



OECD Competition Assessment Reviews

INDONESIA

LOGISTICS SECTOR



OECD Competition Assessment Reviews: Logistics Sector in Indonesia

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Foreword

Southeast Asia, one of the fastest growing regions in the world, has broadly embraced 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 Indonesia*, 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, and rail; 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 Indonesia in the *OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Indonesia*.

The OECD assessment was conducted in consultation with the Indonesian authorities and local stakeholders, and with the support of the ASEAN Secretariat and the ASEAN Economic Reform Programme under the UK Foreign, Commonwealth & Development Office (UK Government). The assessment prioritises 57 pieces of legislation and identifies 56 regulatory barriers where changes could be made to foster competition in the logistics sector. This is especially important for Indonesia where logistics currently accounts for about 5% of the country's GDP. This report offers policy recommendations that can help the Indonesian government address structural and regulatory shortcomings in this sector.

These structural reforms have become even more pressing as the Indonesian economy is expected to shrink by about 2.4% in 2020 (compared to 5% growth in 2019) due to the COVID-19 pandemic, with containment measures severely affecting economic activities such as exports and tourism. These policy recommendations contribute to reforms that can help the Indonesian economy return to 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 Indonesian government, as well as the ASEAN Secretariat and the UK Government, on their efforts to lift regulatory barriers to competition and to improve the business environment. The OECD looks forward to continuing and broadening its co-operation with ASEAN to support further its reforms to the benefit of its citizens.

Greg Medcraft



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The OECD Project team consisted of Ruben Maximiano, ASEAN Project Co-ordinator and Senior Competition Expert; Federica Maiorano, Competition Assessment Project Leader and 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. The report was drafted by Sophie Flaherty under the supervision of Federica Maiorano, edited by Tom Ridgway, and prepared for publication by Eleonore Morena, Claudia Gemmel and Erica Agostinho.

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The information and figures in this report were correct as of June 2020, while economic forecasts have been updated with more recent figures reflecting the impact of the COVID-19 pandemic.

The formulation of this report and the field interviews to gather relevant data/information related to this study, were conducted in 2019, prior to the issuance of Law Number 11 Year 2020 (the Omnibus Law on Job Creation). The Omnibus Law 2020 has significantly changed the regulatory landscape in Indonesia with the objective to attract more investment and increase the ease of doing business. These changes have not been reflected in the report.

Fostering competition in ASEAN

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

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

Against this background, the ASEAN Secretariat, with funding from the ASEAN Economic Reform Programme under the UK Foreign, Commonwealth & Development Office (UK Government), tasked the OECD to assist with the implementation of Initiatives 4.1 and 4.2 of the ACAP 2016-2025. These two initiatives require an assessment of the impact of competition law and policy on the markets of all 10 ASEAN Member States, both in general (4.1) and with a focus on state-owned enterprises (4.2).

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

- Freight transportation, including transport by road, maritime (inland waterways and sea), 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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Abbreviations and acronyms

ADB	Asia Development Bank
AEC	ASEAN Economic Community
AEGC	ASEAN Experts Group on Competition
AFAMT	ASEAN Framework on Multimodal Transport
AFAS	ASEAN Framework Agreement on Services
APBMI	Association of Indonesian Loading and Unloading Companies
ASEAN	Association of Southeast Asian Nations
ASEC	ASEAN Secretariat
ASPERINDO	Association of Indonesian Express, Postal and Logistics Service Companies
BKPM	Indonesian Investment Coordinating Board
DWT	Deadweight tonnage
FDI	Foreign direct investment
GDP	Gross domestic product
ICC	Indonesia Competition Commission (or domestically known as KPPU)
INSA	Indonesian National Shipowners' Association
ISIC	International Standard Industrial Classification of All Economic Activities
LPI	Logistics performance index
MFP	Multifactor productivity
ORGANDA	Organisation of Land Transportation Owners
PBE	Port business entity
PMR	Product market regulation
PPP	Purchasing power parity
PSO	Public-service obligation
RPJMN	Rencana Pembangunan Jangka Menengah Nasional / National Medium-Term Development Plan
SEZ	Special Economic Zone
SISLOGNAS	Sistem Logistik Nasional / National Logistics System
SME	Small- and medium-sized enterprise
SOE	State-owned enterprise
STRI	Services Trade Restrictiveness Index (OECD)
TEU	Twenty-foot equivalent
UNCTAD	United Nations Conference on Trade and Development

Executive summary

Logistics in Indonesia

In 2019, the transportation and storage sector employed over 5 million people and accounted for over 5% of Indonesia's GDP. Land transportation is the main sub-sector and accounted for around 44% of the entire sector in terms of GDP, in the same year. Indonesia's ranking in the World Bank's Global Logistics Performance Index, a measure of overall logistics performance, has improved in the past few years, with the country ranking 46 in 2018. This performance improvement has been accompanied by a fall in the country's logistics costs as a percentage of GDP.

Key recommendations

This report makes 43 recommendations on specific legal provisions that should be reviewed, amended or removed. The main recommendations are summarised below.

Road freight transport

- Clarify that the price-setting guidelines are not mandatory and remove the penalty for non-compliance, so that service providers are free to set their own prices.
- Replace bi-annual inspections of commercial vehicles with annual inspections, to reduce operators' costs. In order to ensure road safety, these annual inspections could be supplemented with random on-road spot checks or criteria based on vehicle age.

Maritime freight transport

- Amend the cabotage law to increase competition in domestic cargo transportation. For instance, by allowing international ships to operate on specific routes, permitting certain categories of international ships to meet specific demand or by lifting the ban on foreign vessels carrying domestic cargo. As a first step, this could apply only to vessels from ASEAN member states.
- Remove the requirement for certain imports and exports to be carried by national sea transportation companies. This may reduce vessel shortages and, through increased competition from foreign-flagged vessels, provide incentives that improve efficiency and lower prices.
- Replace set prices for port services with maximum prices to allow negotiations between service providers and customers, introducing price competition.

Rail freight transport

- Implement railway sector reforms. Consider separating the ownership or the management of infrastructure from rail freight transport service operations or, introduce separate accounting for infrastructure and freight transport services.

- Introduce a legal provision which requires the infrastructure manager to grant third-party access to existing infrastructure. This will lower barriers to entry for potential competitors, who will be able to use the incumbent's infrastructure instead of investing in new railway tracks.

Freight forwarding

- Level the playing field by removing the obligation on freight-forwarding businesses with foreign participation, such as companies with joint venture and investment status, to have extra capital. The regimes for international and domestic investors should be aligned in order to attract more foreign investment and encourage market entry.
- Clarify that price-setting guidelines are not mandatory and remove any penalty for non-compliance, so that service providers are free to set their own prices.
- Remove the compulsory association requirement, which can facilitate anti-competitive co-ordination and collusion between market players.

Small-package delivery services

- Remove the specific capital requirements for courier service providers as they raise the cost of entry and discourage potential entrants; replace them with bank guarantees and insurance policies. This may increase the number of market participants.
- Remove the geographical restrictions on joint ventures to allow them to operate outside international airports and seaports. This may improve efficiency, lower costs and increase service quality.
- Remove the ban on below-cost pricing in price-setting guidelines and remove any penalty provision so that providers are free to set their own prices.

Horizontal legislation

- Progressively relax foreign-equity limits with the long-term goal of allowing up to 100% foreign ownership in the logistics sector. As an alternative, foreign equity limits could be relaxed on a reciprocal basis.
- Consider implementing an alternative model for the transportation of basic and essential goods to remote areas. Instead of awarding PSO contracts directly to SOEs, the authorities could assess the costs and benefits of their competitive tendering, to provide incentives for lowering costs and improving quality. If SOEs are directly awarded PSO contracts, safeguards should be put in place, such as the submission to the authorities of separate accounts for PSO business.

1 Introduction

1.1. Introduction to the ASEAN competition assessment project

Logistics play a significant role in increasing a country's economic development. In 2004, the Association of Southeast Asian Nations (ASEAN) chose the logistics sector in its ASEAN Framework Agreement for the Integration of Priority Sectors as one of its 12 priority sectors. As part of the ASEAN Competition Action Plan 2016-2025, the ASEAN Secretariat asked the OECD to 1) carry out an independent competition assessment of legislation in the logistics sector and 2) prepare a regional report assessing the impact on competition of state-owned enterprises (SOEs) and government-linked monopolies in selected markets in ASEAN.

An OECD team has been conducting competition assessments of laws and regulations in 10 ASEAN member states, as well as a study for the ASEAN region. It has worked in close co-ordination with the ASEAN Secretariat (ASEC), the ASEAN Experts Group on Competition (AEGC), as well as with the responsible authorities within each member state, in particular, competition authorities. The project has been funded by the ASEAN Economic Reform Programme under the UK Foreign, Commonwealth & Development Office (UK Government).

The following analysis of laws and regulation in the logistics sector in Indonesia was carried out with the support of the Indonesian Competition Commission (ICC). While the ICC has developed its own methodology for conducting competition assessments, this project uses the methodology of the OECD Competition Assessment Toolkit.

1.2. Introduction to the logistics sector

According to a common definition of logistics, which includes inbound, outbound, internal, and external movements, it is:

“the process of planning, implementing, and controlling procedures for the efficient and effective transportation and storage of goods and related information from the point of origin to the point of consumption for the purpose of conforming to customer requirements” (*Mangan and Lalwani, 2016, p. 9^[1]*).

Other authors define logistics as the process of strategically managing the procurement, movement and storage of materials, parts and finished inventory (and the related information flows) through an 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]).

Using twenty-foot equivalent (TEU) containers is nowadays a fundamental feature of all major national and international transport modes. TEUs can be stacked on top of each other on board a ship, allowing the efficient use of space and better cargo handling. Containerisation makes possible the so-called “intermodal system of freight transport”, which enables the uncomplicated movement of bulk goods from one mode of transport to another. TEU containers and container systems also allow a number of small packages to be consolidated into a large single unit, leading to a reduction in transport and handling costs.

Generally, logistics is a cluster of activities that each involve a range of different actors and services.¹ This report will focus on five subsectors of logistics:

- freight transportation (excluding air transport)
- freight forwarding
- warehousing
- small-package service delivery
- value-added logistics.

The exact scope of the logistics sector for this project was agreed with the ASEC and each ASEAN member state in the context of the AEGC.

The report does not cover customs issues.

1.2.1. Freight cargo transport

Five principal modes of transport of freight are generally defined: 1) road; 2) water; 3) rail; 4) air; and 5) pipelines (Mangan and Lalwani, 2016, p. 103^[1]). This report only covers the first three modes of freight transport. Transport by air, which only makes up a small percentage of overall freight transport in the ASEAN region, raises a set of different questions, which are often regulated in bi-lateral or multilateral agreements. Transport by pipelines is usually not counted as logistics and is legislated for under energy law. For that reason, this report does not cover the transport of oil and gas.

Road freight transport

The road freight transport sector encompasses 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 law covering road transport usually distinguishes between transport for own-account, which is freight transportation between establishments belonging to the same business, and transport for hire or reward. As in many countries, road freight transport continues to be the dominant mode of domestic transport in Indonesia. Fixed costs are low as the physical transport infrastructure, such as motorways, is usually in place and publicly funded; variable costs include fuel costs, and maintenance charges, road use and congestion. Road is also often the most suitable or efficient mode of transport since it allows door-to-door transport without any transfers of cargo between different vehicles, which results in lower costs for senders and recipients, as well as in reduced risks of possible loss or damage from cargo transfers.

Inland waterway and maritime freight transport

Waterborne freight transport refers to goods transported on waterways using various means, including boats, steamers, barges and ships, both within and outside the country. When the goods are transported by using inland waterways such as rivers or canals, transport is referred as inland waterway transport. Maritime transport refers to seaborne movement of goods on ships, linking a large number of origin and destination points, either within the country's territorial waters, for instance within an archipelago or coastal trading (known as cabotage) or, more often, to other countries (OECD, 2016, p. 141^[3]).² Ninety per cent of global international trade is transported by sea. Transporting cargo by sea is ideal for high-volume cargo that is not necessarily time sensitive or which has long lead times for delivery (Rushton, Croucher and Baker, 2017, p. 447^[4]). Fixed costs for waterborne freight transport, such as vessels, handling equipment and terminals, are high; variable costs are low due to economies of scale based on large volumes of freight (Mangan and Lalwani, 2016, p. 105^[1]).

Globally, 60% of the goods by value moved by sea are carried by liner vessels.³ Shipping lines are carriers providing shipping services to shippers on fixed routes with regular schedules between ports (International

Transport Forum, 2018, p. 10^[5]). In the past, liner vessels were often organised into conferences, formal groups of shipping lines operating on shipping routes that brought together all lines operating in a specific geographic zone to set common freight rates and regulate capacity. This practice has been under scrutiny in some regions of the world, such as in the EU,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 to liner shipping conferences in 2006 (International Transport Forum, 2018, p. 11^[5]).

Ports 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 facilitating domestic and international trade of goods, often on a large scale. Most ports have an extensive network of infrastructure including quays, roads, rails tracks, areas for storage and stacking, and repair facilities, as well as fences or walls to securely enclose the port. In addition, ports include superstructures constructed above 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 three main ports in Indonesia are Port of Tanjung Priok, Port of Belawan and the Port of Tanjung Perak.

Typical port services include:

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

Some 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 some geographical regions, there is fierce competition between and within ports (OECD, 2018^[6]). In others, however, enhancing competition can prove difficult, especially when ports are local natural monopolies with limited space and so subject to heavy national regulations. The state of port competition would need to be assessed in the context of ports facing global shipping alliances with strong bargaining power (International Transport Forum, 2018^[5]), especially since certain shipping sectors such as container shipping have recently become more concentrated (OECD, 2018, p. 181^[6]).

Rail freight transport

Rail freight refers to freight – cargo or goods – transported by railways; it does not include parcels or baggage transport services associated with railway passenger services. Fixed costs for rail tend to be high due to expensive requirements such as locomotives, wagons, tracks and facilities such as freight terminals; variable costs are, however, mostly low (Mangan and Lalwani, 2016, p. 105^[1]).

1.2.2. Freight forwarding

Freight forwarding is the organisation of the transportation of items, on behalf of customers according to their needs; this can also include ancillary activities, such as customs clearance, warehousing, and ground services. Unlike the 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, final delivery at the destination country, and knowledge of the different costs associated with different modes and destinations (Rushton, Croucher and Baker, 2017, p. 444^[4]).

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

The last three subsectors investigated in this report comprise warehousing, small-package delivery services and value-added services.

Warehousing encompasses the storage (holding) of goods in bonded warehouses (where dutiable goods may be stored, manipulated, or undergo manufacturing operations without payment of duty) or non-bonded warehouses. Often, the main problem for building and operating new warehouses is accessing land in central locations.

Small-package delivery services deliver small packages from pick-up location to drop-off location. They can include express or deferred delivery, both domestically and internationally, by any mode of transport. Possible distortions to competition for postal services related to SOEs will be analysed in a separate OECD report, *Impact on Competition of State-Owned Enterprises in Logistics: A Focus on Small-Package Delivery Services in Indonesia*; this report will cover only those issues that affect both SOEs and private players.

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 Competition Assessment of Laws and Regulations project aims to identify regulations that may unduly restrict market forces and, by doing so, 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 a variety of products and services, firms are forced to compete, innovate more, and improve their productivity; see for instance, Nickell (1996^[7]), Blundell (1999^[8]) and Griffith (2006^[9]). Industries in which there is greater competition experience faster productivity growth. These conclusions have been demonstrated by a wide variety of empirical studies and summarised in the OECD's "Factsheet on how competition policy affects macro-economic outcomes" (OECD, 2014^[10]).

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 the evidence that competition fosters productivity and economic growth, many studies have shown the positive effects of more flexible product market regulation (PMR), the area most relevant to this report.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) (Fournier et al., 2015_[11]; Fournier, 2015_[12]).⁶ By fostering growth, more flexible PMR can help the sustainability of public debt.

There is a particularly large body of evidence on the productivity gains created by more flexible PMR. At the company and industry level, restrictive PMR is associated with lower multifactor productivity (MFP) levels (Nicoletti and Scarpetta, 2003_[13]; Arnold, Nicoletti and Scarpetta, 2011_[14]). The result also holds at aggregate level (Égert, 2017_[15]).⁷ 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 the sectors closer to the productivity frontier (Bourlès et al., 2013_[16]).⁸ Specifically, a large part of the impact on productivity is due to investment in research and development (Cette, Lopez and Mairesse, 2013_[17]). Moreover, lowering regulatory barriers in network industries can have a significant impact on exports (Daude and de la Maisonneuve, 2018_[18]).

Innovation and investment in knowledge-based capital, such as computerised information and intellectual property rights (IPRs), are also negatively affected by stricter PMR. A number of studies show that competitive pressure, as measured by lower regulatory barriers (for example, lower entry costs to a market), encourages firms in services sectors, such as retail and road transport, to adopt digital technologies (Andrews and Criscuolo, 2013_[19]; Andrews and Westmore, 2014_[20]; Andrews, Nicoletti and Timiliotis, 2018_[21]). Pro-competition reforms to PMR are associated with an increase in the number of patent awards (Westmore, 2013_[22]). More stringent PMR is shown to be associated with reduced investment and amplifies the negative effects of a more stringent labour market (Égert, 2017_[15]).⁹

Greater flexibility can also lead to higher employment. A 2004 study found that after deregulating the road transport sector in France, employment levels in the sector increased at a faster rate than before deregulation (Cahuc and Kamarz, 2004_[23]).¹⁰ A 10-year, 18-country OECD study published in 2014 concluded that small firms that are five years old or less on average contribute about 42% of job creation (Criscuolo, Gal and Menon, 2014_[24]). As noted in the OECD report *Economic Policy Reforms 2015*: “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_[25]).

There is also some evidence on the benefits of lifting anticompetitive regulations for reducing income inequality. One study found that less restrictive PMR improved household incomes and reduced income inequality.¹¹

Finally, one 2018 study looked at the impact of PMR on the persistence of profits in the long term (Eklund and Lappi, 2018_[26]). It concluded that regulations that raise barriers to entry can protect incumbents’ above-average profits and more stringent product market regulation, as measured by the OECD PMR indicator, is associated with persistent profits.

The results described above hold in a variety of settings, but specific estimates may differ depending on the country. For instance, Égert quantified the impact of structural reforms, including PMR and labour reform, in a large sample including both OECD and non-OECD countries, and found that “stringent product market regulations will have a three-time larger negative impact on MFP in countries with per capita income lower than about USD 8 000 (in PPP terms)” (Égert, 2017_[15]).¹²

Increased market competition may also reduce gender discrimination and equality (Pike, 2018_[27]; Cooke, Fernandes and Ferreira, 2018_[28]). Further, the 2018 OECD Roundtable on Competition Policy and Gender noted that restrictive or discriminatory laws or policies against women’s economic participation may be

interpreted as anticompetitive 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 any 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 (female) suppliers to provide a good or service or by significantly raising the cost of entry or exit by a (female) supplier.

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

1.4. Introduction to Indonesia

Indonesia is an archipelago of over 17 000 islands, located between the Indian and Pacific Oceans. Its five main islands are Java, Kalimantan, Papua, Sulawesi and Sumatra. The majority of Indonesia's population is concentrated on the island of Java, which is also home to the capital, Jakarta. Indonesia is a presidential republic with a civil-law legal system.

Indonesia is following a 20-year economic development plan (2005-2025), which has been split into four five-year National Medium-Term Development Plans, (Rencana Pembangunan Jangka Menengah Nasional, RPJMN), with distinct development priorities that help to guide public spending (World Bank, 2020_[29]). The 2015-2020 RPJMN has focused on priorities including infrastructure development.

Since 1998, Indonesia has implemented decentralisation reforms that have transferred certain responsibilities from central government to provincial and local government (see, for example, Law 22/1999). In 2015, Indonesia had 34 provinces and 508 local governments (regencies and cities) (OECD, 2016_[30]). Local governments are responsible for providing many public services and have a strong influence on the development of economic policy. While the decentralisation process was in part aimed at addressing significant regional inequalities, large disparities do remain. Efficiency is constrained by "limited capacity of officials at lower government levels" and the lack of co-ordination between regional and central governments (OECD, 2018, p. 138_[31]). Economic activity, for example, is still largely concentrated on the island of Java.

In 2020, Indonesia's population was estimated at 267.3 million, the largest in ASEAN (World Bank, 2020_[29]). Like other emerging economies, half of Indonesia's population is aged under 30. An increasing working-age population alone boosts potential GDP per capita growth (OECD, 2018, p. 42_[31]).

1.4.1. GDP, economic growth and the COVID-19 crisis

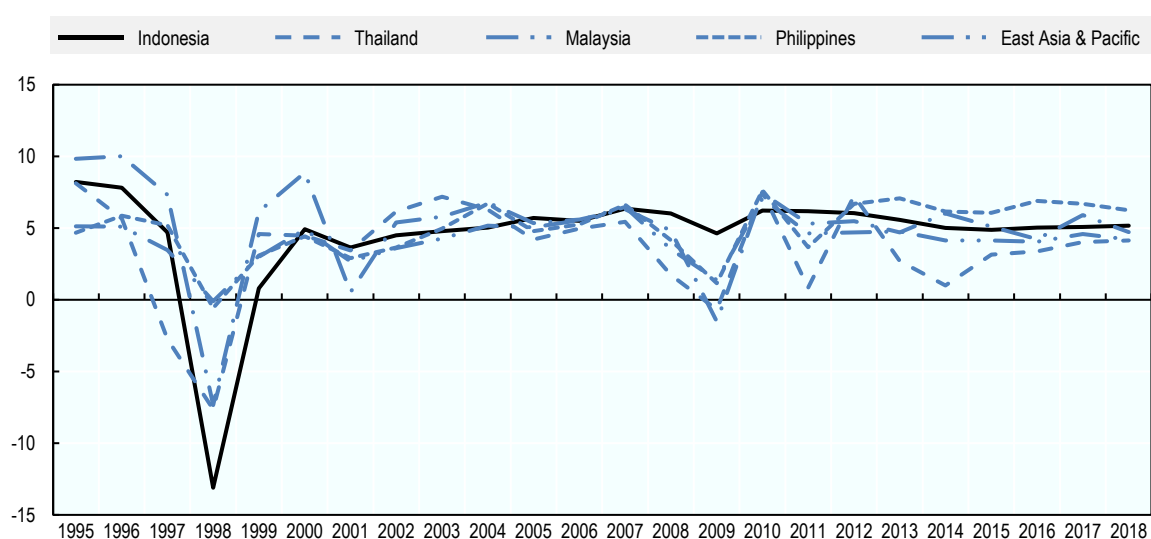
Indonesia is Southeast Asia's largest economy, and the 16th largest in the world. It has been a member of the G20 since 1999 and will chair the group in 2022. In 2019, Indonesia's GDP had an annual growth rate of 5% (OECD, 2020, p. 186_[32]). According to the OECD, Indonesia's economic growth will have slowed in 2020 due to the COVID-19 epidemic, and only a partial recovery is expected in 2021. The country's GDP growth rate in 2020 is expected to be -2.4% and it is expected to remain below previous trends in 2021 at 4%, but to rebound to 5.1% in 2022 (OECD, 2020, pp. 185-6_[32]). New trade agreements including the Regional Comprehensive Economic Partnership (RCEP) – which was signed on 15 November 2020 – and reform initiatives such as Indonesia's Omnibus Law on Job Creation are expected to boost recovery prospects.

The COVID-19 crisis has resulted in Indonesia's first recession since the Asian financial crisis of 1997 and 1998. Since then, Indonesia's economy had been on an upward trajectory, similar to other comparable economies (Figure 1.1). In the *2018 OECD Economic Survey of Indonesia*, the OECD noted that GDP per

capita had increased by 70% over the previous two decades and that since 2013, Indonesia's economic growth had been solid, at around 5% per year (OECD, 2018^[31])

Indonesia's living standards are improving, but poverty and inequality remain key issues. According to the World Bank, Indonesia achieved upper-middle-income status in 2019, with GNI per capita of USD 4 050 (as of 1 July 2020) (Serajuddin and Hamadeh, 2020^[33]). While Indonesia was on the path to becoming a high-income country, its progress has been halted by the COVID-19 crisis. The *OECD Economic Outlook*, published in December 2020, stated that “in a few months, the pandemic reversed some hard-won advances in well-being with poverty, malnutrition and even hunger rising fast” (OECD, 2020, p. 185^[32]).

Figure 1.1. Annual percentage GDP growth rate in selected ASEAN economies, 1995-2018



Source: World Bank, <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=ID-MY-PH-TH-VN-Z4>.

1.4.2. Contribution to GDP by sector and the importance of services

Contribution of services to GDP

As highlighted in *OECD Investment Policy Reviews: Indonesia 2020*, the services sector accounted for “43.4% of national value added in 2018, compared to 70.7% in OECD countries (in 2017) and 53.8% of GDP in other middle-income countries” (OECD, 2020, p. 22^[34]).

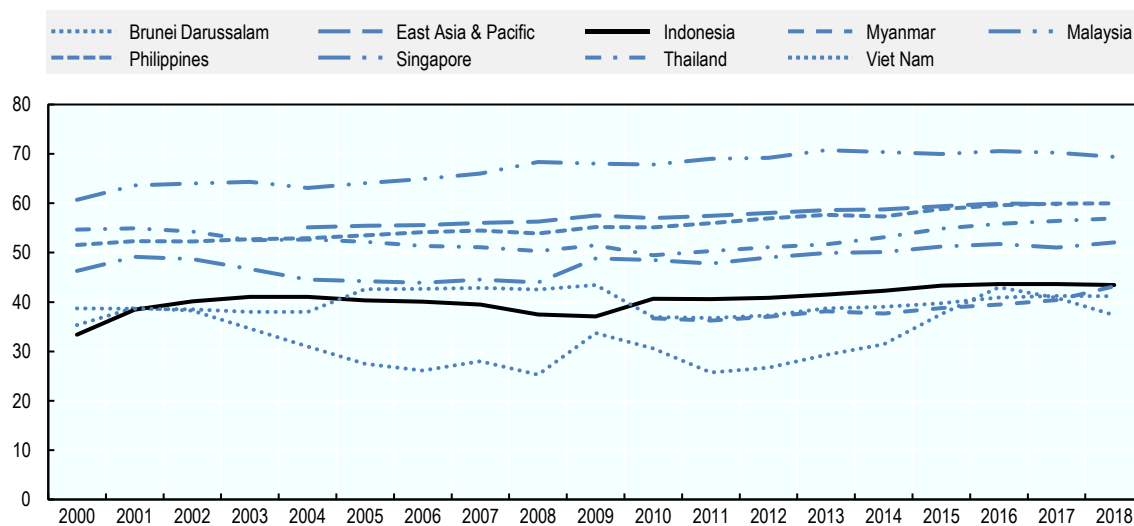
In terms of percentage of GDP corresponding to services, Indonesia is fifth in ASEAN after Singapore, the Philippines, Thailand and Malaysia (see Figure 1.2). The growing relevance of the services sector is common across ASEAN. In 2016, services accounted for 73% of ASEAN inward foreign direct investment (FDI), similar to the OECD member-country average (70% in 2015) and to global trends (OECD, 2019, p. 27^[35]).

More generally, this move towards 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).¹³ Under this framework, all countries agreed to move forward with commonly agreed liberalisation programmes, with a view to removing restrictions to trade in services and boosting ASEAN services-based economies. The OECD has previously highlighted how AFAS contained certain liberalisation commitments (particularly in specific service sectors, such as transport) and has achieved certain positive results in terms of liberalisation since its signing in 1995. However, it continued:

“ASEAN agreements need to go deeper to provide the sort of catalytic liberalisation needed to bring their overall level of restrictiveness closer to the average openness observed elsewhere in the developing world” (OECD, 2019, p. 37^[35]).

On 7 October 2020, ASEAN member states signed the ASEAN Trade in Services Agreement (ATISA), which affirms ASEAN’s commitment to free and open trade and regional economic integration and will supersede AFAS.¹⁴ This agreement deepens the integration of the services sector by building on the achievements made under AFAS. It also introduces some changes to the traditional AFAS approach, by mandating ASEAN member states to transition from the existing schedules of commitments (where commitments do not apply unless a sector or sub-sector is specifically included) to a schedule of non-conforming measures (with the opposite presumption, which assumes that the sector falls within the liberalisation commitment, unless otherwise specified, and lists measures that run counter to the liberalisation commitments).

Figure 1.2. Services as a percentage of GDP in ASEAN countries, 2000-18



Source: World Bank, “Services, value added (% of GDP) – Brunei Darussalam, East Asia & Pacific, Indonesia, Myanmar, Malaysia, Philippines, Singapore, Thailand, Vietnam”, <https://data.worldbank.org/indicator/NV.SRV.TOTL.ZS?locations=BN-Z4-ID-MM-MY-PH-SG-TH-VN>.

In 2018, services exports were worth USD 28 billion to the Indonesian economy, while services imports were worth USD 35 billion (OECD, 2019^[36]). The services sectors’ contribution to GDP has varied over the last 20 years, dropping notably in 2000 and 2001 (33.36% and 38.4%) and again in 2008 (37.45) and 2009 (37.05%), but has remained at a constant level for the period 2014 to 2019 (World Bank, 2020^[37]).

Employment in the services sector

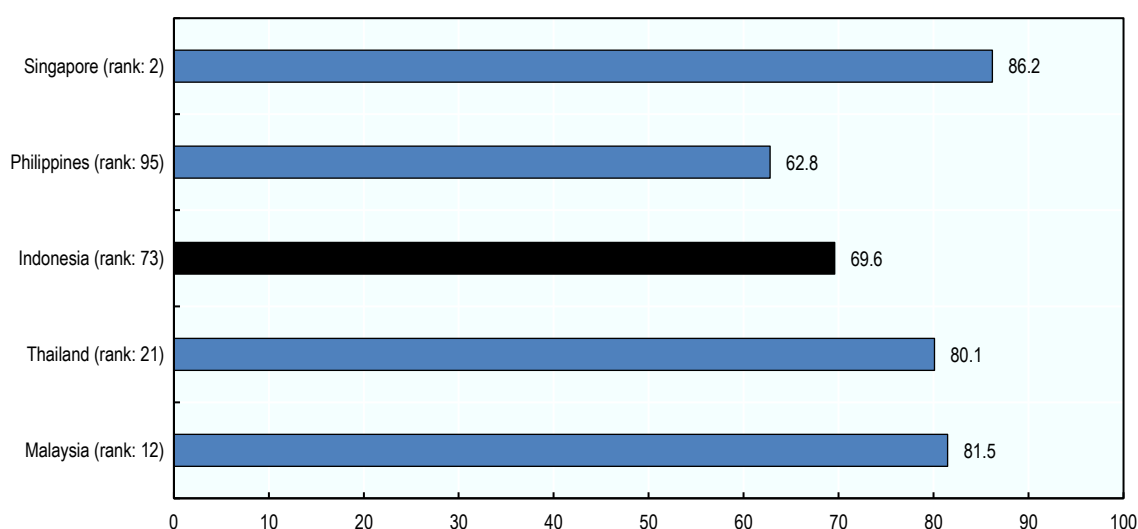
In 2019, the services sector accounted for 49% of formal employment in Indonesia (World Bank, 2020^[38]), and thus was a major contributor to the country’s economic growth, productivity, and earnings. However, Indonesia has a large informal economy. The OECD estimated in 2018 that around 70% of workers were informally employed in Indonesia (OECD, 2018, p. 43^[31]). Open and well-regulated services markets facilitate access to information, skills, technology, funding, and enable the movement of skilled labour across borders (OECD, 2019, p. 50^[39]).

1.4.3. Business environment

The World Economic Forum's 2019 *Global Competitiveness Report* ranked Indonesia 50 out of 141 economies in terms of national competitiveness.¹⁵ This was a slight drop from 2018 when it ranked 45 out of 140 economies. Indonesia was ranked fourth in the ASEAN region after Singapore (1), Malaysia (27) and Thailand (40). Indonesia is ranked second among OECD Key Partners, behind China (28), but ahead of India (68), South Africa (60), and Brazil (71). The report noted that Indonesia's main strengths were its market size (7) and macroeconomic stability (54) (World Economic Forum, 2019, p. 16_[40]).

The World Bank's *Doing Business 2020* report ranked Indonesia 73 out of 190 economies for the ease of doing business, with an overall score of 69.6/100 (World Bank Group, 2020_[41]); the same rank as 2019 but an improvement of its 2019 score of 67.9/100. Globally, New Zealand, Singapore and Hong Kong, China were the top three, while in the ASEAN region, the top performers after Singapore were Malaysia (12), Thailand (21) and Brunei Darussalam (66). Indonesia ranks in the middle compared to other OECD Key Partners, behind China (31) and India (63), but ahead of South Africa (84) and Brazil (124).¹⁶

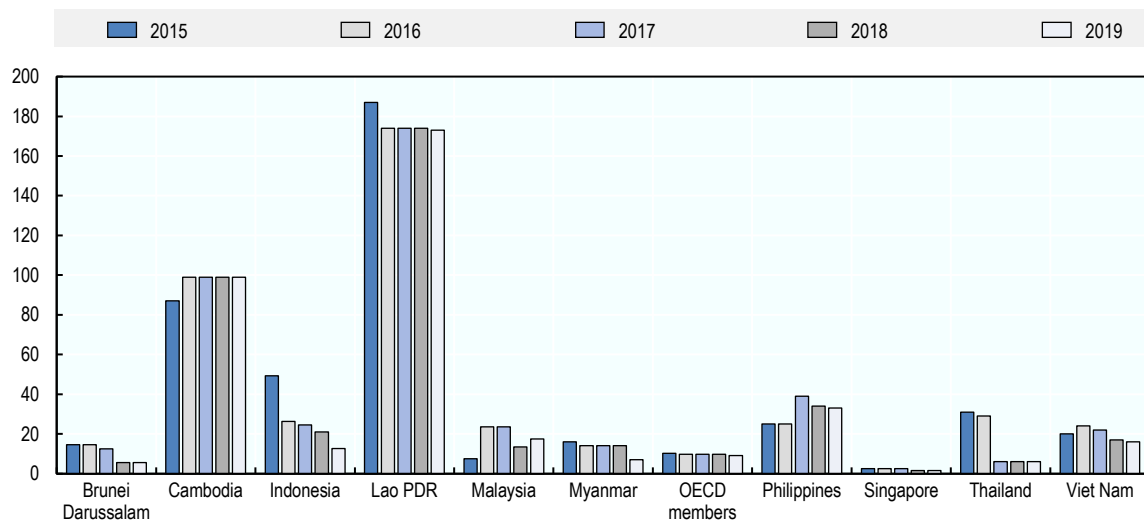
Figure 1.3. World Bank *Doing Business 2020* rankings for Indonesia and selected ASEAN members



Source: World Bank Group, *Doing Business 2020*, <https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402.pdf?sequence=24&isAllowed=y>, p.4

Among the factors the World Bank takes into account to calculate the ease of doing business in a country is the time required to open a new business, as regulations regarding the launch of a new business can affect market entry more generally.¹⁷ As shown in Figure 1.4, since 2015, almost all ASEAN member states have significantly reduced the amount of time required to start a business and in most of these countries, it is now possible to conclude all the necessary procedures within one month (for example, 13.5 days in Indonesia). These steps bring most ASEAN countries closer to the OECD member average of 9.2 days, while certain, such as Brunei Darussalam, Singapore and Thailand, are already performing better than the OECD average.

