (AFAS) for ASEAN member-owned entities providing road transport services. This could then be extended to non-ASEAN nationals. In the long term, the Philippines may consider full liberalisation by allowing 100% foreign ownership of road-transportation services. 2. Relax foreign-equity limits on a reciprocal basis, allowing full foreign ownership by nationals of countries that allow Filipinos to hold 100% shares in a company. 3. Allow 100% foreign ownership, while introducing a screening system of FDI in cases where the proposed investment passes a certain value threshold (such as in Australia) or when it affects specific sensitive sectors.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
					following exclusive list of public utilities: transmission of electricity, distribution of electricity, water works, and sewerage systems. The PCC submitted two position papers (21 February 2016 and 2 March 2016) to the House of Representatives, supporting the limited definition outlined in an earlier version of the bill filed in Congress (Senate Bill No. 1754). <u>International Comparison</u> In Australia, up to 100% foreign equity is allowed in road freight transport, but transport is defined as a "sensitive business", which allows the government to review foreign investment proposals in the sector against the "national interest" on a case-by-case basis. There are also thresholds for screening with foreign persons required to receive approval before acquiring a substantial interest (over 20%) in an Australian entity valued above AUD 261 million.Research suggests that most OECD countries do not consider road freight transport as a "public utility" or equivalent.	
16	1987 Philippine Constitution, Public Service Act, Commonwealth Act No. 146 (as amended by RA	Commonwealth Act No. 146 (as amended by RA 2677, s 1960) section 13(b)	As road transport is considered as a "public utility", owners and operators of land (and rail) transportation facilities and services are required to obtain a certificate of public convenience	The requirement to obtain a CPC restricts entry as it creates an entry barrier that may reduce the number of operators.	The CPC requirement ensures that applicants wishing to operate a public service are properly scrutinised.	Road freight transport should not be classified as a "public service". As a consequence, the CPC requirement would be removed. The CPC requirement may need to be replaced by a licensing process for

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
	2677, s 1960) Republic Act 7160 s 1991)		(CPC), a licence from the Department of Transportation, specifically the LTFRB.		International comparison Ina majority of OECD countries in order to establish a national road freight business (except for dangerous goods or goods that require sanitary checks), operators need to obtain a specific licence or permit from the government or regulatory agency. Many OECD countries require an operator's licence. UK Hauliers are required to obtain an operator's licence for vehicles weighing more than 3.5 tonnes. There are also three types of operator licences for goods vehicles depending on where the goods are being transported to/from and whose goods are being transported. 1) Standard national licence: vehicles can carry their own goods in the UK and internationally or others' goods in the UK. Vehicles can take loaded trailers to or from ports within the UK as part of an international journey, as long as the vehicles do not leave the country. 2) Standard international licence: vehicles can carry their own goods and others' goods in the	road freight transport to guarantee that services provided by the operators are of a certain standard. This should be a standard operating licence, similar to those issued in other countries, such as the UK, where operators of trucks over a certain weight, are required to obtain an operating permit.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
					UK and internationally. 3) Restricted licence: vehicles may only carry their own goods. Licences are valid as long as a continuation fee is paid every 5 years and the operator continues to operate within the terms of the licence.	

*. See OECD Trade Restrictiveness Index Regulatory Database, https://qdd.oecd.org/subject.aspx?Subject=063bee63-475f-427c-8b50-c19bffa7392d.

Maritime freight transport

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
1	Republic Act 9295 (Domestic Shipping Development Act of 2004)	Section 6, RA 9295 (Foreign vessels engaged in trade and commerce in Philippine Territorial Waters)	Foreign vessels are prohibited from engaging in domestic shipping, known as cabotage, which prohibits the movement of goods between ports within the same country. There are limited exceptions to the cabotage policy. The provision provides that "no foreign vessel shall be allowed to transport domestic cargo between ports or places within Philippine territorial waters, except upon the grant of a special permit".	The prohibition on foreign vessels transporting domestic cargo between ports in the Philippines prevents foreign firms from entering the national shipping market. A special permit may be obtained by foreigners (authorisation requirement) from MARINA, but its scope is limited. Foreign firms are therefore generally unable to participate in the domestic shipping market. According to market participants, cabotage restrictions may contribute to the accumulation of empty containers in some ports and a shortage of containers in other ports due to inefficient allocation of resources; this amplifies trade-imbalance issues.	The legislation seeks to support the Philippine domestic shipping industry, promoting the ownership of vessels operating under the Philippine flag. A 2017 UNCTAD report, *Rethinking Maritime Cabotage for Improved Connectivity*, explains that in the past, cabotage restrictions had a security objective, but today the policy objective is aimed more at "building supply-side capacity in shipping to derive revenue and employment benefits". The Water Transport Planning Division (WTPD) of the Department of Transportation (DOTr) explains that cabotage still has a security objective in the Philippines, which should be considered along with its economic aims. Various government stakeholders, including WTPD and DOTr, have highlighted the importance of strengthening the domestic shipping industry and to support inter-island operations. It has also been noted that cabotage restrictions are not absolute, given the possibility of obtaining a "special permit". <u>International comparison</u> Cabotage is a common policy worldwide. Many countries	1) In co-operation with other ASEAN countries, introduce an ASEAN-wide cabotage policy similar to the EU, whereby ASEAN operators are treated in a similar fashion to national operators and can provide services in other ASEAN countries. 2) Amend the cabotage law with a further amendment to the 2015 exemption to allow foreign ships to carry 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. This could possibly be based on reciprocity arrangements or as a first step between ASEAN members. 2) Allow international ships to operate in the domestic shipping market on specific routes for which there is demand, by introducing a broader special permit.

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					including OECD countries have rules on cabotage. See Box 3.1 Cabotage regimes around the world.	
2	Republic Act 10668 (Foreign Ships Co-Loading Act of 2015), amendment to Republic Act 9295 (Domestic Shipping Development Act of 2004).	Section 4 (Carriage of Foreign Cargo by a Foreign Vessel), Section 8 (Prohibitions) RA 10668	Section 4 provides an exemption to the general rule (Section 6, RA 9295) that foreign vessels cannot engage in domestic shipping. Section 4 allows foreign vessels to transport foreign cargo between ports or places within Philippine territorial waters (outside the special permit scheme). A foreign vessel travelling from a foreign port may carry foreign cargo to its Philippine port of final destination – after being cleared from its port of entry (a port with appropriate customs facilities). After clearance, at the port of entry, a foreign vessel may load cargo onto another foreign vessel. Through co-loading agreements, foreign vessels can therefore carry other foreign cargo to the same Philippine port of final destination. For example, a Malaysian vessel arriving at Port of Manila may pick up cargo from a Singaporean vessel at this port and take it to Davao, the Philippine port of final destination. A foreign vessel departing from a Philippine port of origin to its	The limitation on cabotage restricts the number of suppliers able to transport domestic cargo within the Philippines, reducing potential competition in the domestic shipping market.	The legislation promotes the domestic Philippine shipping industry. It provides an exception for the transhipment of foreign cargoes for import and export, but reaffirms the general cabotage policy. Prior to the amendment, foreign shippers would need to use domestic ships to transport goods domestically, paying them to conduct domestic transhipment of their import and export cargoes. The main policy objective behind this amendment seems to be to assist importers and exporters in enhancing their competitiveness in light of an increase in international trade; and to lower the cost of shipping export cargoes from Philippine ports to international ports and import cargoes from international ports for the benefit of the consumers. The amendment does, however, increase competition in the market for shipping foreign cargoes domestically between ports in the Philippines.	As the amendment does increase competition in the market for shipping foreign cargoes domestically between ports in the Philippines, the OECD has no recommendation as long as the current prohibition on cabotage is maintained.

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			foreign port of final destination is also allowed to carry foreign cargo intended for export. Under a co-loading agreement, it may also carry foreign cargo from another foreign vessel through a domestic transhipment port to its port of final destination. For example, a Malaysian vessel may pick up goods for export at Davao, pick up foreign goods for export at a transhipment port such as Manila and then carry all these goods to their foreign port of final destination(s). The provision does not allow foreign vessels to transport domestic cargo or container vans. This is specifically prohibited by Section 8 of RA 10668 and reaffirms the cabotage policy.			
3	MC 2011-04 (Revised Rules on the Temporary Utilisation of Foreign Registered Ships within the National Territory), Implementing Rules and Regulations (IRR) 2014 (to RA 9295).	MC 2011-04, Section IV.1, 2 and 13, Section 6, Implementing Rules and Regulations (IRR) 2014 (to RA 9295), Section 6.6 (permit issued on month to month basis), 6.7 (long list of documents to submit).	These provisions provide the main exception to the general rule (Section 6, RA 9295) that foreign vessels cannot engage in domestic shipping. These provisions provide for the deliverance of a special permit, which allows foreign ships to operate within Philippine territory, when there is no available and suitable domestic ship equipped to provide the specialised service required. The IRR provides that the special permit is issued on a month-to-month basis or on a bi-monthly	. Foreign ships are allowed to operate in the Philippine territory only if no domestic ship is available to provide the required specialised service, which prioritises domestic companies. The requirements for this exception seem excessive, especially the number of documents required. Further, it may be difficult for applicants to foresee whether they will be granted a special permit due to MARINA's broad discretion.	The exception implements the cabotage policy in the Philippines. It supports the Philippine domestic shipping industry, promoting the ownership of vessels operated under the Philippine flag. The legislation suggests that the special permit is specifically intended for specialised vessels, such as those used for oil-exploration projects, which are not normally available from the domestic fleet.	Re-evaluate how to improve the process of obtaining a special permit, including a reassessment of the duration of permits – currently too short – as well as required document, removing redundant requirements and simplifying and streamlining the process. Guidelines should be introduced to provide applicants more legal certainty. Finally, a more specific yet more generous exemption could be considered.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			basis and cannot have a duration of more than 3 months (Section 6.6). By granting the special permit and in determining its period of operation, account should be taken of the vessel's likely role in the country's economic development. MARINA will check whether available and suitable domestic ships are offered by Philippine shipping associations. If so, the application for a special permit is denied. The IRR provides a long list of documents that must be submitted to apply for the domestic permit (Section 6.7).		Short one-month permits do not incentivise applicants. For regular liner services, operators are unlikely to change their route planning every month depending on whether they have the permit or not. Some countries have more generous exemptions for certain ship types (such as oil tankers). Depending on the bottlenecks in Philippine domestic shipping, a more specific but more generous exemption might be considered. International comparison Some countries have more generous exemptions for certain ship types, such as oil tankers. For example, in Australia, under the Coastal Trading (Revitalising Australian Shipping) Act 2012 (Part 4, Division 2, section 35), Australia may grant temporary licences to foreign-flagged vessels; these are valid for a limited number of voyages in a 12-month period. The licence is granted over a longer period (even though the number of voyages is restricted) and subject to ministerial discretion.	
4	1987 Philippine Constitution, Commonwealth Act 146 (Public Service Act), as amended;	Chapter II, Section 15 and 16 (a); Rizal Light & Ice Company v. LGU of Morong, Rizal, G. R. Nos. L-	A CPC is an authorisation necessary when operating a "public service" in the Philippines. One of the three main requirements for obtaining a CPC	The 60% equity requirement limits foreign participation in the Philippine shipping market and makes it more difficult for foreigners to	Public utilities are considered as services essential to the public and which involve a public-interest element. The CPC requirements likely	Maritime freight transport should no longer be interpreted as a public utility. The PSA and any other legislation implementing this interpretation should be amended to

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
	Supreme Court decisions	20993 and L-21221, September 28, 1968; III (Requisites before a certificate of public convenience may be granted)	according to Section 16a of the Public Service Act (PSA) is that they shall only be granted to citizens of the Philippines or a company whose stock or paid-up capital belongs at least 60% to citizens of the Philippines. Maritime freight transport services are currently classed as "public services", based upon the definition set out in Section 13b of the Public Service Act (PSA). Supreme Court decisions have interpreted that "public services" are interchangeable with "public utilities". The Constitution limits the operation of public utilities to citizens of the Philippines or a company whose stock or paid-up capital belongs at least 60% to citizens of the Philippines. The 60-40 equity requirement for maritime freight transport is thus imposed by both the Constitution and the PSA's CPC requirement.	provide these services.	exist to ensure control over who operates a public service by ensuring that applicants wishing to operate a public service are properly scrutinised. CPCs are granted by agencies authorised by law (such as MARINA and LTFRB) to determine that the operation of the service and the authorisation to do business will promote the public interests in a proper and suitable manner (PSA, Section 15 and Section 16[a]).	reflect this. Maritime freight transport should then be removed from the list of public services under the PSA so that maritime freight transport operators are no longer required to obtain a CPC. Subject to any additional sector-specific restrictions or screening requirements that are imposed, this would mean that foreigners could own up to 100% of maritime freight -transportation companies.
5	Republic Act 9295 (Domestic Shipping Development Act of 2004), Implementing Rules and Regulations (IRR) 2009, 2014 (to RA 9295).	Section 7 (Issuance of authority to operate)	This provision contains the specific requirements for granting a CPC by MARINA, notably, that the applicant must prove that its activities will promote the public interest. MARINA has the power to issue a CPC to qualified domestic ship operators, taking into consideration the economic and beneficial effect that the proposed services might	MARINA assesses whether there is need for a shipping service. MARINA enjoys wide discretion in determining the "economic and beneficial effect the proposed services should have on the port or province and the financial capacity of the domestic ship operator in accordance with standards set by government regulation".	The 60% requirement limits foreign participation in the Philippine shipping market and promotes the ownership of vessels operated under the Philippine flag. Consideration of the "economic and beneficial effect" supports the economic development of Philippine ports and provinces. There are no further regulations	Option 1) The Public Service Act is amended and transport and logistics services are no longer considered as "public utilities" and "public services". Therefore, no CPC will be necessary and this provision is removed. Option 2) If a CPC (or equivalent) continues to be required, guidelines should detail criteria for economic development and how the discretion will be exercised.

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			have on the port province or region they propose to serve, and the financial capacity of the domestic ship operator to provide and sustain a safe, reliable, adequate, efficient and economic service in accordance with the standards set by the government regulation. There is also a requirement to state the proposed route or at least intended services. Section 10(10) of RA 9295 provides MARINA with the broad discretion to "determine the impact which any new service shall have on the locality it will serve". This power is not implemented in any regulation or rules. These other conditions are outlined in the Implementing Rules and Regulations (IRR); for example, economic and beneficial effect is noted as a consideration in 7.6.1.3 of the IRR.	This might lead to discrimination between competitors. MARINA's broad discretion to determine whether a new service will have a certain impact on the market could potentially limit new entrants. This creates a risk of discrimination. Further, the requirement for shippers to state a fixed route at the time of application might limit competition in that a shipping company cannot easily respond to demand and adjust its market behaviour if it is obliged to serve only the route specified in the CPC. However, the OECD has been unable to determine how exactly this requirement is applied.	that specify what those terms cover. Specific requirements (means of proof) were provided in the 2009 IRR, but then removed in the updated 2014 IRR. This makes it likely what is accepted as proof of economic and beneficial effect has been broadened. The applicant might present evidence recommended in the 2009 IRR (Section 7.4.1.3), but this proof may not be considered sufficient for MARINA and it may require more evidence, or the applicant may decide to submit more or different types of evidence to satisfy this requirement. It is likely that MARINA's broad discretion is to ensure it can support the economic development of Philippine ports, markets and provinces.	
6	Implementing Rules and Regulations (IRR) 2014 (to RA 9295)	7.6.3.4	This provision details the documentary requirements for a CPC application to MARINA. One requirement is to provide a feasibility study or a study or document that will show probable "economic and beneficial effect" to the port, province or region the shipper proposes to serve. There are no further criteria on what this study must contain. The study is	The lack of clear criteria for "economic and beneficial effect" may lead to bias, for example, in favour of incumbents or domestic players (if foreign players were allowed to apply for a CPC) who know how applications are treated "in practice". In general, the lack of clear criteria makes	The consideration of the "economic and beneficial effect" supports the economic development of Philippine ports and provinces. If MARINA procured the study, it would be able to make its decision based on comparable and useable data.	The OECD recommends one of two options. 1)Freight transport and logistics should no longer classified as "public services". The PSA should be amended to reflect this. As a consequence, a CPC would no longer be necessary. 2)If a CPC continues to be required, the policy of requiring an economic feasibility study seems reasonable if

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			procured and paid for by the applicant.	the test subjective and open to bias.		the criteria for economic and beneficial effects are clearly defined. Further, in order to ensure maximum objectivity of the study, it should be procured for an agreed amount by MARINA as the decision maker, or by the applicant under clear criteria, and paid for by the applicant.
7	Republic Act 9295 (Domestic Shipping Development Act of 2004), IRR 2014.	Section 8 (Deregulation of the Domestic Shipping Industry), Section 10(12), Section 8 IRR 2014 (Deregulation of the Domestic Shipping Industry)	Section 11 of the Act allows domestic shipping operators to establish their own domestic shipping rates. However, MARINA may continue to exercise "regulatory intervention where it is established after due process that public interest needs to be protected and safeguarded". Systems and procedures for regulatory intervention are outlined in IRR (to RA 9295) 2014, Section 8. Section 10(12) explains that MARINA has the possibility to intervene to ensure reasonable stability of freight rates. There are no further conditions or related guidelines. MARINA has exercised this power of intervention on several occasions (as outlined in MARINA Advisory Nos 2014-30, 2015-11 and 2016-04), ordering domestic shipping companies to adjust their cargo and passenger rates due to a decrease in oil prices in the	"Intervene" is not further defined in Section 8 of the 2014 IRR. It seems that the provision allows MARINA to intervene and fix prices based on a complaint or even on its own initiative. The provision gives MARINA broad discretion, which may result in discrimination.	This provision reflects the deregulation of the domestic shipping industry. MARINA's ability to intervene was likely included to protect the domestic industry and consumers from high shipping rates post-liberalisation. Market participants have claimed that domestic shipping rates have risen, but it is not clear whether this is market driven or caused by anticompetitive practices. The exception may be considered reasonable because it is limited in scope and because the industry is dominated by monopolies and oligopolies on shipping routes.	Option 1) Remove MARINA's ability to intervene and allow the market to set domestic shipping rates. Option 2) If MARINA's ability to intervene is maintained, guidelines should set out as to when interventions are allowed by defining and providing permitted examples. Intervention should be limited to exceptional circumstances.