Figure 1.4. Days required to start a business in ASEAN countries, 2015-19



Source: World Development Indicators (2019), "Time required to start a business (days) – Thailand, Philippines, Malaysia, Cambodia, Singapore, OECD members, Indonesia, Vietnam, Lao PDR, Brunei Darussalam, Myanmar", <https://data.worldbank.org/indicator/IC.REG.DURS?end=2019&locations=TH-PH-MY-KH-SG-OE-ID-VN-LA-BN-MM&start=2019&view=bar>.

In 2018 and 2019, Indonesia implemented several reforms that made it easier to do business in the country.¹⁸ These included the establishment of regional one-stop-shop integrated service centres and the Online Single Submission (OSS) licensing system. In its report, the World Bank noted the example of the online platform for business licensing introduced in Jakarta, which replaced hard-copy licences with electronic certificates (World Bank, 2020, p. 103_[42]).

Online Single Submission system

The OSS centralises the licences and permits that are required to start a business in Indonesia.¹⁹ It allows businesses to have access to a one-stop-shop and seeks to streamline processes, increase transparency, and provide certainty for investors. While not yet fully operational throughout Indonesia, the OSS is well positioned to increase efficiency in business operations. *OECD Investment Policy Reviews: Indonesia 2020* noted certain deficiencies in the OSS, including implementation problems, local resistance and additional investor requirements that are not integrated into the system (OECD, 2020, p. 200_[34]). Additional reforms and resources are thus still required. The OECD understands that Indonesia's new Omnibus Law on Job Creation aims, among other things, to integrate and simplify licensing processes and that the central government will provide a special allocation fund to support the implementation of the OSS. The OECD has highlighted the importance of clear rules and guidelines for OSS users and ensuring that implementing bodies are well resourced in order to overcome any operational challenges (OECD, 2020, p. 202_[34]).

Foreign investment

Indonesia remains one of the most restrictive countries under the OECD FDI Regulatory Restrictiveness Index. Indonesia's Negative Investment list (as set out in Presidential Regulation 44/2016) contains three categories of sector-specific foreign-equity restrictions: business fields that are closed to investment; those that are open but reserved for or in partnership with micro-, small-, and medium-scale enterprises or co-operatives; and those that are open under certain other conditions. Since 2016, the logistics and e-commerce sectors have been opened (see Section 2.1.1) but as set out in Chapter 7, several transportation sectors continue to be subject to substantial foreign ownership limitations.²⁰ Under the Omnibus Law on Job Creation, it is expected that the negative investment list will be replaced with a "priority or positive list",

but it is not yet clear what this will mean in practice. *OECD Investment Policy Reviews: Indonesia 2020* recommended preserving and improving Indonesia's current "negative list" approach to regulating market access and treatment accorded to foreign investment in the ongoing Omnibus law reform (OECD, 2020, p. 34^[34]):

Beyond extensive sector-specific foreign equity restrictions, Indonesia maintains a range of discriminatory policies that apply across the board, such as higher minimum capital requirements for foreign-invested companies, stringent conditions on the employment of foreigners in key management positions, limitations on branching and access to land by foreign legal entities and preferential treatment accorded to Indonesian-owned entities in public procurement. (OECD, 2020, p. 32^[34])

The active role of SOEs in the Indonesian economy

According to the 2019 OECD Services Trade Restrictiveness Index (STRI), the Indonesian state has "a prominent role" in the national economy. Analysis shows that there is "at least one major state-owned enterprise in all sectors except for computer services, motion pictures and sound recording" (OECD, 2019^[36]). This role is recognised in Article 33(2) of the 1945 Constitution, which states that "sectors of production that are important for the country and affect the life of the people shall be under the powers of the State". In Indonesia, SOEs are known as badan usaha milik negara (BUMN)²¹ and are defined as "an entity, the capital of which is in part or in whole owned by the state through direct participation that is derived from the state's separated assets".²² There are three types of SOEs in Indonesia:²³

1. *Perusahaan perseoran*: state-owned limited-liability enterprise, of which at least 51% of the shares are owned by the state, and which have profit as their principal objective.
2. *Perseroan terbuka*: state-owned limited liability enterprises that are listed (through an initial public offering or IPO), and so only partly held by the state.
3. *Perum*: a public, profit-seeking enterprise (*perusahaan umum*) wholly owned by the state and serving the public interest by providing high-quality goods or services.

As of 2019, the Indonesian government owned 114 SOEs: 14 SOEs are *perum* and 100 are either *perusahaan perseoran* or *perseroan terbuka*.²⁴ Listed SOEs make up nearly one-quarter of Indonesian market capitalisation (OECD, 2020, p. 191^[34]). SOEs have been impacted by the COVID-19 crisis and "strategic" SOEs, including those in transportation, were included in the National Economic Recovery programme launched in May 2020.²⁵ As part of the IDR 44 trillion SOE stimulus package, for example, railway operator Kereta Api Indonesia was awarded IDR 3.5 trillion.

The Omnibus Law on Job Creation

Indonesia adopted the Omnibus Law on Job Creation (Law 11/2020) in October 2020 and it was enacted in November 2020. It sets out a far-reaching economic reform package, revising over 75 laws and covering various sectors. The law seeks to promote investment, improve Indonesia's ease of doing business rating, minimise overlapping policies of central and local governments, simplify regulations and licensing procedures, protect and facilitate the development of SMEs, and address unemployment. The impact of the law will depend significantly on the implementing regulations, which are yet to be finalised. Transparent and meaningful stakeholder consultation will be key to this success.²⁶

2 Economic and institutional overview of the logistics sector in Indonesia

The logistics sector is a crucial sector for the development of any economy, connecting firms to both domestic and international opportunities (World Bank, 2018^[43]). Apart from its large contribution to GDP, a well-developed logistics network ultimately affects a majority of economic activities and is fundamental to productivity and growth.

Recognising the importance of connectivity and logistics for the economies of its member states, ASEAN adopted a *Master Plan on ASEAN Connectivity 2025*, with the aim of strengthening ASEAN competitiveness through enhanced trade routes and supply-chain efficiency.²⁷

As a major component of the logistics sector, freight transport has an important role in enhancing economic 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. Freight transport therefore constitutes a sector of vital importance for the Indonesian economy. It can also aid development by connecting remote regions to centres of economic activity and allowing consumers to benefit from a wider variety of products and services, while spreading technological advancements across the country and internationally (Boylaud, 2000^[44]).

2.1. Key figures of the logistics sector

2.1.1. Contribution to GDP and employment

According to Badan Pusat Statistik (Statistics Indonesia), the transportation and storage sector contributed IDR 881 663 billion in 2019 (USD 63.4 billion) to the Indonesian economy, accounting for 5.57% of GDP in 2019.²⁸ As seen in Table 2.1 below, this contribution has been increasing since 2014.

Table 2.1. Contribution to GDP of transport and storage sector, percentage

Sector	2014	2015	2016	2017	2018	2019
Transport and storage	4.42	5.02	5.20	5.41	5.38	5.57
Railways transport	0.04	0.06	0.06	0.07	0.07	0.08
Land transport	2.14	2.44	2.43	2.42	2.39	2.47
Sea transport	0.34	0.34	0.32	0.31	0.30	0.32
River, lake and ferry transport	0.12	0.12	0.11	0.11	0.11	0.11
Air transport	1.03	1.25	1.43	1.63	1.62	1.63
Warehousing and support services for transportation, postal and courier	0.75	0.81	0.84	0.88	0.88	0.97

Note: The data relate to both freight and passenger transport.

Source: Adapted from Statistics Indonesia (2020), "Series 2010, Quarterly GDP Distribution at Current Prices According to Business Field (Percent)", www.bps.go.id/linkTableDinamis/view/id/828.

As shown in Table 2.2 below, in 2019, the largest contributing sub-sector of transport and storage was land transport (44.32%), followed by air transport (29.23%), and warehousing and support services (17.37%). Indonesia's logistics sector grew by 8.5% from 2017 to 2018 and by 10.5% from 2018 to 2019 (Supply Chain Indonesia, 2020^[45]).

Table 2.2. Transport and storage sub-sectors, percentage

	Percentage of each sub-sector in transport and storage sector		
	2017	2018	2019
Railway transport	1.25	1.31	1.37
Land transport	44.65	44.38	44.32
Sea transport	5.71	5.65	5.74
River, lake and ferry transport	2.05	2.01	1.98
Air transport	30.05	30.20	29.23
Warehousing and support services for transportation, postal and courier	16.28	16.45	17.37

Source: Statistics Indonesia (2020), "Quarterly GDP at Current Prices According to Business Field (Billion Rupiahs), 2014-2020", www.bps.go.id/dynamic/2015/05/06%2000:00:00/826/seri-2010-pdb-triwulanan-atas-dasar-harga-berlaku-menurut-lapangan-usaha-miliar-rupiah-2014-2018.html.

In 2016, 1 302 455 businesses were operating in the transportation and warehousing sector (Statistics Indonesia, 2019^[46]).²⁹ International businesses account for approximately 30% of the logistics and freight market (Mordor Intelligence, 2020, p. 291^[47]).

According to Statistics Indonesia, 5.42 million people were employed in the transportation and storage sector in February 2020, a figure that has been increasing since 2017 (Table 2.3).

Table 2.3. Employment in the transportation and storage sector, millions

	2017	2018	2019	2020
Transportation and storage sector	4.94	5.09	5.2	5.42

Note: 2017-2020 (February).

Source: Statistics Indonesia (2020), Monthly Socio-Economic Data Report: June 2020, www.bps.go.id/publication/2020/06/11/ed2b9bd3d77fc830b687938e/laporan-bulanan-data-sosial-ekonomi-juni-2020.html, p. 131.

Logistics were among the sectors partially opened in the 2016 Negative Investment List. According to the Indonesian Investment Coordinating Board (BKPM), the number of investment projects³⁰ in the logistics sector has increased, particularly in 2018 and 2019. For example, there were 16 investment projects in "logistics and supporting of transportation" in 2014, 153 in 2018, and 266 in 2019.³¹ This positive outcome has occurred even though some logistics sub-sectors appear on BKPM's Negative Investment List. The growth in logistics projects can be attributed to the increase in e-commerce and the growing transportation sector.

2.1.2. Logistics costs

In 2013, logistics costs as a percentage of GDP in Indonesia were 25.7%. While this rate decreased to 24% in 2016, and 21% in 2019 (Indonesian Logistics and Forwarders Association, 2018, p. 15^[48]), it remains high for the ASEAN region – Thailand was 16% in 2019 – and compared to the global average of 10-12% (OECD, 2020, p. 25^[49]).³² The World Bank has stated that if Indonesia were to reduce its logistics

costs to 16% of GDP, it would save businesses, governments and households an estimated USD 70 billion to USD 80 billion a year (World Bank, 2015^[50]).

Compared to other countries in the region, Indonesia has relatively high freight costs, which in turn leads to higher import and export costs. According to 2012 World Bank data, a typical charge for a forty-foot dry container or a semi-trailer (total freight including agent fees and other charges) was then only USD 178 in Singapore but USD 415 in Indonesia (Anas and Panjaitan, 2018, p. 43^[51]). In addition, Indonesia's high domestic logistics costs, especially between islands, are higher than international export-import costs:

“the cost of sending a 100-kilogram package from Jakarta to Tanjung Pinang, in Kepulauan Riau Province of Indonesia, using Jalur Nugraha Ekakurir’s (JNE) cheapest service is IDR 2.5 million [USD 260] On the other hand, JNE charges only IDR 1.2 million [USD 130] for a package of the same weight sent from Jakarta to Singapore, a distance farther than the route from Jakarta to Riau Islands” (Anas and Panjaitan, 2018, p. 43^[51]).

According to the Ministry of Trade, 82% of the Indonesian population live in Java and Sumatra, which make up only 44% of Indonesian territory.³³ The logistics market is therefore concentrated in these two island groups, especially Java. This leads to significant price differences between different island groups due to transportation costs, and causes connectivity problems. Several government initiatives have sought to address these issues, such as the public-service obligation for the transport of essential goods, discussed in Section 7.1.2.

2.1.3. Maritime transport

Indonesia has a coastline of 54 716 kilometres (Republic of Indonesia, 2011^[52]). In 2019, sea transport contributed 0.32% and river, lake and ferry transport 0.11% to GDP, a similar level since 2014 (Table 2.1).

Number of Indonesian flagged vessels

In 2019, 9 879 merchant vessels were registered under the Indonesian flag, a number that has been increasing since 2011 (Table 2.4). In Indonesia, 93% of vessels are registered under the national flag (UNCTAD, 2019, p. 36^[53]), a contrast to global figures: only 10 out of 35 of the largest ship-owning countries have more than 50% of their fleet registered under the national flag.

Table 2.4. Total merchant fleet ships by flag of registration

	2011	2012	2013	2014	2015	2016	2017	2018	2019
Brunei Darussalam	82	82	81	81	97	102	104	100	104
Cambodia	836	754	740	699	606	580	351	364	268
Indonesia	5 960	6 341	6 768	7 542	8 132	8 472	8 974	9 053	9 879
Lao PDR	1	2	1	1	1	1	1	1	1
Malaysia	1 405	1 456	1 525	1 561	1 617	1 658	1 682	1 704	1 748
Myanmar	83	86	86	88	98	98	96	95	95
Philippines	1 407	1 403	1 390	1 436	1 461	1 534	1 565	1 615	1 706
Singapore	2 772	3 117	3 306	3 166	3 339	3 419	3 480	3 526	3 433
Thailand	769	746	747	767	776	795	795	807	825
Viet Nam	1 756	1 774	1 776	1 752	1 761	1 798	1 836	863	1 868

Note: The figures cover seagoing, propelled merchant ships of 100 deadweight tonnes and above, excluding inland waterway vessels, fishing vessels, military vessels, yachts, and offshore fixed and mobile platforms and barges (with the exception of floating production, storage and offloading vessels, and drill ships).

Source: UNCTAD, “Summary: Merchant fleet by flag of registration and by type of ship, annual”, <https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=93>.

Major players in the domestic shipping market

In 2016, 21 476 water-transport businesses were active in Indonesia (Statistics Indonesia, 2019, p. 53^[46]); the five largest national shipping companies were: Meratus Line with a 15.2% market share; SPIL (13.6%); Tanto Intim Line (11.6%); Tempuran Emas Line (7%); and Caraka Tirta Perkasa (3%). (Bank Indonesia, 2016^[54]).³⁴

In 2019, according to Ministry of Transportation data (Table 2.5), foreign companies provided only foreign transport (see, Section 4.1.1 about cabotage restrictions), and recorded significantly higher volumes than national companies. Foreign companies have not provided domestic transport since 2015.

Table 2.5. Sea freight transported in 2018 and 2019, tonnes

	National companies		Foreign companies	
	2018	2019	2018	2019
Domestic transport	1 386 609 508	1 428 669 776	x	x
Foreign transport	31 386 549	28 690 231	799 800 741	774 497 749

Source: Ministry of Transportation (2019), "Table A.2.1.09 Number of Ocean Shipping Service Productions in Indonesia", Transportation Statistics 2019 Book.

Cost of domestic shipping

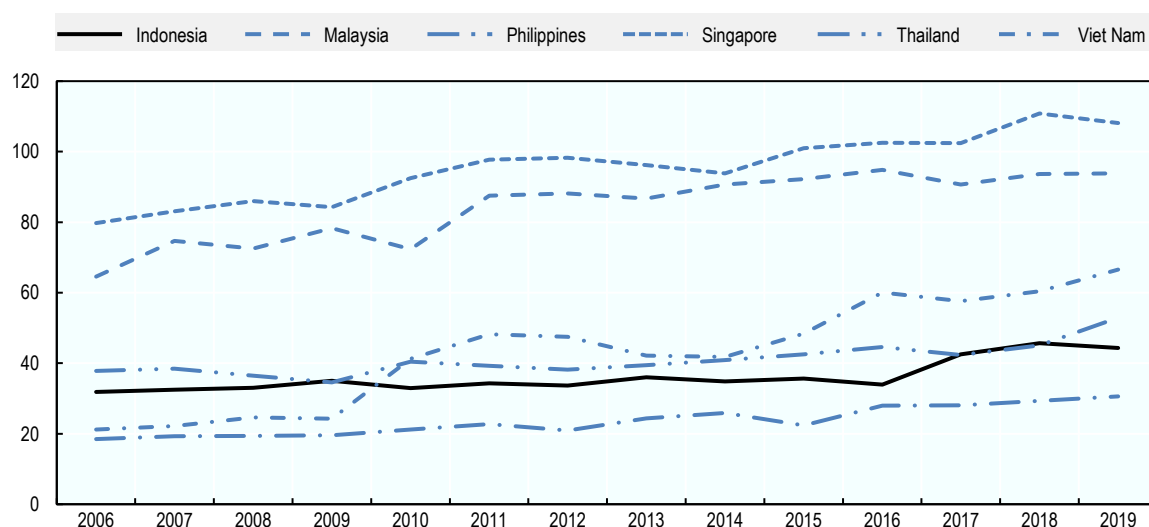
In 2014, the average port-to-port cost per nautical mile in Indonesia was USD 0.77, lower than other ASEAN archipelago countries such as Malaysia (USD 1.36) and the Philippines (USD 1.47) (World Bank, 2014, pp. 22-23^[55]). Nevertheless the cost of domestic shipping is still high, especially to and from remote islands. In terms of the most expensive routes per nautical mile, a 2016 study found door-to-port TEU shipments to Papua and shipments to Bali, Nusa Tenggara and Kalimantan were the most expensive, when considering outbound routes from Jakarta and Surabaya (FGD Bank/Franciscus Welirang, 2016^[56]). A 2016 study compared the cost of shipping between Jakarta and Singapore and between Jakarta and other Indonesian ports, and found the domestic routes cost 22-67% more than the international route (FGD Bank/Franciscus Welirang, 2016^[56]). As seen in Table 2.5, foreign transport is largely carried out by foreign companies, while national companies carry out all domestic transport.

International connectivity

Indonesia's liner-shipping connections with other countries did not significantly improve in the period 2006 to 2019. Figure 2.1 shows Indonesia and other comparable ASEAN countries' position on UNCTAD's Annual Liner Shipping Connectivity Index, which shows countries' levels of integration into the global liner-shipping networks.³⁵ Since 2006, Indonesia's connectivity level has shown only a slight increase, passing from 31.9 out of 100 in 2006 to 44.35 in 2019. It remains behind several of its ASEAN peers, including Singapore, Malaysia, Viet Nam and Thailand.

Figure 2.2 shows the countries with which Indonesia has the strongest bilateral connections in 2019,³⁶ a crucial determinant of bilateral exports; the top three countries are Singapore, Malaysia, and Hong Kong, China. Studies have shown that there is a close relationship between bilateral maritime liner-shipping connectivity and exports in containerised goods; a lack of a direct maritime connection with a country results in lower values of exports to that country (Fugazza and Hoffmann, 2017^[57]).

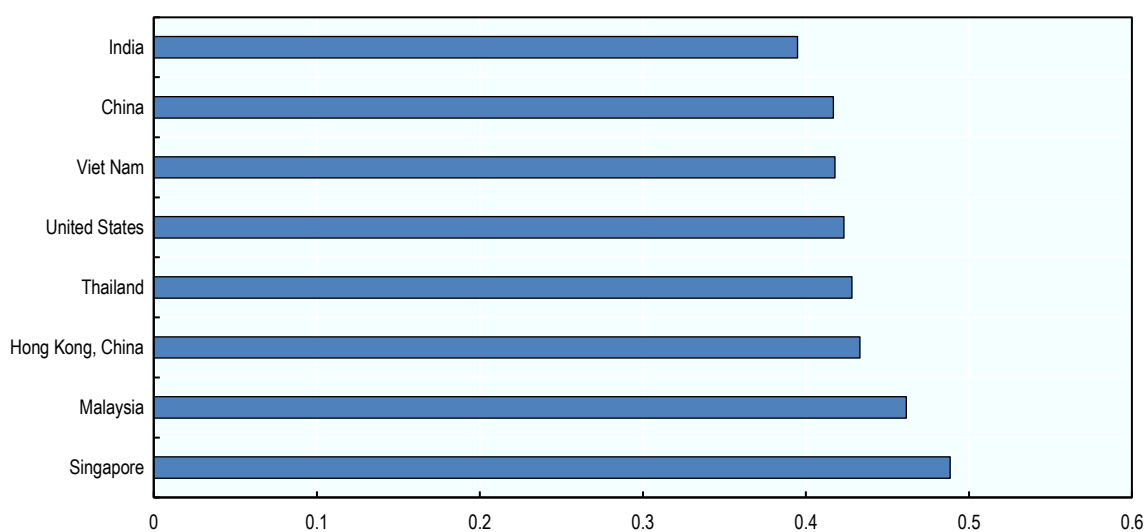
Figure 2.1. Annual Liner Shipping Connectivity Index



Note: In 2006, the index has the maximum value of 100 for China; all other indices are in relation to this value.

Source: UNCTADstat, <https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=92>.

Figure 2.2. Indonesia's Liner Shipping Bilateral Connectivity Index, 2019



Note: Values between 0 (minimum) and 1 (maximum) connectivity.

Source: UNCTADstat, Liner Shipping Bilateral Connectivity Index, <https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=96618>.

2.1.4. Road transport

Road freight transport accounts for 44% of the transport and storage market in terms of its contribution to GDP (Table 2.2). As of May 2020, road transportation accounted for 70-80% of freight volume handled domestically (Mordor Intelligence, 2020, p. 278^[47]). In 2019, the land transport sector represented 2.47% of Indonesia's GDP (Statistics Indonesia, 2020^[58]; 2020^[59]).³⁷ It is made up of several major local road freight transportation providers and a small number of major international players.³⁸ Various SOEs are active in the sector, including DAMRI (see Section 2.2.1).

In 2018, 7 778 554 freight vehicles were registered in Indonesia, a figure that has risen by over 1.5 million vehicles since 2014 (Table 2.6). Large domestic road freight providers include BSA, CTL, Java Indah, JIT, Lookman Djaja, New Star Kingdom, Puninar, Radiant Land, Reliable World Express, Satya Variety, Sipure and Suryakencana (Mordor Intelligence, 2020, p. 95^[47]).

Table 2.6. Freight vehicles registered in Indonesia, 2014-18

2014	2015	2016	2017	2018
6 235 136	6 611 028	7 063 433	7 289 910	7 778 554

Source: Statistics Indonesia, "Number of Motor Vehicles by Types, Indonesia 1949-2018", www.bps.go.id/linkTableDinamis/view/id/1133.

2.1.5. Railway transport

Kereta Api Indonesia (KAI) is the SOE providing rail transportation services for both passengers and freight in Indonesia. KAI and its related companies are the only operators of rail freight transport in Indonesia; KAI also controls the infrastructure.³⁹

In 2019, railway transport contributed 0.08% to GDP.⁴⁰ The total weight of commodities carried by train in 2019 was 47 622 tonnes of which coal, cement and containers represented 42 845 tonnes and oil 2 485 tonnes. No express freight was carried in 2019 or 2018. As seen in Table 2.7, the total volume of commodities transported by rail has increased since 2014, after a slight decrease in 2015.

Table 2.7. Main commodities carried by train, tonnes, 2014-19

Product	2014	2015	2016	2017	2018	2019
Oil	2 112	2 002	2 087	2 571	2 265	2 485
Fertilizer	–	32	87	69	78	29
Cement	5 071	4 907	4 173	5 762	5 588	4 515
Coal	16 914	18 516	21 395	26 490	29 639	33 160
Plantation products	781	402	855	893	852	816
Container	2 764	2 701	3 379	3 909	5 397	5 170
Quartz sand	–	1.4	–	–	–	–
Rubber	–	7	–	–	945	944
Express freight	177	68	111	114	–	–
Passenger freight	154	124	137	160	314	265
Other	2 712	958	271	163	185	238
Total	30 685	29 717	32 495	40 131	45 263	47 622

Source: Ministry of Transportation (2018), Transportation Statistics 2018 Book, 4.4; Ministry of Transportation (2019), Transportation Statistics 2019 Book, p. 217.

2.1.6. Other logistics sectors

Small packages

The Indonesian courier, express, and parcel market was worth USD 1.4 billion in 2016. In 2019, it reached 2.3 billion, and it is expected to be valued at USD 5.5 billion by 2025 (Mordor Intelligence, 2020, p. 168^[60]). This growth is largely driven by e-commerce. The Indonesian e-commerce market grew by 88% annually

from 2015 to 2019. E-commerce was valued at USD 1.7 billion in 2014 and USD 21 billion in 2019. It is expected to reach USD 82 billion by 2025 (Google, Temasek, Bain & Company, 2019^[61]). In 2017, Presidential Regulation No. 74/2017 on the E-commerce Roadmap for the Years 2017-2019 acknowledged the economic importance of e-commerce for Indonesia.

In 2016, the “post and courier service” sector was made up of 15 273 businesses.⁴¹

Express delivery has increased significantly in Indonesia from 2014 (126 million consignments) to 2019 (377 million consignments) (Mordor Intelligence, 2020, p. 283^[47]). Several large local companies are involved in the express-last mile delivery sector, as well as international companies.⁴²

Freight forwarding

From 2016 to 2019, Indonesia had a total of 3 162 freight forwarding and supporter companies each year (Ministry of Transportation, 2020, p. 101^[62]).⁴³ According to the Ministry of Transportation, the number of freight-forwarding companies operating in the sea transport sector was 1 186 in 2015.⁴⁴

The Indonesian Freight Forwarders Association (ALFI) has around 3 000 registered freight forwarders, while around 1 000 unregistered freight forwarders are thought to operate in the market (Mordor Intelligence, 2020, p. 118^[47]). Both large local and international freight forwarding companies operate in Indonesia.⁴⁵

Warehousing

In 2016, Indonesia had a total of 50 660 warehouse operators. The majority were micro-small enterprises (41 175), while the remainder were medium-sized enterprises (9 485). The majority of warehouses are located on the island of Java in East Java (9 154), West Java (7 816), Central Java (7 783), Special Region of Jakarta (6 721), Banten (1 874) and in the Special Region of Yogyakarta (1 867) (Statistics Indonesia, 2019, p. 51^[46]).

In 2018, 69 major companies were operating cold-storage warehouses, with a total capacity of 370 000 tonnes a year (Capricorn Indonesia Consult, 2019, p. 105^[63]). Both local and international companies are involved in the value added warehouse and distribution sector in Indonesia.⁴⁶

Indonesia currently has 12 special economic zones (SEZ), each one regulated by its own decree or regulations. The Negative Investment List does not apply within SEZ, meaning investment is only restricted in prohibited sectors and in SMEs, in line with the general investment regime. SEZs provide tax incentives to investors and seek to attract FDI (OECD, 2020, p. 225^[34]).

2.1.7. Infrastructure

The World Economic Forum (WEF) ranks Indonesia 55 out of 141 surveyed countries for transport infrastructure (World Economic Forum, 2019, p. 283^[40]). It ranks 109 for road connectivity, 60 for quality of road infrastructure, 85 for railroad density, 19 for efficiency of train services, 36 for liner-shipping connectivity, and 61 for efficiency of seaport services (World Economic Forum, 2019, p. 283^[40]).

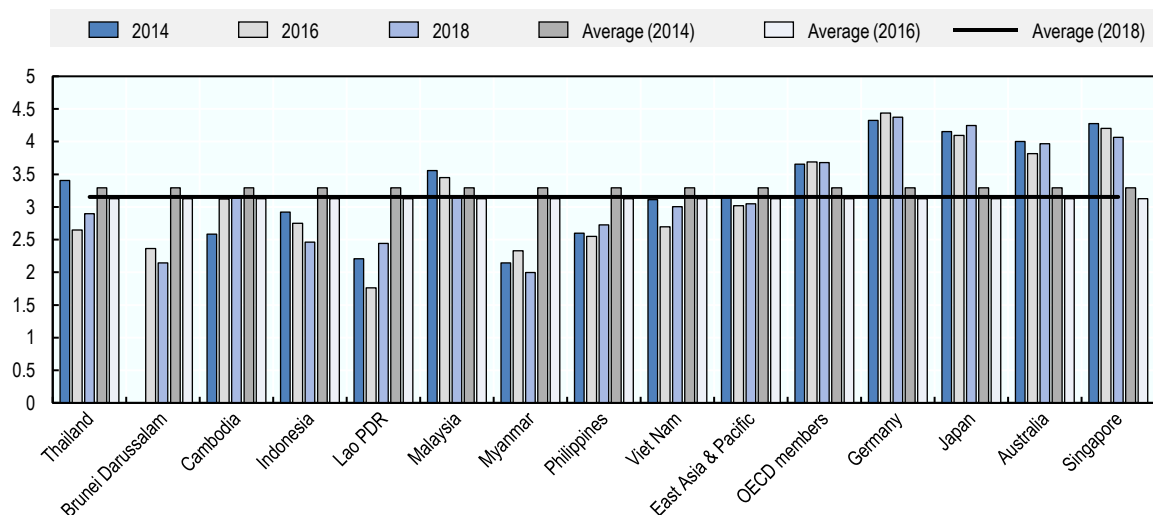
The World Bank also collects data on the quality of trade and transport-related infrastructure and provides an aggregate indicator across 160 countries. This captures logistics professionals’ perception of the quality of a country’s trade and transport-related infrastructure, including ports, railways, roads and information technology. The index ranges from one (very low quality) to five (very high quality).

As seen in Figure 2.3, the average quality of trade and transport-related infrastructure in East Asia and Pacific is 3.01 and only three ASEAN members (Malaysia, Singapore and Thailand) score above this average. Singapore is the best performer in the region and ranks even higher than the OECD average. Indonesia is in fifth position among ASEAN member states.

Ports

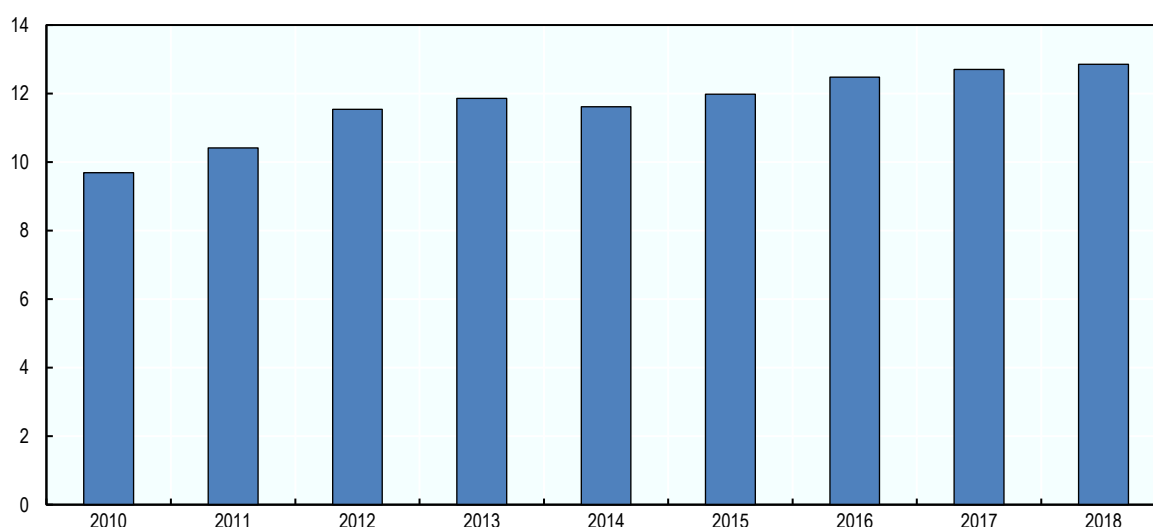
In 2018, the total throughput of Indonesia's container port system was 12.85 million TEU. According to the World Shipping Council, Indonesia's largest port, Tanjung Priok, ranks 22 among world container ports, recording a volume of 7.64 million TEU in 2018 (World Shipping Council, 2020^[64]). According to the ITF, between 2000 and 2017, the volume of containerised cargo at Tanjung Priok Port grew 130% overall; despite declines in 2013, 2014 and 2015, it rebounded 6% in 2016. These growth rates are small when compared to other Southeast Asian ports, such as Port Klang in Malaysia (270%) and the Laem Chabang port in Thailand (224%) but higher than growth rates achieved in certain other major urban ports, such as Manila (70%) and Bangkok (43%) (International Transport Forum, 2017^[65]). Indonesia recorded 62 059 port calls in 2018 (UNCTAD, 2019, p. 66^[53]). UNCTAD notes the time spent in ports as "an indicator of a port's efficiency and trade competitiveness" (UNCTAD, 2019, p. 65^[53]). The median time ships spend in Indonesia's ports is high compared to the top 25 economies in terms of port calls. Container ships, for example, spend 1.09 days in Indonesian ports compared to the median time of 0.70 days (UNCTAD, 2019, p. 66^[53]).