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			domestic and global markets.			
8	MARINA revised rules of practice and procedure: 28 January 2014	Rule II (Section 5 – where to file)	This provision provides that all applications for CPC amendments, renewals and extensions shall be filed with the MARINA office where the CPC or certificate of exemption was originally issued. The principal place of business of an incorporated company is the address indicated in its articles of incorporation (AOI) issued by the Philippine Securities and Exchange Commission (SEC). If the company operates in its principal place of business and applies for the CPC in the MARINA office there and the company does not then change that place of business, CPC renewals will be made in that same place. If, however, the company changes its principal place of business in its AOI, or its place of operations (for example, to another branch) after initially securing its CPC, then the requirement is that the CPC renewal must be made in the MARINA office where the initial CPC was issued.	If the CPC applicant is no longer based in its initial location, the current requirement to make an application at the original MARINA office in person could increase costs for some suppliers.	The Revised Rules of Practice and Procedure provide that the object of the rules is to obtain a just, speedy and inexpensive disposition and resolution of petitions filed before MARINA (Section 3, Revised MARINA Rules and Regulations). From a practical standpoint, the requirement that the petition be filed in the principal place of business of the applicant recognises most Philippine businesses' general practice of establishing their headquarters in their registered principal place of business. The requirement that renewal be made in the same office where the CPC or certificate of exemption was issued may also serve the speedy renewal of the certificates, at least from MARINA's perspective. Verification of an applicant's records is easier if renewal is made in the same office where the certificates were issued. The OECD notes that this is not a major restriction, but does provide an example of why an online system would be a preferable solution. The OECD recommendation is	Establish online procedures for the processing of applications and renewal to ease the sharing of information across all MARINA offices. This would allow changes to the application to be made in any location. The OECD supports ARTA's approach.

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					in line with newly established Anti-Red Tape Authority (ARTA) principles. When providing feedback to the OECD, ARTA explained that: "R.A. 11032 prescribes a whole-of-government approach in relation to any re-engineering and streamlining efforts. Meaning, all transactions that need documentary requirements from other agencies must be taken into consideration. The authority highly discourages a silo system wherein agencies work alone and only through their own jurisdiction not taking into consideration burdens from other agencies. R.A. 11032 prescribes the interconnection of agencies and if possible, the close co-ordination with concerned agencies. Sec 13 of R.A. 11032 mandates DICT to implement an interconnectivity infrastructure development programme for interconnectivity between and among NGAs and LGUs. Furthermore, the authority is also formulating guidelines on the conduct of re-engineering through the whole-of-government framework. Once this has been finalised, concerned agencies may utilise this guideline as a tool in their re-engineering and streamlining efforts."	
9	MARINA revised	MARINA revised	When an applicant applies for a	Opposing parties, such as	The purpose of the opposition	If maritime freight transportation were

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	rules of practice and procedure: 28 January 2014; Implementing Rules and Regulations (IRR) 2014 (to RA 9295)	rules of practice and procedure: 28 January 2014 – Section 12, Rule II, Section 20- Issuance of decision; Implementing Rules and Regulations (IRR) 2014 (to RA 9295) rule 7.6.3.2	CPC, interested parties, notably incumbents, have a limited right to oppose the application. Potential opponents are made aware of the CPC application because the applicant is required to publish its notice for hearing. If there is opposition the time frame for making the decision is extended. The opposition process requires a "notice and hearing" of CPC applications (Section 16a of the Public Service Act) authorising quasi-judicial functions to the body administering CPC. This allows interested parties (including competitors) to oppose or intervene in a CPC application. This right to intervene exists for most quasi-judicial processes in the Philippines, whenever a person's rights or interests will be affected by the outcome of proceedings. According to MARINA, the opposition process for CPC applications is almost never used in practice. Its principle function is to aid MARINA in the evaluation of the merits of the application or petition (MARINA Revised Rules of Practice and Procedure, Rule II, Section 12). Rule 7.6.3.2 requires applicants to publish the notice of hearing for the	incumbents, can delay the decision-making process, slowing market entry, as any opposition gives MARINA 20 extra days (and potentially longer, if the issues are complicated or the records voluminous) to make its decision on a CPC application. Also, any opposition filed will likely raise costs for an applicant as it will need to spend time and money considering and responding to the opposition. MARINA clarified that the opposition process is rarely used and is only used to aid it in evaluating the merits of the application. However, stakeholders expressed uncertainty about which issues opponents could raise and the extent that MARINA takes such opposition into consideration. Such uncertainties favour incumbents as they are already operating in the market (and so have applied and passed the CPC process) giving them better knowledge about what to expect than new (or potential) market	process is to aid MARINA in the evaluation of the merits of an application or petition (MARINA Revised Rules of Practice and Procedure, Rule II, Section 12). This is because a CPC application is considered a quasi-judicial (rather than a simple administrative process), therefore allowing opposition and its merits to be determined by MARINA. The opportunity for opponents to intervene is present in all other CPC applications as it stems from the application of Section 16a of the Public Service Act, which explains that CPC applications are subject to the notice and hearing process in a quasi-judicial application process. The idea behind opposition is that it brings new facts to the attention of the authority regarding the suitability of the applicant as a public-service provider. The likely policy rationale is to ensure that new entrants fully meet the requirements. It is questionable how and why a competitor would be in a position to present such information.	no longer considered as a "public utility", operators would no longer need a CPC and so this rule would be removed. In that case, another licencing process may replace the CPC process, which could include an opposition process. If this were to occur, the OECD would recommend one of two options. 1) Incumbents should not be able to oppose the CPC (or equivalent) application process. 2) If opposition remains possible, it should not substantially delay the process, with a maximum additional time of 10 days (the time frame for making a decision in the absence of opposition). If the opposition process is removed, the publication requirement could likely also be removed unless another need for publication is shown.

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			CPC application in a newspaper or suitable publication. This is to ensure incumbents are informed about the CPC application and if necessary, can oppose it. The regulations allow additional time for MARINA to make decisions when there is opposition. Without opposition, MARINA must make the decision within 10 days, but in the case of opposition, it shall make the decision within 30 days "except where the records are voluminous or the issues are complicated that a longer period is required". There is no precise definition of or regulation about the limit of such "longer period".	participants. Regulatory uncertainty deters market entry.		
10	MARINA Circular No. 2015-04	VI Incentives (1-5)	Under MARINA Circular No. 2015-04, MARINA can grant pioneer status and special incentives to domestic shipping operators that introduce new ships meeting the standards imposed by the International Association of Classification Societies (IACS). Pioneer status gives shippers certain incentives. The first provides protection of investment and for liners, route protection. This grants a shipper with pioneer status exclusive rights to provide the service on a certain route by preventing the deployment of any additional vessels on the route for a period of six years. An exception to this rule applies if MARINA determines that a route requires	The first incentive, which grants exclusive rights for certain routes, prevents competition in the market for the provision of shipping services on a set route. It establishes an exclusive right to operate for one company, which could lead to monopoly pricing. The other incentives might amount to discrimination between companies enjoying pioneer status and their competitors.	MARINA Circular No. 2015-04 was issued to encourage the modernisation, improvement and upgrade of the domestic merchant fleet. By encouraging internationally classed vessels and new vessels, safety and efficiency of services should be improved. The domestic maritime industry in the Philippines is characterised as having poor safety standards. In its 2015 report, *Philippine Economic Update: Making Growth Work for the Poor*, the World Bank noted: "In the East Asia region, the Philippines has the highest absolute casualty rate, which is 40 percent higher than the second-ranked country,	**Recommendation.** The OECD agrees with PCC's recommendation to re-evaluate the special ramp and berthing facilities incentive, given how it currently works in practice. In addition, the OECD recommends one of three options. 1.No additional action. The policymakers' objective of improving safety and efficiency justifies the competition restrictions. The OECD does however recommend that no extension of pioneer status should be granted beyond the initial six-year term for such special rights. 2.Implement the other PCC recommendations to evaluate other measures that MARINA can

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			additional vessels, however, even then a pioneer-status operator is given the opportunity to fill that demand first "without prejudice to applications by ship-owners/operators offering IACS-classed brand-new or newly constructed vessels". The second incentive is priority in CPC approval. The third is that pioneer-status vessels are subject to only 50% of fees and charges for applications and licences. The fourth is that they have access to dedicated ramps and berths when fulfilling dry-docking requirements.		Indonesia. On average, there are 228 ships involved in accidents and 303 casualties per year in the Philippines." The annual world average for ship accidents is 32 and 60 casualties. Further, the average age of vessels in the Philippines is 30 years, compared to a global average of 22 years. The Philippine Competition Commission (PCC) undertook a competition assessment of this incentive scheme and shared its recommendations with the OECD in early 2019. Its overview revealed that the incentive scheme has attracted mainly passenger-transport operators; only one cargo operator has pioneer status. In summary, the PCC made three recommendations: 1)Evaluate other measures that MARINA can implement to ensure quality and safety of vessels, which do not require IACS-classification to be granted pioneer status. 2)Evaluate new methods to allow non-pioneer-status operators who wish to enter or expand operations on pioneer-status routes. 3)Review the implementation of the provision of special ramp and berthing facilities as in	implement to ensure quality and safety of vessels that do not necessarily require IACS-classed vessels for pioneer status and for non-pioneer-status operators that wish to enter or expand operations on pioneer-status routes. 3.Alternatively, regulations could be implemented that specify stricter security standards (equivalent to IACS), but without the need to purchase new ships and without the granting of pioneer status. New legislation requiring stricter security standards would, however, need to include a sufficiently long transition period (for example, 10 years) to allow market players to adapt to new standards. Direct subsidies for a limited time could be used to encourage compliance as an option.

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					practice, such facilities are not accessible to competitors. The domestic maritime industry in the Philippines is characterised as having poor safety standards. In its 2015 report, *Philippine Economic Update: Making Growth Work for the Poor*, the World Bank noted: "In the East Asia region, the Philippines has the highest absolute casualty rate, which is 40 percent higher than the second-ranked country, Indonesia. On average, there are 228 ships involved in accidents and 303 casualties per year in the Philippines." The annual world average for ship accidents is 32 and 60 casualties. Further, the average age of vessels in the Philippines is 30, compared to a world average of 22. Providing incentives for certain types of ships (for example, less polluting ships) is becoming increasingly common. These incentives are generally how certain behaviours can be encouraged without having to change regulation	
11	2014 IRR to the Domestic Shipping Development Act	Example (Section 7.6.3.8.2 and Section 8.3.2)	The 2014 IRR requires copies of safety certificates be sent to MARINA as part of the CPC application process, despite CPC	The duplication of requirements increases costs for applicants, delays entry and prevents	The policy rationale behind safety inspections is to ensure vessels comply with safety standards.	Carefully consider any overlapping safety inspections and combine into a single inspection. Alternatively, MARINA should recognise any

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			applicants already being subject to additional safety inspections by MARINA. Stakeholders complain of these overlapping requirements and having to undergo the same inspections twice. For example, CPC applicants are required to submit a minimum safe-manning certificate (2014 IRR, Section 7.6.3.8.2), despite being subject to MARINA inspection for minimum safe-manning requirements during port stays and/or while underway, or while the vessel is dry-docked (2014 IRR, Section 8.3.2). The Ship Safety Inspection System Manual also describes similar types of inspection. For example, both annual inspection and dry-docking inspections verify the completeness of ship documents and the condition of the hull.	operations (as vessels are usually dry-docked to be tested).	Avoiding duplication is in line with ARTA's policy objectives. It emphasised to the OECD that RA 11032 states that agencies must avoid any duplication of processes and conduct streamlining measures to ease burdens imposed by multiple or overlapping safety inspections.	inspections that have already been carried out as part of the CPC application process and adapt its own inspections accordingly.
12	Administrative Order 01-1995	Section 7	The Philippine Ports Authority (PPA) determines the maximum number of pilots in each pilotage district and has issued an administrative order to that end (PPA AO 03-85, as amended by PPA A0 01-95).The maximum number of pilots can be increased or decreased by the PPA's general manager to respond to the service needs of a district. Each district	This provision restricts the number of pilots able to provide services. This might create a shortage and might lead to higher costs for pilotage services.	The provision assumes that the PPA is in the best position to determine the number of pilots required in a pilotage district. During stakeholder consultation, Cebu Ports Authority (CPA) agreed that setting the maximum number of pilots should be discontinued and that port authorities should set the	The current provision imposing a cap of the authorised number of pilots for each district should be removed. The law should not impose a maximum number of pilots for each port, but instead require a minimum service level, such as a maximum waiting time for pilots to board a ship. This should be required as part of a tendering process for pilotage services. Each pilotage company

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			has its own numbers of pilots, as determined (and changed) by PPA. For example, in the Cagayan de Oro Pilotage District there are 8 pilot positions (increased from 7 by PPA Administrative Order No 02-2017).		minimum number of pilots for each port, according to need. It explained that: "port authorities must promulgate policies that promote open competition in pilotage services by accrediting pilots or pilot organisations." The PCC added that, "the rationale of PPA's determination of the number of pilots per district is weak. It should just accredit companies who want to provide pilot services". PPA agreed that, "each pilotage district should make its own assessment regarding the number of pilots necessary to accommodate all vessels (domestic/foreign)". As noted by PPA, pilotage is not compulsory (for example, pilotage is not required for vessels calling at private ports whose owners have formally waived the requirements of compulsory pilotage; see, PPA Administration Order No. 03-85, Article III, Section 9f) and exceptions exist so any recommendations about required service levels would need to take account of this. One example is PPA Administration Order No. 03-85, Article III, Section 8: "for entering a harbour and anchoring thereat, or passing through rivers or straits within a pilotage district, as well as docking and	should make its own assessment and its decision regarding the number of pilots necessary to reach the required service level.

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					undocking at any pier/wharf, or shifting from one berth or another, every vessel engaged in coastwise and foreign trade shall be under compulsory pilotage. However, in the Ports of Manila and Cebu, and in such other ports as may be allowed by this Authority, ship captains may pilot their vessels engaged in coastwise trade provided that they meet/comply with the following minimum qualifications/requirements." The Cebu Port Authority Administrative Order No. 02-98 (Rules and Regulations Governing Pilotage Services, the Conduct of Pilots and Pilotage in the Ports of Cebu), Article II, Section 1 states: "For entering a harbour and anchoring thereat, or passing through navigable rivers, straits or channels within a pilotage district, as well as shifting, docking and undocking every vessel with 500 GRT [gross register tonnage] and above, engaged in coastwise or foreign trade shall be under compulsory pilotage. However, ship captains or masters may be allowed to pilot their own vessels, provided that they are duly accredited by the Authority under such terms and conditions it may be imposed consistent with existing government	

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					regulations." Section 9, exemptions, states that in the following cases, pilotage is not compulsory: 1) vessels engaged in coastwise trade undocking at all ports, except the ports of Manila, Cebu, Iloilo, Tacloban, Davao, Zamboanga, Pulupundun, Masinloc, and San Fernando 2) government vessels 3) vessels of foreign governments entitled to courtesy 4) vessels authorised by BOT to engage in daily ferry service plying between two placed between two places within a port or between two ports 5) Philippine-flagged vessels engaged in coastwise trade that depart from anchorage 6) vessels calling at private ports whose owners have formally waived the requirements of compulsory pilotage.	
13	MARINA MC 2016-06, Executive Order 125/125-A (1987)	Section 12, Executive Order 125/125-A (1987)	MARINA regulates the pilotage profession and the licensing of pilots. Executive Order 125/125-A (1987) gives MARINA the power to issue licences to qualified harbour pilots, who can then be appointed by PPA, which announces the roster of regular harbour pilots for each pilotage district in an operational Memorandum Circular (MC). "Harbour pilot" refers to a "master duly licensed by MARINA	The requirement of a specific licence for each different pilotage district prevents pilots from easily working across districts. This is a geographical barrier and may reduce the number of pilots able to work in each port, potentially allowing pilots to exercise market power and	It is important that pilots have specific knowledge of a port or maritime area and so understandable that they are not able to work across ports with a single licence. The objective is likely to ensure safety.	The individual licensing requirements seem reasonable given the policy objective of ensuring pilots have specific knowledge of the port where they are licensed to practice. Nevertheless, the OECD recommends the authorities make it easier for pilots to work across pilotage districts and areas and to obtain multiple licences in order to avoid shortages and ensure that the geographical flow of such services is

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			and appointed by the Philippine Ports Authority (PPA) to act as a pilot in a specific pilotage district in the Philippines". "Harbour pilot licence" refers to the privilege and qualifications granted to a person for the practice of pilotage in a specific pilotage area or district of the country. "Pilotage area or district" refers to a "navigable area specified as such by PPA and named after its principal port, the navigation of which requires a harbour pilot". If a pilot wishes to work across pilotage districts, specific licences must be obtained for each pilotage district.	increase prices.		not unnecessarily restricted.
14	Executive Order 1088 (1986) and further implemented by PPA Administrative Order 004-2003	Executive Order 1088 (1986)	Pilotage is defined by the PPA Administrative Order 004-2003 as the "act of conducting a vessel from/to Pilots' Boarding Station, to/from berth or anchorage, at any public or private wharf or pier" Section 5 of the order determines the applicable pilotage rates as "prescribed under EO 1088 shall apply for pilotage services rendered for every movement of the vessel". Executive Order 1088 (1986) sets out the rate of pilotage fees or charges based on tonnage for services rendered to both foreign and domestic vessels. Stakeholders have explained that rates have not been officially changed since this EO was first published, and that market	The regulation of pilotage fees restricts the ability of firms to decide prices freely. It restricts competition as service providers have no incentive to compete on price and can lead to price co-ordination. It seems that in practice fixed prices are not enforced as market participants negotiate pilotage fees. However, as operators are required to remit a percentage based on the official maximum rates to PPA, there is an incentive to offer services at these maximum prices (and not below).	The provision aims to standardise the pilotage services to be rendered and the fees to be charged in the different pilotage districts (Objective, PPA Administrative Order 004-2003). Price controls of maximum prices were likely applied because of the current monopoly (in practice) of pilotage services in the Philippines, whereby only one organisation provides pilotage services. Only maximum prices are applied. The Cebu Port Authority (CPA) explained that: "As a representative of the public and in the public interest, the rates are regulated by the port authorities to prevent overcharging or overpricing,	No recommendation on the use of maximum prices. Update prices if necessary as they have not been updated since 1986.

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			participants do not apply these fixed prices in practice. Prices are instead determined by negotiation. The OECD was told by PPA Commercial Service Department, however, that the rates prescribed by PPA are maximum ceiling prices and although operators can set prices below the ceiling, the amount remitted to PPA (10% of fees) will always be based upon the ceiling rate.		especially since there is practically no competition in the pilotage service. It is therefore necessary that pilotage rates should be regulated by the government."	
15	PPA Administrative Order 004-2003	Article 7	The administrative order states that all harbour pilots and pilot associations shall remit "to the authority, through the Port Management Office (PMO) no later than the 10th day of the succeeding month, a government share of not less than 10% of the gross income derived from pilotage services, whether billed/unbilled and collected/uncollected. Late payments by the harbour pilots/pilots' associations shall be subject to interest and penalties as prescribed under PPA AO No 01-2002".	This rule relates to the conflict of interest (COI) of the PPA in its role of approving any increase in rates. However, unlike for cargo-handling services, fees for pilotage are set by the president and so there is no (or less) conflict.	The aim of the provision is to raise revenue. The Philippine state requires a share of revenue "in consideration of the rights and privileges granted to render pilotage services and for the use of port facilities".	No recommendation. It is up to government to determine how to raise revenue and any revenue-raising functions of government agencies.
16	PPA Administrative Order 12-2018	Section 17	The awarding of contracts for port services under the Port Terminal Management Regulatory Framework (PTMRF) is conducted through public bidding, conducted by the Bids and Awards Committee (BAC), which is formed by PPA. The bidding process includes the	The exclusion of foreign firms from the public bidding process limits the number of potential market players. This eliminates potentially lower-cost offers from foreign firms.	The provision aims to promote the participation of Philippine firms in the bidding process by restricting access to contracts under the Port Terminal Management Regulatory Framework to domestic suppliers. Foreign investment is prohibited above 40% equity	Progressively relax foreign-equity limits with the long-term goal of allowing 100% foreign-owned firms to participate in bidding processes. A first step might be to implement changes that move towards the ASEAN Framework Agreement on Services (AFAS) target of 70% ASEAN foreign-ownership in entities

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			following steps. 1) The BAC publishes an invitation to bid through a newspaper, its website, and by posting the same notice in certain visible public places. 2) The BAC holds a pre-bid conference, during which bidders that have purchased the bid documents may ask questions about the bid. 3) On a specified date, the bidders submit documents showing their legal eligibility, technical eligibility, and financial capability in one envelope. The financial proposal, which shall state the proposed concession fee, is contained in a second envelope. 4) The bidder with the highest responsive or single responsive bid will receive notice of award from the BAC. 5) Should the competitive bidding procedure fail twice, the BAC can directly negotiate the contract with eligible private entities. For this purpose, the BAC shall invite at least three entities. If only one responds, the BAC can continue to negotiate with that entity. The process is similar to the bidding process under the Government Procurement Reform Act. Only Filipino citizens or Philippine entities with at least 60% Philippine equity can join the public		participation in a company. Public-procurement reforms are to be initiated by ARTA in relation to RA 9184. The OECD encourages the ARTA moves to consider international firms' participation and ASEAN firms' participation as part of this reform. International comparison The OECD Guidelines for Fighting Bid Rigging in Public Procurement recommend that, in general, a tender process should be designed so that it maximises the potential participation of genuinely competitive bids, and reduces constraints on foreign participation in procurement whenever possible. In the European Union, the European Commission generally advocates open international public-procurement markets and grants market access to its public procurement markets for certain goods and services to non-EU countries. In Australia, the public-procurement framework is non-discriminatory and procurement regulation explicitly prohibits discrimination against foreign suppliers, meaning that all potential government suppliers must be treated equitably. The ASEAN Framework Agreement on	providing port services, before extending it to non-ASEAN nationals. In the long term, the Philippines, may consider full liberalisation by allowing 100% foreign-owned port service providers to participate in the bidding process.

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			bidding.		Services (AFAS) is an ASEAN-wide strategy of strengthening co-operation among member countries under which all countries are required to move towards commonly agreed liberalisation programmes, with the view to removing restrictions to trade in services and boosting ASEAN services-based economies. The initial target is 70% ASEAN foreign-ownership in concerned entities	
17	Commonwealth Act 613 (1940); Executive Order 408 (1960)	Commonwealth Act 613, Section 9(c)	A foreign crew member requires a visa; its maximum duration is 3 months. The Philippines Department of Foreign Affairs (DFA) – Office of Consular Affairs, explained that the guidelines, which contain the requirements for 9(c) visa applications, as well as the maximum duration of such visas, are neither published nor released to the public. According to DFA, it distributes these guidelines internally to the different Philippine embassies. The embassies then post the relevant information on their websites. DFA confirmed however that the maximum validity period of the seaman and crew member's visa is 3 months. All applicants for a 9(c) seaman's visa must file their application at a Philippine embassy. A survey of the requirements posted by 10 different Philippine embassies (in	The need for a visa is a regulatory burden. Certain countries exempt seafarers and so remove this burden. The short 3-month duration of the visa also means that the application process needs to be regularly repeated. Further, the lack of transparency and access to the relevant guidelines (even if available through the relevant embassy) may create legal uncertainty and increases costs for actual and potential market participants.	The OECD has not identified a policy objective for the short length of the visa and the lack of published guidelines. International comparison In the OECD Trade Restrictiveness Index (which measures trade barriers in services) the number of days allowed for a foreign crew visa ranges from 15 days to 36 months, but in many countries, seafarers are exempt from such visa requirements. For example, in Australia, the duration of a crew visa is 36 months. Multiple entries are allowed for these maritime crew visas.	Extend the duration of the 9(c) visa and make the visa guidelines publicly available on the DFA website.

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			Pakistan, India, Argentina, Australia, Singapore, Malaysia, Nordic Region, USA, Macau and Jordan) showed that the requirements for the seaman's visa and crew members' visa appear to be identical, save for a few minor exceptions. The visa fees appear to differ in each country, but not substantially.			
18	Presidential Decree 505 (creation of PPA and mandate), known as the Philippine Port Authority Decree of 1974, as amended by Presidential Decree 857.	Article IV, Section 6, Corporate Powers and Duties, (i), (ii), (iii) and (iv); Article VIII, Section 26 (Power to make port regulations).	The multiple functions of the Philippine Ports Authority (PPA) as a port developer, maintainer, regulator and service provider could lead to conflicts of interest. For example, PPA engages in revenue-generating activities as the developer and owner of its ports and their facilities, while also leasing these facilities to private service providers for which it receives revenues and holds the power to impose fee rates and other charges. In addition to these usage fees, PPA also receives a share of the revenues of these private service providers. As the Republic Act 7656 requires Government-Owned and Controlled Corporations (GOCC) to remit at least 50% of their annual net earnings to the government as dividends, PPA has an incentive to maximise revenues from its operations, while also being the regulator of port operations and those of private service providers. Stakeholders have complained that these conflicts of interest in PPA's	PPA is offering port services, while also being responsible for regulating and monitoring those same services. A real or perceived conflict of interest may exist. This conflict of interest might lead to excessive fees, as well as a possible competitive advantage over competitors.	PPA's declared policy concerning its current role and functions is to implement an integrated programme for the planning, development, financing and operation of ports or port districts for the entire country. The OECD recognises that PPA has already begun taking the initiative and making an effort to address conflicts of interest, for example, by holding public hearings on rate increases. In September 2019, House Bill 4317 was filed before the House of Representatives; it seeks to reform the administration of ports in the Philippines and provides for the separation of PPA's regulatory, commercial and development functions. The proposal is to transfer PPA's regulatory functions to MARINA and create a new corporation, PHILPORTS, to run the commercial and development functions. The bill aims to "avoid the conflict of interest arising from regulatory agencies vested	Enact HB 4317, which will ensure the separation of PPA's functions, avoid conflicts of interest, and ensure that PPA is incentivised to develop, modernise and expand its ports.

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			functions has led to high port charges, inefficient port operations and low service levels.		in both regulatory and development or commercial functions". It explains that "under no circumstances should a regulatory agency benefit from its own regulation and/or use its own regulatory powers to protect itself from competition at the expense of public interest" (Section 2, HB 4317). As explained in the OECD's *Best Practice Principles for Regulatory Policy*, regulatory integrity is of upmost importance: "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. A high level of integrity improves outcomes of the regulatory decisions." (OECD, 2014, p. 47[3]). It is important to create an independent and structurally separate body. When clarifying the roles of future regulators and involved agencies, reference should be made to the principles of role clarity; for example, under "functions": "Regulators should not be assigned conflicting or competing functions or goals. The assignment of potentially conflicting functions to any regulator should only occur if there is a clear public benefit in	

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					combining these functions and the risks of conflict can be managed effectively" (OECD, 2014, p. 30[3]). The World Bank's *Port Reform Toolkit* provides a guide to policymakers on undertaking sustainable and well-considered port reforms (World Bank, 2016[4]). It provides that, "to avoid conflicts of interest, the law should explicitly regulate the powers and duties of the port authority in relation to private operators with respect to investments and share participation." It also states that: "generally, it is undesirable for a public port authority to be directly involved in terminal operations. A port law may explicitly prohibit a port authority from providing cargo-handling services. A further step to avoid conflict of interest issues would be to prohibit a port authority from being a shareholder in a terminal operating company located in its port area".	
19	Republic Act 7621	Section 9(a), (b) and (c)	Like PPA, Cebu Ports Authority (CPA) has a dual role of operator and regulator of ports; this includes management and operational functions, as well as revenue-raising powers. Like PPA, CPA also has broad powers and excessive discretion (see, for example, Section 7 of the Republic Act).	Again, like PPA, CPA is faced with a COI. There is a financial incentive for CPA to approve increases in rates as this generates more revenue. Both are therefore unlikely to be objective (and even more unlikely to be seen as neutral).	The provision aims to integrate and co-ordinate the planning, development, construction and operations of all ports and port facilities within CPA's territorial jurisdiction.	Any reform of PPA's regulatory and commercial functions should also apply to CPA, as well as for any other port authority with the same structure.

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20	Rep. Act 7656 (GOCC Dividend Law)	Rep. Act 7656, Section 3	As a GOCC, PPA must remit 50% of its annual net earnings back to the state.	Market participants complain that PPA has the goal of generating as much revenue as possible to remit to the state and, as a consequence, may be biased in carrying out its various functions. This consequently may distort competition in the market for port services. For example, the profit-maximising function of PPA was applauded in a Philippine News Agency article of 14 March 2018: "Department of Transportation (DOTr) Secretary Arthur Tugade congratulated the Philippine Ports Authority (PPA) as it is set to remit more than PHP 3 billion in dividends to the national government, its highest contribution since 1986." Another article describes PPA as being part of the "billionaires club" of GOCCs. The real issue may not be the requirement of remittance itself, but rather that the increases PPA approves are motivated (solely or in part) by the requirement to remit the highest possible dividend,	The policy objective of the GOCC Dividend Law is to allow the government to raise additional revenue. Section 1 states: "Government-owned or -controlled corporations, without impairing their viability and the purposes for which they have been established, shall share a substantial amount of their net earnings to the National Government."	No recommendation. It is up to the government to determine how to raise revenue and any revenue-raising functions of GOCC. The policymakers' objective prevails over the restriction of competition. However, the OECD does support reform that would address the conflict of interest.

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				even if the extra money would be better spent on investment in infrastructure works, for example.		
21	Presidential Decree 505, (Creation of PPA and mandate) – known as the Philippine Port Authority Decree of 1974 – as amended by Presidential Decree 857 and LOI 1005-A (1978), PPA Administrative Order 11-1995	Article VII, Section 20 (Rates and charges), LOI 1005-A, Section 3, PPA AO 11-95, Section 5.1	PPA regulates port charges, including cargo-handling charges, and collects revenue from these charges, meaning it benefits from any increase in rates as it receives a part of port revenues. Currently, it collects 10% for domestic cargo-handling rates and 20% for international cargo-handling rates, as well as revenue from other services such as tug handling. Rate increases are approved by PPA after a hearing process. Neither the Ministry of Transport nor the president provides final approval. The report *OECD Investment Policy Reviews: Philippines 2016* states that the PPA "has little incentive to promote competition and has used its regulatory powers to protect its ports from competition delaying or not issuing permits to construct and operate private ports". This COI harms competition and disadvantages competitors such as private port operators.	There is a conflict of interest in PPA's role as it has a financial incentive to approve rate increases to generate more revenue. PPA might not be completely objective in determining rates when a port-service provider requests an increase in the rates it charges its customers, because it receives a percentage of those rates.	The policy aims to implement an integrated programme for the planning, development, financing and operation of ports or port districts for the entire country. If HB 8005 is passed, it would address the issues noted. Indeed, Section 3(g) explicitly states that the newly created entity, PHILPORTS, shall only collect port fees and dues duly approved by MARINA and that it shall not "share from cargo-handling revenues and/or any service providers contracted by PHILPORTS". The OECD fully supports these proposed changes.	HB 8005 should be implemented. If HB 8005 is *not* passed, the OECD would recommend the separation of PPA's revenue-generating activities from its regulatory activities. PPA could retain its operational and revenue-generating functions over the ports, but regulatory functions should be transferred to another agency to ensure independence. For example, MARINA or another Department of Transport (DOTr) agency could approve rates. Alternatively, if PPA is to make a recommendation on rates, final approval should be carried out by a separate agency. Also, LOI 1005-A should be rescinded so that PPA is not eligible to obtain a percentage of the revenue from these port-service providers.
22	PPA AO-No. 10-2018	Section 4 (e)	In order to provide port services in ports under PPA jurisdiction, operators must obtain accreditation under PPA AO No. 10-2018. Applicants must comply with the criteria listed in Section 4, including the requirement that the applicant has been engaged in port service	This law limits the ability of some suppliers (those that have been engaged in port services for less than two years) from providing a port service in a PPA-controlled port as they are unable to obtain the required	The guidelines on the accreditation of port-service providers seek to ensure that "port services at PPA ports are being provided by qualified service providers" (Recital to PPA AO-No. 10-2018) and that port services are "rendered	No recommendation. According to PPA, the approval of the new Administrative Order on the Guidelines on the Accreditation of Port Service Providers by the PPA Board of Directors per Resolution No.