Figure 2.3. Quality of trade and transport-related infrastructure



Source: World Bank and Turku School of Economics, "Logistic Performance Index Surveys", <https://lpi.worldbank.org>.

Figure 2.4. Indonesia's annual container port throughput, 2010-18, in TEU, millions



Source: UNCTADstat, "Container port throughput, annual" <https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=13321>.

Nine ports in ASEAN member states feature in the Lloyd's List ranking of the world's top 100 ports, based on throughput; two are located in Indonesia (Table 2.8).

Table 2.8. Ranking of ASEAN ports in *One Hundred Ports*, based on throughput, 2018

	Port
1	Singapore
2	Port Klang (Malaysia)
3	Tanjung Pelepas (Malaysia)
4	Laem Chabang (Thailand)
5	Tanjung Priok (Indonesia)
6	Ho Chi Minh City (Viet Nam)
7	Manila (Philippines)
8	Tanjung Perak (Indonesia)
9	Cai Mep (Viet Nam)

Source: Lloyd's List (2019), *One Hundred Ports 2019*, <https://loydslist.maritimeintelligence.informa.com/one-hundred-container-ports-2019/Digital%20edition>.

Indonesia has two types of ports: commercial and non-commercial. There are currently ten operators of commercial ports in Indonesia, including four SOEs: Pelabuhan Indonesia (Pelindo) I, II, III and IV, each one covering a specific geographic region (Table 2.9). In 2019, the country had a total of 90 commercial ports, 69 of which were operated by Pelindo, a drop from 74 in 2018 (Ministry of Transportation, 2020, pp. 103-105^[62]).

Table 2.9. Geographical coverage of state-owned port corporations

Pelindo	Coverage
I	Aceh, North Sumatra, Riau
II	West Sumatra, Jambi, South Sumatra, Bengkulu, Lampung, Jakarta
III	Central Kalimantan, South Kalimantan, West Nusa Tenggara, East Nusa Tenggara
IV	Sulawesi, Maluku, Irian Jaya

Source: Adapted from S. Wahyuni et al. (2019), *Revealing Indonesian Port Competitiveness*, Open Book Publishers, <https://doi.org/10.11647/OBP.0189.08>.

In 2019, Indonesia had a total of 165 non-commercial ports (Ministry of Transportation, 2020, p. 106_[62]).

The National Port Master Plan (Ministry of Transportation Decree 432/2017) sets out eight national port policies:

1. encouraging private investment
2. fostering competition
3. empowering the port authority
4. integrating planning
5. creating an appropriate legal framework
6. enabling optimal operating systems
7. improving maritime environmental protection
8. developing human resources.

Pelindo is currently undertaking significant capital expenditure in line with government plans to develop Indonesia's maritime industry.⁴⁷

Railways

Railway infrastructure exists only on the islands of Java and Sumatra. In 2018, Indonesia had 6 061 kilometres of operational tracks, an increase from 5 196 kilometres in 2014 (Ministry of Transportation, 2018, p. 2.11_[66]). The number of train stations in Java and Sumatra increased from 586 to 634 over the same time period (Ministry of Transportation, 2018_[66]).

In 2011, the Directorate General of Railways under the Ministry of Transportation released a National Railway Master Plan (NRMP) to develop the network and services on the main islands. It proposed the extension of railway lines in key areas, ensuring links between airports and seaports and a substantial infrastructure upgrade. The latest version of NRMP was published in 2018, and set out the government's plan to build railway networks on eight of the largest Indonesian islands by 2030.⁴⁸ One of the plan's goals was to increase accessibility by connecting, for example, airports, ports and dry ports.⁴⁹

Roads

In 2018, Indonesia's road network had a total length of 540 658 kilometres (439 087 municipality roads, 54 554 provincial roads and 47 017 state roads) (Statistics Indonesia, 2019, p. 417_[67]). It is widely acknowledged that Indonesia has underinvested in its road network and needs to improve its quality, while "demand for road transport in Indonesia has outpaced economic growth" (World Bank, 2020, pp. 214-215_[68]). This is especially true for state (or national) roads, which according to the World Bank, carry nearly 40% of traffic. Between 2012 and 2017, "demand for national road transport grew by 8.7 percent per year to 134.9 billion vehicle-km per year". During this time, average GDP growth per year was 5.3% (World Bank, 2020, p. 215_[68]). According to the Ministry of Public Works and Housing, in 2019, 55.82% of district roads, 68.95% of provincial roads and 76.8% of city roads were considered to be in good condition (Ministry of Public Works and Housing, 2019, pp. 78-83_[69]).

2.1.8. Government logistics initiatives

Sector-specific legislative reform has occurred in certain logistics areas, such as rail (2007), shipping (2008), road transport (2009) and postal services (2009) (Anas and Panjaitan, 2018, p. 43^[51]).

In 2012, the Indonesian government issued Presidential Regulation (No. 26/2012), which provided for a Blueprint of the Development of the National Logistics System (Sistem Logistik Nasional, SISLOGNAS), the aim of which was to develop the logistics sector in Indonesia (Anas and Panjaitan, 2018, p. 43^[51]). According to this Blueprint, logistics is defined as:

“parts of the supply chain that involve handling of flow of goods, information and money through procurement, warehousing, transportation, distribution and delivery services from point of origin to point of destination” (Anas and Panjaitan, 2018, p. 50^[51]).

Indonesia has a public service obligation (PSO) programme for goods transportation to and from underdeveloped, remote, outermost and border areas. Set out in Presidential Regulation No. 70/2017, this programme subsidises SOEs active in various transport sectors (land, sea and air) to ensure the movement of basic and essential goods throughout Indonesia, and so reduce price disparity and decrease inequality.

2.1.9. Logistics rankings

In 2018, Indonesia ranked 46 out of 160 countries in the World Bank’s Logistics Performance Index (Table 2.10). Indonesia’s LPI ranking has improved since 2016 when its ranking hit a low of 63. As explained in Box 2.1, the LPI score ranges between 1 (lowest) and 5 (highest) and in 2018 Indonesia had an overall LPI score of 3.15, ranking it fifth among ASEAN countries, after Singapore (7), Thailand (32), Viet Nam (39) and Malaysia (41).

Table 2.10. LPI overall ranking, 2018

	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, Logistics Performance Index 2018, <https://lpi.worldbank.org>.

Of the six indicators used to calculate LPI, analysis suggests that Indonesia's greatest challenge is improving efficiency of the clearance process (currently scoring 2.67). It ranks 4 in ASEAN for international shipments (3.23), tracking and tracing (3.3) and timeliness (3.67), while maintaining its overall ranking of 5 for infrastructure (2.89), logistics competence (3.1), and customs (2.67).

Box 2.1. 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.

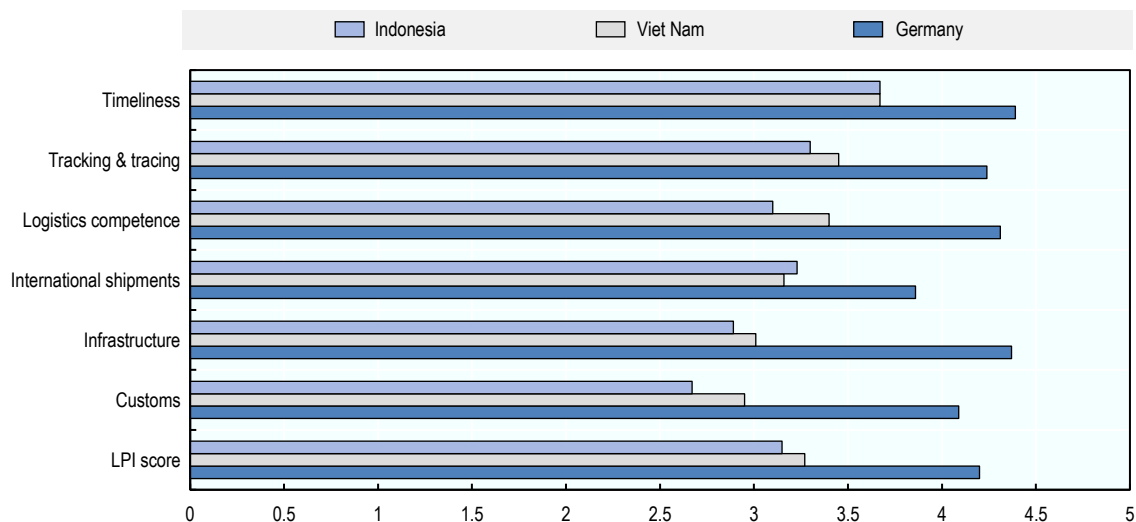
The LPI uses the weighted average of a country's scores meeting six key criteria.

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^[43]).

Figure 2.5 shows Indonesia's LPI overall score and sub-indicators against the top performer in its income group (Viet Nam) and the top performer globally (Germany) in 2018.

Figure 2.5. Indonesia LPI score against top performers, 2018



Note: Minimum score = 0; maximum = 5.

Source: World Bank LPI 2018, <https://lpi.worldbank.org>.

2.2. Key stakeholders

2.2.1. Government stakeholders and institutional framework

The key government stakeholders are the Ministry of Transportation; Ministry of Trade; Coordinating Ministry for Economic Affairs; Ministry of Communication and Information Technology; Ministry of Finance; Ministry of State Owned Enterprises; Investment Coordinating Board; and Indonesia Competition Commission.

The **Ministry of Transportation** (MOT) has the goal of enabling the provision of reliable, competitive and value-added transportation services. Its mission is to maintain transportation facilities and infrastructure, carry out reform, improve access to services and improve their quality.⁵⁰ Its functions include formulating and implementing national transportation policies, overseeing and evaluating the sector and managing state property and assets, which belong to the Ministry. Its structure is set out in Ministry of Transportation Regulation PM No. 122/2018 concerning Organisation and Work Procedure of the Ministry of Transportation.

Relevant directorates include:

- **Directorate General of Land Transportation**, which is responsible for formulating and implementing policies for land transportation. It has six departments, including the Road Transportation Directorate, whose responsibilities include goods transportation, multimodal and intermodal transportation, implementing policies, setting standards and providing technical guidance. Relevant sub-directorates include the Sub-Directorate of Freight Transport, which regulates the transport of public and special goods, including licensing. The Sub-Directorate of Multimodal and Intermodal Transportation issues business licences for multimodal and intermodal transport.
- **Directorate General of Sea Transportation**, which regulates domestic shipping and ports, and sets the conditions for registration and operation under the Indonesian flag. Important sub-directorates include the Directorate of Shipping and Maritime Affairs – charged with overseeing shipbuilding, ship design and vessel safety – and the Directorate of Ports, which regulates ports and special terminals, as well as issuing port-business entity licences, port-development permits, port-operating permits and special terminal operating and development permits. The Directorate of the Sea and Coast Guard oversees the entry of foreign ships into Indonesia and their operations at Indonesian ports.
- **Directorate General of Rail Transportation**, which is charged with formulating and implementing policies in the railway sector.⁵¹ It includes the Directorate of Railway Infrastructure, which issues railway infrastructure development permits, and the Directorate of Traffic and Railways, which issues the business licences and operational licences. The Directorate General also supervises freight rates as provided for under Ministry of Transportation Regulation No. 17/2018.

The **Ministry of Communication and Information Technology (KOMINFO) – Directorate General of Post and Information Technology** formulates and implements policies in the postal and telecommunications sector. It has regulatory (including licensing), monitoring and law-enforcement functions.

The **Indonesian Investment Coordinating Board (Badan Koordinasi Penanaman Modal, BKPM)** is a non-Ministerial government agency responsible for investment promotion, facilitation and regulation. It registers foreign and domestic investment projects and is in charge of the Online Single Submission (OSS) licensing system and the National Single Window for Investment (NSWi).⁵²

The **Ministry of Trade** is responsible for overseeing domestic and international trade, regulating importers and exporters, and is responsible for consumer protection. The Ministry of Trade issues warehouse-

registration certificates and oversees the management and development of warehouses. It is also in charge of the development and regulation of Special Economic Zones.

The **Ministry of Finance** is in charge of state finance. Its functions include forming and implementing policies in relation to budget, tax, customs and excise, treasury, asset management, fiscal balance, budget financing and risk management. It also manages state properties and assets that are under its responsibility.⁵³

The **Ministry of State Owned Enterprises** is appointed and authorised to represent the government as shareholder in almost all limited liability SOEs, following Law No. 19/2003 on State-Owned Enterprises and Government Regulation No. 41/2003 on the Transfer of Position, Duties and Authority of the Ministry of Finance in State-Owned Enterprises to the Ministry of SOEs.⁵⁴ It is tasked with formulating and implementing policies in relation to SOEs.⁵⁵

The **Coordinating Ministry for Economic Affairs** is tasked with co-ordinating, harmonising and overseeing Ministry affairs in the administration of government in the economic sector, pursuant to Presidential Regulation No. 37/2020. In accordance with Presidential Regulation No. 67/2019, it specifically co-ordinates: 1) Ministry of Finance; 2) Ministry of Manpower; 3) Ministry of Industry; 4) Ministry of Trade; 5) Ministry of Agriculture; 6) Ministry of Agrarian Affairs and Spatial Planning / National Land Agency; 7) Ministry of State-Owned Enterprises; 8) Ministry of Co-operatives and Small- and Medium-Sized Enterprises; 9) Ministry of Research and Technology / National Research and Innovation Agency; 10) Other agencies deemed necessary.⁵⁶

The **Indonesia Competition Commission (ICC)**, known domestically as KPPU, is an independent authority that supervises the implementation of the Law No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, and was established on 7 June 2000.⁵⁷ In 2019, the ICC issued 33 decisions, of which 54.5% concerned bid rigging; 36.5% delays in notification of mergers and acquisitions; 6% cartels; and 3% monopolies; these resulted in 31 fines totalling over IDR 165.624 billion (Indonesia Competition Commission, 2019, p. 6_[70]). In 2019, ICC conducted assessments of 124 merger notifications, an increase of 67.5% compared to 2018 (Indonesia Competition Commission, 2019, p. 7_[70]). The ICC also plays an active role in government policy reform – such as its recently released “Guideline on Competition Policy Assessment Checklist”⁵⁸ – and has the right to review proposed and existing regulations for anticompetitive provisions.⁵⁹ For example, the OECD understands that in 2020 the ICC persuaded the Ministry of Transportation to repeal a regulation that granted airlines associations the right to set prices on scheduled economy-class tickets.⁶⁰

State-owned enterprises (SOEs)

The development of the logistics sector in Indonesia has to a certain extent been “government-led”, and the transportation sector still contains various SOEs, many of which are increasingly providing logistics services. After sectoral law reform enabled private-sector participation in shipping in 2008 and postal services and road transport in 2009, the role of SOEs has declined, but they still largely dominate the logistics sector, as set out below (Anas and Panjaitan, 2018, p. 56_[51]).

The Ministry of State-Owned Enterprises’ website lists the SOEs in the transportation and warehousing sectors.⁶¹ These include:

- **Pos Indonesia**, the universal postal service provider regulated by the Ministry of Communication and Information Technology. It has around 24 000 service points in the country and, according to its *Annual Report*, recorded a net profit of IDR 344 billion in 2017.
- **Djawatan Angkoetan Motor Repoeblik Indonesia (DAMRI)**, the provider of land transportation services, notably passenger services, as well as freight services such as delivery of small- and medium-sized packages. Its logistics business is concentrated in B2B services.
- **Kereta Api Indonesia (KAI)**, a monopoly provider of both passenger and freight rail services.

- **Pelayaran Nasional Indonesia (PELNI)**, the national maritime company of Indonesia, providing both passenger and cargo transport services. According to the Ministry of Transportation, in 2018 PELNI owned 8 freight ships and 26 passenger vessels (Ministry of Transportation, 2018, p. 88^[71]).
- **Pelabuhan Indonesia (Pelindo) I, II, III and IV**, four SOE port corporations; each Pelindo covers specific geographic regions (see Table 2.9).⁶²

Main trade associations

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

- The **Organisation of Land Transportation Owners (ORGANDA)**, established in 1962 to represent the interests of the land transportation industry. It was recognised by the government as the only official land transportation trade association by a government decree of 17 June 1963.
- The **Indonesian National Shipowners Association (INSA)** was founded in 1967 to represent and promote the interests of Indonesian shipowners and recognised as the official organisation by the Ministry of Maritime Decree No. DP 10/7/9 (6 September 1967).⁶³ In 2017, it had 1 490 active member companies involved in various shipping sub-sectors, including general cargo transportation, passenger transportation, bulk and liquid transportation, oil and gas, and imports and exports. INSA is a member of the Federation of ASEAN Shipowners' Associations, the Asian Shipowners' Association, and the International Maritime Organization.
- The **Association of Indonesian Express, Postal and Logistics Service Companies (ASPERINDO)** brings together national companies providing courier services. Founded in 1986, it replaced the Association of Domestic Air and Freight Companies (HIPPARI), which was made up of companies active in both the courier and cargo sectors. Members of ASPERINDO are now only active in the courier service market. ASPERINDO counts 276 member companies that have more than 40 000 service points spread across Indonesia.⁶⁴
- The **Association of Indonesian Loading and Unloading Companies (APBMI)**, founded in 1988, aims to bring together loading and unloading companies, other associations and government stakeholders.

2.3. Overview of logistics-sector legislation in Indonesia

The OECD has identified 57 pieces of legislation related to the logistics sector, including international agreements, acts and regulations.

Table 2.11. Number of screened pieces of legislation, restrictions and recommendations

Sector	Legislation analysed	Restrictions found	Recommendations
Freight transport			
Road	9	6	2
Maritime (including ports)	22	21	15
Rail	3	3	3
Freight forwarding and multimodal transport	2	6	6
Warehouses	1	2	1
Small-package delivery services	4	6	5
Horizontal/others	16	12	11
TOTAL	57	56	43

Note: Legislation analysed currently includes only that for which restrictions were found.
Source: OECD.

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

A summary of the legislation reviewed by the OECD, the barriers identified, and the recommendations made in this report are summarised below in Chapters 3 to 7, while all barriers and recommendations are set out in Annex B.

3 Road freight transport

3.1. Operational licences

In Indonesia, freight transportation is classified as either general freight transportation⁶⁵ or special freight transportation.⁶⁶ Under Government Regulation No. 74/2014 concerning Road Transportation, commercial vehicle operators require a licence for special freight transportation and the carriage of dangerous goods.⁶⁷ There is no general operating licence for general freight transportation.

3.2. Classification of vehicles

In Indonesia, vehicles have different coloured number plates depending on their classification.⁶⁸ For commercial vehicles, there are two relevant categories: private vehicles (black plate) and public motor vehicles (yellow plate). The OECD understands that black number plates are assigned to private vehicles used for the transport of businesses' own goods, while yellow plates are assigned to commercial vehicles such as trucks for hire (businesses engaged in cargo transportation).

3.3. Restrictions on the operation of commercial vehicles

3.3.1. Restrictions on market entry

Price regulation

Description of obstacle. In 2019, the Ministry of Transportation issued a guideline setting out how road transport companies must calculate their tariffs,⁶⁹ with administrative penalties for companies that fail to follow the guideline.⁷⁰

The OECD understands that freight transportation companies do set their own prices but that these are based on the 2019 guideline. It explains factors to include in determining the tariff are: 1) the weight and volume of cargo; 2) the type of cargo carried; 3) the time needed for and distance of the delivery.⁷¹ The freight rate is calculated by also considering fixed costs (vehicle depreciation, loan interest rates, licencing and administration, salaries of vehicle crews, and vehicle insurance) and variable costs (fuel consumption, oil/lubricant use, tyre use, vehicle maintenance and miscellaneous expenses).⁷² Public stakeholders have told the OECD that there is no price regulation and that the guideline provides non-binding guidance. The penalty provision in the legislation, however, suggests otherwise. Indeed, violation of the freight tariff guideline is considered a "moderate violation".⁷³

Harm to competition. Any requirement to follow the guidance when determining freight rates may limit companies' ability to set their own prices and to compete on price as they may not be able to undercut competitors' prices in order to gain market share, for instance if they are willing to price below cost.

International comparison. According to the OECD 2018 indicators of product market regulation (PMR), the government, regulator or ministry provides pricing guidelines for setting retail tariffs to road freight companies in three out of 45 countries (France and Korea for some services and Greece, for all services).

Policymakers' objective. The OECD has not identified an objective for this provision, although, according to government authorities, the guidance is in place to help businesses, especially SMEs, understand how to set prices.

Recommendation. Remove the administrative penalty for failing to follow the price setting guidelines. Service providers should be free to set their own prices.

3.3.2. Operational challenges for commercial vehicles

Truck bans

Description of obstacle. Regional governments have the power to set conditions related to the use of vehicles in certain areas or between certain times, known as truck bans.⁷⁴ These can apply generally or for specific periods.⁷⁵

Harm to competition. Truck bans limit to certain times of day when trucks can operate on roads in Indonesia and so when they can provide their services. The bans may also reduce the use rate of staff and trucks, increasing the average cost of transport per freight unit.

Policymakers' objective. This provision aims to preserve the free flow of traffic during peak hours, which would otherwise be halted due to limited road capacity. The bans also limit pollution, addressing environmental concerns in cities where the OECD understands they usually apply. As storage and industrial areas tend to be located outside urban areas and have direct access to toll roads, truck bans may have less impact on logistic activities in these areas.

International comparison. Truck bans are common worldwide. Other ASEAN nations have them in place, including Thailand, Viet Nam, Myanmar and the Philippines. Some EU countries also use truck bans at certain hours. For instance, in France, most heavy goods vehicles over 7.5 tonnes are banned from the road every weekend from 10pm on Saturday to 10 pm on Sunday, with certain exceptions, such as for trucks carrying perishable goods or serving sporting events.

Recommendation. No recommendation. Nevertheless, authorities could consider alternatives to truck bans such as congestion charges. If it is not possible to improve infrastructure capacity, the policy objective justifies truck bans. If necessary, express delivery within cities can be carried out with smaller vehicles.

Biannual vehicle inspections

Description of obstacle. Commercial vehicles (including trucks and trailers) are subject to periodic testing for roadworthiness. The first test must be carried out within one year of the issuance of the motor vehicle registration certificate,⁷⁶ and then every six months.⁷⁷ Public passenger cars and buses are also subject to these testing requirements.

Harm to competition. Biannual inspections increase costs for market participants. During the inspection, a truck must spend time off the road in the inspection centre and so cannot be used. Frequent inspections are also an administrative burden. Over time, the requirement potentially reduces the number of participants in the market due to increased costs and could be a barrier to entry for new participants. Further, it is likely that the requirement for biannual instead of annual inspections is stricter than is necessary to ensure safety and consumer protection.

Policymakers' objective. Based upon the legislative provisions, the OECD understands that such frequent inspections are required in order to ensure the safety of vehicles, for environmental protection, and because these vehicles are involved in providing public services, notably for transporting passengers.

International comparison. The principal factors for determining the condition of goods vehicles are proper operation; kilometres covered; years in service; and regularity of technical inspections. Maintaining vehicles correctly becomes particularly important as they age and for those used on long international routes. In other ASEAN countries, annual inspections are common, such as in the Philippines, where they are linked to vehicle registration, and in Singapore, where commercial vehicles are inspected annually or every 6 months if the vehicle is more than 10 years old. EU Directive 2014/45 of 3 April 2014 requires member states to carry out periodic safety and emission roadworthiness inspections. For vehicles over 3.5 tonnes, for example, vehicles must be inspected no more than one year after initial registration and then annually. International Transport Forum experience has shown that supplementing regular inspections with random on-road checks could be a helpful step to ensure roadworthiness, as well as the use of years in service criteria.

Recommendation. In general, replace biannual with annual inspections. If necessary, biannual inspections can be maintained for trucks older than 10 years or an inspection system could be introduced, based upon the number of kilometres travelled. If there is a genuine risk of market participants cheating the system based on kilometres or otherwise, surprise inspections or heavier fines for such behaviour could be introduced as a deterrent.

4 Maritime freight transport

The main legislation related to domestic shipping is Law No. 17/2008 on Shipping; its implementing regulation is Government Regulation No. 20/2010.

4.1. Domestic shipping

4.1.1. Cabotage

Description of obstacle. Law No. 17/2008 contains a general prohibition on foreign vessels engaging in domestic shipping or cabotage,⁷⁸ which is the movement of goods between ports within the same country. The cabotage provision provides that domestic sea freight transportation be carried out by national sea transport companies using Indonesian-flagged vessels with an Indonesian crew. Foreign ships are only allowed to transport goods to and from Indonesian ports that are open to foreign trade and are banned from freight transportation within Indonesia. Before entering Indonesia, a foreign vessel must arrange with domestic vessels if the goods it is carrying need to be transported from its port of arrival in Indonesia to another port in Indonesia. While there are no exceptions to cabotage restrictions for the transport of goods within Indonesia, certain provisions do exist for specific activities (see the following recommendation).

Harm to competition. The prohibition on foreign vessels transporting domestic cargo between ports and places in Indonesia prevents foreign firms from entering the national freight transportation market. According to the authorities, there is no exception to the cabotage rule, so that if no domestic ships are available, goods cannot be transported until one is. This can delay transport of goods and increase the cost of goods in Indonesia. A special permit can only be obtained from the Ministry of Transportation for specific vessels, such as oil tankers.

Policymakers' objective. The legislation seeks to support and develop the Indonesian domestic shipping industry, promoting the ownership of vessels operated under the Indonesian flag, and so promote domestic companies. These goals are stated in Law 17/2008. In 2017, the International Transport Forum (ITF) recommended the opening up of domestic coastal freight transport to international shipping lines:

For an island nation like Indonesia, maritime connectivity is of great importance for domestic commerce as well as external trade, but also for domestic trade. Maritime cabotage regulations most likely constrain the development potential of coastal shipping. Although reforming maritime cabotage regulations have proved challenging in many countries, some have nevertheless opened up cabotage. A way to do this is to gradually introduce exemptions for certain categories of ships; considering the desire to attract direct calls from large container ships to Jakarta – and other Indonesian ports – it would be advisable to formulate an exemption from cabotage laws for such types of ships (International Transport Forum, 2017^[65]).

Box 4.1. Cabotage regimes around the world

Most countries have rules on cabotage. The United States has an extremely strict cabotage regime thanks to the Merchant Marine Act of 1920 (Jones Act): “it requires that shipping of all goods transported between US ports be carried out by ships under the US flag. The ships must be constructed in the United States, owned by US citizens and crewed by US citizens and permanent residents” (UNCTAD, 2017, p. 24^[72]) In Australia, under the Coastal Trading Act 2012, the cabotage regime is based on a three-tier licensing system, comprising:

- General licences, granting unrestricted coastal trade for a period of five years and available to ships registered in the Australian General Shipping Register, in which foreign-owned and -operated vessels cannot be registered.
- Temporary licences, available to foreign-flagged ships and ships registered in the Australian International Shipping Register and valid for a limited number of voyages in a 12-month period.
- Emergency licences, open to foreign-flagged ships and valid for no more than 30 days and issued to respond to national emergencies.

In Canada, the Coasting Trade Act (1992) allows foreign ships to perform cabotage, only if no Canadian ship is suitable and available to provide such services, subject to the issuance of a licence by the Ministry of Public Safety and Emergency Preparedness (OECD, 2018^[73]).

The EU has a principle of freedom to provide maritime transport services within the EU territory. A 2014 European Commission report assessing the lifting of cabotage restrictions between 2001 and 2010, concluded that removing barriers to maritime cabotage market access barriers does not seem to have led to a significant increase in the number of operators interested in providing cabotage services.⁷⁹

New Zealand also introduced cabotage liberalisation in 1994 in order to increase competition. Following the reform, international vessels visiting New Zealand were allowed to deliver imports or pick up exports. As a result, prices dropped by 20-25% between 1994 and 2000. National carriers were however able to retain control of the vast majority of the market, although they were forced to reduce rates. Upon review of this reform, the government decided not to re-introduce cabotage restrictions (UNCTAD, 2017, p. 23^[72]).

In the Philippines, Section 4 of Republic Act 10668 allows foreign vessels to practice cabotage with foreign goods. For example, a Malaysian vessel arriving in Manila may pick up cargo from a Singaporean vessel in this same port and take the cargo to another Philippine port that is the port of final destination. A foreign vessel departing from a Philippine port of origin to its 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 by another foreign vessel through a domestic transshipment port to its port of final destination. For example, a Malaysian vessel may pick up goods for export at Davao, pick up goods of foreign goods for export at the transshipment port such as Manila and then carry the goods to their foreign port of final destination. This provision does not allow foreign vessels to transport domestic cargo or containers, however.

Malaysia removed cabotage restrictions for Sabah and Sarawak in 2017 because there were not sufficient vessels to carry goods from Eastern Indonesia.

Source: (UNCTAD, 2017^[72]), (OECD, 2018^[73]).

Recommendation. The OECD suggests one of three options:

1. Open the domestic shipping market to foreign competition by lifting the ban on foreign vessels carrying domestic cargo between ports in Indonesia. This could possibly be based upon reciprocity arrangements, as a first step, between ASEAN member states.
2. Amend the cabotage law to allow foreign ships to carry their own cargo (and other foreign cargo) domestically, allowing ships to travel domestically to a port of final call after arriving at a first port of entry. This has been introduced as an amendment to the cabotage law in the Philippines to support imports and exports. A further step would then be to allow foreign ships to carry other domestic cargo from the port of entry to the port of final call if the foreign vessel has capacity after unloading goods at the port of entry.
3. Allow certain categories of international ships (following ITF recommendations, for example) to operate in domestic shipping market on specific routes, where there is demand.

Exceptions to cabotage in Indonesia

Description of obstacle. If no domestic vessels are available, foreign vessels may carry out certain activities within domestic waters if they obtain a permit from the Ministry of Transportation. Exceptions include: 1) oil and gas surveys; 2) drilling; 3) offshore construction; 4) offshore operations support; 5) dredging; and 6) salvage and underwater work. The rules for obtaining this permit are outlined in Ministerial Regulation 46/2019; under Article 10, a clear proposal of works to be undertaken must be submitted to the ministry and any permit is granted for a maximum of six months. During this process, the ministry also verifies that no Indonesian flagged vessel is available.

Harm to competition. The cabotage exception is limited in its scope as foreign ships can only operate in Indonesian waters if no domestic ship is available to provide the required specialised service. This privileges domestic firms and provides limited authorisation to foreign vessels to operate. Given that the ministry must assure itself that no available Indonesian flagged vessel is available, the application process can take time. Further, the uncertainty of not knowing whether they will be granted a special permit at the Ministry's discretion may discourage foreign applicants. Finally, the short six-month permit may not incentivise applicants to apply to operate in Indonesia.

Policymakers' objective. The exception implements the cabotage policy of Indonesia by supporting the Indonesian domestic shipping industry, promoting the ownership of vessels operated under the Indonesian flag. Similar exceptions exist in the Philippines.

International comparison. In Australia, the Coastal Trading Act 2012 (Division 2) allows the authorities to grant temporary licences to foreign-flagged vessels subject to Ministerial discretion; these are valid for a limited number of voyages in a 12-month period. While foreign-flagged vessels remain restricted, the licence is granted over a longer period.

Recommendation. A more generous time exemption could be considered. In line with the recommendations to lift the cabotage restriction, this exception could be extended for regular freight transport so that foreign vessels could transport goods within Indonesia, when no domestic ships are available.

4.1.2. Operator licence

As explained in the analysis of cabotage, only licenced "national sea transportation companies" can operate in the Indonesian domestic shipping market. "National sea transportation companies" are Indonesian legal entities and are defined as sea transportation companies under the Indonesian flag that carry out sea transportation activities within the territorial waters of Indonesia and to ports abroad.⁸⁰

An operating licence is also required to carry out river and lake transport, or transport by ferry.⁸¹

This competition assessment does not assess the need for operator licence itself.

Licence requirement

Description of obstacle. Only “national sea transportation companies” can operate in the Indonesian domestic shipping market⁸² and must obtain a sea transportation business licence to operate. This licence is available from the local, provincial or national authority depending on the anticipated area of operation.

The applicant must satisfy a number of technical requirements, notably owning a seaworthy Indonesian flagged ship, tugboat or launch barge of a certain size.⁸³ The applicant must submit proof of ownership and of the vessel’s seaworthiness.

Additional requirements on business entities wishing to obtain a sea transportation licence include: 1) employing at least one shipping expert with specific shipping qualifications; 2) meeting the foreign equity limitations for joint ventures (see 7.1.1); and 3) submitting a business plan and shipping business plan.

A business may alternatively apply for a “special sea transportation licence”, which is required for the operation of specialised vessels, for example, oil tankers.

Harm to competition. The OECD does not assess whether licensing is justified, as it is outside the scope of the report. Two licensing requirements may however cause competition concerns. First, the government authority judges who should enter the market by evaluating business and shipping business plans, even though it may not be best placed to assess new entrants’ viability and reliability. This discretionary power may lead to the selection of less suitable new entrants. In addition, the submission of a business plan may result in higher costs of entry especially for smaller companies. The requirements may restrict the number of suppliers, reduce competition between suppliers, and result in higher prices or less desirable contract terms for customers. Second, it appears that applicants must own their vessels. This prevents service providers who wish to lease rather than purchase vessels from obtaining a licence and significantly increases the cost of entry for shipping companies. The purchase of a vessel constitutes a significant financial liability, particularly when compared to chartering or leasing, and limits the potential number of operators able to compete in the market. This will decrease competitive pressure for established operators and favour larger potential entrants with the ability to purchase a vessel over smaller firms.

In those countries where the majority of the world’s merchant fleet is based, shipping companies are not required to own a ship to operate.⁸⁴ In fact, the proportion of global fleet capacity provided by lessees increased significantly in recent decades: from 16% in 1995 to 54% by the end of 2018, according to one industry source (Global Ship Lease, 2019^[74]).