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			for no less than two years immediately prior to the application date.	accreditation. This law favours incumbents who have already been operating in the market for more than two years. New players cannot enter the market, which decreases the number of potential market participants, and so increases the cost of the service.	efficiently and continuously by qualified service providers" (Section 6).	2808 means that the experience of at least two years is no longer required.
23	PPA AO-No. 10-2018	Section 6	The accreditation process for providing port services for PPA – set out in in Section 6 of the order – gives no time limit for PPA's assessment of the accreditation application. This creates uncertainty about the length of time required for accreditation.	Lack of a time limit could delay accreditation and so market entry of port-service providers.	The guidelines on the accreditation of port-service providers state that the provision aims to ensure that "port services at PPA ports are being provided by qualified service providers" (Recital to PPA AO-No. 10-2018) and that port services are "rendered efficiently and continuously by qualified service providers" (Section 6). The OECD notes the introduction of the 2018 Ease of Doing Business and Efficient Government Service Delivery Act (EODB Law), which requires that processing of government transactions must be limited to a maximum number of days ranging from 3 days to 20 days depending on whether the transaction is classified as simple, complex or highly technical, subject to certain conditions.	Statutory time limits should be introduced, in line with the EODB Law. Applicants should be given certainty about the maximum time that the PPA will take to assess and grant accreditation.

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					PPA has told the OECD that it will meet these EODB-enforced time limits. ARTA noted that Section 9(b) of RA 11032 also has set processing times for simple transactions (3 days), complex transactions (7 days), and highly technical transactions (20 days) for which non-compliant entities may be held liable by law. If special laws govern a particular agency, the prescribed processing times stipulated in the special law will prevail as RA 11032 is only a general law. However, it is critical that agencies still stipulate the prescribed processing times in their Citizens' Charters so applicants are able to identify and clearly determine how long a particular process will take. The failure to prescribe the identified processing time and publish it in a Citizens' Charter will lead to the penalties set out in RA 11032 or the relevant special law.	
24	PPA AO-No. 10-2018	Section 6	The accreditation process for providing port services for PPA – set out in in Section 6 of the order – give the authority broad discretion to "require additional documentary requirements".	This possible requirement could result in delays, increase uncertainty for market participants, and increase the cost of obtaining accreditation.	The guidelines on the accreditation of port-service providers state that the provision aims to ensure that "port services at PPA ports are being provided by qualified service providers" (Recital to PPA AO-No. 10-2018) and that port services are "rendered efficiently and continuously by qualified	Any required documents should be outlined in the legislation or in regulations. Or at least, the time limit within which PPA can require additional documents should be stated.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
					service providers" (Section 6). PPA has explained that the new Administrative Order on the Guidelines on the Accreditation of Port Service Providers streamlined the documentary requirements. ARTA emphasised that: "agencies covered under RA 11032 must be able to publish online their Citizens Charter. Furthermore, pursuant to Sec. 6e concerned agencies must indicate the document/s to be presented by the applicant or requesting party, if necessary, in the Citizens' Charter. This means that agencies must clearly indicate all required documents in the Citizens' Charter and avoid the use of additional documentary requirements that can cause additional burdens to the transacting party."	
25	PPA AO-No. 10-2018	Section 4	The criteria for accreditation for providing port services for PPA relate to business composition and potential conflicts of interest, but set no specific or technical criteria for when an operator can be accredited to provide a port service. Neither do the regulations clearly set out how PPA will evaluate the accreditation application.	The lack of clear criteria and transparency could lead to discrimination, cause uncertainty and discourage market entrance. As one of the few clear accreditation criteria is that the applicant has been engaged in port services for no less than two years immediately prior to the application date, the	The guidelines on the accreditation of port-service providers state that the provision aims to ensure that "port services at PPA ports are being provided by qualified service providers" (Recital to PPA AO-No. 10-2018) and that port services are "rendered efficiently and continuously by qualified service providers" (Section 6).	State in the guidelines the specific criteria that will be taken into account when assessing an application.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
				process favours incumbents.		
26	2014 IRR to the Domestic Shipping Development Act	Rule III	Operators of tugboats must obtain a CPC from MARINA, unless the tugboats are used for pilotage, salvaging and dredging. Given this list of exceptions, it is unclear when tugboats actually require a CPC.	The requirement to obtain a CPC restricts entry into the towage market. It creates a barrier to entry that reduces the number of operators and could increase entry costs for potential entrants.	CPC are required by "public utilities" that are understood as services essential to the general public and that involve a public-interest element. Licencing requirements exist to ensure control over who operates a public service, given its importance. The CPC requirement ensures that applicants wishing to operate a public service are properly scrutinised. CPC are granted by agencies authorised by law (such as MARINA) to determine that the operation of the service and the authorisation to do business will promote the public interests in a proper and suitable manner (PSA, Section 15 and Section 16[a]).	Clarify in law that no type of tugboat requires a CPC.
27	Philippine Merchant Marine Regulations (1997)	Rule XV/I	Domestic vessels engaged in towing must obtain a Bay and River Licence (BRL) from MARINA's Maritime Safety Service, as well as a CPC (unless exempted). A BRL is valid for one year for the "particular port/body of water where the ship may engage in business".	The requirement to obtain a licence restricts entry. It creates an entry barrier that reduces the number of operators and might increase entry costs for potential operators.	The provision aims to ensure the safety and security of vessels in domestic waters.	No recommendation.
28	Presidential Decree 1221, 1977	Section 2	"Ship repair" is defined in Presidential Decree 1221 (IRR) 1999 as: "the overhaul, repair improvement, alternation of the	This provision contains a double restriction. It prevents: 1) potential market participants not	The recital to Presidential Decree 1221 explains that the requirement to undertake repairs in MARINA-registered shipyards,	Allow repairs to be carried out overseas, removing the requirement to carry out repairs at a MARINA-approved shipyards in the

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			hull, machineries, equipment outfits and components of all types of watercrafts." Ships may be required to be dry-docked in order for repairs to be carried out. With limited exceptions, the decree requires Philippine owned and/or registered vessels to undertake all repairs and alterations in the Philippines, in MARINA-registered shipyards (see also, PD No. 666 and its IRR). Further, fines apply if this requirement is not followed (see, Section 4).	registered with MARINA; and 2) eliminates competition from overseas providers. This reduces competition in the Philippine market for repairs and increases costs for Philippine-owned and registered vessels. Stakeholders have highlighted that it can be far cheaper to have repairs carried out overseas than in the Philippines.	in the Philippines is necessary in order to: 1) promote and maintain the Philippine ship-repair industry, ensuring domestic capability for ship repair and maintenance; and 2) ensure the conservation of the country's foreign-exchange reserves, as "repairs undertaken abroad entail payment in foreign currency, thereby resulting to the depletion of the country's foreign exchange reserves". The need to conserve foreign-exchange reserves is reiterated in the introduction to the IRR of PD No. 1221. This may no longer be a main consideration for the requirement to carry out repairs in the Philippines at MARINA-registered shipyards. Today, it is more likely that the main reasons include safety and quality control, as well as the promotion of the Philippine ship-repair industry. <u>International comparison</u> The OECD has found no similar restriction in ASEAN countries such as Thailand, Brunei Darussalam, Malaysia, Indonesia and Viet Nam. Shipowners in these ASEAN countries are free to carry out ship repairs outside their	Philippines. This permission might be accompanied by regulations that impose equivalent standards on overseas shipyards (for example, compliance with accepted international standards). To maintain standards of quality control and safety MARINA should, however, continue to require shipyards in the Philippines to register, in line with international standards.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
					country.	
29	Presidential Decree 1221, 1977	Section 2	As mentioned above, with limited exceptions, Section 2 of Presidential Decree No. 1221 requires Philippine-owned and/or registered vessels to undertake all repairs and alterations in the Philippines, in MARINA-registered shipyards. Fines apply if this requirement is not followed. "Dry-docking" is defined in MC 152 1999 (Amendments to Specific Regulations on Inspection, Dry-docking and Statutory Certificates) as "a condition in which a ship is taken out of water for cleaning and repair of her hull and its parts such as rudder, propeller, sea valves and sea chests, among others". Dry-docking is different to general repairs, but ships may need to be dry-docked in order for repairs to be carried out.	This provision contains a double restriction. It bans potential market participants not registered with MARINA and eliminates competition from overseas providers. This reduces competition in the Philippine market for dry-docking and increases costs for Philippine-owned and registered vessels. The World Bank's 2015 *Philippine Economic Update: Making Growth Work for the Poor* noted that: "Dry docking outside the country can be up to 70 percent cheaper for large vessels. In fact, even if transportation costs are factored in, it would still be cheaper to dry-dock a vessel outside the country." Stakeholders also confirm that it can be far cheaper to carry out repairs overseas than in the Philippines.	The recital to Presidential Decree 1221 explains that the requirement to undertake dry-docking in MARINA-registered shipyards in the Philippines is necessary in order to: 1) promote and maintain the Philippine ship-repair industry, ensuring domestic capability for ship repair and maintenance; and 2) ensure the conservation of the country's foreign-exchange reserves, as "repairs undertaken abroad entail payment in foreign currency, thereby resulting to the depletion of the country's foreign exchange reserves". The need to conserve foreign-exchange reserves is reiterated in the introduction to the IRR of PD No. 1221. This may no longer be a main consideration for the requirement to dry-dock in the Philippines at MARINA-registered shipyards. Today, it is more likely that the main reasons include safety and quality control, as well as the promotion of the Philippine ship-repair industry. International comparison The OECD has found no similar restriction in Thailand, Brunei	Allow dry-docking to be carried out overseas, removing the requirement to dry-dock at a MARINA-approved shipyard in the Philippines. This permission might be accompanied by regulations that impose equivalent standards on overseas shipyards (for example, compliance with accepted international standards). To continue standards of quality control and safety, however, MARINA should continue to require registration of shipyards in the Philippines, in line with international standards.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
					Darussalam, Malaysia, and Viet Nam. Shipowners in these ASEAN countries are free to carry out their dry-docking obligations outside their country.	
30	Presidential Decree 1221 (Implementing rules and regulations) 1999	Rule III (Exceptions to the requirement), Rule IV (Applications for exemption)	Philippine owned and/or registered vessels are required to undertake repairs and dry-docking in the Philippines in MARINA-registered ship yards. Rule III of the IRR to PD 1221 sets out the exceptions to this requirement: 1) in emergency situations where it is impractical that the vessel be brought back to the Philippines 2) when repair cannot be undertaken at MARINA-accredited shipyards due to their existing prior commitments or the inadequacy or lack of service facilities, as determined by MARINA 3) when the Philippines is not the vessel's port of call (a waiver must be obtained from MARINA) 4) other meritorious cases as determined by MARINA. Rule IV provides that vessels able to seek an exemption under Rule III must apply to MARINA within 5 days following the contracting of such repairs or dry-docking and provide the documentation outlined in the legislation. The rules provide	The exemptions are limited, but nevertheless create uncertainty surrounding exemption approval due to MARINA's broad discretion. The consequences of an eventual refusal may dissuade operators from repairing their vessels or dry-docking overseas, even if they potentially meet one of the exemptions. The limited nature of the exemptions precludes competition in the market for ship repairs and dry-docking and increases costs faced by Philippine-owned and registered vessels. Section 4 of Rule IV provides that if an applicant is covered by an exemption it may file an application with MARINA for: "verification/determination of the reasonableness of the cost together with a copy of the estimates, contract or job order and other pertinent documents; provided, that if MARINA determines the	The policy objective behind the requirement to undertake dry-docking in MARINA-registered shipyards in the Philippines is discussed above.	No recommendation. If the above recommendation is implemented, this exemption provision would no longer apply.

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			broad discretion to MARINA. For example, under Rule IV (Section 2), before it approves the matter, MARINA can refer the applicant to other MARINA-registered shipyards, and if a waiver is issued, it may be subject to terms and conditions that MARINA decides to impose. Section 3 provides that if MARINA denies the application, the Philippine Central Bank is informed and applications for foreign-exchange allowances are denied. Section 5 provides for a filing fee for the exemption application set by MARINA.	unreasonableness of the cost, unless the applicant finds an alternative MARINA-registered shipyard, public bidding may be conducted among MARINA-registered shipyards and the repairs or works shall be awarded to the lowest bidder." This seems to partly address the high costs of domestic shipyards, but only seems to apply to ship-owners exempt from the requirement to dry-dock in the Philippines and so seems to be of limited use.		
31	PD 666, MC 178 s2002, Memorandum Circular No.152, PD 1059.	MC 178 s2002, Section IV.1	Shipyards and the business of constructing and repairing vessels are not considered "public utilities" and therefore do not require a CPC to operate; see, PD 666, Section 1 (d). However, shipyards need a valid certificate of registration from MARINA to operate. Only MARINA-licensed shipyards can undertake repairs or carry out dry-docking activities for Philippine owned and registered ships. MARINA's power to regulate shipyards is set out in PD 1059.	As only MARINA-licensed shipyards can undertake repairs or carry out dry-docking activities for Philippine-owned and -registered ships, non-licensed shipyards are prohibited from market participation, restricting competition among national suppliers. As MARINA-licensed shipyards must be located within the Philippines, this requirement also eliminates competition from overseas shipyards.	This rule promotes the development of the Philippine shipbuilding and ship-repair industry, while allowing for quality control.	No recommendation in terms of the need to be MARINA-licensed to operate as a shipyard in the Philippines, as this is justified on the grounds of safety and quality control. Accreditation also ensures a level playing field. If shipowners are allowed to dry-dock or carry out repairs overseas, it should follow that overseas shipyards should have equivalent accreditation. Any such shipyards should comply with international standards and be accredited by their national authority.
32	MC No. 131 of 15 July 1998; MC	Various	There is a nationality requirement for the crews of Philippine-	The provision prevents market participants from	The crew requirements support the national labour market and	The OECD recommends one of two options.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
	137 of 17 September 1998; MC No. 182 of 22 January 2003; MC No. 2017-04 of 13 July 2017		registered shipping vessels, both domestic and international. This is outlined in various MARINA MC. The MC provide that all ships shall be completely manned by Filipino crew. Foreign crew may be allowed upon approval by the MARINA. MC 2017-04 provides that all ships shall be completely manned with Filipino officers and crew and no foreign officer shall be allowed, except as supernumerary and as provided for in any other regulations. While Rep. Act 8544 (Philippine Merchant Marine Officers Act of 1998), as amended by Rep. Act 10635, provides for a system of the recognition of a foreign CPC, this applies only to the recognition of the professional licence of a foreign marine officer permitted to work on Philippine-registered vessels, in the absence of any available or equally qualified Filipino marine officer.	hiring foreign workers. This is especially an issue where there is a shortage of qualified workers, which stakeholders have confirmed is the case, as firms are prevented from supplying the market due to lack of eligible workers.	seek to ensure Filipino citizens acquire necessary skills. The preference for Filipino crews for Philippine-registered vessels is expressed as a state policy in both Rep. Act 7471 (Philippine Overseas Shipping Development Act), approved on 5 May 1992 and Rep. Act No. 9295 (Domestic Shipping Development Act of 2004), approved on 3 May 2004. Sec. 2 (a) of RA 7471 provides for the Declaration of Policy as: "Develop and maintain a Philippine Metropolitan Marine composed of well-equipped, safe and modern vessels most suited for Philippine requirements and conditions, manned by qualified Filipino officers and crew, and owned and operated under the Philippine flag by citizens of the Philippines or by associations or corporations organized under the laws of the Philippines, at least sixty percent (60%) of the capital of which is owned by citizens of the Philippines." Similarly, the Declaration of Policy in RA 9295, states: "The Philippines needs a strong and competitive domestic merchant fleet owned and controlled by Filipinos or by corporations at	1)Remove the nationality requirements. If necessary, keep them for key positions, such as captain. 2)Conduct annual surveys of supply and demand for crews and, in the case of shortages, allow exemptions from the nationality requirement.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
					least sixty percent (60%) of the capital of which is owned by Filipinos and manned by qualified Filipino officers and crew." International comparison In other countries, management is often restricted to nationals while crew are not subject to nationality requirements. For example, in Denmark, only the captain of a ship must be a Danish or EU citizen; there is no nationality requirement for other crew members. Likewise, in Germany, only the captain of German-flagged merchant ships has to be an EU/EEA citizen. For other officers, there is a requirement to have one EU/EEA citizen officer only for ships of more than 8 000 gross tonnes. In Malaysia, there is no restriction on a crew member's nationality if the ship manager or ship-management company operating the ship is incorporated in Malaysia.	
33	MC 182 s2003	Section 4	Ships registered under MARINA Circular 182 s2003 for international voyages must be completely crewed by Filipinos.	The provision prevents market participants from hiring foreign workers. This is especially an issue where there is a shortage of qualified workers, which stakeholders have confirmed is the case, as firms are prevented from supplying the market due to	The crew requirements support the national labour market and seek to ensure Filipino citizens acquire necessary skills. The preference for Filipino crews on Philippine-registered vessels is expressed as a state policy in both Rep. Act 7471 (Philippine	The OECD recommends one of two options. 1) Remove the national requirement. If necessary, keep it in place for key positions, such as captain. 2) Conduct annual surveys of supply and demand for crews and, in the