Policymakers’ objective. In terms of the licensing requirements, the requirement to submit a business plan likely aims to exercise control over the market and to ensure the efficiency of market players. Another likely objective is consumer protection.

Recommendation. No recommendation in relation to the licence requirement. The OECD does recommend removing both the requirement to submit a business plan from the licensing criteria and the requirement to own a vessel.

4.2. International shipping

4.2.1. Agency requirement for foreign flagged vessels

Description. A foreign sea transportation company is required to appoint a national sea transportation company or a national company specifically established to provide ship-agency business services as its agent,⁸⁵ which will take care of the interests of its ship while in Indonesia.⁸⁶ Regulation of the Ministry of

Transportation No. 65/2019 concerning Operation and Management of Shipping Agencies outlines who can provide shipping-agency services, their activities and their obligations.

Services performed by shipping agencies include, for example, reporting the arrival and departure of vessels, submission of ship documents to the relevant authorities, managing port services required by the vessel, appointing loading and unloading companies for ship-owners and settling bills on their behalf.⁸⁷ The tariffs charged by shipping agencies are agreed between the parties based on tariff-calculation guidelines set by a separate Ministerial regulation.

Harm to competition. This requirement means that foreign sea transportation companies cannot represent themselves at ports in Indonesia. National sea transportation companies are not required to hire an agent and can carry out this work themselves. This may raise the operational costs of shipping companies by requiring them to hire a shipping agent whose services might not be necessary, for example, if they can be replaced by online processes. This creates an artificial demand for shipping agents.

Policymakers' objective. The objective is likely to develop national shipping companies and reinforce the cabotage policy. In *OECD Competition Assessment Reviews: Portugal*, the OECD found that international and national shipping companies and carriers were required to hire a shipping agent to represent them in ports where they were not based (OECD, 2018, pp. 226-227^[6]); the OECD recommended for this barrier to be removed.

Recommendation. The use of agents should not be mandatory for foreign sea transportation companies. Foreign sea transportation companies should have the choice to carry out activities themselves or to appoint agents.

4.2.2. Government shipping requirements

Transport of imports by Indonesian flagged vessels

Description. Transportation of imported goods belonging to the government and regional governments must use Indonesian-flagged vessels operated by national sea transportation companies. The OECD understands that previously when insufficient Indonesian flagged vessels were available to carry out these transportation activities, the Ministry of Transportation had the discretion to allow national sea transportation companies to use foreign vessels, but this discretion was removed in 2018.⁸⁸

Harm to competition. The provision limits the government's ability to choose the best carrier. While both Indonesian-flagged vessels and foreign-flagged vessels are allowed to transport goods to and from Indonesia, this requirement discriminates against foreign shipping companies importing goods and restricts access to the domestic market. If there is insufficient competition between national sea transportation companies, these regulations may result in inefficient companies being kept in the market thanks solely to transport contracts awarded due to their Indonesian-flagged vessels. The provision may reduce incentives to compete and may lead to higher prices charged to government.

Policymakers' objective. To support and develop the Indonesian shipping industry and to encourage vessels to register in Indonesia.

Recommendation. The OECD recommends one of two options.

1. Consider removing this provision following a transition period to allow Indonesian operators that currently benefit from this provision to adjust to the new legal framework.
2. If a specific, exceptional need arises, consider ad hoc measures rather than introducing long-term competition-distorting policies.

Insurance and fleet preference for certain named exports

Description of obstacle. Certain named exports, including coal and crude palm oil, and imports, such as rice, which are transported by sea, must be transported using national sea transportation companies and insurance up to a carrying capacity of 10 000 deadweight tonnage (DWT). Foreign-flagged vessels may only be used if Indonesian flagged vessels are not available or have limited availability or if the cargo concerned is above 10 000 DWT. The requirement to use national insurance was enforced on 1 February 2019 and the obligation to use national shipping companies for the stated purposes was enforced on 1 May 2020.⁸⁹

Harm to competition. In general, both Indonesian-flagged vessels and foreign-flagged vessels are allowed to transport goods to and from Indonesia, but this requirement discriminates against (and restricts access of) foreign shipping companies that transport specific goods.

Policymakers' objective. To support and develop the Indonesian shipping industry and the Indonesian insurance industry, and encourage vessels to register in Indonesia.

Recommendation. The OECD recommends one of two options.

1. Consider removing this provision following a transition period to allow Indonesian operators that currently benefit from this provision to adjust to the new legal framework.
2. If a specific, exceptional need arises, consider ad hoc measures rather than introducing long-term competition-distorting policies.

4.3. Ports

Ports are covered under Law No. 17/2008, which regulates the shipping sector in Indonesia. Port business is additionally regulated under Government Regulation No. 61/2009 and Government Regulation No. 64/2015. Government Regulation No. 5/2010 regulates safety and security issues, including pilotage.

Indonesia has two types of ports: commercial and non-commercial ports. Commercial ports are governed by port authorities and non-commercial ports by Port Management Units.⁹⁰ Before 2008, all commercial ports were operated by Pelabuhan Indonesia (Pelindo), an SOE appointed under Government Regulation No. 1/1969. There were four “operational areas” of Pelindo where it operated several public seaports commercially (see Table 2.8). Ports which were not operating on a commercial scale were operated by technical units under the supervision of the Ministry of Transportation (OECD, 2011, p. 249^[75]).

Law 17/2008 restructured the port sector in Indonesia, separating the functions of the port operator and regulator for commercial ports and removing Pelindo's legislated monopoly, allowing competition from the private sector in commercial port operations.

The government took on the role of port authority and the role of Pelindo or private operators was limited to operating port facilities and providing port services, as port business entities (PBE). Pelindo is granted PBE permits by Decrees of the Ministry of Transportation.⁹¹

A port business entity (PBE) is “a business entity that has business activities specifically in the field of terminal business and other port facilities”.⁹² In commercial ports, business activities are carried out by PBEs;⁹³ these include, for example, warehousing services, loading and unloading, provision of terminal services and the provision of the related equipment.⁹⁴ Article 91(1) explains that such activities are carried out by a PBE “in accordance with the type of business licence that it has”. The port authority itself is in charge of port services such as pilotage and towing, but is able to delegate its authority to an SOE or a private company. Tariffs for port services provided by PBEs are set in accordance with government regulations.

Under Article 344 of Law 17/2008, any commercial port in existence before the 2008 law retained Pelindo as its operator, while ports opened since the law are open to private companies. The government uses a tender process or direct assignment to select these ports' operators, which are then awarded concession agreements that provide for the duration of the concession and the applicable fee.

In non-commercial ports, the terminal and other port facilities are operated by a port operator unit, but may be carried out by PBEs upon agreement with the Ministry of Transportation.⁹⁵

4.3.1. Selection of port business entities

Technical requirements for port business entities (PBEs)

Description of the obstacle. PBEs are regulated by Government Regulation No. 61/ 2015. A company wishing to become a PBE, which may be an SOE, a regionally owned entity or a limited company established in the port sector, must obtain a licence from the relevant authority as set out in the legislation.⁹⁶ This report does not assess whether licensing is justified but considers the licensing requirements. Along with other usual administrative requirements, an applicant must provide a proposed port activity plan and company financial statements for at least the previous financial year audited by a registered public accounting firm.

Technical requirements for becoming a PBE include:

1. Controlling and/or operating facilities and infrastructure in the port sector, including but not limited to land and equipment.
2. Providing proof of having at least two permanent employees holding port certificates issued by the director general or those recognised by the director general.
3. Having experience in providing port services and/or service activities related to port services.

A PBE licence is valid for five years. In order to carry out port services, a PBE must then obtain a concession from the port authority (commercial ports) or the Port Management Unit (non-commercial ports).⁹⁷ The OECD understands the concession is granted through either an auction mechanism or an assignment mechanism.⁹⁸ The OECD understands that the duration of a concession is based upon an agreement between the concession provider (port authority) and concession recipient (PBE), taking into consideration factors such as return on investment. The OECD also understands that the wording used for the factors to consider when determining the duration of the concession is vague.

Harm to competition. The technical requirements to become a PBE favour incumbents (such as the requirement to control or operate facilities and infrastructure; to have professional experience in providing port services and service activities related to ports). Further, the criteria are unclear; for example, "experience" in port services is required, but no specific details are provided. These requirements may make it more difficult for new entrants to enter the market and leave too much discretion to the authorities when granting licences. As a result, these requirements may lead to lower entry, less competition, and worse outcomes for port users.

Policymakers' objective. The administrative and technical requirements are likely in place to ensure efficient, viable and safe PBEs. Countries often have professional-experience requirements for professionals in the maritime industry. The OECD made several recommendations in relation to experience requirements in *OECD Competition Assessment Reviews: Tunisia* (OECD, 2019_[76]), to promote more competition in the sector.

Recommendations. The OECD has two recommendations:

1. Revise technical requirements to ensure a level playing field and so allow new entrants. For instance, the experience requirement may not be necessary if the applicant satisfies the requirement on professional qualifications.
2. Issue guidelines to provide in-depth guidance on administrative and technical requirements.

4.3.2. Price regulation of port charges

Description of obstacle. Under Law 17/2008, the fixed rates for the use of water, land and port services that the Port Authority manages are established by it after consultation with the Ministry (Article 110).

For ports where services are provided by PBEs, Government Regulation 61/2009 concerning Port Affairs provides that the tariffs are based upon a structure set by the Ministry of Transportation (Article 147). The OECD understands that the ministry sets a formula that must be followed by the PBE and that the tariffs are then formally set by the port's business board. The same tariff mechanism applies to ports services such as cargo handling and pilotage (see Sections 4.3.3 and 4.3.4). The OECD understands that the relevant service provider and service-user association negotiate before the tariff is presented to the ministry, and tariffs are then fixed. Consultation with the ministry is unnecessary where more than one PBE is providing a given service in a port and when pilotage and towage services are provided by more than one PBE.

Harm to competition. If charges are fixed, firms cannot decide prices freely. This restricts competition as service providers have no incentive (or ability) to compete on price and this may lead to higher prices.

Policymakers' objective. Port charges and service tariffs are likely set by the ministry or Port Authority because competition is limited.

Box 4.2. Price regulation in ports: An international comparison

OECD past recommendations and World Bank comments on fixed prices

In *OECD Competition Assessment Reviews: Portugal* (2018), the OECD found that port tariffs were subject to multiple forms of price control, depending on the regime under which the port service was provided, whether by port authorities or private operators. The report recommended removing the provisions on fee-setting criteria, discounts and exemptions.

The World Bank's Port Reform Toolkit states that to respond to market competition:

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

Source: OECD (2018), *OECD Competition Assessment Reviews: Portugal: Volume I – Inland and Maritime Transports and Ports*, OECD Publishing, Paris, www.dx.doi.org/10.1787/9789264300026-en; World Bank, Port Reform Toolkit, <https://ppp.worldbank.org/public-private-partnership/library/port-reform-toolkit-ppiaf-world-bank-2nd-edition>.

Recommendation. The government framework for setting port charges and service tariffs should only allow the setting of maximum prices and not fixed prices. Rates and the methodology used to calculate charges should be published.

4.3.3. Cargo-handling services

According to the Ministry of Transportation, 1 023 cargo-handling companies were active in 2019 in Indonesia. This number has not changed since 2016. This was a slight decrease from 2015, when that number was 1 077 companies (Ministry of Transportation, 2018, p. 91^[66]; 2020, pp. 101(2-6)^[62])

Licence requirement

Description of obstacle. Cargo handlers are required to have a “loading and unloading” business licence.⁹⁹ “Loading and unloading business activities” are defined as including “activities to load and unload freight to and from ships at the ports, including stevedoring, cargodoring; and receiving/delivery”.¹⁰⁰ The licence is granted by the governor of the port location where the activity is carried out.

PBEs may carry out cargo-handling activities without this specific licence, however, as cargo handling is one of the activities allowed under their general permit. The OECD understands that, in 2017, the Cargo Handling Association (APBMI) lodged a complaint with the Ministry of Transportation stating that Pelindo should not be carrying out loading and unloading services (see Article 90 (3)(e) of Law 17/2008); the Ministry found against the association, ruling that Pelindo had the authority to carry out these services under its PBE permit.

Harm to competition. This report does not assess whether or not licensing is justified. While the licence requirement is provided for in legislation, the specific conditions for obtaining the licence are unclear. If the decision maker has any discretion to grant a licence or if certain providers are excluded from the licence requirement, this could lead to discrimination. Moreover, transparency about licence criteria can help potential new entrants by reducing regulatory and investment uncertainty, as well as by lowering the costs to obtain information on the criteria.

Policymakers’ objective. The licence requirement is likely in place to uphold safety standards and to control entry into the market.

Recommendation. Introduce guidelines or regulations that clearly outline the licence criteria in order to guide decision makers and so licences can be granted if specified criteria are satisfied. All operators should be subject to the same licensing requirements. The recommendations could be implemented in the context of the review of the regulation on cargo handling (No. 152/2016) that the OECD understands the government is planning to launch.

Licence requirements: balance of supply and demand

Description of obstacle. In order to obtain a cargo-handling licence, certain administrative and technical requirements must be satisfied. According to Ministry of Transportation Regulation No. 152/2016, one is the requirement to have a “a letter of recommendation or written opinion from the Port Authority or the local port operator unit on the balance of supply and demand for loading and unloading business activities”.¹⁰¹

Harm to competition. The requirement for a letter of recommendation favours certain market participants, notably incumbents, and could effectively be a way of restricting entry, as the authorities make an assessment of whether further entry is needed, based upon supply and demand. In the absence of further entry (or a threat of entry), incumbents are effectively protected from competition and so have less incentive to be efficient, to the detriment of cargo-handler users. There may also be actual or perceived conflicts of interest as the recommendation appears to be at the discretion of the authority.

Policymakers' objective. This provision is likely in place to ensure the port authority or operating unit has full control over the services offered within its port and to monitor supply and demand. Stakeholders have explained that the market has limited capacity and that too many players could result in unhealthy competition and unfair business practices.

Recommendation. Remove the requirement to obtain a letter of recommendation on the balance of supply and demand.

Restricted areas of operation for joint-venture companies

Description of obstacle. Joint-venture companies are limited in where they are allowed to operate. Article 5(3) of Ministry of Transportation Regulation No. 152/2016 regarding Freight Loading and Unloading Operational (Cargo Handling) that: "Companies holding business licences in the form of joint ventures can carry out loading and unloading of goods only at certain ports determined by the government." The OECD understands that the ports referred to are the ones outlined in the Negative Investment List (Bitung Port, Ambon Port, Jupang Port and Sorong Port), where in accordance with AFAS, the equity requirements for ASEAN investors is higher in these ports.

Harm to competition. This discriminates against joint ventures with foreign equity that have already satisfied the requirements to obtain a business licence similar to domestic businesses.

Policymakers' objective. The OECD has not identified an objective for this provision.

Recommendation. Joint-venture companies should be allowed to operate in exactly the same ports as domestic companies.

Price regulation: Set tariffs for loading and unloading

Description of obstacle. The OECD understands that a guideline exists in the legislation for calculating tariffs for loading and unloading on and off ships at a port, but that it does not apply to the loading and unloading of containers. Price setting for cargo handling is generally regulated by Ministry Regulation No. 72/2017 and Ministry Regulation No. 121/2018. The OECD understands that a PBE must consult with the association of service users before setting a tariff, which is based upon the structure and formula set by the ministry regulation. A PBE must report its tariffs to the ministry if only one PBE has a contract in a port,¹⁰² but tariffs do not need to be reported if more than one PBE is contracted. Following this procedure, tariffs set by a PBE are fixed and it cannot offer discounts on the published prices.

Harm to competition. Price regulation limits the ability of service providers to set prices of their services, and so to quickly respond to short-term fluctuations in demand. Over time, fixed prices may not provide incentives to providers to become more efficient. In addition, they prevent low-cost suppliers who may provide better value to consumers from winning market share through discounting.

Policymakers' objective. The OECD understands that the regulation aims to protect consumers by preventing excessive loading and unloading tariffs.

Recommendation. The government framework for setting service tariffs should allow only the setting of maximum prices and not fixed prices.

4.3.4. Pilotage

Pilotage is a service provided by a ship pilot with local knowledge and skills, which enable him or her to conduct the navigation and manoeuvring of the vessel in and approaching the harbour (OECD, 2011^[75]). Pilotage and towage are regulated under Ministerial Regulation No. 57/2015. It determines where pilotage is mandatory, which is determined according to the difficulty of navigating in a particular area due to local conditions and vessel size.

Monopoly on the provision of pilotage services

Description of obstacle. Pilotage services are carried out by the Port Authority or other nominated authorities and provided under monopoly by one service provider at a time.¹⁰³ The OECD understands that if these parties do not provide pilotage services in a compulsory pilotage area, then the provision of these services can be delegated to a PBE that meets the requirements.¹⁰⁴ The ministry determines whether pilotage and towage operations can be delegated.¹⁰⁵

In order to be a pilotage and towage service provider the relevant entity (port authority, harbour master and port authority, or port management unit) must meet certain criteria: provide qualified pilots, equipment, and infrastructure; meet performance standards; report piloting activities on a monthly basis; and propose tariffs in accordance with the legislation.¹⁰⁶

PBEs providing piloting services must meet administrative and technical requirements, including the requirement to have “the results of evaluation and research by the Director General on the feasibility of the business entity to carry out pilotage and towage services”.¹⁰⁷ In terms of technical requirements, the entity must have at least 15 pilots for each tugboat and a pilot ship of a certain size.¹⁰⁸ Other requirements include a PBE being required to submit a letter of application and a letter of recommendation from a port authority or other relevant entity submitted to the ministry.

Law 17/2008 removed Pelindo’s legislated monopoly on commercial ports, with regulatory and operational functions now divided between the port authority and the port operator. Under the current framework, the port operator is in charge of most port services, while pilotage and towing remain the responsibility of the port authority. It appears that only one operator can provide pilotage services at a time in a port and the provision of pilotage services can only be delegated if the port authority or equivalent is not currently providing the service.

Harm to competition. This provision gives a single entity a monopoly over piloting services; this restricts other economic operators’ market access. If already providing pilotage services, the port authority has an exclusive right to provide the services. Exclusive rights are an entry barrier and may lead to monopoly pricing and other problems associated with the exercise of market power.

International comparison. Data collected by the European Sea Ports Organisation (ESPO) for its 2016 ‘Fact-finding report’ from 86 port authorities in 19 EU Member States, Norway and Iceland, showed that only around 19% of piloting services (provided inside the port) were directly provided by port authorities. The remaining 81% of piloting services were provided through private operators (47%), government (22%) and other providers (11%) (European Sea Ports Organisation, 2016^[77]).

Recommendation. The legislation should allow the provision of pilotage services by to private companies at any time, not only when the nominated entities are unable provide the services. There should be an appropriate legal framework so that piloting services can be tendered on fair and non-discriminatory terms to guarantee competition in the market. This would not affect the requirements for pilots and so continue ensuring local knowledge and quality standards to guarantee safety.

Price regulation of pilotage services

Description of obstacle. Tariffs for pilotage services are determined by different regulations or mechanisms depending on who is providing the service. The OECD understands that a proportion of revenue for pilotage and towage services provided at commercial ports is collected and classified as non-tax state revenue.¹⁰⁹

The price setting mechanisms are outlined in Ministry of Transportation regulations.¹¹⁰ The government has established a port-service tariff framework (Article 7, Regulation No. 72/2017); time structure and unit of measure for pilotage and towage services (Article 9, Regulation No. 121/2018); tariff classes (Article 11, Regulation No. 72); and tariff currencies of port services (Article 12, Regulation No. 72). The mechanism

for setting the pilotage and towage tariffs for each type of port is in accordance with the type, structure, and class of tariffs stipulated in Ministerial Regulation No. 72/2017 and No. 121/2018. The OECD understands that for ports:

1. managed by port authorities, tariffs are determined by government regulations
2. managed by a port operator unit established by the government, tariffs are determined by government regulation
3. managed by a port operator unit established by a provincial government, tariffs are determined by provincial regional regulations
4. managed by a port operator unit established by a regency or city government, tariffs are determined by regency or city regional regulations
5. managed by PBEs determine their own tariffs based on the structure and classification determined by the Ministry of Transportation; for ports served by a single PBE, consultation must be undertaken with the Ministry before the PBE sets the tariff (article 17, No. 72/2017); the PBE prepares a tariff proposal supported by data by considering factors set out in the legislation including the public-service nature of services, improvement of service quality, interests of service users, costs of return, and business development costs.¹¹¹ If more than one PBE is operating in a port, the PBE can set its tariffs, but must still report the tariffs to the ministry (121/2018, Article 4). There are only certain scenarios where the pilotage (and towage) tariffs can be determined by the PBE based on agreement with the service user. According to Article 21 of Regulation No 121/2018, this is only possible in waters where pilotage is not mandatory and where there is demand for the services and additionally for ships that are, for example, damaged and so require special services. This agreement can be for a maximum of six months.¹¹² In addition, PBEs or specific terminals that manage and operate pilotage, must pay a percentage of all fees from pilotage and towage to the government as non-tax government income.

Article 9(2) of Regulation No. 121/2018 sets out the tariff formula for pilotage. It is calculated based on the size of the ship being piloted in gross tonnage (GT) “with the units of GT per movement associated with piloting distance and level of risk with the formula: $((GT \times \text{variable rate}) + \text{fixed rate}) \times \text{movement}$.”¹¹³

Harm to competition. Operators obliged to follow the tariffs set by the ministry are limited in their ability to set their own prices and so compete on price (for example, they will be unable to undercut rivals on price in order to gain market share). The percentage of fees that must be paid to the government may be a real or perceived conflict of interest as the government is involved in the tariff-setting process.

Policymakers’ objective. Pilotage services are often provided by a single service provider and so price regulation is often used to prevent excessive prices.

Recommendation. The government framework for setting pilotage tariffs should only allow the setting of maximum prices and not fixed prices, which do not allow for freedom in setting tariffs. This would allow negotiations on price discounts between pilots and ships. The requirement to pay a percentage of the set pilotage fees to the government should be removed.

5 Freight transport by rail

As set out in Section 2.1.5, Kereta Api Indonesia (KAI), an SOE, is the sole rail transportation service provider for passenger and freight in Indonesia. As outlined in Tables 2.1 and 2.2, railway transport is the sub-sector of the transportation and storage sector with the lowest value and lowest contributor to GDP.

An attempt was made to reform the sector in 2007 with Law No. 23/2007. Enacted in 2007, it provided for the full liberalisation of the railway market if specified steps were undertaken within a three-year period. These did not occur and in 2010, the government enacted a decree that returned the management, maintenance and operation of the railway infrastructure to KAI.¹¹⁴

Today, other rail freight service providers may enter the market if they build their own infrastructure and satisfy legal requirements. As seen in Section 5.1.1, the 2007 Railway Law does not regulate third-party access to the infrastructure operated by KAI.¹¹⁵

5.1. Vertical integration of railway infrastructure and freight services

Description of obstacle. KAI is the sole operator for railroad infrastructure and facilities. The OECD understands that its mandate is extended every year through a Ministry of Transportation decree¹¹⁶ and its operational licence renewed every five years.¹¹⁷ In addition, KAI provides downstream freight services. Other companies wishing to offer rail freight service may enter the market, but only if they build their own infrastructure and satisfy legal requirements.

Harm to competition. As a vertically integrated company, being both the operator of the rail network and a freight transport service provider, KAI may have an incentive to foreclose competitors and to favour its own transport operator, which may result in harm to competition. It may do this, for instance, by preventing potential rail transport service providers from using its railway infrastructure. In a less evidently restrictive manner, KAI may charge unfair prices for essential services such as allocation of tracks or access to energy supply. To address these concerns, several models exist in OECD countries concerning separation of infrastructure and cargo transport, spanning from full ownership separation to accounting separation (see Box 5.1).

Box 5.1. Separation models in OECD countries

Vertical integration in the railway sector is common worldwide. The rail infrastructure provider is vertically integrated with one or more rail operators in all countries surveyed as part of the OECD 2018 PMR. Only Australia and Switzerland noted the presence of an independent infrastructure manager/system operator to guarantee equivalence of access to the rail infrastructure to all rail operators and prevent discrimination.

In the European Union, Directive No. 91/440/EEC on the development of railways is the main measure taken to increase competitiveness in rail transport. It distinguishes between the provision of transport services and the operation of infrastructure, identifying the necessity for these two areas to be managed

separately in order to facilitate further railway development and efficiency within the EU. The directive covers particularly four areas of policy: 1) the independence of railway undertakings in their management, administration and internal control over administrative, economic and accounting matters, so that assets, budgets and accounts are separate from those belonging to the state; 2) the separation of infrastructure management and transport operations; 3) the reduction of debt and improvement of finances; and 4) access rights to railway infrastructure. These principles have been implemented using different models across EU countries.

Privatisation or ownership separation may solve access and discrimination problems, and might accelerate investment in infrastructure. Several models exist in OECD countries, going from full ownership separation to vertical separation. Some countries such as Sweden, have implemented full structural separation, while other countries, such as Germany, have organised infrastructure and operations into separate subsidiaries with a holding company structure.

In Italy, in June 2000, state-owned monopoly Ferrovie dello Stato (FS) was transformed into a holding company, comprising an infrastructure manager (Rete Ferroviaria Italiana) and an operator responsible for freight and passenger services (Trenitalia).

In the UK, the rail sector comprises an infrastructure manager (Network Rail, a publicly owned “arm’s length central government body” since 1 September 2014); an independent economic and safety regulator (the Office of Rail and Road); and private railway companies providing passenger and freight services, the majority of which are subsidiaries of foreign public companies such as Deutsche Bahn, SNCF, and NS.

The Netherlands reorganised the state-owned railway company Nederlandse Spoorwegen (NS) in 1995 by separating the commercial activities (passenger transport, freight transport, railway stations, and real estate) from infrastructure management, which was transferred to a holding company. In 2003, ProRail, the infrastructure manager was created.

Evidence on the impact of railway sector reform, including separation, is mixed. Some authors find that increased levels of separation and privatisation are not associated with lower prices, mainly because state-owned operators can charge subsidised railway fares. However, other studies conclude that there have been improvements in efficiency and that customer satisfaction and quality have improved following the opening of the railway industry.

Source: United Nations (2017), Railway Reform in the ECE Region, www.unece.org/fileadmin/DAM/trans/main/sc2/2018-Railway_Reform_in_the_ECE_Region.pdf.

Policymakers’ objective. The OECD has not identified a policy objective for this grant other than that KAI was the existing operator and that the relevant legislation was not implemented in time.

Recommendations. The OECD has three recommendations.

1. Implement the planned reform of the railway sector.
2. Consider separating ownership and management of infrastructure from rail freight transport service operations, or introduce separate accounting for infrastructure and freight transport services.
3. Ensure third-party access, as discussed in Section 5.1.1.

5.1.1. Third-party access

Description of obstacle. Although not explicitly stated in the legislation, stakeholders have confirmed that a business entity is able to apply for a licence from the Directorate General of Railways to operate rail freight transport services. Under Law No. 23/2007, a new entrant may use existing tracks by co-operating

with the infrastructure operator or by building its own track(s) that connect with, intersect with or separate existing tracks.

The OECD understands that a railway service provider may apply to build its own railway infrastructure to the Directorate General of Railways, and governors and mayors, depending on the geographical scope of the rail infrastructure; the authorities must consider the complete application. The OECD understands that such a proposal should be in line with the National Railway Master Plan (established by Ministry of Transportation Regulation No. 2128/2018), but that a proposal to build rail infrastructure outside the master plan can be considered if stated requirements are met.

New entrants do have a right to build infrastructure, but as this is extremely expensive, potential entrants would clearly prefer to use existing tracks. The OECD understands, however, that it can be difficult for new entrants to access existing tracks as KAI controls the infrastructure and there is no clear separation of assets.

The legislation provides for a guideline for calculating the costs for the use of railway infrastructure, but the criteria are broad.¹¹⁸ This is set out in Regulation No. 62/2013 on Cost Calculation Guidelines for the Use of State Railway Infrastructure.

Harm to competition. KAI has an exclusive right to operate and control the existing railways infrastructure, but has no obligation to allow access to infrastructure. This prevents potential market players from accessing the infrastructure and so limits market access. According to stakeholders, it may be difficult to negotiate with KAI to allow access to the network on a voluntary basis. This will deter new entry as the alternative option – constructing own infrastructure – may not be viable.

International comparison. In order to make entry viable, a number of jurisdictions around the world impose a requirement on the infrastructure provider to allow third-party access on regulated terms. For instance, in the UK, track access is regulated under the Railways Act 1993. Operators must have a contract with Network Rail, which owns and manages the majority of the railway network in the UK. These contracts are approved by a regulator, the Office of Rail and Road (Butcher, 2016^[78]).

Policymakers' objective. The legislation allows for third parties to either build their own infrastructure or to negotiate with KAI for the use of existing railway tracks and other facilities. The intention of the policymaker appears to have been to allow new entry.

Recommendations. The OECD has two recommendations.

1. Impose a requirement in the law to grant third-party access in such a way as to ensure access on transparent and non-discriminatory terms.
2. Establish a pro-competitive regulatory framework, such as granting the regulator the power to intervene should negotiations between the incumbent and third parties fail.

6 Other logistics services

6.1. Freight forwarding

Freight-forwarding services are defined in Indonesia to include “all activities required for the delivery and receipt of goods via land, train, sea and/or air transportation” (Article 1(15), Ministry of Transportation Regulation No. 49/2007). The OECD understands that in Indonesia “transportation management service companies” means companies providing freight-forwarding services.

6.1.1. Additional capital requirements for foreign companies

Description of obstacle. Freight-forwarding companies with joint venture and foreign investment status (those with foreign equity) must meet additional requirements including minimum capital requirements. Such companies are required to have an investment licence issued by the Indonesian Investment Co-ordinating Board with an investment of at least USD 4 million and at least 25% of the authorised capital must be placed and fully paid with proof of a legal or audited deposit by a public accounting firm. This means that the capital requirement is USD 1 million, a requirement not imposed on local companies, which are instead required to have at least USD 77 000 for a 25% capital requirement of USD 19 250.

Harm to competition. These additional requirements imposed on certain categories of freight-forwarding companies discriminate against joint ventures and firms with foreign equity. Foreign firms face higher capital requirements and so a higher barrier to entry than domestic firms, discouraging potential entrants, especially smaller foreign firms. This may reduce the number of market participants and lead to lower quality and higher prices over time.

Policymakers’ objective. The purpose of this provision is likely to be the protection of national operators against international competition. It is unclear why Indonesia has such high capital requirements for freight-forwarding companies and why the minimum capital requirements change depending on whether the company is part of a joint venture or has foreign equity.

International comparison. Greece and France, for example, require no minimum capital requirement for freight-forwarding companies. Instead, legislators commonly impose minimum professional-insurance coverage. In *OECD Competition Assessment Reviews: Portugal*, the OECD recommended that Portuguese authorities remove minimum capital requirements imposed on freight forwarders in order to promote market entry and operational efficiency (OECD, 2018). By lifting these financial criteria, market players can better adapt and reinvest their capital, increasing their competitiveness and promoting lower prices for consumers. Box 6.1 contains a discussion of international experience on minimum capital requirements.

The *2020 OECD Investment Policy Reviews: Indonesia* recommended the elimination of discriminatory capital requirements against foreign direct investors in horizontal regulations, including, notably, to “align the general minimum capital requirements for foreign –invested companies with capital requirements for domestic investors” (OECD, 2020, p. 33^[34]).

Box 6.1. International comparison on capital requirements

It is common in many countries to have general minimum paid-up capital requirements for specific types of companies, such as, for example, limited liability companies or public limited-liability companies, rather than capital requirements, which are specific to the sector in which the company is active. For example, in Germany, a limited-liability company must have paid up at least EUR 12 000 that is placed in a bank account when registering the company.

In a 2014 report, *Doing Business 2014: Why are minimum capital requirements a concern for entrepreneurs?*, the World Bank observed that, in general, minimum share capital is not an effective measure of a firm's ability to fulfil its debt and client service obligations. In particular, share capital is a measure of the investment of a firm's owners, not the assets available to cover debts and operating costs. In the report, the World Bank concluded that minimum capital requirements protect neither consumers nor investors and that they are associated with less access to financing for SMEs and a lower number of new companies in the formal sector.

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 freight forwarding services.

The World Bank also observed that minimum paid-in capital requirements, as often stipulated by commercial codes or company laws, do not take into account variations in firms' economic activities, size or risks, and are thus of limited use for addressing default risks. Creditors prefer to rely on objective assessments of companies' commercial risks based on the analysis of financial statements, business plans and references, as many other factors can affect a firms' possibility of facing insolvency. Moreover, such requirements are particularly inefficient if firms are allowed to withdraw deposited funds soon after incorporation.

Contrary to initial expectations, the World Bank report explains that evidence has shown that minimum capital requirements do not help the recovery of investments; indeed, they are negatively associated with creditor recovery rates. Credit recovery rates tend to be higher in economies without minimum capital requirements, which suggest that other alternative measures – such as efficient credit and collateral registries and enhanced corporate governance standards – are potentially more efficient in addressing such concerns. Moreover, minimum capital requirements have been found to be associated with higher levels of informality, and with firms operating without formal registrations for a longer period. They also tend to diminish firms' growth potential.

In Portugal, the OECD recommended for freight forwarding that any amount of required initial capital should be considered under the general rules for constituting a company, in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code, rather than under specific minimum capital requirements depending on the activity.

Source: World Bank (2014), *Doing Business 2014: Why are minimum capital requirements a concern for entrepreneurs*, www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB14-Chapters/DB14-Why-are-minimum-capital-requirements.pdf.

Recommendation. The OECD recommends the removal of additional capital requirements for freight-forwarding businesses with joint venture and investment status and recommends that legislators apply the general regime for commercial companies or to align the requirements with those of domestic investors. As an alternative to capital requirements, an insurance requirement or bank guarantee could be introduced.

6.1.2. Price regulation

Description of obstacle. The legislation provides for the regulation of tariffs for freight-forwarding services. The government can issue guidelines that set out how market players should calculate their tariffs. In practice, the OECD understands that prices are agreed between the service provider and the consumer and not in accordance with a guideline.

Harm to competition. Any obligation to follow guidance when determining freight-forwarding rates may limit companies' ability to set their own prices and to compete on price; for example, they may not be able to undercut prices of rivals in order to gain market share if they are willing to price below cost.

Policymakers' objective. The OECD is not aware of the policy objective behind this price regulation except to support operators in determining prices, especially SMEs.

Recommendation. Ensure that there is no price regulation, for example, by ensuring that companies that fail to follow any guidelines are not penalised. Service providers should be free to set their own prices.

6.1.3. Compulsory association requirement

Description of obstacle. There is an obligation to be registered as a member of the government-recognised freight-forwarding association, the Indonesian Freight Forwarder Association or ALFI (Asosiasi Logistic Dan Forwarders) in order to obtain a freight-forwarder's business licence.¹¹⁹

Harm to competition. This requirement restricts market access as providers must be members in order to access the market. Compulsory association requirements may increase the cost of doing business. Further, an industry association with responsibility for regulating the conduct of its members without government legislative backing, increases the potential for significant anti-competitive impacts. In particular, there is potential for co-ordination of prices and business practices; for example, if they have standard terms and conditions, to which all members must adhere. International experience confirms these arguments (see Box 6.2).

Policymakers' objective. Compulsory association membership is likely required in order to ensure some arm's-length government control over the industry. The OECD understands that the association issues the certificate, members' IDs and works closely with the Ministry of Transportation to communicate changes in legislation and keep members informed of news in the sector.

Recommendation. Remove the requirement.

Box 6.2. Mandatory membership in trade associations

In Mexico, a 1936 law made membership in a business chamber a compulsory requirement for an industry or business to operate. Mexico's Supreme Court of Justice of the Nation struck this requirement down in 1995, holding that mandatory membership in a chamber of commerce and business association is unconstitutional as it violated the right to not associate.

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

In the Philippines, 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 (Memorandum Circular No. 2018-02). A shipyard must be an existing member of a "MARINA-recognised shipyard association" prior to the issuance of a new MARINA shipyard licence or the 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.

Source: OECD (2007), "Policy Roundtables: Trade Associations", www.oecd.org/daf/competition/sectors/41646059.pdf; European Commission Memo No. 16-2490, Infringement No. 20084585, https://ec.europa.eu/commission/presscorner/detail/EN/MEMO_16_2490, *OECD Competition Assessment Reviews: Logistics sector in the Philippines* (OECD, 2020^[79]).

6.2. Warehouses

In Indonesia, warehouses must be registered with the Ministry of Trade,¹²⁰ with registration valid as long as the warehouse is used to store traded goods. Warehouses must be re-registered every five years. There are limited exceptions to this registration requirement; for example, warehouses used as temporary storage for freight-forwarding services; warehouses in bonded zones; and those attached to a business that are used for temporary storage, such as supermarkets and e-commerce businesses. The authority of the ministry to issue this registration can be delegated to local authorities. According to Ministry of Trade Regulation No. 08/2020, the certificate is issued by the regent or mayor; this may be set out in local regulations.¹²¹

6.3. Small-package delivery services

In Indonesia, the Ministry of Communication and Information Technology (KOMINFO) is responsible for overseeing and regulating commercial postal services and universal postal services in Indonesia. The small-package delivery services sector in Indonesia has changed considerably since the 2009 postal law (Law No. 38/2009) replaced the 1984 postal law (Law No.6/1984).

Under the 2009 law and its implementing regulations, a postal operator requires a licence to operate, which must be obtained from KOMINFO¹²² and can now be obtained electronically.¹²³ Postal operators can obtain a licence for commercial postal services, universal postal services, military postal services (non-commercial), or other postal services (for example, government post that requires certain confidentiality standards). There are three types of licences for postal operators, categorised according to where the

licence holder wishes to operate (national, provincial and regency or city operational permits).¹²⁴ Postal operators may engage in the following services:

1. written communication and electronic mail
2. packages
3. logistics
4. financial transactions
5. postal agency.¹²⁵

Before the 2009 postal law was implemented, private companies were only permitted to deliver documents and packages weighing more than two kilogrammes. This gave the postal SOE, Pos Indonesia, a monopoly on documents and packages below two kilogrammes. The 2009 law enabled all types of business entities to act as postal operators, subject to satisfying the licensing requirements. This licence is granted for an unlimited period as long as a company remains active and fulfils its obligations,¹²⁶ including reporting on its activities every year.¹²⁷ A postal operator is subject to an annual review by the General Directorate of Post and Telecommunication and a comprehensive evaluation every five years.¹²⁸

Government Regulation No. 24/2018 on Electronic Integrated Business Licensing Services is also relevant and was introduced to support the 2018 launch of the online single submission (OSS) licensing system.

6.3.1. Minimum capital requirements

Description of obstacle. An applicant for a postal-service operator licence (including for the provision of commercial services) must comply with minimum capital requirements. The amount is dependent on the licence category.

1. National postal-service operator licences require capital of at least IDR 500 million.
2. Provincial postal-service operator licences require capital of at least IDR 100 million.
3. Regency or city postal-service operator licences require capital of at least IDR 50 million.

These capital requirements apply to all applicants, whether private companies, SOEs, regional SOEs, or co-operatives.

Harm to competition. This provision may increase the entry costs of new companies and discourage investment and market entry, reducing the number of operators in the market and leading to higher consumer prices, less choice and lower service quality for consumers. It may notably restrict entry of small- and medium-sized enterprises (SMEs).

Policymakers' objective. The objective may be to ensure that the company has sufficient resources to offer reliable and efficient courier services. It may also aim to protect consumers and creditors from risky and potentially insolvent businesses. The OECD understands that the stipulated capital requirements reflect the amount required for micro-small- and medium-sized enterprises (MSMEs) as outlined in Law No. 20/2008 concerning MSMEs.

Recommendation. Remove specific capital requirements for commercial postal services, as there appears to be insufficient reasons for singling out this sector. Companies should only be required to comply with any capital requirements under the general regime. Alternatively, an insurance requirement or bank guarantee could be introduced.

Restricted operational areas for foreign companies

Description of obstacle. Joint ventures between domestic and foreign postal operators have a limited operational area, they are only permitted to operate in international airports and seaports and are banned

from making intercity deliveries. To carry out these services, a joint venture must enter into a co-operation agreement with a domestic operator.¹²⁹

Harm to competition. This creates a geographical barrier for companies wishing to supply their services and limits their ability to compete as they are required to co-operate with a third-party postal operator in order to provide intercity deliveries. This may increase costs and may have a negative impact on prices. Moreover, if international providers are required to rely on domestic operators, the country may not benefit fully from foreign companies' innovative technology and management practices.

Policymakers' objective. This geographical restriction and obligation to co-operate with a third-party Indonesian postal operator is likely in place to support the development of Indonesian firms, notably SMEs. The OECD understands that the government is currently formulating a policy to relax foreign-equity restrictions, with the aim of promoting ease of doing business.

Recommendation. Remove the geographical restrictions on joint ventures. This would remove the obligation to co-operate with a domestic operator to carry out intercity deliveries.

Co-operation with a nominated domestic postal operator

Description of obstacle. Joint-venture firms with foreign equity operating in the postal sector are required to co-operate with domestic postal operators to carry out postal operations. Article 12(1)(d) of Law No. 38/2009 prevents foreign postal operators from co-operating with more than one domestic postal operator.

Harm to competition. This requirement could prevent a foreign operator from creating a network and operating all over Indonesia as it is reliant on the network of the domestic operator with which it co-operates. This may be exacerbated by the geographic restriction on the joint venture, as discussed above.

Policy maker's objective. The OECD has been unable to identify a policy objective for this position but understands that the government is currently formulating a policy to relax foreign-equity restrictions, with the aim of promoting ease of doing business.

Recommendation. Remove this restriction. Joint-venture firms should be able to co-operate with more than one firm.

6.3.2. Price regulation of commercial postal and courier services

Description of obstacle. The prices for commercial postal and courier services carried out by a postal operator, are regulated.¹³⁰ The government has issued a guideline that states how market players should calculate their tariffs and notes that a postal operator shall determine its tariffs based on the published tariff formula. Further, the legislation provides that the tariffs of the commercial post service cannot be lower than its costs.

The OECD understands that commercial postal companies must set their prices in accordance with the legislative formula; universal postal services are regulated under a different price formula.¹³¹

Under Article 6 of the regulation, postal operators must report their tariffs to the General Directorate of Post and Telecommunication and Article 7(2) that: "The Postal Operator must review and adjust the published rates, if the tariff setting is not in accordance with the tariff formula." A penalty provision for failing to follow the tariff formula is in place and an operator can be prevented from operating if it does not fulfil its obligations under the law, including the tariff formula. This suggests that the tariff formula is binding.

Harm to competition. The obligation to follow the formula when determining commercial post and courier service rates limits operators' ability to set their own prices and to compete on price; for example, they cannot undercut rivals' prices in order to gain market share. In particular, the requirement to price above

cost may lead to inefficient outcomes and harm consumers (see Box 6.3). The Ministry of Communication and Informatics does not publish the tariffs of commercial postal services.

Box 6.3. Below-cost pricing

Selling certain products below cost is a common strategy used to attract consumers, for example, to encourage them to try a new product or retailer. In these circumstances, pricing below cost may well be less expensive than running large advertising campaigns (OECD, 2006^[80]). In addition, it can be used to grant discounts to repeat customers, to compensate a consumer switching from one product to another when switching costs are high, or to clear out obsolete or dead stock that would be costly to store or dispose of. Further, when a firm has multiple products, it can price one product below cost (a “loss leader”) in order to attract consumers to other more profitable products. These strategies can therefore be both pro-competitive and beneficial for consumers.

Empirical studies have investigated the effects of the regulation of below-cost pricing in a number of countries (OECD, 2006^[80]). One study found that restrictions on below-cost sales led to price increases in Ireland (Allain and Chambolle, 2011^[81]). Another study reached similar conclusions in France and found that “the transparency of the invoiced price fosters retailer price alignment and reduction in intra-brand/inter-store competition” (Colla and Lapoule, 2008^[82]). In addition, the authors found that French rules prohibiting below-cost pricing caused retailers to focus less on negotiating the lowest possible prices from their suppliers, which would benefit consumers. Instead, since promotional fees and other manufacturer incentives are not considered elements of the “purchase price” for the purposes of the below-cost pricing rule, they put more effort on obtaining these fees and incentives that improve retailer profitability without benefitting consumers. This contributed to keeping prices higher for consumers.

Below-cost pricing restrictions are found in countries including Portugal, Spain and Italy. Other countries, such as Greece and Luxembourg have removed restrictions. The majority of OECD countries have no below-cost pricing restrictions, including Australia, Canada, Denmark, Finland, Hungary, Iceland, Ireland, Korea, Mexico, the Netherlands, New Zealand, Norway, Poland, Sweden, and the United Kingdom.¹³²

There are cases in which below-cost pricing does impair market functioning and so requires action. These concerns can generally be addressed using competition law on a case-by-case basis, in which pro-competitive below-cost pricing can be distinguished from anticompetitive strategies. In particular, below-cost pricing becomes problematic from a competition perspective when it is put in place by a dominant firm in such a position of economic strength that it can behave independently of its competitors, customers and consumers, with the intention of driving its rivals (such as small businesses) out of the market and then raising prices to above-market levels to recover any initial losses.¹³³ This predatory-pricing strategy is an abuse of dominance in Indonesian competition law, in line with the competition-law frameworks of the majority of jurisdictions.¹³⁴

Most jurisdictions make this distinction in their competition-law frameworks. European Union case law has underlined that below-cost pricing strategies by dominant firms are not intrinsically abusive, but specific circumstances may exist where those behaviours are illegitimate.¹³⁵ In the United States, the regime is more permissive, since below-cost pricing strategies are considered to be abusive solely if there is evidence that losses have been recouped.¹³⁶

Policymakers’ objective. The aim of this provision is to allow Postal Operators to set their rates with a cost-based calculation formula. The 2009 postal law explains that postal operators can determine their own tariff, based on a cost-based calculation formula.¹³⁷ The OECD understands that, as most companies in the postal sector are SMEs, this tariff formula is in place to help them to set tariffs. It is also in place

to avoid unfair business practices and predatory pricing. The OECD understands that the tariff formula and associated reporting obligations allow transparency and prevent companies from pricing below cost, which the authorities believe, could harm consumers. The reporting obligation allows supervision by the government, enabling it to evaluate the prescribed tariff formula and to ensure that service providers do not charge below-cost prices.

International comparison. In other ASEAN countries, including the Philippines, Thailand and Brunei Darussalam, there is neither price regulation of courier services nor a reporting requirement. In the EU, Article 12 of the Postal Directive (97/67/EC) provides guidelines for regulating prices of universal postal services only. Such prices should be regulated only “for each of the services forming part of the provision of the universal service”.

Recommendation. The OECD has two recommendations.

1. Remove the penalty provisions.
2. Remove the obligation that prices should be above costs.¹³⁸

7 International agreements and horizontal issues

7.1. Horizontal and others

7.1.1. Foreign investment restrictions

Description of obstacle. The Negative Investment List, which is set out in Presidential Regulation No. 44/2016, contains sector-specific foreign-equity restrictions. It specifies three categories:

1. business fields closed to investment
2. business fields open with conditions: reserved or in partnership with micro-, small-, and medium-sized enterprises and co-operatives
3. business fields open under certain conditions.

Transportation is listed under the third category and there are numerous restrictions relevant to freight transport and port services.¹³⁹ Foreign equity is limited, for example, in the following activities.

- **Land freight transportation.** Foreign equity is limited to 49% for cargo land transportation and special cargo land transportation.
- **Shipping.** Foreign equity in the provision of domestic and international shipping is limited to 49%, as are river and lake transportation for general, special and hazardous freight. The legislation provides for specific technical requirements for joint ventures between national and foreign persons or entities for domestic shipping: they must have at least one Indonesian-flagged motorised vessel with gross tonnage of 5 000. (Indonesian sea transportation companies are required to have a vessel with a gross tonnage of only 175).
- **Provision of harbour facilities.** Foreign equity for the provision of harbour facilities is limited to 49%.¹⁴⁰ In addition to this foreign-equity restriction, the negative investment list provides that investors seeking to provide harbour facilities are subject to additional special permits from the Ministry of Transportation related to minimum capital requirements.
- **Cargo handling.** Foreign equity is limited to 67%, but ASEAN foreign ownership can be up to 70% in specific ports: Bitung Port, Ambon Port, Kupang Port and Sarong Port, in line with the AFAS target. As noted in Section 4.3.3, foreign joint-venture companies are also limited in their area of operations.
- **Multimodal transportation.**¹⁴¹ Foreign equity is limited to 49%, while ASEAN foreign ownership is limited to 70%.
- **Warehousing.** Foreign equity is limited to 67%.¹⁴²
- **Freight forwarding.** Foreign equity is limited to 67%; ASEAN foreign ownership to 70%.
- **Postal services sector.** Foreign equity is limited to 49% for “mail providers”.¹⁴³ Additional restrictions are set out in Article 12 of the Postal Law, for “foreign postal operators” including an

obligation to co-operate with and operate through a joint-venture mechanism with the share majority owned by domestic postal operators, restrictions on this co-operation such as potential firms and number of firms, and a geographic restriction (see 6.3).

Harm to competition. These equity restrictions may prevent or make it more difficult for foreign companies to enter the market, and so reduce competition. As a consequence, less competition in the market may result in reduced innovation and quality and potentially higher prices. Higher technical requirements and any associated discretion for such joint ventures results in discrimination and increases costs for these companies. Along with a reduction in competition, foreign-equity restrictions could reduce innovation spillovers from more sophisticated companies. More generally, FDI restrictions lead to lower investment and employment than might otherwise be the case.

OECD Investment Policy Reviews: Indonesia recommended that Indonesia:

undertake a comprehensive regulatory impact assessment of existing restrictions on FDI, including assessments of potential alternative, non-discriminatory policies where relevant, and subject the assessment to ample stakeholder scrutiny to identify priority areas for reform and inform policymaking in the context of the omnibus reform on job creation and further implementing regulations [and] consider prioritising further liberalisation of FDI in services sectors due to their economy-wide productivity implications. (OECD, 2020, p. 33^[34])

Policymakers' objective. In certain categories, such as multimodal transport, cargo handling and freight forwarding, ASEAN foreign equity is limited to 70%, a higher amount than for other foreign investors; this is in line with AFAS.

Recommendation

The OECD recommends one of three options.

1. Remove foreign-equity restrictions.
2. Progressively relax foreign-equity limits towards allowing up to 100% foreign ownership in the long term.
3. Relax foreign-equity restrictions on a reciprocal basis, allowing foreign ownership by ASEAN nationals or of countries that allow Indonesian nationals to hold 100% shares in a company.

The OECD also recommends removing different technical requirements currently imposed on firms with foreign equity.

7.1.2. Public service obligation for freight transport by road and maritime

Description of obstacle. Presidential Regulation No. 70/2017 creates a public service obligation (PSO) for road and maritime transportation to transport goods to underdeveloped, remote, outermost and border areas of Indonesia.¹⁴⁴ The regulation states that the implementation of this PSO is held by the government and assigns responsibility for it to the SOEs DAMRI, active in land freight transportation; PELNI, active in maritime freight transportation; and ASDP Indonesia Ferry, for goods carried by ferry. The PSO relates to the carriage of basic and essential goods, as stipulated by the Ministry of Trade.

Under this scheme, the budget required for PSO is part of the Ministry of Transportation's national revenue and expenditure budget, with contracts with relevant SOEs and business entities signed once it has been finalised.

Specific regulations for each mode of transport

Road transport

Ministry of Transportation Regulation No. 10/2020 sets out the relevant guidelines, with Article 7 providing that the ministry is charged with implementing the PSO transportation of goods by road and can assign it to DAMRI. If it has insufficient fleet numbers, DAMRI can be replaced by other service providers, who are chosen in accordance with government procurement rules.¹⁴⁵

The ministry assigned the PSO for road transportation to DAMRI for the period 1 January 2020 to 31 December 2020 through a Ministry of Transportation Decree.¹⁴⁶

Maritime transport

Costs are calculated according to rules set out in Ministry of Transportation Regulation No. 4/2018. In 2020, a decree was issued that determines freight rates for each of the 376 relevant PSO routes.¹⁴⁷

If contracted companies lack the capacity to carry out certain obligations – for example, because they have insufficient vessels – the government can select another service provider in accordance with general public procurement rules.¹⁴⁸

The parties implementing PSO for the transport of goods at sea must meet the following requirements: 1) have the ability to provide cargo service on the navigable route network; 2) own ships to transport the goods; and 3) be able to provide replacement vessels so that the PSO can be maintained if the main ship is damaged or docked.¹⁴⁹ Companies must also ensure a minimum service frequency as set out in the law.¹⁵⁰

The OECD understands that the government has opened certain routes to private entities under the programme, with the selection process regulated under Presidential Regulation No. 16/2018 on Government Procurement.¹⁵¹ On the remaining routes, private entities remain unable to provide the stipulated public services as the service has been delegated to named SOEs. The OECD understands that there is no time limitation on the PSO programme.

Technical supervision and control of PSO implementation for the transportation of goods at sea is overseen by the Director-General of the Ministry of Transportation.¹⁵²

Harm to competition. Third parties may carry out a PSO (or parts of it) only if the assigned provider cannot carry out its duties or if a specific route has been opened up to wider participation, as is the case for certain maritime freight routes. This regulation restricts market entry. In most cases, the PSO is assigned to an SOE without a tender, which may lead to a service provider being chosen that is not the most efficient or the best in terms of price and quality. As a result, consumers may suffer. If the costs and potential benefits of a PSO are not assessed in a transparent way, the result may be an excessive burden for the state budget.

Policymakers' objective. The objective behind the appointment of a PSO provider is to ensure that goods are transported throughout Indonesia. One aim, set out in the National Medium-Term Development Plan for 2015-2019, was to reduce price disparity by ensuring the availability of goods and improving the welfare of the community, and ensuring the continuity of the transport services for goods from and to underdeveloped, remote, outermost and border areas in supporting the implementation of the “sea-toll” programme.¹⁵³ For maritime, a similar concept is mentioned in the Shipping Law (Law No. 17/2008), which explains that transportation in waters of underdeveloped or remote areas should be carried out by government and regional governments.¹⁵⁴

International comparison. In the European Union, PSO exist for passenger transport, but not for freight transport by road or rail, and the EU has noted the benefits of conducting a competitive tender process for their provision (EC, 2018_[83]):

1. Institutional benefits, including greater responsibility and commitment of transport authorities.
2. Financial benefits, including cost reductions; for example, the difference between France where no tenders for rail transport services are held and Germany where 70% of contracts were tendered in 2015, finding that “the total cost of providing rail public transport service is EUR 25.50/train-km in France, against EUR 15.70/train-km. Staff, maintenance and ticket sale costs are significantly lower in Germany”.
3. Service benefits, with quality improved by tendering processes. For example, the EU notes an increase of new technology and infrastructure: “Thanks to the perceived improvement in quality, Member States which opened their markets have witnessed a significant increase in the number of passengers (e.g. +48% between 2002 and 2016 in Germany)”.

Box 7.1. European Union: Public service obligations (PSO) in the transport sector

Passenger transport by road and rail is covered by EC Regulation No. 1370/2007, which states:

In order to maintain appropriate scheduled maritime transport of passengers and goods to and from or between islands, Member States may impose public service obligations or conclude public service contracts on these routes, in particular in the event of market failure to provide such adequate services. Member States are bound by conditions and requirements set out in Article 4 of Regulation No 3577/92 on maritime cabotage.¹⁵⁵

Several important conditions are attached to the imposition of PSO. These include:

- Obligations imposed or contracts must be concluded “in a non-discriminatory manner”.
- Financial compensation must comply with EU rules on state aid, which the European Commission defines “an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities” and which is generally prohibited but for specific legislative exemptions.¹⁵⁶
- “Public service contracts” can be awarded for a maximum of 12 years “on the basis of an open, transparent, fair and non-discriminatory Union-wide award procedure”, with the call for tender published in the Official Journal of the European Union.

Source: European Union, “Public service obligations: Marine and inland waterway transport”, https://ec.europa.eu/transport/themes/pso/maritime-inland_en.

Recommendation. Ensure that SOEs providing PSOs comply with accounting separation and reporting requirements to ensure that PSO funds cannot be used to cross-subsidise other freight services that are in competition with private players.

In addition, the OECD recommends that the authorities consider identifying and implementing an alternative PSO model for the provision of basic and essential goods to remote areas. If such a model were found, it should promote efficiency of public services and minimise distortions to competition. For example, the policymaker could assess the costs and benefits of allowing competitive tendering of PSO contracts, to provide incentives for lowering costs and improving quality. Any tender processes should be fair and non-discriminatory, and contracts should have a set duration.

7.1.3. Co-operation between SOEs

Description of obstacle. Indonesian SOEs are expected to prioritise co-operation with other SOEs, including in the area of procurement. In particular, they are permitted to assign a contract to another SOE

without running a procurement tender, even though a tender would be necessary to award the contract to a private company. The Ministry of State-Owned Enterprises issued general guidelines for procurement rules for goods and services for SOEs in Regulation No. PER-08/MBU/12/2019.¹⁵⁷

Harm to competition. The absence of a tender process if a SOE contracts with another SOE makes it more likely that SOEs will choose other SOEs, as conducting a tender process can be burdensome. This discriminates against other market participants who operate in the same market as the concerned SOEs (see Box 7.2 on principles of competitive neutrality). As a result, SOEs favouring SOEs may eliminate competition and potentially cheaper and better quality offers from private firms. As stated in *OECD Recommendation on Guidelines on Corporate Governance of State-Owned Enterprises*: “when SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be competitive, non-discriminatory and safeguarded by appropriate standards of transparency” (OECD, 2015, p. 50^[84]).

Policymakers’ objective. The likely policy objective is to support Indonesian SOEs, to encourage government contracts and to save resources by not carrying out a tender process. The SOE synergy policy is implemented in different sectors across Indonesia’s economy. In 2014, the ICC recommended that the Ministry of State-Owned Enterprises revoke this synergy policy, notably in the area of procurement of goods and services and noted the anticompetitive effects of the policy, including the entry barriers for domestic private businesses.¹⁵⁸

Box 7.2. Competitive neutrality

Claims of unequal regulatory treatment between public and private businesses are common worldwide. For example, government-controlled utilities or financial-sector activities are sometimes identified as areas in which SOEs may be subject to a lighter regulatory approach than private enterprises in the same sector. Further problems arise when unincorporated government entities (or entities incorporated according to a tailored legal framework) are involved, since such entities often enjoy regulatory and other advantages due to their integration with the executive powers.

Frequently cited regulatory advantages include the under- or over-enforcement of restrictive business practice laws, such as under-enforcement of merger laws to defend SOE mergers and prevent the entry of private competitors. Other examples of regulatory advantages conferred to SOEs can include sovereign immunity laws; preferential access to land; preferential treatment for disclosure; and compliance with other requirements including environmental regulations, bankruptcy laws, and start-up administrative requirements, such as obtaining building permits or complying with zoning regulations. Municipally owned businesses are also often cited as benefiting from some of these advantages.

Governments may erect regulatory barriers with no basis in genuine public-interest objectives to protect their own enterprises and protect national champions. This can create significant cost asymmetries between incumbents and entrants with considerable harm to competition. Proximity of SOEs to policymakers also puts them at an unfair advantage compared to their private-sector counterparts in their ability to exert influence on the policymaking process to their benefit.

For a government committed to competitive neutrality, the approaches for pursuing neutrality in the regulatory area include: 1) structural separation of those operations where regulatory discrimination is warranted; 2) ongoing evaluation of public-sector obligations and assessments of the competition and regulatory approach; and 3) compensatory payments where regulatory advantages apply.

Source: OECD (2012), *Competitive Neutrality: Maintaining a Level Playing Field between Public and Private Businesses*, www.oecd.org/corporate/50302961.pdf, pp. 66-67.

Recommendation. The OECD has three recommendations:

1. Public procurement rules should treat any potential supplier equitably, without discrimination and irrespective of its ownership. SOEs should be subject to requirements comparable to those demanded from private bidders.
2. The authorities should reconsider the practice of direct assignments from one SOE to another or from government entities to SOEs, and encourage open tenders, clearly defining the circumstances when alternative procedures can be applied.
3. The government should establish internal guidelines and provide training to officials to ensure that non-discriminatory public procurement rules are followed and enforced and that SOEs are not granted preferential access to the provision of services to government agencies.

7.1.4. Access to legislation and digitalisation

Logistics legislation should be accessible and organised in a user-friendly way, with all rules and regulations enforced by logistics agencies publicly available. Indonesian government authorities should ensure that there is an up-to-date version of legislation and implementing guidelines on their websites and on any official government databases, such as the State Gazette of the Republic of Indonesia. This means that any amendments to a piece of legislation should be included in a new consolidated version or that there should be links to the new amendments, while obsolete legislation should be marked as such. Amending public legal databases would be costly and time consuming, but should be a long-term goal for all ASEAN countries. Difficulties in accessing logistics legislation create legal uncertainties and increase costs for actual and potential market participants. Market participants need fully transparent rules and regulations applicable to them.

Box 7.3. Legal databases

International experience

The majority of OECD countries has an easily accessible public legal database.

Portugal

In Portugal, Simplex¹ has been the successful legal database programme since its launch in 2006. In 2016, the Portuguese government launched Simplex+, which aimed to reduce administrative burdens and improve regulatory quality. This project included Revoke+, which aimed to reduce the legislative stock by identifying and then repealing obsolete legislation, and Unilex, which aimed to ensure 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”.

Australia

In Australia, all federal laws are published on the Federal Register of Legislation website² on which a consolidated version of legislation is clearly marked “In force – Latest Version”. Users can choose “View Series”, which shows all the versions of the legislation in question and also can easily find any amending acts. Users can easily identify the legislation currently in force, see previous versions (and so know which law applied at a particular time), as well as seeing which amendments were made and when; there is also a link to related bills.

Notes:

¹ See www.simplex.gov.pt

² See www.legislation.gov.au

7.1.5. Digitalising application procedures

Logistics providers do not currently have full access to online application processes when applying for sector-specific licences and accreditations, and are often required to submit hard-copy applications with the relevant agency for each authorisation.

The use of online application forms for licences, for example, facilitates the effective delivery of services, allows data sharing across agencies, and ensures better data organisation. The lack of digitalisation increases costs for logistics providers, which are required to compile a hard-copy application for each authorisation and provide this to the relevant agency. It may also increase the likelihood of errors and delays.

For business licences, Indonesia has made significant improvements with the introduction of its Online Single Submission (OSS) licensing system and regional one-stop shop centres. For example, the Ministry of Communication and Information Technology now accepts applications for a postal licence through the OSS, eliminating the need for physical documents to be submitted to the Ministry and reducing the time to complete the application process. However, the OECD understands that there are still issues with the implementation of these initiatives (see Section 1.4.3).

Indonesia should continue with its efforts towards the digitalisation of all application procedures for logistics-related authorisations and allow online applications. The OECD understands that the Omnibus Law on Job Creation seeks to reform and simplify licensing processes across sectors and is intended to promote digitalisation.

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Endnotes

¹ See, for instance, European Commission merger case COMP/M.7630 – Fedex / TNT Express of 8 January 2016¹ European Commission 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, as shown, for instance, in Viet Nam by the overlap of responsibilities between the Vietnam Inland Waterway Administration (VIWA) and the Vietnam Maritime Administration (VINAMARINE).

³ 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, in 1998, the OECD developed an economy-wide indicator set of PMR (Nicoletti, 1999[91]); this indicator was updated in 2003, 2008 and 2013.

⁶ Fournier et al. (2015_[11]) 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_[12]) 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 Egert (2017_[15]) investigates the drivers of aggregate MFP in a sample of 30 OECD countries over a 30-year period.

⁸ Bourlès et al. (2013_[16]) studied 15 countries and 20 sectors from 1985 to 2007 to estimate 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.

⁹ Egert (2017_[15]) investigated the link between product and labour-market regulations with investment (capital stock) using a panel of 32 OECD countries from 1985 to 2013.

¹⁰ Employment growth in France in the sector 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 road transport sector doubled, from 170 000 to 340 000.

¹¹ Using the OECD's summary index of PMR in seven non-manufacturing industries in the energy, telecom and transport sectors, Causa (2015^[89]) 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. Lower regulatory barriers to competition "tend to boost household incomes and reduce income inequality, pointing to potential policy synergies between efficiency and equity objectives". 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/lprdy/multifactor-productivity.htm>).

¹² 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/lprdy/multifactor-productivity.htm>).

¹³ 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.

¹⁴ ATISA was signed by ASEAN Economic Ministers in Jakarta on 7 October 2020. The agreement will supersede AFAS after 5 years for all member states except Vietnam (7 years) and Cambodia, Lao PDR and Myanmar (13 years).

¹⁵ National competitiveness is defined by the World Economic Forum as "the set of institutions, policies and factors that determine the level of productivity".

¹⁶ For the full list of countries with their respective rankings, see <https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402.pdf?sequence=24&isAllowed=y>.

¹⁷ Another factor is the time necessary to register property.

¹⁸ The World Bank considered reforms implemented from May 2018 to May 2019.

¹⁹ Regulation No. 24 of 2018 on Integrated Business License Services through Electronic System dated 21 June 2018 (GR 24/2018). See <https://oss.go.id/portal/>.

²⁰ Presidential Regulation No. 44/2016 concerning Lists of Business Fields Closed and Open with Conditions to Investment; see www.bkpm.go.id/images/uploads/prosedur_investasi/file_upload/REGULATION-OF-THE-PRESIDENT-OF-THE-REPUBLIC-OF-INDONESIA-NUMBER-44-YEAR-2016.pdf.

²¹ In the Indonesian context, the term SOE can refer both to an enterprise owned by the central government (SOE) or one owned by provincial and municipal governments, also known as local government enterprises (LGE).

²² Article 1(1), Law on State-Owned Enterprises No. 19/2003.

²³ Article 1, Law No. 19/2003.

²⁴ See Ministry of State-Owned Enterprises, Performance Report, 2019, page 16 <https://bumn.go.id/storage/report/milgz1io0eeidM26o8ymbv58z4uznahWZYFK3cJv.pdf>

²⁵ See www.aseanbriefing.com/news/indonesia-launches-national-economic-recovery-program.

²⁶ The *OECD Investment Policy Reviews: Indonesia 2020* noted criticism from environmental and social groups on the Omnibus law on Job Creation and recommended the implementing regulations “include due consideration of environmental and social impacts of business operations and that streamlining of administrative procedures does not come at the expense of labour and environmental protection and an inclusive and sustainable development pathway” (OECD, 2020, p. 39^[34]).

²⁷ See <https://asean.org/storage/2016/09/Master-Plan-on-ASEAN-Connectivity-20251.pdf>. This master plan is the successor to an earlier version, *Master Plan on ASEAN Connectivity 2010*.

²⁸ Transport includes both freight and passenger transport.

²⁹ Micro- and small-sized businesses (UMK) and medium- and large-sized businesses (UMB) are the two categories of companies in Indonesia.

³⁰ The OECD understands that BKPM defines a “project” as a new business or an expansion of a business.

³¹ Data provided during the OECD interview with BKPM in October 2019. The BKPM also noted an increase in projects in the sea transportation sector with 10 projects in 2014, 25 in 2017, 44 in 2018, and 119 in 2019.

³² For example, *OECD Investment Policy Reviews: Egypt 2020* noted that in this lower-middle-income economy, logistics costs to GDP accounted for around 20% of GDP (OECD, 2020, p. 26^[49]).

³³ OECD meeting with the Ministry of Trade, 23 October 2019.