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
				lack of eligible workers.	Overseas Shipping Development Act), approved on 5 May 1992 and Rep. Act No. 9295 (Domestic Shipping Development Act of 2004), approved on 3 May 2004. International comparison In other countries, management is often restricted to nationals while crew are not subject to nationality requirements. For example, in Denmark, only the captain of a ship must be a Danish or EU citizen; there is no nationality requirement for other crew members. Likewise, in Germany, only the captain of German-flagged merchant ships has to be an EU/EEA citizen. For other officers, there is a requirement to have one EU/EEA citizen officer only for ships of more than 8 000 gross tonnes. In Malaysia, there is no restriction on a crew member's nationality if the ship manager or ship-management company operating the ship is incorporated in Malaysia.	case of shortages, allow exemptions from nationality requirement.
34	Republic Act 9295 (Domestic Shipping Development Act of 2004)	Section 9 (Safety standards)	MARINA has the power under this section to "inspect vessels and all equipment on board to ensure compliance with safety standards". The law does not define the conditions for such an inspection.	MARINA has broad discretion, which may result in discrimination between different competitors.	The enforcement of safety standards is necessary to ensure security and safety.	Draft guidelines that clearly outline MARINA's power of inspection describing exactly in which cases MARINA has the power to inspect vessels. The exact conditions of an inspection should be defined by the

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
						legislator to ensure consistency of decisions and allow companies to be aware of how and on what grounds such an inspection can be carried out.
35	Republic Act 9295 (Domestic Shipping Development Act of 2004)	Section 10 (3)	The relevant provision allows MARINA to "modify, suspend or revoke at any time upon notice and hearing any certificate, licence or accreditation it may have issued to any domestic ship operator". "Notice and hearing" are not further defined, however. The provision states that: "Any action to modify, suspend or revoke any certificate, license or accreditation of a domestic ship operator is governed by MARINA Revised Rules of Procedure issued in 2014". The conditions for modifying or suspending the authorisation are not explained further.	MARINA has broad discretion and this may result in discrimination, deter new entrants and increase costs for existing players.	Subject to certain fairness considerations (upon notice and hearing), MARINA has broad discretion to determine a domestic shipper's appropriateness to provide its services.	Guidelines should be drafted that clearly outline MARINA's powers of revocation, particularly those for revoking authorisations. The circumstances under which authorisations could be revoked should be defined by the legislator to ensure consistency of decisions to give companies clarity about how and on what grounds this could occur.
36	Republic Act 9295 (Domestic Shipping Development Act of 2004), MARINA's Rules of Practice and Procedure (RPP)	RA 9295, Section 10(4); RPP, Section 4	Section 4 of RA 9295 gives MARINA the power to establish and proscribe domestic ship operators' routes, zones or areas of operations. Routes are usually part of the conditions of any CPC granted to domestic shipping operators. Section 4 of MARINA's Rules of Practice and Procedure (RPP) state that an applicant must state "the route that it proposes to serve" in its CPC application. The route must indicate the exact location of the ports of origin and destination. However, neither the nature of how routes are set nor MARINA's influence on the route-	Requiring approval of a set route upon which the operator is allowed to operate limits its ability to adapt to changing market conditions and new opportunities, particularly given the difficulty of changing any set route through an amendment to the CPC application. Depending on how route setting works in practice, the rule could discriminate against certain participants if they are forced to follow a route they no longer wish to	It is likely that routes are approved by MARINA for safety and security reasons, and to ensure proper supervision.	MARINA should only be able to "establish and prescribe routes" for safety reasons. The ability to establish or proscribe routes for other general public-interest reasons or because a company already services a route should no longer be sufficient reason to prevent changes.

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			setting process is clear.	follow. According to stakeholders, this may lead to underuse of some routes in practice. The route-setting process may create geographic barriers, and limit the number of service providers in certain areas.		
37	Republic Act 9295 (Domestic Shipping Development Act of 2004)	Section 10 (5)	MARINA can require a domestic shipping provider to provide services, if necessary for the development of an area, emergency reasons or in the public interest. The OECD has not been able to locate any regulations that specify under which conditions domestic operators can be required to provide services and if and how much compensation is provided.	Forcing a company to provide services might create discrimination between competitors. Requiring a company to provide a certain service creates associated opportunity costs. The OECD has not been able to locate any regulations that specify under what conditions domestic operators can be required to provide services and if and how much compensation is provided.	The provision likely aims to protect the national interest and allows MARINA to assess whether current shipping services meet the country's development and public-interest needs.	The legislation should be amended so that MARINA is no longer able to require ship operators to provide any services for development or for the public interest. MARINA should only be able to require domestic shipping companies to provide services in situations of national emergency, such as for emergency sealifts. Guidelines should clarify when this is this case and under which conditions services may be required (including appropriate compensation). In all other cases, any shipping operator providing services for MARINA or another party should do so subject to negotiation or a public procurement procedure.
38	Republic Act 9295 (Domestic Shipping Development Act of 2004), Section 12 of IRR of RA 9295 (2014).	Section 12	Under Section 12 of RA 9295, MARINA has the power to force domestic shippers to transport government mail and other government cargo "on mutually agreed terms" and must give "preferential, negotiated conditions" for the carriage of this cargo. No related issuances setting out more specific guidelines for the implementation of this provision exist. The OECD could not find out how this provision works in	Shippers forced to take government cargo are not able to use this space to engage in other commercial activities, limiting their ability to provide services to other parties. Shippers must also carry out the service on preferential conditions, which might lead to discrimination between competitors.	Based on one stakeholder's opinion, the policy objective is likely to ensure that government mail and cargo is transported under preferential conditions.	MARINA should only be able to force companies to take government mail and cargo in a situation of national emergency. In that case, conditions should be clearly set out in guidelines. In other situations, carriage of government cargo should be subject to negotiation and, when appropriate, public procurement procedures.

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			practice – whether preferential terms are actually given and how they compare with market rates – as it does not have access to the contracts agreed between the government and shipping companies.			
39	Republic Act 9295 (Domestic Shipping Development Act of 2004), RA 9295 2014 IRR	Section 13	Section 13 of RA 9295 states that MARINA can create special rules for monopolised routes, but the text of the provision is unclear as to the exact nature of these rules. "Monopolised route" is defined in Section 3 of the act and refers to a route or link served either by only one franchised operator, a group of franchised operators beneficially owned by a single individual, a family or corporation, or a cartel, which results in the absence of competition or lack of effective competition. For example, Section 13 of RA 9295 2014 IRR provides that MARINA shall ensure the rates charged for monopolised routes are just and equitable to sustain a service, taking into consideration the economic and beneficial effect that a service may have upon the port, province, island or region it proposes to serve, the volume of available passengers and cargo, the level and quality of service offered by the ship operator, and the available port facilities and terminal handling services. The standards of service provided must be in accordance with relevant MARINA rules and	It is unclear how this provision is applied in practice, especially how MARINA ensures the rates charged are just and equitable, while taking into account the considerations listed. It is unclear whether MARINA actually sets maximum prices and enforces them in practice. If it does, this would greatly reduce any incentive to innovate or improve the service.	Control of maximum prices may serve as a counterweight to a lack of alternatives on a monopolised route. Price regulation is likely used to protect passengers on monopolised routes by preventing a monopolist from abusing its dominant position on the specific route.	Grant additional permits whenever possible to reduce the number of monopoly routes. Continue to allow MARINA to impose maximum prices for monopoly routes.

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			regulations relative to service standards. The OECD has not been able to locate any guidelines that explain the implementation of this provision.			
40	Implementing Rules and Regulations (IRR) 2014 (to RA 9295)	7.6.1.1, 7.6.3.3 (which requires the accreditation as a document required for the CPC application)	In order to be issued with a CPC, the applicant must first be a MARINA-accredited entity. Before an applicant can apply for a CPC, it must first apply for and receive MARINA accreditation. This may draw out the approval process and prevent speedy market entry.	The process of receiving this initial accreditation involves various steps and is potentially burdensome. Provisions that pose an excessive administrative burden may significantly increase costs for market operators and authorities. The extended process delays market entry.	The purpose of the CPC is to authorise a domestic ship operator to engage in domestic shipping. In addition to this, MARINA imposes accreditation requirements for domestic shipping enterprises or entities as a prerequisite to the granting of permits, licenses, authorities, VAT exemption under RA 9295 (if applicable), financial assistance and incentives. Stakeholders explain that Section 5 of Republic Act 11032 encourages all agencies to review existing laws and recommend the repeal of laws that are outdated, redundant, conflicting and add undue regulatory burden to the public. ARTA encourages the use of regulatory impact in reviewing current or proposed national laws, local legislation, regulations or procedures.	If the CPC requirement remains, combine the CPC and accreditation processes (and alternatively any licencing process that would replace the CPC) so that all processes can be undertaken at once.
41	MC 2009-23	VI(1)	This scheme provides missionary route operator status for roll-on-roll off (ro-ro) ferries and similar types of ships. It applies to all domestic shipowners or operators intending to provide water transport services on missionary routes for ro-ro and	The first incentive – the granting of exclusive rights – prohibits competition in the market for the provision of shipping services on the stated route. It establishes a monopoly which could lead	It is likely that the policy objective is to encourage service by ro-ro vessels on missionary routes, which serve ports with no existing shipping service due to geographic limitations or absence of economic or market	No recommendation. The incentives seem reasonable given the policy objective of servicing ports with no existing shipping services. Further, the criteria for calculating the term of protection are clear and transparent.

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			similar types of ships (Section II). Domestic shipowners and operators are defined in Section III as those that meet the 60% Filipino equity requirement. An operator granted ro-ro missionary-route operator status is required to apply for a CPC, which once granted entitles it to incentives under the circular. Ro-ro missionary-route operator status is defined as the privilege accorded to domestic shipowners or operators to provide shipping service on a missionary route for ro-ro and similar type of ships. "Ro-ro missionary route" refers to a route involving one or more direct links covering two ro-ro capable ports that have no existing shipping service due to geographic limitation or absence of economic and market viability (Section III). MARINA determines missionary routes, but an applicant can also apply and obtain missionary status for another route that has not been identified by MARINA. Two incentives are available for ro-ro missionary-route status holders. 1) If an operator is granted ro-ro missionary-route status, its investment is protected until it is recovered. MARINA determines	to monopoly pricing. The second incentive, which provides a reduction in fees might amount to discrimination.	viability. The legislation does not seem to prevent the ro-ro vessel from servicing other ports in addition to the missionary route. It is unknown whether in practice, this is the case.	

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			the number of years of protection according to an economic formula outlined in Section VI(1) and this number is subject to annual review by MARINA. Operators also receive a 50% discount for fees linked to the renewal of ship documents, licences, certificates and permits during the period of protection of the ship, while operating on the missionary route. 2) Another MARINA domestic shipping incentive scheme set out in MARINA Circular No. 2015-04 sees it grant pioneer status and special incentives to domestic shipping operators if they introduce International Association of Classification Societies (IACS) classed new ships (See Section 3.2.5). Similar incentives are provided, except that the status is only granted for a period of 6 years, unlike the ro-ro missionary status, which is granted until the investment is recovered.			
42	MC 2009-23	V(6), IV(3)	A domestic ship-owner or operator that has been granted ro-ro missionary-route operator status under this Circular is required to apply for a CPC. One of the three main requirements for obtaining a CPC, according to the 1987 Philippine Constitution, is that such authorisations shall only be granted to citizens of the Philippines or a company with 60% of its stock or paid-up capital	Missionary-route ships are given full protection of their investment and a 50% discount in fees. Given that the 60% equity requirement is required because the circular only applies to domestic ship-owners and operators and that the 2 other CPC criteria – financial standing and public interest – are considered in the circular, the additional	The CPC requirement reinforces the classification of ro-ro vessels with missionary status as public services and public utilities.	Remove requirement for CPC for ro-ro vessels with missionary status as defined under this circular.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			belonging to citizens of the Philippines. In requiring the applicant to be a domestic ship-owner or operator, the 60% equity requirement is already imposed. It is therefore likely that the CPC requirement is in place so that the applicant needs to prove its financial capacity and that its activities will promote the public interest. These criteria are already considered in the application for ro-ro missionary status.	authorisation of a CPC presents a double requirement.		
43	MC 2009-23	VIII	Under the ro-ro incentive scheme, missionary-route status and its incentives can be cancelled and revoked. These grounds are: 1) failure to deploy a ship within the specified period under item V5 of the Circular; 2) any unauthorised suspension or withdrawal of service; 3) violation of any of the terms and conditions of the CPC; 4) other circumstances, which are not in the public interest. No appeal process is mentioned.	The legislation provides for broad discretion, which may result in discrimination, deter new entrants and increase costs for existing players.	The purpose of this broad discretion is likely to give MARINA the power to control and administer, as it sees fits, the missionary-route status regime.	Clarify grounds for and detail any applicable appeal processes. The circumstances under which an authorisation can be revoked should be defined by the legislator to ensure consistency of decisions and allow companies to know up front how and on what grounds this can occur.
44	MC 2009-23	VIII	Operators of ro-ro missionary routes may permanently withdraw a service from the missionary route due to inability to continue services, subject to the approval of MARINA. It is not clear how this process works and what factors MARINA considers in approving a cancellation and subsequently what (if any) consequences it may have for the shippers.	It seems that MARINA has discretion to approve withdrawal of a service from the missionary route. It is not clear how this is done or what conditions may be attached. Such discretion could potentially raise the cost of exit from the market.	Given the incentives provided, MARINA would like to control exit of missionary vessels.	Set out guidelines or clarify the rules for the withdrawal process.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
45	EO 170s 2003; MARINA MC 2009-23	MARINA MC 2009-23, Section IV.3.	Section 1 of EO 170 s2003 defines ro-ro operations as "the method of loading and discharging of self-powered vehicles, such as cars, and trucks, on their own wheels by their owners or drivers between vessel and shore via a ramp" and a ro-ro vessel as "a ship type or design duly approved for ro-ro operations". The operation of a ro-ro vessel requires a CPC issued by MARINA. This is for ro-ro generally, not just those under the missionary-route scheme.	Maritime transport is considered a public utility and as foreign companies cannot hold more than 40% of a public utility, foreign participation is limited, potentially reducing the number of suppliers.	Public utilities are seen to be services that are essential to the general public and involve a public-interest element. It is likely that the licensing requirements exist to ensure control over who operates a public service, given its importance. The CPC requirement ensures that applicants wishing to operate a public service are properly scrutinised. CPCs are granted by agencies authorised by law (such as MARINA) to determine that the operation of the service and the authorisation to do business will promote the public interests in a proper and suitable manner (PSA, Section 15 and Section 16[a]).	Remove the CPC requirement for ro-ro vessels.
46	11th Foreign Negative List (effective 18 November 2018), – Equity restrictions by sector, as defined in RA 7042 (Foreign Investment Act of 1991), RA 10635.	Annex on professions	The Regular Foreign Investment Negative List (RFINL) covers investment areas or activities that are open to foreign investors – explaining any investment thresholds for foreign investment in particular sectors – and reserved for Filipino nationals. There are two lists: List A, for which foreign ownership is limited by mandate of the constitution and specific laws, and List B, for which foreign ownership is limited for reasons of security, defence, risk	This provision restricts access to the market for foreign workers. The provision may limit choice or create an artificial scarcity of workers that raises prices for shipping companies.	The policy intent behind List A is to give effect to the foreign-equity restrictions outlined in the 1987 Philippine Constitution. In terms of professions, no foreigners are allowed in certain professions including, for example, X-ray technology, criminology, law, and, relevantly, marine deck officer and marine engine officers. These professions were added in the RFINL's current (11th)	The OECD recommends one of three options. 1.Remove restrictions and allow foreigners to engage in these marine professions. 2.Conduct annual surveys of supply and demand for these professions and, in the case of shortages, allow exemptions from the nationality requirement. 3.If foreign participation must be

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			to health and morals and protection of small- and medium-sized enterprises. It also contains an annex of professions for which foreigners are subject to limitations, but where for example, those listed under (a) are open to reciprocity. According to List A, foreign ownership is limited by "mandate of the Constitution and specific laws", under the category "no foreign equity, rule 2 – practice of professions", which lists 2 maritime professions (marine deck officers and marine engine officers). "Practice of the professions" is explained in footnote 2: Section 1(b) of Professional Regulation Commission Resolution No. 2012-668 defines "practice of profession" as an "activity/undertaking rendered by a registered and licensed professional or a holder of a Special Temporary Permit as defined in the scope of practice of a professional regulatory law". The provision results in a complete ban on foreigners working as marine deck officers and marine engine officers.		version, which came into force on 16 November 2018. These professions are therefore now restricted to Filipinos. The OECD has not been able to determine why these professions were added. The RFINL aims to provide certainty to investors about the equity restrictions that apply in the relevant sectors.	restricted, the professions of marine deck officers and marine engine officers should be listed in the Annex on Professions, where it is stated that foreigners are allowed to practice the following professions in the Philippines "provided that their home country allows Filipinos to be admitted to the practice of these professions".
47	MC 2018-02	Section 13	Any entity that is engaged in or intends to engage in shipbuilding must be properly registered and have been issued a certificate of	Requiring shipyards to be a member of an approved association increases the cost of doing business.	According to MARINA's Shipyard Regulations Service, membership in a MARINA-recognised shipyard association	Remove association requirement. Market participants should be free to choose whether to become a member of the association.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			registration by MARINA. A shipyard must be an existing member of a "MARINA-recognised shipyard association" prior to the issuance of a new MARINA licence as a shipyard or renewal of an expired licence. If not yet a member, it should submit proof that it has a pending application for membership in such an association.		was introduced to create a public consultation mechanism between the government and the shipbuilding and ship-repair (SBSR) sector. This policy objective is not reflected in law or in a MARINA issuance. This value of creating a unified voice for private stakeholders was mentioned by MARINA in a 2015 press release marking the creation of the Shipyard Association of the Philippines (SHAP). On 22 September 2016, MARINA supported SHAP at the first national Shipyard Convention, where the participants made the following resolutions: 1) SHAP will be the single national shipyard association recognised by MARINA; 2) membership of SHAP will be mandatory for all; 3) a technical working group (TWG) will be created to study and review SHAP's current by-laws to reflect the purpose of the national shipyard association.	