³⁴ Other main local companies include: Samudera Indonesia; LJK; APOL; HIT; Sistemindo; Pancaran Laut; PSS; Bimaruna; and PELNI. Major international providers include: Maersk; OOCL; NYK; Hapag Lloyd; Mitsui; OSK; HMM; YML; UASC; MSC; APL; NYK; RCL; ANL; CMA CGM; Heung A; Evergreen; PIL; and Cosco. See Supply Chain Indonesia (2018^[88]), “Data Collection of Logistic Service Providers in Indonesia”, https://supplychainindonesia.com/wp-content/files/30-04-2018_SCI_-_Kumpulan_Data_Penyedia_Jasa_Logistik_di_Indonesia.pdf.

³⁵ UNCTAD explains that the current version of the index is based on six components: 1) the number of scheduled ship calls a week in the country; 2) deployed annual capacity in TEUs, i.e. total deployed capacity offered in the country; 3) the number of regular liner-shipping services from and to the country; 4) the number of liner-shipping companies that provide services from and to the country; 5) the average size (in TEUs) of ships deployed by the scheduled service with the largest average vessel size; and 6) the number of other countries that are connected to the country through direct liner-shipping services.

³⁶ The Liner Shipping Bilateral Connectivity Index (LSBCI) comprises five components: 1) the number of transshipments required to get from country A to country B; 2) the number of direct connections common to both country A and B; 3) the geometric mean of the number of direct connections of country A and of country B; 4) the level of competition in services that connect country A to country B; 5) the size of the largest ships on the weakest route connecting country A to country B. For more details on the methodology, see <https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=96618> and click on “Information”.

³⁷ In 2019, the land transport sector was valued at IDR 390.775 billion, an increase from 2018 (IDR 328.307 billion) and 2017 (IDR 354.093 billion).

³⁸ Major local service providers include: Posindo/Poslog; Lookman Djaja Handal; Dunia Express; Puninar; Jawa Indar; JIT; Sipure; CTL; Satya Ragam; BSA; Pancaran Darat; Bintang Baru Raya; Lancar; Suryakencana; Alamui; Kumis; and MP Log. Major international providers include Nova Jaya and Bimaruna. See Supply Chain Indonesia (2018_[88]), “Data Collection of Logistic Service Providers in Indonesia”, https://supplychainindonesia.com/wp-content/files/30-04-2018_SCI_-_Kumpulan_Data_Penyedia_Jasa_Logistik_di_Indonesia.pdf.

³⁹ KAI Company Profile 2020, https://kai.id/static/company-profile/company_profile_2020.pdf.

⁴⁰ Statistics Indonesia (2020_[58]), “Series 2010, Quarterly GDP Distribution at Current Prices According to Business Field (Percentage)”, www.bps.go.id/linkTableDinamis/view/id/828.

⁴¹ Statistics Indonesia (2019_[46]), *Modern Postal and Courier Service Business Analysis: Further Analysis of the 2016 Results*, www.bps.go.id/publication/2019/04/04/9d7edb0136ff6c500215dd0c/analisis-hasil-se2016-lanjutan-analisis-usaha-jasa-aktivitas-pos-dan-kurir-modern.html, p. 53.

⁴² Local companies include Posindo; Caraka; Re Pex; TIKI; JNE; Cardig; Intrasco; Pandu Siwi Senotosa; BGR; Kamadjaya; Kirim; SAP Express; J&T; ARK Xpress; Jet Ekspres; and CKB Express. International companies include FedEx; DHL Express; UPS; Lazada Express; A-Commerce; Etobee; Ninja Van; and Deliveroo. See Supply Chain Indonesia (2018_[88]), “Data Collection of Logistic Service Providers in Indonesia”, https://supplychainindonesia.com/wp-content/files/30-04-2018_SCI_-_Kumpulan_Data_Penyedia_Jasa_Logistik_di_Indonesia.pdf.

⁴³ There are no individual statistics for maritime freight forwarding companies, which are counted with supporter companies, another type of shipping auxiliary service company.

⁴⁴ No data is available for 2016-2018. See www.dephub.go.id/public/images/uploads/posts/buku-statistik-1-2018.pdf, p. 91.

⁴⁵ The main local companies include BGR; Posindo/Poslog; Pusaka Lintas; MIF; Ritra; FIN; CKB; Linc; BSA; MSA; Puninar; and SILkargo. International companies include DBSchenker; DGF; APL Logistics; Panalpina; Yusen Agility; K&N; Damco; SDV; Bimaruna; Logwin; OOCL-Log; and Pantos. See Supply Chain Indonesia (2018_[88]), “Data Collection of Logistic Service Providers in Indonesia”, https://supplychainindonesia.com/wp-content/files/30-04-2018_SCI_-_Kumpulan_Data_Penyedia_Jasa_Logistik_di_Indonesia.pdf.

⁴⁶ The main local companies include Poslog; Wira; Linc Group; Go Trans; BSA; BGR; Kamadjaya; CKB; LJK; Linc; and ARK. International companies include Linfox; Ceva; YCH; DHL SC; DB Schenker; DHL SC; APL Logistics; Panalpina; Yusen; Agility; K&N; Damco; SDV; Bimaruna; Logwin; GAC; Pantos; OOCL-Log; and TOLL. See Supply Chain Indonesia (2018_[88]), “Data Collection of Logistic Service Providers in Indonesia”, https://supplychainindonesia.com/wp-content/files/30-04-2018_SCI_-_Kumpulan_Data_Penyedia_Jasa_Logistik_di_Indonesia.pdf.

⁴⁷ See, for example, PWC, “Port development: Capex of 4 Pelindos amounting to Rp32 trillion”, www.pwc.com/id/en/media-centre/infrastructure-news/march-2019/capex-of-4-pelindos-amounting-to-rp32-trillion.html (accessed 31 July 2020).

⁴⁸ Ministry of Transportation Regulation No. KP.2128/2018.

⁴⁹ Ministry of Transportation (2018_[71]), *Master Plan of National Railway*, http://djka.dephub.go.id/uploads/201908/KP_2128_TAHUN_2018.pdf, p. 44-45.

- ⁵⁰ See <http://ppid.dephub.go.id/index.php?page=profile&kategori=Visi-dan-Misi>.
- ⁵¹ Section 18, Presidential Regulation No. 40/2015.
- ⁵² See <https://oss.go.id/portal/>.
- ⁵³ See Ministry of Finance website, “Tasks and Functions”, www.kemenkeu.go.id/en/profile/task-and-functions.
- ⁵⁴ See Article 2, Regulation No. 41/2003.
- ⁵⁵ See Ministry of State-Owned Enterprises website, <https://bumn.go.id/about/profile>.
- ⁵⁶ See Co-ordinating Ministry for Economic Affairs website, “Kementerian Koordinator Bidang Perekonomian Republik Indonesia”, www.ekon.go.id/profil/1/tentang-kami.
- ⁵⁷ See http://eng.kppu.go.id/wp-content/uploads/2016/11/law_5_year_1999_.pdf.
- ⁵⁸ The guidelines take into account the provisions of the Competition Act relating to actions excluded from competition law (Article 50) and the role of SOES (Article 51).
- ⁵⁹ See Article 35 (e), Law No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, http://eng.kppu.go.id/wp-content/uploads/2016/11/law_5_year_1999_.pdf.
- ⁶⁰ See https://kppu.go.id/wp-content/uploads/2020/06/Siaran-Pers-No.-37_KPPU-PR_VI_2020.pdf.
- ⁶¹ See <https://bumn.go.id>.
- ⁶² Other relevant SOEs in this sector (excluding air freight) include ASDP Indonesia Ferry; Bhandha Ghara Reksa; Djakarta Lloyd; Kawasan Berikat Nusantara (KBN); Kawasan Industri Makassar (KIMA); Kawasan Industri Medan (KIM); Kawasan Industri Wijayakusuma; PDI Pulau Batam; Varuna Tirta Prakasya (VTP); and Pengangkutan Penumpang Djakarta (PPD).
- ⁶³ Reconfirmed by Ministry of Transportation Decree No. KP.8/AL.308/1989.
- ⁶⁴ See <https://asperindo.id/web.asperindo/aboutus?c=aboutus>.
- ⁶⁵ General freight transportation is defined in the legislation as transportation, which does not require special facilities. It includes freight of “a. general content; b. metal content; c. wood load; d. cargo loaded on pallets/package; e. vehicles with side curtain drapes; and f. flat glass”. General transportation is carried out by using “Freight Cars, Double-Sided Trains, and/or Patch Cars, which are operated on the road in accordance with the class of road being traversed and where logistic distribution centres and/or loading and unloading centres are available” (see Government Regulation No. 74/2014 concerning Road Transportation and Regulation of the Ministry of Transportation Regulation No. 60/2019 concerning the Operation of Freight Transportation with Motorised Vehicles on the Road).
- ⁶⁶ The legislation defines special freight transportation as the transportation of dangerous or harmless goods that require special facilities. See Ministry of Transportation Regulation No. 60/2019 concerning the Operation of Freight Transportation with Motorised Vehicles on the Road and Government Regulation No. 74/2014 concerning Road Transportation.

⁶⁷ Public-transport companies that wish to carry out special freight transportation require a licence from the Ministry of Transportation (Article 41) and must be an “Indonesian legal entity” (Article 42)”, such as an SOE, regionally owned entity, limited company or co-operative). The licence is valid for five years – Article 43(2) – and the “surveillance card” (placed in the vehicle) is valid for one year, renewable annually.

⁶⁸ Article 39, Head of the Indonesian National Police Chief Regulation No. 5/2012.

⁶⁹ Article 62, Ministry of Transportation Regulation No. 60/2019 concerning the Operation of Freight Transportation by Motorised Vehicles on the Road.

⁷⁰ Article 80, Ministry of Transportation Regulation No. 60/2019.

⁷¹ Article 61, Ministry of Transportation Regulation No. 60/2019.

⁷² Article 62, Ministry of Transportation Regulation No. 60/2019.

⁷³ This classification determines the penalty involved. Article 80, Ministry of Transportation Regulation No. 60/2019.

⁷⁴ See various regional regulations; for example, Palembang Mayoral Regulation No. 26/2019 concerning Arrangement of Freight Car Routes in Palembang City; Tangerang Regency Regulation No. 47/2018 concerning Restrictions on the Operating Time of Freight Cars on Roads in the Regency of Tangerang; Regional Regulation No. 17/2013 concerning Supervision, Control and Traffic of Road Transportation in Sukabumi Regency.

⁷⁵ An example of a truck ban issued for a specified period is Article 62, Ministry of Transportation Regulation No. 60/2019 and Ministry of Transportation Regulation No. 72/2019 concerning Regulation of Freight Vehicle Operational Traffic during Christmas 2019 and New Year 2020, which limited the operating hours and movement of trucks and heavy vehicles during the peak period. This regulation was issued in order to ensure security, safety and to maintain traffic flow on several national roads and toll roads, during the specified period.

⁷⁶ See Article 62, Ministry of Transportation Regulation No. 60/2019 and Article 4(3), Ministry of Transportation Regulation No. 133/2015 concerning Periodic Testing of Motorised Vehicles.

⁷⁷ See Article 4(5), Ministry of Transportation Regulation No. 133/2015.

⁷⁸ See Section 8, Law No. 17/2008. See also, Implementing Government Regulation No. 20/2010.

⁷⁹ See https://unctad.org/en/PublicationsLibrary/dtltlb2017d1_en.pdf.

⁸⁰ See Article 1, Law No. 17/2008 concerning Shipping.

⁸¹ See Article 28(3, 4, 5), Law No. 17/2008.

⁸² In Article 1, Law No. 17/2008, a “national sea transportation company” is defined as an Indonesian-registered sea transportation company that carries out sea transportation activities within the territorial waters of Indonesia and to ports abroad.

⁸³ In order to obtain a sea transportation business licence, a business entity is required to have an Indonesian-flagged vessel of a minimum gross tonnage (GT) of 175. As discussed in Section 4.1.3, individual Indonesian citizens or business entities can create joint-venture sea transportation companies

with foreign sea transportation companies or foreign legal entities or foreign nationals. Such companies must have at least one vessel of a minimum 5 000 GT captained by an Indonesian citizen.

⁸⁴ This includes China, United States and European Union countries. There is no such requirement for vessel ownership in, for example, France (Article L5411-1 and Article L5411-2, Code des transports) and Greece (Law No. 959/1979 on Shipping Companies).

⁸⁵ See Article 11, Law No. 17/2008.

⁸⁶ See Article 1(7), Law No. 17/2008.

⁸⁷ See Section 3, Ministry of Transportation Regulation No. 65/2019 concerning Operation and Management of Shipping Agencies.

⁸⁸ The OECD understands that this discretion was removed by Ministry of Transportation Regulation No. 92/2018 concerning Procedures and Requirements Giving Agreement for Use of Foreign Ships for Activities Not Including Passenger Transportation and/or Goods in Sea Transportation Activities.

⁸⁹ Article 3, Ministry of Trade Regulation No. 65/2020 concerning Amendments to Ministry of Trade Regulation No. 40/2020 concerning Provisions for the Use of National Sea Transportation and National Insurance for the Export and Import of Certain Goods.

⁹⁰ See Article 1 (10), Government Regulation 61/2009, which provides that a port authority is a government agency at a port and the authority authorised to carry out regulatory, control, and supervisory functions of commercially operated port activities. Article 1 (11) provides that a port-management unit is a government agency at the port with regulatory, control and supervisory functions over non-commercially operated port activities.

⁹¹ See, for example, Pelindo I: Decree of the Minister of Transportation No. KP.133/2011 concerning the Granting of Business Permits to PT Pelabuhan Indonesia I (Persero) as a Port Business Entity.

⁹² See Articles 1(28), Law No. 17/2008. See also, Articles 1, 25 and 26, Government Regulation No. 51/2015.

⁹³ See Articles 90 and 91, Law No. 17/2008.

⁹⁴ See also Article 69, Government Regulation No. 61/2009.

⁹⁵ See Article 91(3-4), Law No. 17/2008.

⁹⁶ See Article 30(2), Government Regulation No. 61/ 2015: “a. Minister for Port Business Entities in hub ports and spoke ports; b. the governor for the Port Business Entity in the regional feeder port; and c. regent/mayor for a Port Business Entity at the local feeder port.”

⁹⁷ See Article 1(30), Government Regulation No. 61/2009, <https://luk.staff.ugm.ac.id/atur/sda/PP61-2009Kepelabuhan.pdf>.

⁹⁸ See Article 37, Ministry of Transportation Regulation No. 15/2015.

⁹⁹ See Ministry of Transportation Regulation No. 152/2016 regarding Conducting the Business of Loading and Unloading Goods to and from Ships. See also, Ministry of Transportation Regulation No. PM89/2018

concerning Norms, Standards, Procedures, and Criteria of Business Licences through the Electronic System in the Sea Transportation Sector.

¹⁰⁰ See Article 2(1), Ministry of Transportation Regulation No. 152/2016.

¹⁰¹ See Section 7, Ministry of Transportation Regulation No. 152/2016.

¹⁰² The report to the Ministry must include the calculation of basic costs; the comparison of applicable rates with basic costs; and the quality of services provided. This can be supplemented with data rates applicable at other seaports both domestically and abroad, which offer similar types and levels of service; a review and justification of proposed tariff increases on service-user charges; and implementation of a service level agreement (SLA), service level guarantee (SLG), and port operational service performance standards. See Article 20(2), Regulation No. 121/2018.

¹⁰³ This includes the harbourmaster and port authority, or port operator unit; see Article 29(1), Ministry of Transportation Regulation No. 57/2015 concerning Pilotage and Towage.

¹⁰⁴ Article 30, Ministry of Transportation Regulation No. 57/2015.

¹⁰⁵ Article 34, Ministry of Transportation Regulation No. 57/2015.

¹⁰⁶ As specified in Article 29, Ministry of Transportation Regulation No. 57/2015.

¹⁰⁷ See Article 33, Ministry of Transportation Regulation No. 57/2015.

¹⁰⁸ See Article 33, Ministry of Transportation Regulation No. 57/2015.

¹⁰⁹ Articles 5 and 20, Ministry of Transportation Regulation No. 69/2015.

¹¹⁰ See Ministry of Transportation Regulation No. 72/2017 and Ministry of Transportation Regulation No. 121/2018 amendment.

¹¹¹ See Article 18, Law No. 72/2017. This includes “results of calculation of cost of goods, comparison of applicable rates with cost of services, quality of services provided” and can be supplemented with data rates applicable at seaports both domestically and abroad with a similar type and level of service, reviews and justifications of proposed tariff increases on service user charges, implementation of service-level agreements (SLA), service-level guarantees (SLG), and operational port-service performance standards; and minutes of agreements with service user associations.

¹¹² See Articles 1-3, Section 21, Ministry of Transportation Regulation No. 121/2018.

¹¹³ According to Article 9(3), Ministry of Transportation Regulation No. 121/2018, the tariffs for towage are calculated based on the gross tonnage (GT) per hour of the towed ship using the formula: ((GT × variable rate) + fixed rate).

¹¹⁴ See Ministry of Transportation Regulation No. KP.219/2010 concerning the Implementation of Public Railways Infrastructure Operations.

¹¹⁵ No legal obligation exists to grant third-party access and any terms and conditions of access are not provided for. See, for example, www.lexology.com/library/detail.aspx?g=137bd2d8-5202-4f1a-b081-d2e5f7ce0560.

¹¹⁶ See Ministry of Transportation Regulation No. 264/2019 concerning the Assignment of PT Kereta Api Indonesia (Persero) to Implement the Maintenance and Operation of State-Owned Railway Infrastructure for Fiscal Year 2020, http://jdih.dephub.go.id/assets/uudocs/kepmen/2019/KM_264_TAHUN_2019.pdf.

¹¹⁷ See Ministry of Transportation Decree No. KP.2008/2015 concerning the Operational Permit for Public Railway Facilities of PT. Kereta Api Indonesia (Persero), http://djka.dephub.go.id/uploads/201908/KP_208_Tahun_2015.pdf.

¹¹⁸ Article 154, Law No. 23/2007 concerning Railways.

¹¹⁹ Chapter 1, Article I(29), Ministry Regulation No. 49/2017 concerning Implementation and Management of Transportation Management Services.

¹²⁰ The applicant must apply for registration by submitting required documents. Warehouse owners are provided with a warehouse certificate as proof of registration.

¹²¹ For example, Balikpapan Mayoral Regulation No. 23/2018 concerning Amendment to Mayoral Regulation No. 18/2017 concerning Delegation of Licensing and Non-Licensing Services to DPMPT.

¹²² The implementing regulation is Ministry of Communications and Information Technology Regulation No. 7/2017 concerning Requirements and Procedures for Granting Permits in Courier Services (Regulation No.7/2017).

¹²³ See Ministry of Communications and Information Technology Regulation No. 7/2018 concerning Electronically Integrated Business Licensing Services in the Field of Communications and Information Technology.

¹²⁴ See Article 5, Regulation No. 7/2017.

¹²⁵ See Article 6, Regulation No. 7/2017.

¹²⁶ See Articles 17 and 19, Regulation No. 7/2017.

¹²⁷ See Articles 88(2), Regulation No. 7/2018.

¹²⁸ See Articles 33 and 34, Regulation No. 7/2017.

¹²⁹ See Article 12(2), Regulation No. 38 /009.

¹³⁰ See Ministry of Communications and Information Technology Regulation No. 01/Per/M.Kominfo/01/2012/2011 concerning Commercial Postal Service Rates Formula. Article 4 of the guidelines states how market players should calculate their tariffs. The obligation to determine the tariff based on the tariff formula and the fact that this is the published rate is outlined in Article 5(1). Article 5(2)(3) provides that the tariffs of a commercial post service cannot be lower than production costs.

¹³¹ See Ministry of Communications and Information Technology Regulation No. 29/2013, which regulates Universal Postal Service rates.

¹³² See OECD (2013_[87])(2013), *OECD Indicators of Products Market Regulation, Sector Regulation*, www.oecd.org/eco/reform/Database_NMR.xlsx. An updated version of these indicators is available at <https://www.oecd.org/economy/reform/OECD-PMR-Sector-Indicator-%20values-2018.xlsx>.

¹³³ See Case 27/76, *United Brands Company and United Brands Continental BV v Commission of the European Communities* (1978) ECR 207, paragraph 65; and Case 85/76, *Hoffmann-La Roche & Co. AG v Commission of the European Communities* (1979) ECR 461, paragraph 38.

¹³⁴ See Part 3 (Market Control), Article 20, Law No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, http://eng.kppu.go.id/wp-content/uploads/2016/11/law_5_yea_r_1999_.pdf.

¹³⁵ The European Court of Justice (ECJ) in the *Akzo Chemie BV v Commission of the European Communities* case distinguished between: 1) average total costs (ATC), and 2) average variable costs (AVC). ATC reflects the total cost of production of one unit of output, while AVC indicates the variable cost of production of one unit of output, calculated by dividing the variable costs (excluding the fixed costs) by the number of units produced. The ECJ held that predation is presumed when firms price products below AVC since in this case the undertaking is losing money by producing the product. When prices are above AVC, but below ATC, the conduct may be considered abusive only if the undertaking is intended to eliminate a competitor.

¹³⁶ See US Supreme Court decisions in *Brooke Group Ltd. v Brown & Williamson Tobacco Corp.*, 509 US 209 (1993) and *Weyerhaeuser Co. v Ross-Simmons Hardwood Lumber Co.*, 549 US 312 (2007).

¹³⁷ See Article 18 of Law No.38/2009.

¹³⁸ The OECD understands, following feedback from the General Directorate of Post and Telecommunication, that if amendments were made to the specified provision regarding the tariff formula for commercial postal services, the postal law and its implementing regulation would also need to be amended to reflect any change (see Law No. 38/2009 and Regulation No. 15/2013).

¹³⁹ Appendix III, Presidential Regulation No. 44/2016 concerning List of Business Fields Closed and Business Fields Open with Requirements in Capital Investment.

¹⁴⁰ Harbour facilities are defined as jetties, buildings and tugs located at cargo container terminals, liquid-bulk terminals, dry-bulk terminals, and roll-on-roll-off ferry terminals.

¹⁴¹ In Article 1, Government Regulation No. 8/2011, multimodal transportation is defined as the “transportation of goods using at least two ... different modes of transportation on the basis of one contract as a multimodal transport document from one ... place of receipt of goods by a transport business entity multimodal to a designated place for delivery of goods to recipients of multimodal transported goods”.

¹⁴² In the Ministry of Trade’s Regulation No.9/2014 concerning Warehouse Arrangement and Development, a warehouse owner is defined as “an individual or business entity that owns a warehouse both for self-management and for rental” (Article 1) and a warehouse manager as “a business actor that carries out business of storing goods intended for trading, both its own warehouse and another party’s warehouse”.

¹⁴³ This appears to exclude small packages as the foreign capital ownership restriction relates to Indonesian Standard Industrial Classification codes 53101, 53102 and 53202, and excludes code 53201 for package delivery.

¹⁴⁴ See Presidential Regulation No. 70/2017 concerning the Implementation of Public Service Obligations for Goods Transportation from and to Underdeveloped, Remote, Outermost, and Border Areas.

¹⁴⁵ See Regulation of the Minister of Transportation No. 10/2020 concerning Guidelines for Implementing Public Service Obligations for Transportation of Goods on Roads from and to Disadvantaged, Remote, Outermost, and Border Areas.

¹⁴⁶ See Decree of the Minister of Transportation No. 95/2020 concerning the Assignment of Public Companies (Perum) DAMRI to Carry out Public Service Obligations for Transportation of Goods on the Roads from and to Disadvantaged, Remote, Outermost, and Border Areas for 2020 Fiscal Year.

¹⁴⁷ Ministry of Transportation Decree No. 4/2020.

¹⁴⁸ Article 6 and 7, Ministry of Transportation Regulation No. 4/2018 concerning the Provision of Public Service Obligations for Sea Transportation. Article 7(1) states that the Directorate General evaluates the fleet operated by PELNI or other SOEs in the field of sea transportation and their capacity to carry out the assigned contract. Article 7(2) explains that if an SOE is unable to provide the service due to limitations of their fleet, other service providers can be selected “in accordance with the provisions of the legislation in the field of procurement of goods/services by the Government”.

¹⁴⁹ See Article 10, Regulation No. 4/2018.

¹⁵⁰ See Directorate General of Sea Transportation Decree No. KP.631/DJPL/2019 concerning the Third Amendment to the Decree of the Directorate General of Sea Transportation and No. UM.002/109/2/DJPL-18 concerning the Route Network for the Implementation of Sea Transportation of Goods in 2019.

¹⁵¹ For more information, www.soemath.com/public/index.php/en/article/read/373/Client.Update..New.Regulation.on.Public.Procurement.of.Goods.Services; <https://maritimindonesia.co.id/2020/01/tahun-2020-swasta-kelola-269-trayek-tol-laut>; <https://koran.tempo.co/read/ekonomi-dan-bisnis/446448/penentuan-rute-dan-operator-tol-laut-diperketat?>.

¹⁵² See Article 13, Ministry of Transportation Regulation No. 4/2018.

¹⁵³ The sea-toll programme was introduced in 2014 to support inter-island connectivity, decrease shipping costs and address the economic inequality between the eastern and western regions.

¹⁵⁴ See Article 70(1), Law No. 17/2008.

¹⁵⁵ Regulation (EC) No. 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos. 1191/69 and 1107/70, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1443518490147&uri=CELEX:32007R1370>.

¹⁵⁶ See EC (2019)^[86], *State Aid Control*, https://ec.europa.eu/competition/state_aid/overview/index_en.html

¹⁵⁷ This replaced Ministry of State-Owned Enterprises Regulation No. PER-05/MBU/2008, as amended by Regulation No. PER-15/MBU/2012.

¹⁵⁸ Indonesia Competition Commission, The ICC's Suggestions and Considerations related to SOE Synergy Policy on SOE's Goods and Services Procurement, 20 May 2014.

Annex A. Methodology

Stage 1: Mapping the sectors

The objective of Stage 1 of the project, which started in the second half of 2019, 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 Indonesian 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, 57 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 October 2019, the OECD team conducted a fact-finding mission to Jakarta 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 56 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 43 recommendations.

Annex B. Legislation screening by sector

Road freight transport

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
1	<p>Various regional regulations, for example, 1. Palembang Mayor Regulation Number 26 Year 2019 concerning Arrangement of Freight Car's Routes in Palembang City</p> <p>2. Tangerang Regent Regulation No. 47 of 2018 concerning Restrictions on the Operating Time of Freight Cars on Roads in the Regency of Tangerang</p> <p>3. Regional Regulation Number 17 of 2013 concerning Supervision, Control and Traffic of Road Transportation in Sukabumi Regency</p>	NA	The regional governments have the power to set conditions related to the use of vehicles in certain areas or between certain times (truck bans). An example of a temporary truck ban (applicable for a specific period) is set out in the line below.	Truck bans limit to certain times of day when trucks can operate on roads in Indonesia and so when they can provide their services. The bans may also reduce the use rate of staff and trucks, increasing the average cost of transport per freight unit.	<p>This provision is aimed at preserving the free-flow movement of traffic during peak hours, due to limited road capacity. The bans also limit pollution, addressing environmental concerns in the city.</p> <p>International comparison: Truck bans are common worldwide. Other ASEAN nations have them in place, including Thailand, Viet Nam, Myanmar and the Philippines. Some EU countries also use truck bans at certain hours. For instance, in France, most heavy goods vehicles over 7.5 tonnes are banned from the road every weekend from 10pm on Saturday to 10 pm on Sunday, with certain exceptions, such as for trucks carrying perishable goods or serving sporting events.</p>	No recommendation. Nevertheless, authorities could consider alternatives to truck bans such as congestion charges. If it is not possible to improve infrastructure capacity, the policy objective justifies truck bans. If necessary, express delivery within cities can be carried out with smaller vehicles.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
2	Ministry of Transportation Regulation Number 72/2019 Concerning Regulation of Freight Vehicle Operational Traffic During Christmas Of 2019 and New Year 2020	3	The government limits the operating hours and movement of trucks and heavy vehicles during peak periods such as during Christmas and New Year. The regulation cited is an example of this.	As above, noting the regulation is more limited in its application (applying to specified peak periods).	This regulation was issued in order to ensure security, safety and to maintain order in traffic flow on several national roads and toll roads, specifically during the Christmas period of 2019 and the new year of 2020.	No recommendation. Such bans are issued for a specified and limited period.
3	Regulation of the Head of the Indonesian National Police (Perkapolri) Number 5 of 2012 Regulation of the Ministry of Home Affairs Number 14 of 2019 Concerning the Basic Calculation of the Imposition of Motorized Vehicle Tax and Transfer Fee of Motorized Vehicles in 2019	39, 9 4,7	In Indonesia, vehicles are given different coloured number plates depending on their classification (Article 39 of Regulation 5 of 2012). In relation to commercial vehicles, there are two relevant categories: private vehicles (black number plate) and public motor vehicles (yellow number plate). The OECD understands that black number plates are assigned to private vehicles used for the transport of businesses' own goods while yellow plates are assigned to commercial vehicle such as trucks for hire (businesses engaged in cargo transportation). Different tax advantages are applied to vehicles according to the colour of their number plate (and hence vehicle category). Yellow plates that transport goods receive a 50% discount compared to black plated vehicles (Article 9). The regulation does not state a fixed rate for vehicles or categories of vehicles. It stipulates a formula, which is used to calculate the tax rate. The formula considers two elements: the selling value of the vehicle and a value for road damage /environmental pollution (Art. 4, 2019 regulation).	There is discrimination in the tax treatment of vehicles used to transport a businesses' own goods and vehicles used to transport third party goods. This provision may incentivise firms not to rely on own account transport, potentially distorting pricing signals in the choice between own and third party transport services and possibly increasing inefficiencies in the supply chain. However, this is only one of the different regulatory requirements these two categories are subject to. A number of regulations are also issued at local level and were not investigated during this prioritised competition assessment review. Therefore it is not possible to reach a conclusion on whether the differential tax treatment harms competition.	The OECD has not identified a policy maker's objective for the different treatment of these two categories of commercial vehicles. The OECD understands that the two categories of vehicles undergo different safety tests. Yellow plated vehicles are subject to a specific test called Uji-KIR. The OECD understands that generally private vehicles are taxed at a higher rate to encourage the use of public transportation vehicles. This has the aim of decreasing traffic congestion and pollution levels.	No recommendation.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
4	Ministry of Transportation Regulation No. 133 of 2015 concerning Periodical Testing of Motorized Vehicles Ministry of Transportation Regulation No. 60/2019.	4,5, 59 62	Commercial vehicles (including freight cars and trailers) are subject to periodic testing for road worthiness. The first test must be carried out within one year from the issuance of the motor vehicle registration certificate (Article 4(3) and then every 6 months (Article 4(5)). Public passenger cars and buses are also subject to these testing requirements.	Biannual inspections increase costs for market participants. During the inspection, a truck must spend time off the road in the inspection centre and so cannot be used. Frequent inspections are also an administrative burden. Over time, the requirement potentially reduces the number of participants in the market due to increased costs and could be a barrier to entry for new participants. Further, it is likely that the requirement for biannual instead of annual inspections is stricter than is necessary to ensure safety and consumer protection.	From the legislative provisions, the OECD understands that such frequent inspections are required in order to ensure the safety of vehicles, for environmental protection and because vehicles are involved in providing public services to the community (this is notably in relation to vehicles used for the transport of passengers). International Comparison The principal factors for determining the condition of goods vehicles are proper operation; kilometres covered; years in service; and regularity of technical inspections. Maintaining vehicles correctly becomes particularly important as they age and for those used on long international routes. In other ASEAN countries, annual inspections are common, such as in the Philippines, where they are linked to vehicle registrations, and in Singapore, where commercial vehicles are inspected annually or every 6 months if the vehicle is more than 10 years old. EU Directive 2014/45 of	In general, replace biannual with annual inspections. If necessary, biannual inspections can be maintained for trucks older than 10 years or an inspection system could be introduced, based upon the number of kilometres travelled. If there is a genuine risk of market participants cheating the system based on kilometres or otherwise, surprise inspections or heavier fines for such behaviour could be introduced as a deterrent.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
					3 April 2014 requires member states to carry out periodic safety and emission roadworthiness inspections. For vehicles over 3.5 tonnes, for example, vehicles must be inspected no more than one year after initial registration and then annually. International Transport Forum experience has shown that supplementing regular inspections with random on-road checks could be a helpful step to ensure roadworthiness, as well as the use of years in service criteria.	
5	Regulation of The Ministry of Transportation Number 60 of 2019 Concerning The Operation of Freight Transportation by Motorized Vehicles on The Road	61, 62- 63, 80, Appendix IV	<p>The legislation appears to provide for the regulation of tariffs for land freight transportation. The government has issued a guideline which states how market players should calculate their tariffs (Article 62) and notes that businesses will be subject to an administrative penalty for failing to follow the guidelines (Article 80).</p> <p>The OECD understands that freight transportation companies do set their own prices but that these are based on the 2019 guideline. It explains factors to include in determining the tariff include: 1) the weight and volume of cargo; 2) the type of cargo carried; 3) the time needed for and distance of the delivery (Article 61).</p>	Any requirement to follow the guidance when determining freight rates may limit companies' ability to set their own prices and to compete on price as they may not be able to undercut competitors' prices in order to gain market share, for instance if they are willing to price below cost.	The OECD has not identified a policy maker's objective for this provision. According to government authorities, the guidance is in place to help businesses; especially SMEs understand how to set prices.	Remove the administrative penalty for failing to follow the price setting guidelines. Service providers should be free to set their own prices.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
			<p>The freight rate is calculated by also considering fixed costs (vehicle depreciation, loan interest rates, licencing and administration, salaries of vehicle crews, and vehicle insurance) and variable costs (fuel consumption, oil/lubricant use, tyre use, vehicle maintenance and miscellaneous expenses) (Article 62).</p> <p>Public stakeholders have told the OECD that there is no price regulation and that the guideline provides non-binding guidance. The penalty provision in the legislation, however, suggests otherwise. Indeed, violation of the freight tariff guideline is considered a "moderate violation" (Article 80).</p>			
6	<p>Government Regulation No. 74/2014 Concerning Road Transportation</p> <p>Regulation of The Ministry of Transportation No. 60/2019 Concerning the Operation of Freight Transportation with Motorized Vehicles on the Road</p>	<p>78, 79, 81</p> <p>Definition (Article 2, 4, 5 and 9)</p> <p>Licence requirement (Article 41)</p> <p>Entity requirement (Article 42).</p>	<p>In Indonesia, freight transportation is classified into two categories: general freight transportation and special freight transportation. Under Government Regulation No. 74/2014 Concerning Road Transportation, Commercial vehicle operators require a licence for "special goods transportation". There is no general operating licence for commercial vehicles.</p> <p>General freight transportation is defined in the legislation as transportation, which does not require special facilities. It includes freight of "a. general content; b. metal content; c. wood load; d. cargo loaded on pallets / packaged; e. vehicles with side curtain drapes; and flat glass. General transportation is carried out by using " Freight Cars, Double-Sided Trains, and / or Patch Cars, which are operated on the road in accordance with the class of road being traversed and where logistic</p>	<p>The requirement to obtain a licence to carry out special freight transportation is a barrier to entry. It restricts entry into the market, limiting the number of suppliers and increasing entry costs for potential entrants.</p> <p>The OECD only analyses the licence requirements themselves and does not consider the licence requirements for special freight transportation to be restrictive.</p>	<p>The Road Department explained that there is no regulation of container trucks generally, only those wishing to carry special or dangerous goods require a licence.</p>	No recommendation.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
			<p>distribution centres and / or loading and unloading centres are available.</p> <p>The legislation defines special freight transportation as the transportation of dangerous goods or harmless goods, which require special facilities.</p> <p>Public transport companies that wish to carry out special freight transportation require a licence from the Ministry (Article 41) and must be an 'Indonesian legal entity (Article 42)' (SOE, regional owned entity, limited company or co-operative). The licence is valid for 5 years (Article 43(2) and the surveillance card (placed on the vehicle) is valid for 1 year and must be renewed every year.</p>			

Maritime freight transport and port operations

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policy makers' objective	Recommendation
1	<p>Law Number 17 Year 2008 regarding Shipping.</p> <p>Implementing regulation Government Regulation No 20/2010.</p>	8	<p>Section 8 of Law 17/2008 contains a general prohibition on foreign vessels to engage in domestic shipping (Cabotage). Cabotage is generally known as the movement of goods between ports within the same country.</p> <p>The cabotage provision provides that domestic sea freight transportation is to be carried out by national sea transport companies, which use Indonesian flagged vessels and which have an Indonesian crew.</p> <p>Foreign ships are only allowed to transport goods to and from Indonesian ports that are open to foreign trade and are not allowed to carry out freight transportation within Indonesia. Before entering Indonesia, a foreign vessel must arrange with domestic vessels if the goods it is carrying must be transported from international ports to other ports in Indonesia. There are no exceptions to this general principle for the transport of goods within Indonesia. Certain provisions do exist for specific activities.</p> <p>The regulation implements the cabotage policy of Indonesia. Article 23 highlights the limitations on foreign sea transportation companies. It explains that foreign sea transportation companies can only carry out sea transportation activities to and from ports or special terminals that are open for foreign trade. Companies that violate these</p>	<p>The prohibition on foreign vessels to transport domestic cargo between ports/places in Indonesia (domestically) prevents foreign firms from entering the national freight transportation market.</p> <p>According to authorities, there is no general exception to the cabotage rule. If there are no available domestic ships, the goods cannot be transported until a ship becomes available. This can delay transport of goods and increase the cost of goods in Indonesia.</p> <p>A special permit may only be obtained from the Ministry of Transportation for special vessels (i.e. oil tankers).</p>	<p>The legislation seeks to support and develop the Indonesian domestic shipping industry, promoting the ownership of vessels operated under the Indonesian flag. It seeks to promote domestic companies. These goals are stated in of Law 17/2008.</p> <p>A UNCTAD report explains that in the past, cabotage restrictions had a security objective but these days the policy objective is aimed more at 'building supply side capacity in shipping to derive revenue and employment benefits'.¹</p> <p>Other ASEAN countries have some exceptions to the general cabotage principle, notably if there are no domestic vessels available.</p>	<p>The OECD suggests one of three options:</p> <ol style="list-style-type: none"> 1) Open the domestic shipping market to foreign competition by lifting the ban on foreign vessels carrying domestic cargo between ports in Indonesia. This could possibly be based upon reciprocity arrangements, as a first step, between ASEAN member states. 2) Amend the cabotage law to allow foreign ships to carry their own cargo (and other foreign cargo) domestically, allowing ships to travel domestically to a port of final call after arriving at a first port of entry. This has been introduced as an amendment to the cabotage law in Indonesia to support import and exports. A further step would then be to allow foreign ships to carry other domestic cargo from the port of entry to the port of final call if the foreign vessel has capacity after unloading goods at the port of entry. 3) Allow certain categories of international ships

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policy-makers' objective	Recommendation
			provisions are subject to sanctions for not providing services at special ports or terminals.			(following ITF recommendations, for example) to operate in domestic shipping market on specific routes, where there is demand.
2	Law No. 17/2008 Regulation of the Ministry of Transportation Number 65 Year 2019 Concerning Operation and Management of Ship Agency	11	Foreign sea transportation companies are required, under Article 11 to appoint national companies as their agents. According to Article 1(7), the agent is a national sea transportation company or a national company specifically established for providing ship agency business services, which is appointed by foreign sea transportation companies to take care of the interests of its ship while it is in Indonesia. The OECD understands that ship agency operations and services are regulated by "Regulation of the Ministry of Transportation Number 65 Year 2019 Concerning Operation and Management of Ship Agency". This legislative instrument outlines who can provide ship agency services, their activities and their obligations. Services performed by the agency (as outlined in section 3 of the regulation) include, for example, reporting of the arrival and departure of vessels, submission of ship documents to the relevant authorities, maintaining port services required by the vessel, appointing loading and unloading companies for ship-owners and settling bills on behalf of the ship-owner. The tariffs for the Ship Agency services are agreed between the parties based on the tariff calculation guidelines set by a separate Ministerial Regulation (Article 29).	This requirement means that foreign sea transportation companies cannot represent themselves at ports in Indonesia. National sea transportation companies are not required to hire an agent and can carry out this work themselves. This may raise the operational costs of shipping companies by requiring them to hire a shipping agent whose services might not be necessary, for example, if they can be replaced by online processes. This creates an artificial demand for shipping agents.	The objective is likely to develop national shipping companies and reinforce the cabotage policy. In <i>OECD Competition Assessment Reviews: Portugal</i> , the OECD found that international and national shipping companies and carriers were required to hire a shipping agent to represent them in ports where they were not based; ² the OECD recommended for this barrier to be removed.	The use of agents should not be mandatory for foreign sea transportation companies. Foreign sea transportation companies should have the choice to carry out activities themselves or to appoint agents.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Polymakers' objective	Recommendation
3	<p>Government Regulation Number 22/2011 Concerning Amendment of Government Regulation Number 20 Of 2010 Concerning Transportation in Waters</p> <p>Ministry of Transportation Regulation 92/2018 Procedures and Requirements Giving Agreement For Use Of Foreign Ship For Activities Another That Does Not Include Passenger Activities And / Or Goods In Sea Transport Activities In The State</p> <p>Ministerial Regulation 46/2019</p>	206a	<p>If no domestic vessels are available, foreign vessels may carry out certain sea transportation activities within domestic waters if they obtain a permit from the Ministry of Transportation. Exceptions include: 1) oil and gas surveys; 2) drilling; 3) offshore construction; 4) offshore operations support; 5) dredging; and 6) salvage and underwater work. The rules for obtaining this permit are outlined in Ministerial Regulation 46/2019; under Article 10, a clear proposal of works to be undertaken must be submitted to the ministry and any permit is granted for a maximum of six months. During this process, the ministry also verifies that no Indonesian flagged vessel is available.</p>	<p>The cabotage exception is limited in its scope as foreign ships may only be allowed to operate in Indonesian waters if no domestic ship is available to provide the required specialised service. The exception privileges domestic firms and provides limited authorisation to foreign vessels to operate.</p> <p>Given that the Ministry must assure itself that there is no available Indonesian flagged vessel the application process would likely take time. Further, it may be difficult for applicants to foresee whether they will be granted a special permit due to the Ministry's discretion. Finally, the short 6-month permit may not incentivise foreign applicants to apply to operate in Indonesia. The uncertainty surrounding the granting of the special permit and the short time limit of the permit might discourage foreign players from applying for one.</p>	<p>The exception implements the cabotage policy of Indonesia. It supports the Indonesian domestic shipping industry, promoting the ownership of vessels operated under the Indonesian flag.</p> <p>International comparison</p> <p>Australia Under the Coastal Trading Act 2012 (Division 2), 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 subject to Ministerial discretion.</p> <p>While the use of foreign-flagged vessels is restricted, the licence is granted over a longer period (even though the number of voyages is restricted).</p>	<p>A more generous time exemption could be considered. In line with the recommendations to lift the cabotage restriction, this exception could be extended for regular freight transport so that foreign vessels could transport goods within Indonesia, when no domestic ships are available.</p>

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
4	Government Regulation Number 20/2010 Concerning Waters Transportation Ministry of Transportation Regulation 92/2018	25	<p>Transportation of imported goods belonging to the Government and / or regional government must use Indonesian-flagged vessels operated by national sea transportation companies.</p> <p>The OECD understands that previously when there were not enough Indonesian flagged vessels to carry out these transportation activities, the Ministry had discretion to allow national sea transportation companies to use foreign vessels. The OECD understands that this discretion was removed by Ministry of Transportation Regulation 92/2018 <i>Procedures And Requirements Giving Agreement For Use Of Foreign Ship For Activities Another That Does Not Include Passenger Activities And / Or Goods In Sea Transport Activities In The State.</i></p>	<p>The provision limits the government's ability to choose the best carrier. While both Indonesian-flagged vessels and foreign-flagged vessels are allowed to transport goods to and from Indonesia, this requirement discriminates against foreign shipping companies importing goods and restricts access to the domestic market. If there is insufficient competition between national sea transportation companies, these regulations may result in inefficient companies being kept in the market thanks solely to transport contracts awarded due to their Indonesian-flagged vessels. The provision may reduce incentives to compete and may lead to higher prices charged to government.</p>	<p>To support and develop the Indonesian shipping industry and to encourage vessels to register in Indonesia.</p>	<p>The OECD recommends one of two options.</p> <ol style="list-style-type: none"> 1) Consider removing this provision following a transition period to allow Indonesian operators that currently benefit from this provision to adjust to the new legal framework. 2) If a specific, exceptional need arises, consider ad hoc measures rather than introducing long-term competition-distorting policies.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
5	<p>Ministry of Trade Regulation No. 80/2018 concerning the Second Amendment of the Ministry of Trade</p> <p>Regulation Number 82/2017 concerning Provisions for the Use of Sea Transportation and National Insurance for the Export and Import of Certain Goods</p> <p>Ministry of Trade Regulation Number 65 of 2020 concerning Amendments to Ministry of Trade Regulation No. 40 of 2020 concerning Provisions for the Use of National Sea Transportation and National Insurance for the Export and Import of Certain Goods.</p>	<p>3,4,5,6,7</p> <p>3</p>	<p>Certain named exports (coal and crude palm oil) and imports (rice), which are transported by sea, as well as goods procured by the government must use national sea transportation companies and insurance if the carrying capacity is up to 10,000 DWT. Foreign-flagged vessels may only be used if Indonesian flagged vessels are not available or have limited availability or if the amount concerned is above 10,000 DWT. The requirement to use national insurance was enforced on 1 February 2019 and the obligation to use national shipping companies for the stated purposes was enforced on 1 May 2020</p>	<p>Both Indonesian flagged vessels and foreign flagged vessels are allowed to transport goods to/from Indonesia so this requirement discriminates against (and restricts access of) foreign shipping companies who transport specific goods.</p>	<p>To support and develop the Indonesian shipping industry and the Indonesian insurance industry. To encourage vessels to adopt the Indonesian flag.</p>	<p>The OECD recommends one of two options.</p> <ol style="list-style-type: none"> 1. Consider removing this provision following a transition period, to allow Indonesian operators that currently benefit from this provision to adjust to the new legal framework. 2. If a specific, exceptional need arises, consider ad hoc measures rather than introducing long-term competition-distorting policies.
6	<p>Law No. 17 of 2008 concerning Shipping</p>	<p>28,29</p>	<p>Only "national sea transportation companies" can operate in the Indonesian domestic shipping market. "National sea transportation companies" are defined as an Indonesian legal entity sea transportation company that carries out sea transportation activities within the territorial waters of Indonesia and / or and to ports abroad (Article 1).</p> <p>A company must obtain a "sea transportation business licence" in order to operate. This licence is available from the local, provincial or national authority</p>	<p>The licence requirement is a barrier to entry. The OECD does not assess whether licensing is justified, as it is outside the scope of the report.</p>	<p>The licence is likely in place for safety reasons.</p>	<p>No recommendation</p>

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			<p>depending on the anticipated area of operation.</p> <p>The applicant must satisfy a number of technical requirements. Restrictive requirements are set out below.</p> <p>A business may alternatively apply for a "special sea transportation licence". This is required for the operation of specialised vessels, for example, oil tankers</p>			
7	Law No. 17 of 2008 concerning Shipping	28,29	<p>Only "national sea transportation companies" can operate in the Indonesian domestic shipping market and must obtain a sea transportation business licence to operate. This licence is available from the local, provincial or national authority depending on the anticipated area of operation.</p> <p>The applicant must satisfy a number of technical requirements, including owning a seaworthy Indonesian flagged ship, tugboat or launch barge of a certain size.(at least GT 175 (one hundred seventy-five Gross Tonnage)).As discussed under horizontal restrictions, The size requirement is increased for joint ventures with foreign equity (minimum 5000 GT)</p>	<p>This licensing requirement may cause competition concerns.</p> <p>It appears that applicants must own their vessels. This prevents service providers who wish to lease rather than purchase vessels from obtaining a licence and significantly increases the cost of entry for shipping companies. The purchase of a vessel constitutes a significant financial liability, particularly when compared to chartering or leasing, and limits the potential number of operators able to compete in the market. This will decrease competitive pressure for established operators and favour larger potential entrants with the ability to purchase a vessel over smaller firms.</p>	<p>The OECD has not identified a policy objective behind vessel ownership.</p> <p><i>International comparison</i></p> <p>In those countries where the majority of the world's merchant fleet is based, shipping companies are not required to own a ship to operate.³ In fact, the proportion of global fleet capacity provided by lessees increased significantly in recent decades: from 16% in 1995 to 54% by the end of 2018, according to one industry source.⁴</p>	Remove the requirement to own a vessel from the licensing criteria.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
8	Law No. 17 of 2008 concerning Shipping	28,29	<p>Only "national sea transportation companies" can operate in the Indonesian domestic shipping market and must obtain a sea transportation business licence to operate. This licence is available from the local, provincial or national authority depending on the anticipated area of operation.</p> <p>The applicant must satisfy a number of technical requirements, notably submitting a business plan and shipping business plan.</p>	<p>This licensing requirement may cause competition concerns.</p> <p>The government authority judges who should enter the market by evaluating business and shipping business plans, even though it may not be best placed to assess new entrants' viability and reliability. This discretionary power may lead to the selection of less suitable new entrants. In addition, the submission of a business plan may result in higher costs of entry especially for smaller companies. The requirements may restrict the number of suppliers, reduce competition between suppliers, and result in higher prices or less desirable contract terms for customers.</p>	The requirement to submit a business plan likely aims to exercise control over who can enter the market and to ensure the efficiency of market players.	Remove the requirement to submit a business plan.
9	Ministerial Regulations No. 93 of 2013 on Transport and Maintenance of the Shipping Company	70	Joint ventures between foreign and domestic partners are allowed in the domestic shipping sector. An Indonesian citizen or Indonesian company may co-operate with a foreign shipping company, foreign company or foreign individual to create a shipping company in the form of a joint venture. This provision requires one expert with an "Associate Degree in the field of management, nautica or trade shipping technique (proved by a	Joint venture firms must employ certain experts, which are not required for domestic firms. This amounts to discrimination.	Indonesia likely has specific expert requirements for joint venture companies with foreign entities to ensure that an appropriate service is provided, which complies with Indonesian standards.	As only one expert is required, the burden is limited. The education requirement should however be clear (i.e. what constitutes an "authorised institution" should be listed in an available format).

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			certificate from an authorised institution). The authorised institution is not set out in the regulation but the OECD understands that there is more than a single institution. In practice the copy of certificate is legalised by each academy that issued the certificate.			
10	Regulation No. 93/2013 regarding Operational and Business of Sea Transportation	10,15	National sea transportation companies are subject to reporting requirements. They must report their ship's operational plans. This applies to ships operating on a permanent and regular route (Article 10) and those operating on a non-permanent and irregular route (Article 15).	These frequent (every 3 months) reporting requirements increase the cost of doing business (administrative burden), especially for smaller players.	Reporting obligations generally allow authorities to fulfil their monitoring tasks. Sea transportation companies may be required to report their route information for safety reasons.	No recommendation. Reporting requirements are likely in place for safety reasons.
11	Ministerial Regulation 57/2015 regarding Pilotage and Towage (Peraturan Menteri Perhubungan No. 57 Tahun 2015 tentang Pemanduan dan Penundaan Kapal)	29,30,31,33,34	<p>Pilotage is a service provided by a pilot with local knowledge and skills, which enable him or her to conduct the navigation and manoeuvring of the vessel in and approaching the harbour.⁵</p> <p>Pilotage and towage are regulated under Ministerial Regulation 57/2015. The requirement for pilotage is determined according to how difficult it is to navigate in a particular area (i.e. condition of waters and size of vessel).</p> <p>The Ministry determines where pilotage is mandatory.</p> <p>There is a monopoly on the provision of pilotage services as they are carried out by one service provider at a time. Pilotage services are carried out by the Port Authority, Harbourmaster and Port Authority, or Port Operator Unit (Article 29 (1)). The OECD understands that if these</p>	This provision gives a single entity a monopoly over piloting services, which restricts other economic operators' market access. The port authority has an exclusive right to provide the services. Exclusive rights are an entry barrier and may lead to monopoly pricing and other problems associated with the exercise of market power.	Law 17/2008 removed Pelindo's legislated monopoly on commercial ports, with regulatory and operational functions now divided between the port authority and the port operator. Under the current framework, the port operator is in charge of most port services, while pilotage and towing remain the responsibility of the port authority. It appears that only one operator can provide pilotage services at a time in a port and the provision of pilotage services can only be delegated if the port authority or equivalent is not currently providing the service.	The legislation should allow the provision of pilotage services by to private companies at any time, not only when the nominated entities are unable provide the services. There should be an appropriate legal framework so that piloting services can be tendered on fair and non-discriminatory terms to guarantee competition in the market. This would not affect the requirements for pilots and so continue ensuring local knowledge and quality standards to guarantee safety.

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			<p>parties are not currently providing pilotage services in compulsory pilotage areas, the provision of these services can be delegated to a port business entity that meets the requirements (Article 30). The ministry determines whether pilotage and towage operations can be delegated (Article 34).</p> <p>In order to be a Pilotage and Towage Service Provider the relevant entity (Port authority, Harbour master and port authority, or Port Management Unit) must meet certain criteria as specified in Article 29. They must provide the qualified pilots, equipment, and infrastructure, meet performance standards, report piloting activities on a monthly basis and propose tariffs in accordance with the legislation.</p> <p>Business entities providing piloting services must meet administrative or technical requirements (Article 33). Notable requirements include the requirement to have 'the results of evaluation and research by the Director General on the feasibility of the business entity to carry out pilotage and towage services'. In terms of technical requirements, the entity must have at least 15 pilots and a tugboat and pilot ship of a certain size.</p> <p>Amongst other requirements, the port business entity must submit a letter of application and the Port Authority or other relevant entity submits a letter of recommendation.</p>		<p><i>International comparison</i></p> <p>Data collected by the European Sea Ports Organisation (ESPO) for its 2016 'Fact-finding report' from 86 port authorities in 19 EU Member States, Norway and Iceland, showed that only around 19% of piloting services (provided inside the port) were directly provided by port authorities. The remaining 81% of piloting services were provided through private operators (47%), government (22%) and other providers (11%).</p>	

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12	Ministerial Regulation 57/2015 regarding Pilotage and Towage (Peraturan Menteri Perhubungan No. 57 Tahun 2015 tentang Pemanduan dan Penundaan Kapal)	11	<p>Pilotage services must be carried out by a pilot. The pilot must be familiar with local waters and be assigned by the "pilot supervisor". Pilots must meet the following requirements:</p> <ul style="list-style-type: none"> a. has passed education and training to increase expertise and skills to guide ships as evidenced by a pilot certificate issued by the Director General b. holds a valid endorsement certificate issued by the Director General c. has a Pilot Identity Card issued by the Director General d. have a guiding pocket book e. understand the systems and procedures or procedures of local guiding; f. be under 60 years of age unless approval is obtained g. be physically and mentally healthy, as evidenced by health information from a government hospital appointed by the Director General through periodic medical check-ups h. report piloting service activities every month to the local pilot supervisor based on his pocket book. <p>No further information about the legislative requirements are stated in the legislation.</p>	Unclear requirements could discourage market entry.	Regulation of the pilotage profession is likely in place to ensure safety.	Ensure details of all requirements are clear and publicly available.
13	<p>Ministry of Transportation Regulation 57/2015 on Pilotage and towage</p> <p>Price setting mechanisms</p> <p>Ministry of Transportation Regulation No. 72/2017 and Ministry of Transportation Regulation No. 121/2018 amendment</p>	43	<p>Tariffs for pilotage services are determined by different regulations or mechanisms depending on who is providing the service. The OECD understands that a proportion of revenue for pilotage and towage services provided at commercial and non-commercial ports is classified as non-tax state revenue (MOT regulation 69/2015, Articles 5 and 20). The price setting mechanisms are outlined in MOT Regulation 72 of 2017 and in the</p>	Operators obliged to follow the tariffs set by the ministry are limited in their ability to set their own prices and so compete on price; (i.e. they will be unable to undercut rivals on price in order to gain market share). The percentage of fees that must be paid to the government may be a real	Pilotage services are often provided by a single service provider and so price regulation is often used to prevent excessive prices.	The government framework for setting pilotage tariffs should only allow the setting of maximum prices and not fixed prices, which do not allow for freedom in setting tariffs. This would allow negotiations on price discounts between pilots and ships. The requirement to pay a percentage of the

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			<p>amendment MOT Regulation 121 of 2018. Here, the government has established a port service tariff framework (Article 7, Regulation 72/2017), time structure and unit of measure for Piloting and towage services (Ministry Regulation 121/2018 article 9), tariff classes (Ministry Regulation 72 article 11), tariff currencies of port services (Ministry Regulation 72 article 12). The mechanism for setting the Piloting and towage tariffs for each type of port is in accordance with the type, structure, and class of tariffs stipulated in Ministerial Regulation 72/2017 and 121/2018.</p> <p>The OECD understands that for:</p> <ul style="list-style-type: none"> a. Ports managed by Port authorities, tariffs are determined by Government Regulations. b. Ports managed by the Port Operator Unit established by the government, tariffs are determined by Government Regulation. c. Ports managed by Port Operator Units established by the provincial government, tariffs are determined by provincial regional regulations. d. Ports managed by Port Operator Units established by regency / city governments, tariffs are determined by regency / city regional regulations. e. The port managed by Port Business Entities (PBE) determine their own tariffs based on the structure and classification determined by the Ministry. <p>For ports served by one PBE, consultation must be undertaken with the MOT before the PBE sets the tariff (72/2017, Article 17). the PBE prepares a tariff proposal</p>	<p>or perceived conflict of interest as the government is involved in the tariff-setting process.</p>		<p>set pilotage fees to the government should be removed.</p>

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			<p>supported by data by considering factors set out in the legislation including the public-service nature of services, improvement of service quality, interests of service users, costs of return, and business development costs.⁶ If there is more than one PBE operating in a port, the PBE can set their tariffs but must still report the tariffs to the Ministry (121/2018, Article 4). There are only certain scenarios where the pilotage (and towage) tariffs can be determined by the PBE based on agreement with the service user. According to Article 21 of Regulation No 121/2018, this is only possible in waters where pilotage is not mandatory and where there is demand for the services and additionally for ships that are, for example, damaged and so require special services. This agreement can be for a maximum of six months.⁷ In addition, PBEs or specific terminals that manage and operate pilotage, must pay a percentage of all fees from pilotage and towage to the government as non-tax government income.</p> <p>Article 9(2) of Regulation No. 121/2018 sets out the tariff formula for pilotage. It is calculated based on the size of the ship being piloted in gross tonnage (GT) *with the units of GT per movement associated with piloting distance and level of risk with the formula: ((GT x variable rate) + fixed rate) x movement.⁸</p>			

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14	Ministry of Transportation Regulation 57/2015 on Pilotage and towage	44	It appears that certain categories of vessels (notably vessels which are not used for profit motives) are excluded from the obligation to pay pilotage fees, including public or private ships used for government duties. The OECD is not aware of whether or not this includes ships used to carry freight procured by the government, for example.	If this advantage were provided to, vessels which are in competition with third party providers this would amount to discrimination. This is also a cost that pilotage companies must consider.	The policy objective is likely to support vessels operating for motives other than for profit.	No recommendation if this exemption only applies to ships operating for not for profit motives and which are not in competition with private market participants. Otherwise, the exemption should be removed.
15	Licence requirement for PBE: Government Regulation No. 61/ 2015 Concession agreement between Port Operator and Port Business Entity: Government Regulation 61/2009 on Port Ministry of Transportation Regulation 15/2015, as amended by Ministry of Transportation Regulation 164/2015. Ministry of Transportation Regulation No. PM89/2018 concerning Norms, Standards, Procedures, and Criteria of Business Licences through the Electronic System in the Sea Transportation Sector.	30 4	Port Business Entities are regulated by Government Regulation No. 61/ 2015. In order to become a Port Business Entity, a licence must be obtained from the relevant authority (see Article 30(2) – a. Ministry for Port Business Entities in hub ports and spoke ports; b. the governor for the Port Business Entity in the regional feeder port; and c. regent / mayor for a Port Business Entity at the local feeder port). This report does not assess whether licensing is justified but considers the licensing requirements. The company may be an SOE, a regionally owned entity or a limited company established in the port sector. Along with other usual administrative requirements, applicants must provide financial statements of the company for at least 1 year (the last year) audited by a registered public accounting firm and their proposed port activity plan. Technical requirements for becoming a PBE include: 1) controlling and/or operating facilities and infrastructure in the port sector, including but not limited to land and equipment 2) providing proof of having at least two permanent employees holding port	The technical requirements to become a PBE favour incumbents (such as the requirement to control or operate facilities and infrastructure; to have professional experience in providing port services and service activities related to ports). Further, the criteria are unclear; for example, “experience” in port services is required, but no specific details are provided. These requirements may make it more difficult for new entrants to enter the market and leave too much discretion to the authorities when granting licences. As a result, these requirements may lead to lower entry, less competition, and worse outcomes for port users.	The administrative and technical requirements are likely in place to ensure efficient, viable and safe PBE. Countries often have professional-experience requirements for professionals in the maritime industry. The OECD made several recommendations in relation to experience requirements in OECD Competition Assessment Reviews: Tunisia, to promote more competition in the sector.	The OECD has two recommendations. 1) Revise technical requirements to ensure a level playing field and so allow new entrants. For instance, the experience requirement may not be necessary if the applicant satisfies the requirement on professional qualifications. 2) Issue guidelines to provide in-depth guidance on administrative and technical requirements.

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			<p>certificates issued by the director general or those recognised by the director general</p> <p>3) having a description of experience in providing port services and/or service activities related to port services</p> <p>Further provisions regarding the requirements for granting a Port Business Entity permit at a regional feeder port and a local feeder port are regulated by the Regional Government as authorised.</p> <p>The port business entity licence is valid for 5 years. In order to carry out port services, the port business entity must then obtain a concession from the port authority/operator.</p> <p>The OECD understands that the concession is granted by the Port Operator through an auction mechanism or an assignment /appointment mechanism (Article 37 of MOT Regulation 15/2015). The category of assignment/appointment is given for matters regulated in Article 28 Ministry of Transportation Regulation 166/21015.</p> <p>The OECD understands that the duration of the concession is based on the agreement of the concession provider (port operator) and concession recipient (port business entity), taking into consideration, for example, return on investment. The OECD understands that the wording used for the factors to consider when determining the duration of the concession is vague.</p>			

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policy-makers' objective	Recommendation
16	<p>Ministry of Transportation Regulation No. 152/2016 regarding Freight Loading and Unloading Operational (Cargo Handling)</p> <p>Ministry of Transportation Regulation No. PM89/2018 concerning Norms, Standards, Procedures, and Criteria of Business Licences through the Electronic System in the Sea Transportation Sector.</p>	7	<p>Cargo handlers are required to have a 'loading and unloading' business licence. 'Loading and unloading business activities' areas defined as including 'activities to load and unload freight to and from ships at the ports, including stevedoring, cargodoring; and receiving/delivery (See Article 2(1) Ministry of Transportation Regulation No. 152/2016). The licence is granted by the Governor at the port location where the activity is carried out. Port business entities may carry out cargo handling activities without this specific licence, as cargo handling is one of the activities allowed under their permit.</p> <p>The OECD understands that PELINDO, as a port business entity, does not need to have a specific licence for cargo handling, as cargo handling is one of the services it provides as a port business entity.</p> <p>The OECD understands that the Cargo Handling Association (APBM) lodged a complaint to the MOT explaining that PELINDO should not be carrying out loading and unloading services under its port business entity permit (see Article 90 (3)(e) of Law 17/2008) but it was found that PELINDO had authority to carry out these services under its PBE permit.</p> <p>The OECD understands that historically, PBEs only provided cargo handling activities in specialised ports while cargo handling companies provided the services in multipurpose ports but that now there is competition between the two.</p>	<p>This report does not assess whether or not licensing is justified. While the licence requirement is provided for in legislation, the specific conditions for obtaining the licence are unclear. If the decision maker has any discretion to grant a licence or if certain providers are excluded from the licence requirement, this could lead to discrimination. Moreover, transparency about licence criteria can help potential new entrants by reducing regulatory and investment uncertainty, as well as by lowering the costs to obtain information on the criteria.</p>	<p>The licence requirement is likely in place to uphold safety standards and to control entry into the market.</p>	<p>Introduce guidelines or regulations that clearly outline the licence criteria in order to guide decision makers and so licences can be granted if specified criteria are satisfied. All operators should be subject to the same licensing requirements. The recommendations could be implemented in the context of the review of the regulation on cargo handling (No. 152/2016) that the OECD understands the government is planning to launch.</p>

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17	Ministry of Transportation Regulation No. 152/2016 regarding Freight Loading and Unloading Operational (Cargo Handling)	7	<p>Cargo handlers are required to have a 'loading and unloading' business license. 'Loading and unloading business activities' areas defined as including 'activities to load and unload freight to and from ships at the ports, including stevedoring, cargodoring; and receiving/delivery (See Article 2(1) Ministry of Transportation Regulation No. 152/2016). The licence shall be granted by the Governor at the port location where the activity is carried out.</p> <p>In order to obtain a cargo handling licence, certain administrative and technical requirements must be satisfied. Two notable administrative requirements include "having experts with nautical expert qualifications or commercial shipping management experts" and "a letter of recommendation or written opinion from the Port Authority or the local Port Operator Unit on the balance of supply and demand for loading and unloading business activities".</p> <p>Specific details of the qualification requirements are set out in section 6 -</p> <p>a. for companies that will carry out activities at the main port, at least 1 (one) person with qualifications of Level II Nautical Expert or Diploma of Commercial Commerce Management Expertise with Diploma III with a minimum of 3 (three) years working experience;</p> <p>b. for companies that will carry out activities at the hub port, at least 1 (one) person with a qualification of Level III Nautical Expert or Diploma of Commercial Commerce Management Expert with Diploma III with a minimum work experience of 1 (one) year;</p>	The specific qualification requirements create barriers to entry.	The specific qualification requirement is likely in place to uphold safety standards and a standard quality of service is provided in Indonesian ports.	No recommendation.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
			<p>and c. for companies that will carry out activities at the feeder port, at least 1 (one) person with a Level IV Nautical Expert qualification or a Diploma III Commercial Commerce Management Expert with a minimum of 1 (one) year work experience.</p> <p>Technical requirements include equipment requirements: i.e. having loading and unloading equipment necessary for the services to be provided at the specific port.</p>			
18	Ministry of Transportation Regulation No. 152/2016 regarding Freight Loading and Unloading Operational (Cargo Handling)	7	<p>In order to obtain a cargo handling licence, certain administrative and technical requirements must be satisfied. One is the requirement to have a "a letter of recommendation or written opinion from the Port Authority or the local Port Operator Unit on the balance of supply and demand for loading and unloading business activities".</p>	<p>The requirement for a letter of recommendation favours certain market participants, notably incumbents, and could effectively be a way of restricting entry, as the authorities make an assessment of whether further entry is needed, based upon supply and demand. In the absence of further entry (or a threat of entry), incumbents are effectively protected from competition and so have less incentive to be efficient, to the detriment of cargo-handler users. There may also be actual or perceived conflicts of interest as the recommendation appears to be at the discretion of the authority.</p>	<p>This provision is likely in place to ensure the port authority or operating unit has full control over the services offered within its port and to monitor supply and demand. Stakeholders have explained that the market has limited capacity and that too many players could result in unhealthy competition and unfair business practices.</p>	<p>Remove the requirement to obtain this recommendation on the balance of supply and demand.</p>

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
19	Law No. 17 of 2008 concerning Shipping Government Regulation 61/2009 on port Ministry Regulation Number 121/2018 revising Ministry Regulation 72/2017 about Type, Structure, Class and Mechanism of Ports Charges	110 147 18,20	Under Law 17/2008, the fixed rates for the use of water, land and port services that the Port Authority manages are established by it after consultation with the Ministry (Article 110). For ports where services are provided by PBEs, Government Regulation 61/2009 concerning Port Affairs provides that the tariffs are based upon a structure set by the Ministry of Transportation (Article 147). The OECD understands that the ministry sets a formula that must be followed by the port business entity and that the tariffs are then formally set by the port's business board. The same tariff mechanism applies to ports services such as cargo handling and pilotage. The OECD understands that the relevant service provider and service-user association negotiate before the tariff is presented to the ministry, and tariffs are then fixed. Consultation with the ministry is unnecessary where more than one PBE is providing a given service in a port and when pilotage and towage services are provided by more than one PBE.	If charges are fixed, firms cannot decide prices freely. This restricts competition as service providers have no incentive (or ability) to compete on price and this may lead to higher prices.	Port charges and service tariffs are likely set by the Ministry or Port Authority because competition is limited.	The government framework for setting port charges and service tariffs should only allow the setting of maximum prices and not fixed prices. Rates and the methodology used to calculate charges should be published.
20	Law No. 17 of 2008 concerning Shipping	28(3)(4)	Operators must obtain a business licence in order to carry out river and lake transport. This licence is available from the local, provincial or national authority depending on the anticipated area of operation. The OECD has not identified any restrictive licensing	The licence requirement is a barrier to entry.	This competition assessment does not assess the need for operator licence itself. The licence requirement is likely in place as a way to ensure safety standards	No recommendation

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
21	Law No. 17 of 2008 concerning Shipping	28(4)(5)	<p>Operators must obtain a business licence in order to carry out transport services by ferry.</p> <p>This licence is available from the local, provincial or national authority depending on the anticipated area of operation.</p> <p>The OECD has not identified any restrictive licensing provisions.</p>	The licence requirement is a barrier to entry.	This competition assessment does not assess the need for operator licence itself. The licence requirement is likely in place as a way to ensure safety standards	No recommendation

Notes:

1. See UNCTAD (2017^[72]), "Rethinking maritime cabotage for improved connectivity", https://unctad.org/en/PublicationsLibrary/dtltb2017d1_en.pdf.
2. See (OECD, 2018, pp. 226-227^[6]).
3. This includes China, United States and European Union countries. There is no such requirement for vessel ownership in, for example, France (Article L5411-1 and Article L5411-2, Code des transports) and Greece (Law No. 959/1979 on Shipping Companies).
4. See Global Ship Lease (2019^[74]), *Our Industry*, www.globalshiplease.com/industry-overview (accessed 20 August 2020).
5. See (OECD, 2011).
6. See European Sea Ports Organisation (2016^[77]), *Trends in EU Ports Governance*, www.espo.be/media/espopublications/Trends_in_EU_ports_gouvernance_2016_FINAL_VERSION.pdf.
7. See Article 18, Law No. 72/2017. This includes "results of calculation of cost of goods, comparison of applicable rates with cost of services, quality of services provided" and can be supplemented with data rates applicable at seaports both domestically and abroad with a similar type and level of service, reviews and justifications of proposed tariff increases on service user charges, implementation of service-level agreements (SLA), service-level guarantees (SLG), and operational port-service performance standards; and minutes of agreements with service user associations.
8. See Articles 1-3, Section 21, Ministry of Transportation Regulation No. 121/2018.