Freight forwarding

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
1	Philippine Shippers Bureau Administrative Order No. 06 Series of 2005	Rule II and III	Freight forwarders act as service-supplier intermediaries between clients (importers or exporters) and freight transportation companies. They do not take on the risk associated with the transportation of goods. Sea- and air-freight forwarders need accreditation to operate in the Philippines; land-freight forwarders do not. The current accreditation process for sea-freight forwarders outlined by this provision involves applying in writing and under oath, submitting the necessary documents, and paying a filing and processing fee. Branch offices of the applicant firm must also be accredited, and each and every branch of the firm must be accredited before any firm can legally engage in business. A certificate of accreditation is valid for 2 years. After the validity of the certificate of accreditation has lapsed, a firm must apply for renewal of accreditation to continue operating.	The requirement to be accredited in order to operate as a sea-freight forwarder in the Philippines constitutes a barrier to entry. Accreditation requirements can limit the number of suppliers and increase entry costs for potential entrants.	This accreditation relates to sea-freight forwarders. According to Executive Order (No.514) the Philippines Shippers Council was originally tasked with the accreditation of freight forwarders (see, section 3(h) of EO 514). Its goal was to "facilitate and assist the development and growth of Philippine trade and the national economy by enhancing the legitimate interests of Philippine shippers". The objectives of the freight-forwarding accreditation system are set out in the Philippine Shippers Bureau Administrative Order No. 06 Series of 2005 (Section 1). It states that its role is to: 1) lay down the minimum standards and requirements under which firms may legally do business; 2) upgrade the quality of services, capabilities, resources and expertise of firms so that they may meet the demands of Philippine global and rising domestic trade; 3) curtail acts and practices inimical to the fast growth of the freight-forwarding industry and prejudicial to the interests of Philippines shippers. Stakeholders have explained that	No recommendation.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
					accrediting sea-freight forwarders remains important as there is a problem of fraudulent freight forwarders in the Philippines. <u>International comparison</u> While many countries require a specific licence for freight forwarders, in Germany, the Netherlands, Sweden and the UK, a freight forwarder requires no specific registration, but must register as a business.	
2	Philippine Shippers Bureau Administrative Order No. 06 Series of 2005	Section 6	Freight forwarders must obtain separate accreditation for each branch office.	The requirement to accredit each branch office substantially increases costs and may deter new entrants into the market.	It is unclear why each branch office requires accreditation and why offices cannot simply be listed in the main application. Stakeholders have explained that the accreditation of freight forwarders in the Philippines was actually initiated by the industry in early 1980s because its members saw the importance and benefit of official government recognition for companies, especially when dealing with foreign counterparts. Industry representatives initially made representations to the Maritime Industry Authority (MARINA) to propose government regulation of the industry. MARINA, however, referred them to DTI. The group then actively participated in the drafting and formulation of guidelines for accreditation, and the industry remains an active	Option 1) Remove the authorisation procedure for branches. Option 2) Allow all offices to be accredited in one application, which would entail extending a main office's accreditation to all branches.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
					partner in these initiatives. The OECD understands that the DTI is currently reviewing the guidelines with the aim of streamlining requirements and is considering extending the validity of accreditation to 3 years. The proposal of extending the accreditation of the main office to its branches is also being considered. <u>International comparison</u> Thailand A permit is required for each office of multimodal transport operators. The registrar may grant permission for the branch based upon conditions that "protect the interests of service users". No other conditions are laid down in the Multimodal Transport Act or in the ministerial regulations prescribing rules and procedures for applying for a branch establishment licence and issuing a branch license for the operation of registered MTOs under Section 39(1) B.E. 2550.	
3	Philippine Shippers Bureau Administrative Order No. 06 Series of 2005	(Rule II) Section 4 (A)(5), Section 4 (B)(6)	In order to obtain accreditation for corporations and partnerships, Section 4 (A)(5) and Section 4 (B)(6) of the Order state that an applicant must file a copy of the document with a list of	The professional experience requirement discriminates against employers who might not want to hire employees with the required experience.	The policy aims to improve service (thanks to industry experience) and safety. Stakeholders confirmed this, explaining that: "The minimum experience requirement applies only to one of the key operating	No recommendation. The policymakers' objective and the application of the rule to only one operating officer, justifies the minor restriction on competition.

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			corporate officers and key operating personnel with corresponding biodata and passport-sized photographs. One of these key operating officers must have at least three years' experience in shipping, freight forwarding or related activities, and must submit certification or proof of employment from previous employers.		officers of the company, and not for lower-ranking staff. It is to ensure that at least one of the officers has the necessary experience in handling operations related to freight forwarding and allied activities."	
4	N/A	N/A	Freight forwarders are regulated by different agencies according to the mode of transport used. Freight forwarders are regulated by the DTI (for sea-based transport) and the DOTr (for air). Industry stakeholders told the OECD that they would prefer freight forwarders to be all regulated by a single agency. This is also mentioned in the government's draft logistics masterplan.	Having different regulators accrediting freight forwarders according to their mode of transport may increase costs for businesses if they undertake both sea- and air-based freight forwarding.	It is not clear why two different bodies regulate freight forwarding. International comparison Sea- and air-based freight forwarders are regulated by separate bodies in other ASEAN countries (for example, Thailand, and Malaysia), although often the two bodies are actually different departments within the same ministry.	Freight forwarders should be regulated by the same ministry, even if by different departments.
5	NA	NA (Practice not based on a provision)	Accreditation is required from the DTI to act as a maritime freight forwarder in the Philippines, but market participants have complained that in practice DTI does not accredit shipping lines as freight forwarders. The OECD has found no provision upon which this practice could be based, which means that there is no legislative authority to deny	Banning certain market participants from freight-forwarding services limits access to the market. Shipping lines, for example, are potential competitors. The ban also prevents vertical forward integration.	The OECD has been unable to find any legal basis for this practice. It might, however, be in place to prevent forward integration and shipping lines leveraging their market power into the freight-forwarding market. According to DTI, accreditation is only granted to non-vessel-operating common carriers (NVOCC). Common carrier operators are classified as	Explicitly allow freight forwarding businesses to be set up by shipping lines and more widely, VOCCs.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			shipping lines accreditation as freight forwarders.		vessel-operating common carrier (VOCC). The DTI explains that: "shipping lines that apply as sea freight forwarders under the category of NVOCCs are denied accreditation because the very nature of their operation is totally inconsistent with the concept of an NVOCC. As the name suggests, an NVOCC does not own or operate a vessel or a ship to transport its clients' cargo." DTI explained that: "shipping lines have undue advantages over traditional forwarding operators, such as managing and operating their own ocean-going vessels, maintaining their own marketing and sales staff and logistical facilities." <u>International comparison</u> In many other ASEAN countries such as Viet Nam and Thailand, shipping lines are active as freight forwarders.	
6	Philippine Shippers Bureau Memorandum Circular No.01 Series of 2005	Section II	Memorandum Circular No. 01 s. 2005 prescribes indicative rates and charges 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).	The rates are provided as "guidance" and it is not clear what this means in practice. There is the danger that companies orient themselves accordingly, which may lead to price co-ordination.	The recital of the memorandum explains that "standardised services, rates and charges will enhance competition and encourage improved quality of service among freight forwarders" and that "there is a need to standardise the services, rates and charges in the freight-forwarding industry in order to protect the interests of shippers and importers, as well as to prevent indiscriminate charging	Remove guidance on rates.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
					within the industry". According to DTI, the Philippine Shippers' Bureau introduced this MC because of a request from officers of the Philippine International Sea Freight Forwarders Association (PISFA; since 2017, the association has been known as the Philippine Multimodal Transport and Logistics Association, PMTLAI). The MC standardised the terminology for services rendered and rates charged by the freight forwarders. It was intended as a guide for freight forwarders and as a protection for shippers from discriminatory and exorbitant charges made by the freight forwarders.	
7	Philippine Shippers Bureau Administrative Order No. 06 Series of 2005	Rule II, Section 4 (A)(2)	Companies carrying out International freight forwarding face higher minimum capital requirements (PHP 2 million than domestic freight forwarders (PHP 250 000); NVOCC have a minimum capital requirement of PHP 4 million. International freight forwarder is defined as a "local entity that acts as a cargo intermediary and facilitates transport of goods on behalf of its client without assuming the role of a carrier. It can also perform other forwarding services, such as booking cargo space, negotiating freight rates, preparing documents,	The high minimum capital requirement raises the cost of entry in the market, discouraging potential entrants (especially smaller firms), which may reduce the number of market participants over time.	It is unclear why the Philippines has such high capital requirements for freight forwarders and why the minimum capital requirements are different according to the type of freight forwarders. It is possibly implemented to protect consumers and creditors from risky and potentially insolvent businesses. By requiring investors to lock in upfront a minimum amount of capital, investors are likely to be more cautious about undertaking commercial opportunities. In other OECD competition assessments, it has been noted	Remove the requirement for a minimum share capital specific to the type of freight forwarding activity and apply the general regime regarding commercial companies.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			advancing freight payments, providing packing and crating, trucking and warehousing, engaging as an agent or representative of a foreign NVOCC or cargo consolidator named in a master bill of lading as consignee of a consolidated shipment, and other related undertakings. A domestic freight forwarder is defined as an "entity that facilitates and provides the transport of cargo and distribution of goods within the Philippines on behalf of its client". An NVOCC is defined as an "entity, without owning or operating a vessel, providing a point to point service which may include several modes of transport and/or undertakes groupage of less than container load (LCL) shipments and issuing a corresponding transport document".		that minimum capital requirements increase the cost of accessing the market and prevent operators from choosing a lower amount of share capital, even if this is more suitable for the scale of their business. This particularly affects small-scale operators, operators that wish to provide services of lower value or range, and new companies. These provisions may lead to a reduction in the number of operators, and so a greater concentration in the market, and may prevent small-scale operators from offering more innovative, lower-priced services. In general, 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, and not the assets available to cover debts and operating costs. In its report *Doing Business 2014: Why are minimum capital requirements a concern for entrepreneurs?*, the World Bank concluded that minimum capital requirements protect neither consumers nor investors and are rather associated with reduced access to financing for SMEs and a lower number of new companies in the formal sector. Commercial bank guarantees and insurance contracts are a better instrument for managing	

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					counterparty risks, and therefore should be the focus of any regulation seeking to promote a set minimum level of business certainty for users of maritime services. Changes to the legislative framework for these services in the Philippines would be better to address the policy objective of minimum capital requirements. International comparison In Greece and France, there is no minimum capital requirement for ship-classification companies, cargo-handling companies, charter-agent companies and freight-forwarder companies. Instead, legislators commonly impose minimum professional insurance coverage. Portugal In *OECD Competition Assessment Reviews: Portugal* (2018), the OECD recommended that Portuguese authorities remove minimum capital requirements imposed on cargo-handling operators, towing operators, freight forwarders and shipping agents in order to promote market entry and operational efficiency. By lifting these financial criteria, market players can better adapt and reinvest their capital, increasing	

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					their competitiveness and promoting lower prices for consumers.	
8	Philippine Shippers Bureau Administrative Order No. 06 Series of 2005	Section 26(b)	Accredited freight forwarders are required to submit to DTI (previously, Philippine Shipping Board, PSB) quarterly cargo statistics 30 days after the end of each quarter.	This increases the cost of doing business, especially for smaller players.	Reporting obligations generally allow authorities to fulfil their monitoring tasks. Stakeholders have explained that "in the DTI review of guidelines of accreditation of sea freight forwarders, this was considered and the reporting or submission of cargo statistics report will be on half yearly basis, instead of quarterly". <u>International comparison</u> Thailand Every multimodal transport operator (MTO) must submit an operational report "to the Registrar under the form, rules and period prescribed and announced by the Registrar". Such a report must contain general information on the MTO and its branches, as well as on quantity, weight, freight of import and export goods. Pursuant to the Marine Department Announcement No. 284/2558 regarding formulation of criteria and period for registered multimodal transport operators to submit reports on operations referred to under Section 52 of the Multimodal Transport Act,	Consider annual reporting, instead of quarterly or half-yearly reporting.

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					registered MTO need to submit an annual operations report by 31 March of the year following the relevant activities. The rules laid down in this announcement are of general application and apply to all MTO equally.	
9	RA 7916	Section 2(p)	If a freight-forwarding company has any business transactions or arrangements with PEZA-registered entities operating within a Philippine Economic Zone (PEZ), it is required to register with the PEZA Service Registration Unit.	The requirement for a freight forwarder to be accredited with and licenced by PEZA in order to do business with PEZ-based businesses in the Philippines constitutes a barrier to entry. The accreditation and licencing requirements restrict entry into the market. Such permits can limit the number of suppliers and increase entry costs for potential entrants.	Registration and accreditation of freight forwarders working with PEZ-based companies is likely required in order to control activities in the PEZA. It ensures that freight forwarders are aware of their obligations when working in the zone (set out by R.A. 7916, and the Rules and Regulation adopted by the PEZA).	No recommendation.
10	RA 9280 Bureau of Customs CMO No. 6-2006.	RA 9280, Section 14, 16, Bureau of Customs CMO No. 6-2006, Part I, Section 3	In order to work as a customs broker in the Philippines, a person must obtain a licence from the Professional Regulation Commission for customs brokers. (While freight forwarders are often customs brokers, these are two separate roles.) To obtain the licence, the applicant must hold a degree in customs administration, pass the PRC board examination for customs brokers and be of good moral character. In order to take the examination, applicants must be a citizen of the Philippines or from a foreign country qualified to take the	The nationality requirement and the need for specific educational qualifications will limit the ability of certain suppliers to provide services. This could unduly limit the number of suppliers, reduce competition between suppliers and so result in higher prices. The nationality restriction prevents foreign freight forwarders from providing the full service as they may be required to outsource the customs brokerage part and may reduce efficiency.	These requirements appear in line with the *Custom Brokers Guidelines* published by the World Customs Organization (WCO), which explain that licensing criteria should be "completely objective, transparent, non-discriminatory, and measurable" and that there should be a standard list of criteria when customs brokers are licensed. The *Guidelines* explain that: "Licensing requirements for customs brokers, where applicable, vary from one country to another and depend on national legislation and domestic needs. Members'	No recommendation.

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			exam through reciprocity requirements. Accreditation must then be obtained from the Bureau of Customs.		licensing requirements broadly include a combination of the following: sound knowledge of customs and other laws relating to border regulatory requirements, knowledge of trade-related transport and finance matters, demonstrated compliance record (clean track records in terms of security and other compliance matters), financial capacity or solvency, minimum educational qualification, minimum work experience, in some cases a written and/or oral examination and even a minimum number of hours of training, electronic transmission capability, financial guarantee (surety bond, security deposit), and being incorporated or established in the country/citizenship or residency. Some other requirements range from an oral interview or knowledge of the national language to the moral character of the applicant. The reasoning behind these requirements is to secure duties and taxes as well as to ensure continued compliance with customs and other regulatory requirements."	
11	Philippine Shippers Bureau Administrative Order No. 06 Series of 2005, Local Government Code	4.A.3, Section 444(b)(3)(iv), Section 455(b)(3)(iv)	Freight-forwarding companies are required to have a physical office in each area where the company wishes to do business.	The requirement to have an office in each area where a freight-forwarding business wishes to operate substantially increases costs and may deter new market entrants. Freight	The objective of this requirement is not stated in the administrative order. Stakeholders explained that the physical office serves as a point	Accreditation for freight forwarders in the Philippines should be on a national level and only one mayoral permit should be required, in order to be accredited. Consequently, the applicant should only need to show

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
	(RA 7160)		To operate as a local company in the Philippines, the Securities and Exchange Commission requires a company to have a physical office before its certificate of registration as a company is approved. This means that a business must already have a physical office before it even applies for Department of Trade and Industry (DTI) accreditation. In order to be accredited as a freight forwarder, the applicant must file a copy of a mayoral permit, issued by the local government unit (LGU) in the area in which the applicant wishes to carry out its business activities. The Local Government Code (LGC) provides that a business cannot operate within a city or LGU without a mayoral permit (otherwise known as the local business permit). In order to obtain a mayoral permit, an applicant is required to show that it has a physical office within the relevant LGU area. It can be required to submit copies of the lease contracts and pictures of the location. The specific requirements of each LGU are contained in separate local ordinances.	forwarders act as intermediaries and so the requirement to have physical offices may be unnecessary.	of contact for regulatory authorities. In Philippine legal procedures, a physical office is required for the service of summons. Also, a physical office enables easier verification of business operations and ensures access by Filipino law enforcers, if necessary. As a general policy, the Local Government Code (LGC) decentralises investment promotion and gives LGU autonomy in this area. Businesses must work with LGU in order to register and operate a business within the relevant local area. However, according to the World Bank's Doing Business data, setting up a business in the Philippines is difficult with the country ranking 124 out of 189. The role of LGU and their significant independence is reported to increase these difficulties. Foreign investors may seek to operate only in special economic zones in order to avoid dealing with LGUs. <u>International comparison</u> It is a common practice internationally to require a business to have a physical office or commercial address when registering a business. For	proof of a single physical office in the Philippines.

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					example, Malaysia requires an office or business address linked to the business licence, while Brunei Darussalam requires a single office. In Thailand, there is no multiple office requirement for freight forwarders, although multimodal transport operators do need a permit for each office.	

Warehouses

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
1.	Customs AO 1 –2009	Title IV	To operate a bonded warehouse in the Philippines, a permit is required. To acquire one, an application is submitted to the Commission of Customs, except for the application to operate a multinational bonded warehouse, which is submitted to the Bureau of Investments (Customs AO 1-2009, Title IV, Section 4.1). Within 5 days of receipt of an application, the port's District Collector of Customs rates the merits of the application, which is then submitted to the Bonded Warehouse Committee (BWC) for final evaluation and recommendation. The BWC must then act upon the application within 15 days (Section 4.4). The application, endorsed by the BWC chairperson, will be approved by the commissioner of Customs, and a certificate of licence to operate will be issued (Section 4).	The permit restricts entry into the market and is a barrier. Such permits can limit the number of suppliers and increase entry costs for potential entrants.	Bonded warehouses are used to store goods on which applicable duties have not been paid, known as dutiable goods. The Bureau of Customs seeks to regulate the operation of bonded warehouses to ensure that customs policies are upheld.	No recommendation. The policymakers' objective justifies requiring a permit.
2.	RA 7916	Part II	To operate in a special free-trade economic zone, the applicant must register with the Philippine Economic Zone Authority (PEZA). The application is filed with PEZA with the appropriate supporting documents and a filing fee paid. The application is reviewed by	The registration requirement restricts entry into the market and is a barrier. Registration requirements can limit the number of suppliers and increase entry costs for potential entrants.	This provision aims to control who can operate within a PEZ. According to stakeholders, companies within a PEZ are given fiscal and non-fiscal incentives that create a necessity for pre-registration with PEZA. These fiscal incentives	No recommendation. The policymakers' objective justifies requiring a permit to operate in a PEZ.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			the PEZA board, which issues a resolution if it approves the application. The registration certificate is issued following a registration agreement between the applicant and PEZA.		include an income tax holiday (ITH) and a 5% gross income tax (GIT) that are essentially tax exemptions and so can only be enjoyed by qualified companies. A free-trade zone is defined as an isolated, policed area adjacent to a port of entry such as a seaport or airport where imported goods may be unloaded for immediate transhipment or stored, repacked, sorted, mixed, or otherwise manipulated without being subject to import duties. Enterprises located in free-trade zones benefit from various incentives such as exemptions from duties and taxes on merchandise, exemptions from national and local taxes, tax credit for import substitutions, and entitlement to expansion projects. Movement of imported goods from the free-trade area to a non-free-trade area in the country make them subject to import duties.	
3.	1987 Philippine Constitution, CA No 141 (sections 22 and 23), RA no, 9182	Constitution, Article XII, Section 7, CA no.141, Section 22, RA. No. 9182, Section 4.	Private land may only be acquired by Filipino citizens or legal persons (60% Philippine owned). The limited exceptions to this general rule are not relevant to the logistics sector, for example, the ownership of condominiums	Land-ownership restrictions are a barrier for foreign firms operating in the domestic market. The ability to own land or to obtain a long lease of land is important for foreigners wishing to build and use warehouses in a country. Without such security, parties will have no incentive to make	This provision aims to protect the national interest by safeguarding land that can be owned by Filipinos. Filipinos are allowed a maximum lease period of 99 years; generally, foreigners can only lease land for 25 years,	No recommendation. Foreigners can lease land for up to 75 years under the Investors Lease Act.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			or in cases of inheritance.	the relevant investments to enter the market.	renewable for another 25 years. Foreign investors wishing to establish industrial zones, factories, assembly or processing plants, agro-business enterprises, land development for industrial, commercial use, tourism and other similar priority productive endeavours can apply for lease periods of 50 years, renewable for a period of no more than 25 years.	
4.	11th Foreign Negative List (effective 18 November 2018), equity restrictions by sector, as defined in RA 7042 (Foreign Investment Act of 1991)	Article 17	The Regular Foreign Investment Negative List (RFINL) sets out the investment thresholds for foreign investment in particular sectors. It states that, foreign ownership is "limited by mandate of the constitution and specific laws"; under the category "up to forty percent (40%) Foreign Equity", private land is listed. This gives effect to the constitutional limitation that private land may only be acquired by Filipino citizens or corporations 60% of whose capital is owned by Philippine citizens (Constitution, Article XII, Section 7).	Land-ownership restrictions are a barrier to foreign firms operating in the domestic market. The ability to own land or to obtain a long lease of land is important for foreigners wishing to build and use warehouses in a country. Without such security, parties will have no incentive to make the relevant investments to enter the market.	The two lists that make up the RFINL cover investment areas or activities that are open to foreign investors or reserved for Filipinos. On List A, foreign ownership is limited by a mandate of the constitution and specific laws. On List B, foreign ownership is limited for reasons of security, defence, risk to health and morals, and protection of small- and medium-sized enterprises (SME). The RFINL also contains an annex of professions listing the professions for which foreigners are subject to limitations. For the purposes of this assessment, the policy intent behind List A is to give effect to foreign-equity restrictions outlined in the 1987 Philippine constitution and to provide certainty to investors about the equity restrictions that apply in the relevant sectors.	No recommendation. Foreigners can lease land for up to 75 years under the Investors Lease Act.

Small-package delivery services

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
1	RA 7354	Section 27	Formerly known as the Department of Transportation and Communications (DOTC), the Department of Information and Communications Technology (DICT) is the regulatory authority responsible for registering postal service establishments. DICT was created pursuant to RA 10844 and has regulatory functions in relation to private courier service providers, known as PEMEDES. Unlike the state-owned Philippine Postal Corporation (PHLPost), private courier service providers are required to obtain registration. On 23 January 2001, the DOTC issued Department Circular No. 2001-01 known as Rules and Regulations in the Processing, Hearing and Adjudication of Applications for Authority to Operate Private Express and/or Messenger Delivery Service, and in Investigation of Complaints in Connection with the Operation of Such Services (DOTC Rules). These rules	The registration and qualification requirements are a barrier to entry for private market participants. Such requirements restrict entry, limiting the number of suppliers and increasing entry costs for potential entrants. Further, the lack of transparency and access to the relevant rules and regulations surrounding the registration process creates legal uncertainty and increases costs for actual and potential market participants.	The government wants to monitor the delivery sector and oversee market entry and expansion. As of August 2019, the OECD understands that the rules are not available online as they are being revised, including the procedural requirement of public consultation. <u>International comparison</u> According to the OECD Trade Restrictiveness Index, Australia requires no licence or authorisation to enter the courier market. Australia's courier market is open to any business for most postal services, except letters, which are dominated by the state-owned monopoly Australia Post. The parcel market is competitive. There is no monopoly on parcel services.	No recommendation regarding the registration and prequalification requirements as long as the criteria are applied in a non-discriminatory way. All rules relating to registration should be made available online to ensure transparency.

			were adopted by the DICT pursuant to DICT Department Order No. 001, 2017 series. The OECD understand that as the rules are no longer available online, the requirements of registration are not widely known.			
2	Department Circular 2001-01	Rule 4, Section 1	According to DICT, one of the registration requirements to provide express delivery services in the Philippines is a citizenship requirement that allows only Filipinos, in case of single proprietorship, and legal persons that are at least 60% Philippine owned. The OECD has not been able to verify whether this requirement will exist in the new rules currently under preparation and not yet publicly available.	The provision favouring national operators is a barrier to foreign companies wishing to invest or operate in the Philippines.	The foreign-equity restrictions limit foreign participation in the Filipino Private courier service providers market.	Allow foreign participation in the market for express delivery services. If this requirement is linked to the interpretation of express delivery as a public service, the Public Service Act should also be amended.
3	RA 7354	Section 27 (b)	The Postal Regulation Department (PRD) of DICT sets minimum rates for postal services including minimum rates for the delivery of small packages and letters. Maximum prices are not regulated. DOTC Circular No. 2001-01, currently under evaluation by DICT, describes the process for the calculation of minimum rates. DICT-PRD has stated that a revised regulation – likely to maintain the minimum-rates mechanism – would be released during the first half of 2019; to date, this regulation has not been made available.	The imposition of minimum rates reduces productivity, efficiency and innovation by limiting sellers' ability to set their own prices for postal services and by preventing low-cost suppliers who may provide better value to consumers entering the market. Further, prices are currently set by a single market player (PHLPost).	Minimum rates aim to protect PHLPost's market share. According to certain market participants, without these rates, PHLPost may not survive in the market. International comparison Viet Nam has a minimum-rate regime. In Australia, prices for postal services are unregulated. Any requirement to notify prices applies only to ordinary letter services.	The OECD recommends two possible options: 1.Minimum prices for postal services including small packages and letters should be removed. 2.In the new Ministerial Circular currently under consultation, DICT should increase transparency around the mechanism used to calculate minimum rates, including the rationale for both the services and products covered by such minimum rates. Minimum rates should be based upon independent regulatory assessments, rather than on PHLPost's input.

			Stakeholders explained that DICT-PRD calculates the minimum rates in co-ordination with PHLPost, the National Economic Development Authority (NEDA) and the Philippine Central Bank (Bangko Sentral ng Pilipinas). In practice, these rates are determined by PHLPost and formally approved by DICT-PRD. They were last revised in 2014. In theory, licensed service providers must comply with them and DICT-PRD can conduct inspections to monitor compliance. Stakeholders explained that these minimum rates only apply to ordinary domestic mail (i.e. non-tracked letters and small packets up to 2kg); parcels, international deliveries and express deliveries are subject to no price regulation. Further, a request to amend minimum rates can be filed either by PHLPost or by private couriers.			
4	NA	NA	DICT is responsible for approving licences for courier services, but, along with its predecessor, has granted no new licences to small-package delivery service operators since 2006. This is the result of an	DICT's suspension of the processing and approval of new licences prevents new players from entering the market.	The initial moratorium appears to have been implemented due to the change of agency, as well as the existence of a large number of licences in the Philippines at that time (according to DICT, between 130 and 200). As a	Grant new licences to every applicant for courier services that fulfils stated conditions.

			unofficial moratorium introduced in 2006, and prolonged under DICT’s authority beyond the “transition period”.* This extension is backed by no law or memorandum circular. Stakeholders explained that a memorandum was issued in 2006 by the former head of the regulatory body, which suspended processing of all applications “owing to the transfer of the regulatory authority from DOTC to DICT”. No order has been issued to lift this memorandum, but that the suspension of application processing for renewals was implicitly lifted when licences were renewed. While renewals have been granted, they are not automatic and the requirements and process for these authorisations are unclear. The process is set out in the Department Circular No. 2001-01 (DOTC Rules). These rules are no longer available online as they are “under review”, but the OECD has obtained a copy. According to stakeholders, applications to extend the geographical scope of existing licences are treated as new applications.		result, in practice, many licences that were granted to now “dormant companies” are traded on a secondary market, even though they are not transferable. In addition, approximately 50 to 70 players are operating without a licence. As of 1 December 2019, DICT has an online list of 110 authorized private express and “messengerial” delivery service (PEMEDES) or courier service providers.	

5	Lack of enforcement	NA	Stakeholders claim that certain courier operators are circumventing the licence requirements. This seems to be especially the case with start-ups, new market entrants, and new delivery services operating in the e-commerce sector. Stakeholders also mentioned that even if operators are found not to have a licence, fines are not high enough and so do not act as a deterrent. Stakeholders explained that this is especially true for large companies. Currently, DICT-PRD can issue cease and desist orders against service providers operating without a licence (Section 26 Postal Act).	Market players operating in the market without a licence will have lower costs compared to those who are going through the extensive and burdensome process of obtaining all the required accreditations and licences.	As mentioned above, there is an informal moratorium on the granting of new licences.	The OECD suggests three cumulative recommendations for reaching a level playing field for all market participants. 1) DICT should grant new licences to applicants that fulfil the stated requirements. 2) The fines for operating without the required licences should be increased. 3) The policing of companies operating in the market and enforcement actions should be strengthened.

* Section 19 of the DICT Act prescribed a transition period of six months; this should have expired on 23 November 2016.test

Horizontal

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
1	1987 Philippine Constitution, Public Services Act 1936 (CA no. 146, as amended by RA 2677 1960)	1987 Philippine Constitution, Art XII(11), Public Services Act 1936, Section 13b	The Philippine Constitution restricts foreign direct investment (FDI) in public utilities, imposing a 60/40 nationality requirement on the ownership of public utilities (known as an equity restriction). While "public utility" is not defined in the Constitution and the Public Service Act 1936 (PSA) does not provide a definition for public utilities, the latter does define public services and explains which types of public services require certificates of public convenience (CPC) to operate in the Philippines. Public services and public utilities are often used interchangeably. Currently, logistics and transport services are classed as "public utilities". This classification is not explicit, but it is based on the definition of "public service" set out in Section 13b of the PSA and Supreme Court decisions, which have interpreted this section of the PSA. "Public utility" has been defined by Supreme Court decisions. In National Power Corporation v. Court of Appeals, et al, G. R. No. 112702, 26 September 1997, the	The provision is a barrier for foreign companies wanting to invest or operate in businesses that could be defined as public utilities in the Philippines, and so favours national operators.	The provision follows the Philippine First clause, the policy of giving preference to qualified Filipinos in the granting of rights, privileges and concessions covering the national economy and patrimony. The purpose of the citizenship requirement is to prevent foreigners from assuming control of public utilities as this could be detrimental to the national interest. This specific provision implements an overriding economic goal of the 1987 Constitution: to conserve and develop the nation's patrimony and ensure a self-reliant and independent national economy effectively controlled by Filipinos. This was highlighted in the case of Gamboa v. Teves, G.R. No. 176579, 28 July 2011. The OECD notes that certain sectors in the electricity market are not considered public utilities and so are not subject to the foreign ownership limitation. The Electric Power Industry Reform Act (EPIRA) expressly provides that the supply of electricity to the contestable market shall not be considered a public utility. This is important because it shows that	Amend the PSA to exclude logistics and transport from public services. Remove provisions in any transport or logistics legislation that specify foreign equity requirements, due to the classification of the relevant transport or logistics services as public utilities. If logistics and transport are no longer considered public utilities, up to 100% foreign ownership would become possible. While full liberalisation is preferable, if the Philippines were to decide to implement foreign-equity restrictions in the sector, the OECD would recommend the progressive relaxation of foreign-equity limits towards the long-term goal of allowing up to 100% foreign ownership. A first step may be to implement the agreed changes towards the AFAS target of allowing 70% ASEAN foreign ownership in entities providing logistics services and then extending it to non-ASEAN nationals. In the long term, the Philippines should consider full liberalisation by allowing 100% foreign-ownership in entities providing logistics services.

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			court defined public utility as "a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service (citing 64 AM. JUR. 549, cited as footnote 1 in Albano v. Reyes, G. R. No. 83551, 11 July 1989). The term implies public use and service. In KMU v. Garcia (G. R. No. 115381, 23 December 1994), the court defined public utilities as privately owned and operated businesses whose services are essential to the general public. They are enterprises which specially cater to the needs of the public and conduce to their comfort and convenience.		some sectors have been removed from the definition of public utility in the past. <u>International comparison</u> The 1995 ASEAN Framework Agreement on Services (AFAS) provides a legal framework for each member state to liberalise services progressively and aims to eliminate substantially restrictions to trade in services among ASEAN countries. The final objective is to allow ASEAN nationals to hold up to 70% equity participation in entities providing services. The Philippines has not yet implemented the liberalisation commitments regarding logistics.	
2	1987 Philippine Constitution, Public Service Act (Commonwealth Act No. 146, as amended by RA 2677, Republic Act 7160	Commonwealth Act No. 146, as amended by RA 2677, section 13(b)	The Philippine constitution restricts FDI in public utilities, imposing a Philippine ownership requirement for public utilities This equity restriction means only Filipino citizens or associations or corporations whose capital is held 60% by Filipinos can be granted a franchise, certificate or authorisation to operate a public utility. "Public utility" is not defined neither in the constitution nor the Public Service Act 1936 (PSA). The latter does define public	As logistics and freight transportation are defined as "public utilities", operators require a CPC to operate, which restricts entry. Also, CPC application processes are lengthy and likely delays entry.	"Public utilities" are services essential to the general public and which involve a public interest element. Licensing requirements likely exist to ensure control over the operation of important public services and ensure that applicants are properly scrutinised. Several bills amending the 1936 PSA have been filed in Congress, including HB 4501, HB 4468, HB 5828 and SB 1754, to remove logistics and freight transportation from the list of public utilities; none of these bills have yet	Amend the PSA and any other relevant legislation to exclude logistics and freight transport as public utilities and public services. Remove any transport or logistics legislation dealing with the exact requirement and consequences of logistics and transport being a public utility and public service. Operators would then no longer to be required to obtain a CPC. A licensing procedure for such services, such as a general operational licence, for such services would then need to be introduced to guarantee security of

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			services and explains which types of public services require CPC to operate in the Philippines (PSA, section 13b). "Freight services" are classed as a public service Owners and operators for public land and rail transportation facilities and services are required to obtain a CPC from the Department of Transportation's Land Transportation Franchising Regulatory Board (LTFRB). According to sections 15 and 16(a) of the PSA, CPC are granted by agencies authorised by law, such as the Maritime Industry Authority (MARINA) and LTFRB, to determine that the service and the business authorisation will promote the public interest in a proper and suitable manner.		passed. Project Repeal, a Philippine government regulatory reform initiative, has recommended that the sector should not be considered as a public utility.	services.
3	11th Foreign Negative List (effective 18 November 2018), equity restrictions by sector, as defined in RA 7042 (Foreign Investment Act of 1991)	Article 18	The Regular Foreign Investment Negative List (RFINL) gives the investment threshold for foreign investment in specific sectors. It implements the constitutional restrictions on foreign investment. The list is split into two sections, A and B. According to List A: "Foreign ownership is limited by mandate of the constitution and	The foreign-equity restrictions of 40% are a barrier to entry for foreign firms, and so favour national operators. Various restrictions in different legislation and regulations negatively impact upon foreign investors' ability to assess the investment regime, adding to administrative costs. The lack of transparency also means	The two lists of the RFINL are: List A, for which foreign ownership is limited by the constitution and specific laws; List B, for which foreign ownership is limited for reasons of security, defence, health and moral risks, and protection of small- and medium-sized enterprises. The RFINL also contains an annex of professions for which	The RFINL should be amended to exclude freight transport and logistics from the definition of "operation of public utilities", following their exclusion as public services under the PSA.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			specific laws" to 40% equity; operation of public utilities is also listed. Specific sectors are not listed, simply those covered by the "public utilities" definition, but as freight transport and logistics are currently considered public utilities, they are subject to the List A 40% foreign-equity restriction. According to a definition given by the Supreme Court of the Philippines in its ruling in JG Summit Holdings v. Court of Appeals et al. of 24 September 2003, a public utility is: "a business or service engaged in regularly supplying the public with a commodity or service of consequence such as electricity, gas, water, transportation, telephone or telegraph service."	that investors are required to search for information, and so increase costs.	foreigners are subject to limitations. The policy intent behind List A is to give effect to the foreign-equity restrictions outlined in the 1987 Philippine Constitution, notably a restriction on foreign equity in public utilities. Other sectors have recently been excluded from the public utility definition. For example, electricity generation and supply to the contestable market have recently been removed (see sections 6 and 29 of RA No. 9136) from the definition of public utilities. The 11th Foreign Investment List specifically excludes this sector from the 40% limit for the "operation of public utilities".	
4	1987 Philippine Constitution	1987 Philippine Constitution, Article XII, Section 11	All executives and managing directors of a public utility must be Filipinos. The number of non-Filipinos on the boards of directors of corporations or associations engaging in partially nationalised activities are restricted. Examples of sectors considered as partially nationalised activities are advertising (30% limit on foreign ownership), operation of public utilities (40% limit), and those listed in the 11th RFINL with a specified percentage allowed for foreign ownership (Executive	The provision is related to the general 60/40 foreign equity restriction and limits who companies can appoint as their executives and managing directors. This may mean that the most qualified or suitable candidate cannot be appointed as companies must discriminate based on nationality. This would likely restrict foreign investment as investors often want to be represented in the	The constitution adopts a state policy of giving preference to qualified Filipinos in the granting of rights, privileges and concessions covering the national economy and patrimony. The state is also mandated to regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities (Article XII, section 10 of the constitution.	The requirement of 100% Filipino executive and managing officers in public utilities should be eased to allow a higher percentage of foreigners in high managerial positions in order to attract foreign investment. Restrictions based upon citizenship should be replaced by residency requirements.

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			Order 65, 2018). Wholly nationalised industries are those for which 100% Filipino ownership is required, such as mass media. Under Article XII, Section 11 of the constitution, foreigners may be allowed as directors of a partially nationalised industry, but only up to the extent of their equity participation. For example, in a 5-member board, a public utility with 40% foreign ownership, can have 2 foreigners sitting on the board. For wholly nationalised industries, directors must be 100% Filipino as no foreign ownership is allowed. An additional restriction is that all executive and managing officers of a public utility must be Filipino citizens. This is independent of any foreign ownership.	highest leadership positions of a company.	<u>International comparison</u> In Brunei Darussalam, one of the two directors of a company or, where there are more than two directors, at least two, shall be "ordinarily resident" in Brunei Darussalam, but are not required to be Brunei nationals. There is no legal definition in the Companies Act of the status of "ordinarily resident". However, the Registry of Companies and Business Names Division issued *Guidelines for Applying for "Ordinarily Resident" Status for the Purposes of Section 138(2) of the Companies Act (Chapter 39)*. These guidelines provide that an ordinarily resident is a person physically present or employed (other than as a company director) in Brunei Darussalam for at least 183 days in the year preceding the assessment. An application for ordinarily resident status for the purposes of Section 138(2) of the Companies Act must be filed with the Registry of Companies and Business Names Division within the Ministry of Finance and Economy. In Australia, if there is more than 1 director, there is no rule that the majority of the board of directors of a company must be Australian nationals, or that managing directors must reside in or be	

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					Australian nationals (Part 2D.3 Section 201J, Corporations Act, 2001). However, if a company only has one director, he or she must ordinarily reside in Australia. If a company has more than one director, at least one or two of the directors (the latter in the case of public companies) must ordinarily reside in Australia, but there is no majority requirement (Part 2D.3, Section 201A).	
5.	Republic Act 9184, 2016 IRR	Section 43.1.2 (2016 IRR to RA 9184)	Where foreigners are allowed to participate in public bidding, domestic firms are preferred with contracts awarded to lowest domestic bidder provided its bid is no more than 15% in excess of foreign bid.	Discriminates against foreign bidders, and so prevents market entry.	The provision favours national firms and so encourages their development. In line with the constitution, which provides for the "promotion of Filipino labour, domestic materials, and locally produced goods", the Republic Act No. 9184, has a general principle of preferring "Filipino nationals in the award of government procurement contracts". The policy is explained in the government guidelines, *In the Determination of Eligibility of Foreign Suppliers, Contractors, and Consultants to Participate in Government Procurement Projects.*	Eliminate preference for nationals where foreigners are allowed to participate in procurement processes to ensure that the most competitive bid is chosen. If necessary, implement a transition period. Direct subsidies could be considered, if the aim is to help and develop national industries.
6.	RA 7042, as amended by RA 8179 (Foreign Investment Act)	Section 8(b)	Foreign investors face a minimum capital requirement of USD 200 000; a lower requirement of USD 100 000 is applied to investors bringing in	The high minimum capital requirement raises the cost of entry in the market, discouraging potential entrants (especially smaller foreign	The high capital requirements for foreign firms may be in place to promote local SMEs. Further, capital requirements are likely implemented to protect	The OECD recommends aligning the minimum capital requirements for foreign investors with those of domestic investors.

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			technology or employing more than 50 workers. Foreign-owned companies that export more than 60% of their output or domestic purchases are exempt from these capital requirements. This barrier would apply to foreign investors in the logistics and transport sector if these sectors were liberalised and no longer defined as public utilities. (The current 60/40 nationality restriction on foreign equity for the ownership of public utilities means that foreigners are currently investing in joint ventures, which are considered as local companies.) The OECD understands that the Revised Corporation Code (RA 11232), enacted on 20 February 2019, removed the minimum capital requirements for "stock corporations". Domestic capital requirements had been PHP 5 000. Sector-specific minimum capital requirements however may also exist.	firms), which may reduce the number of participants over time. Foreign firms face high capital requirements and so face a higher barrier to entry than domestic firms, which amounts to discrimination.	consumers and creditors from risky and potentially insolvent businesses. By requiring investors to lock in upfront a minimum amount of capital, investors are expected to be more cautious about undertaking commercial opportunities. The Revised Corporation Code (RA 11232), enacted on 20 February 2019, removed the minimum paid-in capital required of stock corporations; Section 12 of the law states: "Stock corporations shall not be required to have a minimum capital stock, except as otherwise provided by special law." Since the Foreign Investments Act is a special law, the minimum capital requirements still apply to foreigners. *OECD Investment Policy Reviews: Philippines 2016* noted that the minimum capital requirement of USD 200 000 was: "substantially greater than capital requirements for both domestic and foreign investors in OECD countries and large developing economies, such as China, Indonesia, India and Russia. The Philippines clearly stands out as an outlier in this respect, including compared to countries with similar income per	

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					capita levels […] the measure affects most the non-capital-intensive industries, such as services, and particularly foreign small and medium companies (SMEs). Small entrepreneurial companies are common in many service sectors, including more knowledge-intensive activities, and the imposed minimum capital requirement can potentially lead foreign SMEs to forgo certain investment opportunities or decide to locate elsewhere. In sectors where barriers to entry are relatively low and investors and labour are largely mobile, measures increasing the cost of doing business affect directly the country's competitiveness in the sector […] The empirical literature suggests a number of shortcomings of minimum capital requirements, notably to the detriment of entrepreneurial activity and companies' growth." The World Bank has highlighted that contrary to governments' expectations, "evidence suggests that minimum capital requirements may not help countries recover their investments as 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 (e.g. efficient credit	

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					and collateral registries and enhanced corporate governance standards) are potentially more efficient in addressing such concerns. Moreover, minimum capital requirements have been found to be associated with lower access to finance for small and medium-size enterprises."	
7	Omnibus Investment Code 1987, Foreign Investment Act 1991	N/A	The Philippines has no single, dedicated investment law, which would comprehensively govern both domestic and foreign investment. Numerous other laws and regulations apply to investment activities, be they sectoral or with a more general scope, which creates a complex web of numerous, sometimes overlapping laws. The two main pieces of legislation are the Omnibus Investment Code 1987 and the Foreign Investment Act 1991. They are complementary, but their consolidation could improve transparency and clarity of the legislation governing investment.	Difficulties in accessing investment legislation creates legal uncertainty and increases costs for actual and potential market participants.	The majority of ASEAN member states have adopted a single dedicated investment law. During stakeholder consultation, stakeholders agreed that a single dedicated investment law should be implemented for coherence and easy access, improving efficiency, lowering costs and even possibly decreasing uncertainties and risk when investing in the Philippines. They explained that infant industries, SMEs and start-ups, would likely thrive in this environment, nurturing entrants and promoting competition. The OECD understands that ARTA will include foreign investment as a classification in PBRIS, so as to provide foreign investors easy access to regulations that affect their businesses.	Implement a single dedicated investment law. Any restrictions on foreign investment should be easily accessible, so that even if foreign investment restrictions are governed by different laws or regulations, investors should be able to go to a single place to see all applicable foreign investment restrictions in their sector. Such transparency will encourage investment. The OECD supports the inclusion of foreign investment in PBRIS.

Other restrictions

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1	Absence of comprehensive public database of logistics laws	NA	Access to logistics legislation is not organised in a user-friendly way. For example, on the Official Government Gazette website, certain pieces of legislation, which are no longer in force are not marked as such. Also, amendments to legislation are not incorporated into the original piece of legislation so market participants must be aware of and then search for a particular amendment.	Difficulties in accessing logistics legislation create legal uncertainty and increases costs for actual and potential market participants. It may also deter market entry.	Amending the public legal database would be costly and take a significant amount of time. It should nevertheless be a long-term goal for all ASEAN countries. The OECD understands that ARTA has been mandated to create a database for business regulations: "Section 17(k) of Republic Act No. 11032, otherwise known as the Ease of Doing Business and Efficient Government Service Delivery Act of 2018, mandates that ARTA should 'ensure the dissemination of and public access to information on regulatory management system and changes in laws and regulations relevant to the public by establishing the Philippine Business Regulations Information System'. Pursuant to this mandate, the Competitiveness Bureau of the Department of Trade & Industry, acting as the temporary secretariat of ARTA, launched the first version of the Philippine Business Regulations Information System (PBRIS) on 12 December 2018. The PBRIS is a web-based platform providing accessible information	The OECD recommends one of two options. 1) Each logistics authority should publish the complete list of legislation it administers on its website. Authorities should revise legislation to include new amendments or alternatively, list the main legislation and then provide a link to any amendments. 2) Ensure that regulations are published on the Philippine Business Regulations Information System (PBRIS).

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					on business regulations issued by the Philippine government. Its primary function is to provide a centralized database of all business-related regulations issued by all offices and agencies of the Philippine government. The regulations are organised according the following categories: by the issuing government agency; by affected sector/industry group; by year enacted; and by implementation status (in effect or abrogated)." The authorities hope to begin public access to the database by early 2020. International comparison In 2016, the Portuguese government launched the Simplex+ Programme, which aims to reduce administrative burdens and improve the quality of regulations. The programme includes the Revoga + project, which aims to reduce legislative stock by identifying and then repealing legislation that has fallen into disuse. It also includes the Unilex project, through which all new draft regulations are subject to a legislative consolidation test, and when possible new proposals for consolidation and unification of related legislation are adopted.	

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					The Simplex+ programme builds on Simplex, Portugal's long-standing and successful legal-database programme. In Australia, all national laws are published on the National Register of Legislation website on which the latest consolidated version of any legislation is clearly marked by "In force – Latest version". Users are able to view series to see all versions of the legislation in question and can also easily find any amending acts. Users can easily identify legislation that is currently in force, view previous versions to know what law applied at a particular time, and see amendments and when they were made. There is also a link to related bills.	
2	Obsolete provisions	NA	The government gazette website lists all the Philippines' legislation and regulations. Most of the government departments and their agencies involved in the logistics sector also list relevant legislation they administer on their websites. However, both of these sources contain laws and regulations that are no longer in force. The current presentation of the laws does not always make clear whether a law is obsolete, has been amended or whether it is the latest version.	Obsolete provisions create legal uncertainty for market entrants.	The OECD understands that when amendments are made to legislation in the Philippines, the amendments are simply made available in a new document rather than the original legislation being amended. This leads to an excessive number of documents in circulation, including obsolete legislation, which can cause confusion and waste time for market participants.	Ministries should publish the legislation they administer, and should take down or clearly mark any obsolete legislation. All current and relevant legislation should be easily accessible and organised in one place. If obsolete legislation is included it should be clearly marked. If obsolete regulations are published on the Philippine Business Regulations Information System (PBRIS), which will soon be launched by ARTA, the OECD recommends that they are clearly marked as such.

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						The OECD understands "one of the features of the PBRIS is that it includes indicators on the status of regulations being viewed (if in effect or abrogated)".
3	Laws and regulations not publicly available	NA	Not all rules and regulations being enforced by logistics agencies are publicly available. Market participants are therefore subject to rules or regulations to which they have no access. Examples include the rules for the accreditation of freight forwarders and the accreditation of private express delivery services (although the Department of Information and Communications Technology has stated that the latter will be released within the first quarter of 2019). As of December 2019, the OECD has not had confirmation of this. Another example is the Land Transportation Franchising and Regulatory Board's rules of practice for commercial hauliers, which are not available online.	Market participants do not have full access to applicable rules and regulations, which can cause legal uncertainty and deter market entry.	The OECD understands from stakeholders that certain logistics-related rules and regulations may not be available because they are currently "under review" by the relevant agency, despite this legislation remaining in force and being applied by the agency in question.	The OECD supports the PRBRIS database, but recommends that rules and regulations be available both on PBRIS and each relevant agency or department's website. The relevant authorities should have complete lists of the updated legislation they administer on their websites.
4	Lack of online and electronic application processes	NA	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 sometimes required to submit hard-copy applications with the relevant agency for each	The lack of digitalisation increases costs for logistics providers as they are required to compile a different hard-copy application for each authorisation and provide this to the relevant agency. This also increases the danger of irregularities.	The use of online application forms for licences, for example, facilitates the effective delivery of services, allows sharing of data across agencies, and ensures better data organisation. Following stakeholder interviews, the OECD understands that most agencies are in the process of introducing electronic application-filing procedures.	Allow online applications and the continuation of digitalisation of all application procedures for logistics-related authorisations.

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			authorisation.		Project Repeal – the Philippine government's anti-red-tape initiative – has encouraged the digitalisation of all government functions. Stakeholders have explained that "pursuant to Section 26 of Republic Act 11032, all agencies are mandated to automate business-related transactions by developing the necessary software and technology platforms and secure web-based infrastructure accessible to the public within 3 years of the act coming into effect (by June 2021). Part of the automation will be the digitalisation of application procedures including logistics related authorisations." International comparison In the UK, a user-friendly online procedure for transport operator licences (with fees payable online by credit card) is available, and it remains possible to file a hard-copy application by post. Decisions are usually issued within 7 weeks for online application and 9 weeks for postal applications.	

OECD COMPETITION ASSESSMENT REVIEWS: LOGISTICS SECTOR IN THE PHILIPPINES

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

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

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