Freight transport by rail

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
1	<p>Law of The Republic Of Indonesia Number 23 Of 2007 Concerning Railway</p> <p>Ministry of Transportation Decree No. KP. 219 of 2010 concerning the Implementation of Public Railways Infrastructure Operations</p>	25, 31, 155	<p>The OECD understands that Law 23/2007 provided for liberalisation of the railway market and that specified steps were required to be undertaken within a 3-year period after the enactment of the law. This did not occur and in 2010, the government enacted a Decree which returned the management, maintenance and operation of the railway infrastructure to PT. Kereta Api Indonesia (KAI) (see, Ministry of Transportation Decree No. KP. 219 of 2010 concerning the Implementation of Public Railways Infrastructure Operation).</p> <p>KAI is the sole operator for railroad infrastructure and facilities. The OECD understands that its mandate is extended every year through a Ministry of Transportation decree¹ and its operational licence renewed every five years.² In addition, KAI provides downstream freight services. Other companies wishing to offer rail freight service may enter the market, but only if they build their own infrastructure and satisfy legal requirements.</p>	<p>The OECD has not identified a policy objective for this grant other than that KAI was the existing operator and that the relevant legislation was not implemented in time.</p> <p>See Box 5.1 for an overview of separation models in OECD countries.</p>	<p>As a vertically integrated company, being both the operator of the rail network and a freight transport service provider, KAI may have an incentive to foreclose competitors and to favour its own transport operator, which may result in harm to competition. It may do this, for instance, by preventing potential rail transport service providers from using its railway infrastructure. In a less evidently restrictive manner, KAI may charge unfair prices for essential services such as allocation of tracks or access to energy supply. To address these concerns, several models exist in OECD countries concerning separation of infrastructure and cargo transport, spanning from full ownership separation to accounting separation.</p>	<p>The OECD has three recommendations.</p> <ol style="list-style-type: none"> 1) Implement the planned reform of the railway sector. 2) Consider separating ownership and management of infrastructure from rail freight transport service operations, or introduce separate accounting for infrastructure and freight transport services. 3) Ensure third-party access, as discussed below
2	Law of The Republic Of Indonesia Number 23 Of 2007 Concerning Railway	NA	<p>Although not explicitly stated in the legislation, stakeholders have confirmed that a business entity is able to apply for a licence from the Directorate General of Railways to operate rail freight transport services. Under Law No. 23/2007, a new entrant may use existing tracks by co-operating with the infrastructure operator or by building its own track(s) that connect with, intersect with or separate existing tracks.</p>	<p>The legislation allows for third parties to either build their own infrastructure or to negotiate with KAI for the use of existing railway tracks and other facilities. The intention of the policymaker appear to have been to allow new entry.</p> <p>International comparison In order to make entry viable, a</p>	<p>KAI has an exclusive right to operate and control the existing railways infrastructure, but has no obligation to allow access to infrastructure. This prevents potential market players from accessing the infrastructure and so limits market access. According to stakeholders, it may be difficult to negotiate with KAI to allow access to the network on a</p>	<p>The OECD has two recommendations.</p> <p>Impose a requirement in the law to grant third-party access in such a way as to ensure access on transparent and non-discriminatory terms.</p> <p>Establish a pro-competitive regulatory framework, such as granting the regulator</p>

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
			<p>The OECD understands that a railway service provider may apply to build its own railway infrastructure to the Directorate General of Railways, and governors and mayors, depending on the geographical scope of the rail infrastructure; the authorities must consider the complete application. The OECD understands that such a proposal should be in line with the National Railway Master Plan (established by Ministry of Transportation Regulation No. 2128/2018), but that a proposal to build rail infrastructure outside the master plan can be considered if stated requirements are met.</p> <p>New entrants do have a right to build infrastructure, but as this is extremely expensive, potential entrants would clearly prefer to use existing tracks. The OECD understands, however, that it can be difficult for new entrants to access existing tracks as KAI controls the infrastructure and there is no clear separation of assets.</p> <p>The legislation provides for a guideline for calculating the costs for the use of railway infrastructure, but the criteria are broad (Article 154, Law 23/2007). This is set out in Regulation No. 62/2013 on Cost Calculation Guidelines for the Use of State Railway Infrastructure.</p>	<p>number of jurisdictions around the world impose a requirement on the infrastructure provider to allow third-party access on regulated terms. For instance, in the UK, track access is regulated under the Railways Act 1993. Operators must have a contract with Network Rail, which owns and manages the majority of the railway network in the UK. These contracts are approved by a regulator, the Office of Rail and Road.³</p>	<p>voluntary basis. This will deter new entry as the alternative option – constructing own infrastructure – may not be viable.</p>	<p>the power to intervene should negotiations between the incumbent and third parties fail.</p>
3	Ministry of Transportation Regulation No. 34/2011 on the Method of Calculating and Determining the Tariff of Passenger and Freight by Train	12	<p>The operator of freight services must publish its tariffs for the transportation of freight.</p>	<p>The OECD understands that rates are published as the authority supervises the tariffs.</p> <p>International comparison</p> <p>In Italy, the incumbent publishes indicative prices but these are subject to negotiation.⁴</p>	<p>If there was competition in the rail freight transportation market, this publication requirement may lead to the co-ordination of prices of market players as publication makes it easy to monitor competitors' prices. The number of competitors would likely be low and transparency can facilitate co-ordination.</p>	<p>Publication of prices should not apply to services provided by third parties. When the market for rail freight services sector becomes competitive, there should be no publication of prices, also for KAI.</p>

Notes:

1. See Ministry of Transportation Regulation No. 264/2019 concerning the Assignment of PT Kereta Api Indonesia (Persero) to Implement the Maintenance and Operation of State-Owned Railway Infrastructure for Fiscal Year 2020, http://jdih.dephub.go.id/assets/uudocs/kepmen/2019/KM_264_TAHUN_2019.pdf.
2. See Ministry of Transportation Decree No. KP.2008/2015 concerning the Operational Permit for Public Railway Facilities of PT. Kereta Api Indonesia (Persero), http://djka.dephub.go.id/uploads/201908/KP_208_Tahun_2015.pdf.
3. See Butcher, L. (2016^[78]), "Rail freight", House of Commons Library Briefing Paper, <https://researchbriefings.files.parliament.uk/documents/SN00151/SN00151.pdf>.
4. According to Article 9(3), Ministry of Transportation Regulation No. 121/2018, the tariffs for towage are calculated based on the gross tonnage (GT) per hour of the towed ship using the formula: ((GT × variable rate) + fixed rate).

Freight forwarding

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
1	Ministry Regulation No. 49 of 2017 concerning Implementation and Management of Transportation Management Services	8	<p>Transportation management service companies' with joint venture and foreign investment status (with foreign equity) must meet additional requirements including minimum capital requirements and minimum education requirements.</p> <p>The OECD understands that 'transportation management service companies' means companies providing freight forwarding services. Freight forwarding services are defined in Indonesia to include 'all activities required for the delivery and receipt of goods via land, train, sea and /or air transportation' (see Ministry regulation 49/2007 article 1(15)).</p> <p><i>Capital requirements</i> Such companies are required to have an investment licence issued by the Indonesian Investment Co-ordinating Board with an investment of at least USD 4 million and at least 25% of the authorised capital must be placed and fully paid with proof of a legal or audited deposit by a public accounting firm. This means that the capital requirement is USD 1 million, a requirement not imposed on local companies, which are instead required to have at least USD 77 000 for a 25% capital requirement of USD 19 250.</p>	<p>The purpose of this provision is likely to be the protection of national operators against international competition. It is unclear why Indonesia has such high capital requirements for freight-forwarding companies and why the minimum capital requirements change depending on whether the company is part of a joint venture or has foreign equity.</p> <p><i>International Comparison</i></p> <p>Greece and France, for example, require no minimum capital requirement for freight-forwarding companies. Instead, legislators commonly impose minimum professional-insurance coverage. In <i>OECD Competition Assessment Reviews: Portugal</i>, the OECD recommended that Portuguese authorities remove minimum capital requirements imposed on freight forwarders in order to promote market entry and operational efficiency (OECD, 2018). By lifting these financial criteria, market players can better adapt and reinvest their capital, increasing their competitiveness and promoting lower prices for consumers. Box 6.1 contains a discussion of international experience on minimum capital requirements.</p>	<p>The additional requirements imposed on selective categories of freight forwarding companies discriminates against joint ventures and firms with foreign equity. Foreign firms face higher capital requirements and so a higher barrier to entry than domestic firms, which amounts to discrimination. The high minimum capital requirement raises the cost of entry in the market, discouraging potential entrants (especially smaller foreign firms), which may reduce the number of market participants over time.</p>	<p>The OECD recommends the removal of the additional capital requirements for freight-forwarding businesses with joint venture and investment status and recommends that legislators apply the general regime for commercial companies or to align the requirements with those of domestic investors. As an alternative to capital requirements, an insurance requirement or bank guarantee could be introduced.</p>

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policy-makers' objective	Recommendation
				The 2020 <i>OECD Investment Policy Reviews: Indonesia</i> recommended the elimination of discriminatory capital requirements against foreign direct investors in horizontal regulations, including, notably, to "align the general minimum capital requirements for foreign –invested companies with capital requirements for domestic investors". ¹		
2	Ministry Regulation No. 49 of 2017 concerning Implementation and Management of Transportation Management Services	8	<p>The OECD understands that 'transportation management service companies' means companies providing freight-forwarding services. Freight forwarding services are defined in Indonesia to include 'all activities required for the delivery and receipt of goods via land, train, sea and /or air transportation' (see Ministry regulation 49/2007 article 1(15)). 'Transportation management service companies' with joint venture and foreign investment status (with foreign equity) must meet additional requirements including minimum capital requirements (see line 4 above) and minimum education requirements:</p> <p><i>Staffing and education requirement</i> Such companies are required to "have Indonesian citizens experts with a minimum Diploma III in the field of Shipping or Maritime or Aviation or Transportation or IATA Diploma or FIATA diploma, Bachelor (S1) Logistics or certificate of professional competence in the field of Powered or Supply Chain Management or</p>	This provision likely supports the national labour market and seeks to ensure a certain level of competency in all firms (and hence quality).	The nationality requirement and the need for specific educational qualifications will limit the ability of certain suppliers to provide services. This could be problematic if there is a shortage of qualified workers. This could unduly limit the number of suppliers, reduce competition between suppliers and so result in higher prices.	<p>Treat foreign and domestic companies the same.</p> <p>Consider allowing the employment of experts with "equivalent" qualifications.</p>

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
			Certificate of Customs or Customs (alternative) or cumulative " This requirement is not imposed on local companies. Article 6(4)(f) provides for additional minimum professional requirements but this requirement applies to both local companies and companies with foreign equity.			
3	Government Regulation of The Republic of Indonesia No. 8/2011 Concerning Multimodal Transport	2,4,5	The legislation provides for the involvement of associations in the licensing process for multimodal operators but their role is not clearly defined in the legislation. Government Regulation 8/2011 explains that multimodal companies require "multimodal transportation documents" which are "prepared by multimodal transport association" as part of the licencing process. The OECD has not been able to identify the exact role of the association in this process. Further, there is no named association and it is unclear which association is involved in this process (if any).	The OECD understands from government authorities that this policy is a way to ensure standard documents for licensing and helps the government to monitor business entities. The OECD understands that this requirement is bothersome for business entities, since there are many associations in each part of the logistic chain (sea, air, land transportation), and it is not clear which association this policy refers to.	Difficulties in understanding how the licencing process works creates legal uncertainty and increases costs for actual and potential market participants. Unclear regulations may deter market entry.	Remove association requirement from the legislation, if it is not applied in practice.
4	Ministry Regulation No. 49 of 2017 concerning Implementation and Management of Transportation Management Services	29	There is an obligation to be registered as a member of the freight forwarding association in order to obtain the freight forwarder's business license. Chapter 1 (Article I (29)) explains that the "association" is the organisation of freight forwarding companies that is admitted officially by the government. This is the Indonesian Freight Forwarder Association or ALFI (Asosiasi Logistic Dan Forwarders)	Compulsory association membership is likely required in order to ensure some arm's-length government control over the industry. The OECD understands that the association issues the certificate, members' IDs and works closely with the Ministry of Transportation to communicate changes in legislation and keep members informed of news in the sector.	This requirement restricts market access as providers must be members in order to access the market. Compulsory association requirements may increase the cost of doing business. Further, an industry association with responsibility for regulating the conduct of its members without government legislative backing, increases the potential for significant anti-competitive impacts. In particular,	Remove the requirement.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
					there is potential for co-ordination of prices and business practices; for example, if they have standard terms and conditions, to which all members must adhere. International experience confirms these arguments (see Box 6.2).	
5	Ministry Regulation No. 49 of 2017 concerning Implementation and Management of Transportation Management Services	14	Transportation management service companies that hold business licenses must fulfil certain obligations, for example reporting requirements (monthly and annual). The monthly reports include activities on sending and receiving goods while the annual report relates more to changes in the company (joint venture, amendment to business permit, change of board of directors or change of place of business).	Supervision of the industry.	Depending on the extent of the requirements, this could be an administrative burden, which could deter entry.	Consider making reporting requirements less frequent and detailed in order to reduce the administrative burden.
6	Ministry Regulation No. 49 of 2017 concerning Implementation and Management of Transportation Management Services	16	The legislation provides for the regulation of tariffs for freight forwarding services. The government has issued a guideline which states how market players should calculate their tariffs. In practice, the OECD understands that prices are agreed between the service provider and consumer and not in accordance with a guideline.	The OECD is not aware of the policy objective behind this price regulation except to support operators in determining prices, especially for SMEs.	Any obligation to follow guidance when determining freight-forwarding rates may limit companies' ability to set their own prices and to compete on price; for example, they may not be able to undercut prices of rivals in order to gain market share if they are willing to price below cost.	Ensure that there is no price regulation, for example, by ensuring that companies that fail to follow any guidelines are not penalised. Service providers should be free to set their own prices.

Note:

1. See http://www.mercitaliarail.it/content/dam/mercitalia-rail/allegati/Listino%20Prezzi_2019.pdf.

Warehouses

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Polymakers' objective	Recommendation
1	Ministry of Trade Regulation No. 9/2014 concerning Warehouse Arrangement and Development	1,3,4,5,6,7	<p>Warehouse owners must register their warehouses and are given a warehouse registration certificate as proof. The registration is issued by the Ministry of Trade. Registration is compulsory and is based on 'class, area and storage capacity'. The applicant must apply for registration by submitting a number of documents and is valid as long as it is used to store traded goods and must be re-registered every 5 years.</p> <p>There are limited exceptions to this registration requirement, for example warehouses used as temporary storage for freight forwarding services, warehouses in bonded zones and those attached to a business which are used for temporary storage.</p> <p>The authority of the Ministry to issue this registration can be delegated to local authorities. Where this is the case it is set out in various local regulations (for example, a. Balikpapan Mayor Regulation Number 23 Year 2018 concerning Amendment to Mayor Regulation Number 18 Year 2017 concerning Delegation of Licensing and Non-Licensing Services to DPMPPT).</p>	The registration is in effect a license and hence this requirement limits the number or range of suppliers. The OECD is not aware of any restrictive requirements or excessive discretion in the registration process.	The purpose of this provision is likely to keep track of warehouses operating in Indonesia.	No recommendation
2	Ministry of Trade Regulation No. 9/2014 concerning Warehouse Arrangement and Development	8	<p>A Warehouse Manager is obliged to keep warehouse administration records regarding the type and amount of goods stored which enter and exit the warehouse, in the format as listed in Attachment III to this Ministerial Regulation.</p> <p>When records concern 'essential goods', they must be reported to the government. Other goods must only be reported when requested.</p> <p>Under Article 13, the warehouse manager is obliged to provide data and information about items availability in the warehouse, if requested by Director General of Trade and / or head of Provincial Official, and head of Districts / City Official who are in charge of Trading or the assigned officer.</p>	Administrative burden	Supervisory function	Limit the discretion of the authority to require data and information from the warehouse manager, to reduce the administrative burden.

Small package delivery services

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
1	<p>Regulation Of The Ministry Of Communication And Information No: 01 / Per / M.Kominfo / 01/20122011 Concerning Commercial Postal Service Rates Formula</p> <p><i>Penalty provision</i></p> <p>Regulation Of The Ministry Of Communication And Information No: 01 / Per / M.Kominfo / 01/2012 Concerning Commercial Postal Service Rates Formula (Articles 7 and 8)</p>	4,5	<p>The legislation provides for the regulation of tariffs for commercial postal and courier services. The government has issued a guideline which states how market players should calculate their tariffs (Article 4) and notes that the postal operator shall determine its tariff based on the tariff formula and that this is the published rate (Article 5(1)). Further, the legislation provides that the tariffs of the commercial post service cannot be lower than the cost of production (Article 5 (2), (3)).</p> <p>The OECD understands that commercial post service companies must set their prices in accordance with the legislative formula. Commercial service companies are required to submit their rates to DG Postal.</p> <p>Under Article 6, postal operators must report their tariffs and Article 7(2) provides that "The Postal Operator must review and adjust the published rates, if the tariff setting is not in accordance with the tariff formula, as stated in the Appendix which is an integral part of this Ministerial Regulation". There is a penalty provision for failing to follow the tariff formula. The operator could be prevented from operating if it does not fulfil its obligations under the law, which includes following the tariff formula. This suggests that the tariff formula is binding.</p> <p>There is a different price regulation regime for Universal postal services (see Ministry of Communications and Information Technology Regulation No. 29/2013, which regulates Universal Postal Service rates).</p>	<p>The obligation to follow the formula when determining commercial post and courier service rates limits operators' ability to set their own prices and to compete on price; for example, they cannot undercut rivals' prices in order to gain market share. In particular, the requirement to price above cost may lead to inefficient outcomes and harm consumers (see Box 6.3). The Ministry of Communication and Informatics does not publish the tariffs of commercial postal services.</p>	<p>The aim of this provision is to allow Postal Operators to set their rates with a cost-based calculation formula. The OECD understands that, as most companies in the postal sector are SMEs, this tariff formula is in place to help them to set tariffs. It is also be in place to implement Article 18(2) of the 2009 Postal Law and avoid unfair business practices and predatory pricing. The OECD understands that the tariff formula and associated reporting obligations allow transparency and prevent companies from pricing below cost, which the authorities believe, could harm consumers. The reporting obligation allows supervision by the government, enabling it to evaluate the prescribed tariff formula and to ensure that service providers do not charge below-cost prices.</p>	<p>The OECD has two recommendations.</p> <ol style="list-style-type: none"> 1) Remove the penalty provisions. 2) Remove the obligation that prices should be above costs.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
2	Regulation Of The Ministry Of Communication And Information No: 01 / Per / M.Kominfo / 01/20122011 Concerning Commercial Postal Service Rates Formula	6,7	<p>Commercial postal operators must report their tariffs, and provide updates of any changes within 30 days.</p> <p>Given that the cost component of the tariff must also be reported, this reinforces the obligation of postal service operators to calculate their tariffs using the tariff formula (as discussed in the line above).</p> <p>The OECD understands that tariffs are not required to be published.</p>	<p>If there is any requirement or encouragement for commercial service providers to publish their prices or costs, could reduce their incentive to compete and may contribute to the formation of cartels as participants can effectively monitor their competitors' behaviour.</p>	<p>Reporting obligations generally allow authorities to fulfil their monitoring tasks. The reporting of tariffs allows transparency, to supervise the industry and to evaluate the tariff formula set. The OECD understands that the tariff formula and associated reporting obligations allow transparency and prevent companies unilaterally deciding prices, which the government believes, could harm consumers.</p> <p>The OECD understands that any amendment to this legislation may also require amendment to the postal law and its implementing regulation.</p>	<p>Remove obligation to report tariffs. If this is already the case in practice, the legislation should be amended to reflect this.</p>
3	<p>Government Regulation No.15 year 2013 on the Implementation of Law 38 year 2009 on Postal</p> <p>Ministry of Communication and Informatics Regulation No. 7/2017 Requirements and Procedure on Granting Permit in Courier Services</p> <p>07/2018 on Electronically Integrated Business Licensing Service in the Field of Communications and Informatics and 24/2018 on Electronic Licensing Services.</p>	15 2, 4, 5, 6, 16	<p>In Indonesia, the Ministry of Communication and Information Technology (KOMINFO) is responsible for overseeing and regulating commercial postal services and universal postal services in Indonesia.</p> <p>In order to operate as a postal operator, a licence must be obtained (Article 4). Pursuant to Article 2, postal operators can obtain a license for:</p> <ul style="list-style-type: none"> commercial postal service; universal postal service; military service post (non-commercial for military purposes); and/or other postal services, (i.e. governmental post that requires confidentiality). <p>There are 3 geographical types of licences</p>	<p>This provision establishes that a licence is required to provide postal services. This may limit the number or range of suppliers in the Indonesian postal services market.</p> <p>Ministry of KOMINFO regulations 24/2018 and 07/2018 relate to electronic licensing services and are aimed to increase the flexibility and speed for obtaining business licenses in order to "accelerate and increase investment".</p>	<p>The licence requirement is likely in place to control market entry.</p>	<p>No recommendation on the licence requirement.</p>

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
			<p>for postal operators, categorised according to where the licence holder wishes to operate (national, provincial and regency/city operation permits). These different licences are provided for in Articles 5 and the area of operation basis in Article 16. Postal operators may engage in the following services (Article 6):</p> <p>a. written communication and / or electronic mail; b. package; c. logistics; d. financial transactions; and / or e. postal agency.</p> <p>Every 5 years, the licence is evaluated by the Ministry (Article 15(3)).</p> <p>The licencing process can be carried out electronically (Ministry of Communication and Informatics Regulation Number 7 of 2018 concerning Electronically Integrated Business Licensing Service in the Field of Communications and Informatics).</p>			
4	Ministry of Communication and Informatics Regulation No. 7/2017 Requirements and Procedure on Granting Permit in Courier Services	7,8,9	<p>An applicant for a postal service operator licence (including for commercial services) must comply with minimum capital requirements. The amount is dependent on the licence category:</p> <ol style="list-style-type: none"> 1. National post operation license require capital of at least IDR 500 million 2. Provincial post operating license require capital of at least IDR 100 million and 3. Regency / city postal operation licence require capital of at least IDR 50 million. <p>These capital requirements apply to all applicants, e.g. private companies, SOEs, regional SOEs and co-operatives.</p>	This provision may increase the entry costs of new companies and discourage investment and market entry, reducing the number of operators in the market and leading to higher consumer prices, less choice and lower service quality for consumers. It may notably restrict entry of small- and medium-sized enterprises (SMEs).	The objective may be to ensure that the company has sufficient resources to offer reliable and efficient courier services. It may also aim to protect consumers and creditors from risky and potentially insolvent businesses. The OECD understands that the stipulated capital requirements reflect the amount required for micro-small- and medium-sized enterprises (MSMEs) as outlined in Law No. 20/2008 concerning MSMEs.	Remove specific capital requirements for commercial postal services, as there appears to be insufficient reasons for singling out this sector. Companies should only be required to comply with any capital requirements under the general regime. Alternatively, a requirement for an insurance requirement or bank guarantee could be introduced.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendation
5	Law No. 38 /009 regarding Postal	12(2)	Joint ventures between domestic and foreign postal operators have a limited operational area. They may only operate in international airports and seaports. They are not allowed to perform intercity deliveries. If the joint venture would like to carry out these services they must enter into another co-operation with a domestic operator.	This creates a geographical barrier for companies to supply their services and limits their ability to compete as they are required to co-operate with a third party postal operator in order to provide inter-city deliveries. This may increase inefficiencies. If international providers are required to rely on domestic operators, there may be a decrease in the quality of services than what would otherwise be provided.	This geographical restriction and obligation to co-operate with a third party Indonesian postal operator is likely in place to support the development of Indonesian firms, notably SMEs. The OECD understands that the government is currently formulating a policy to relax foreign equity restrictions, with the aim of promoting ease of doing business.	Remove the geographical restrictions on joint ventures.
6	Law No. 38 /009 regarding Postal	12(1)	Joint venture firms with foreign equity operating in the postal sector are required to create a joint venture with a domestic postal operator. Joint venture firms are required to co-operate with domestic postal operators when carrying out their postal operations. Article 12(1)(d) prevents foreign postal operators however from co-operating with more than one domestic postal operator.	This requirement could prevent the foreign operator from creating a network and/or operating all over Indonesia as the operator is reliant on the network of the domestic operator they choose to co-operate with. This may be exacerbated by the geographic restriction as discussed in the line above.	The OECD has not been able to identify a policy objective for this position. The OECD understands that the government is currently formulating a policy to relax foreign equity restrictions, with the aim of promoting ease of doing business.	Remove restriction. Joint venture firms should be able to co-operate with more than one firm.

Horizontal restrictions

No.	Title of regulation	Article	Description of the obstacle	Harm to competition	Polymakers' objective	Recommendation
1	<p>Ministry of SOE Regulation No. PER-04/MBU/09/2017 regarding Amendment to Regulation Of The Ministry Of Business Owned By State Number Per-03 / Mbu / 08/2017 Concerning Guidelines For Businesses Cooperation Owned By State-Owned Enterprises</p> <p>Regulation No. PER-08/MBU/12/2019</p>	2	<p>Indonesian SOEs are expected to prioritise co-operation with other SOEs, including in the area of procurement. In particular, they are permitted to assign a contract to another SOE without running a procurement tender, even though a tender would be necessary to award the contract to a private company. The Ministry of State-Owned Enterprises issued general guidelines for procurement rules for goods and services for SOEs in Regulation No. PER-08/MBU/12/2019</p>	<p>The absence of a tender process if a SOE contracts with another SOE makes it more likely that SOEs will choose other SOEs, as conducting a tender process can be burdensome. This discriminates against other market participants who operate in the same market as the concerned SOEs (see Box 7.2 on principles of competitive neutrality). As a result, SOEs favouring SOEs may eliminate competition and potentially cheaper and better quality offers from private firms. As stated in <i>OECD Recommendation on Guidelines on Corporate Governance of State-Owned Enterprises</i>: “when SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be competitive, non-discriminatory and safeguarded by appropriate standards of transparency”.¹</p>	<p>The likely policy objective is to support Indonesian SOEs, to encourage government contracts and to save time and money with direct appointments. The SOE synergy policy is implemented in different sectors across Indonesia's economy. In 2014, the ICC recommended that the Ministry of State-Owned Enterprises revoke this synergy policy, notably in the area of procurement of goods and services and noted the anticompetitive effects of the policy, including the entry barriers for domestic private businesses</p>	<p>The OECD has three recommendations: Public procurement rules should treat any potential supplier equitably, without discrimination and irrespective of its ownership. SOEs should be subject to requirements comparable to those demanded from private bidders.</p> <p>The authorities should reconsider the practice of direct assignments from one SOE to another or from government entities to SOEs, and encourage open tenders, clearly defining the circumstances when alternatives procedures can be applied.</p> <p>The government should establish internal guidelines and provide training to officials to ensure that non-discriminatory public procurement rules are followed and enforced and that SOEs are not granted preferential access to the provision of services to government agencies.</p>

No.	Title of regulation	Article	Description of the obstacle	Harm to competition	Policymakers' objective	Recommendation
2	Law no 5/1960 regarding Agrarian Principle	21, 42, 45	Foreigners and foreign owned companies are prevented from owning land (and buildings) in Indonesia. Foreign entities established in Indonesia or with a representative in Indonesia may however rent and use land, like domestic entities.	Land ownership restrictions may make it more difficult for foreign entities to provide certain logistics services and it could increase costs as the only option is to lease the required land.	<p>The restrictions on land ownership are likely in place to reserve land to Indonesian citizens and avoid land acquisition by foreigners solely for speculation or real estate investment purposes.</p> <p>International comparison</p> <p>In Australia, the acquisition of vacant commercial land is subject to a notification requirement, but there are no lists or restrictions on foreigners purchasing land, as long as they comply with certain conditions, such as the foreign investor must commence construction of the proposed development on the land within 5 years of the date of approval, and cannot sell the land until construction is complete</p> <p>In France, there are no restrictions on foreign entities making real-estate investments. The compulsory filing of a foreign entity's real-estate investment with the French Ministry of Economy was removed in 2017.</p> <p>In Germany, foreigners are subject to the same requirements as local investors when purchasing land. Although the government has the power to impose restrictions on the acquisition of property by foreign corporate investors, where German companies are subject to similar restrictions in the investor's country, according to OECD research, no such restrictions are currently in place.</p>	No recommendation as foreign entities may lease land for a substantial period of time

No.	Title of regulation	Article	Description of the obstacle	Harm to competition	Policymakers' objective	Recommendation
3	Appendix III. Regulation Of The President Of The Republic Of Indonesia Number 44 Year 2016 Concerning Lists Of Business Fields That Are Closed To And Business Fields That Are Open with Condition To Investment List Of Business Fields That Are Open Under Specific Conditions	Appendix 3	<p>Under Article 42(1) of Ministry of Transportation Regulation No 60 year 2019 Goods Transportation with Motor Vehicles, a public transportation company must be an Indonesian legal entity (as set out in 42(2) to include: a. state-owned enterprises; b. regional owned enterprises; c. limited liability company; or d. co-operative).</p> <p>There are restrictions of foreign ownership in the land transportation sector. The Negative Investment List limits foreign equity to 49% for cargo land transportation, special cargo land transportation and multimodal transportation.</p> <p>These categories are not defined in the negative investment list. Within their specific regulations, the categories are defined as follows:</p> <p>Cargo land transportation: transportation of goods in general which are not dangerous and do not require special facilities (Government Regulation No. 74/2014)</p> <p>Special cargo land transportation: transportation requiring use of a specially designed vehicle in accordance with the nature and form of the goods transported.</p> <p>Multimodal transportation: the transportation of goods using at least 2 (two) different modes of transportation on the basis of 1 (one) contract as a multimodal transport document from one place of receipt of goods by a transport business entity multimodal to a designated place for delivery of goods to recipients of multimodal transported goods (Government Regulation Number 8 of 2011)</p>	The provision may prevent or make it more difficult for foreign companies to enter the land freight transportation market, thus reducing competition. As a consequence, less competition in the market may result in reduced innovation and quality and potentially higher prices.	<p>The purpose of this provision is likely to protect national operators against international competition.</p> <p>Indonesia has implemented the AFAS target of 70% ASEAN foreign-ownership for multimodal transportation. This has been in place since 2013.</p>	<p>The OECD recommends one of three options.</p> <p>Remove foreign-equity restrictions.</p> <p>Progressively relax foreign-equity limits towards allowing up to 100% foreign ownership in the long term.</p> <p>Relax foreign-equity restrictions on a reciprocal basis, allowing foreign ownership by nationals of countries that allow Indonesian nationals to hold 100% shares in a company</p>

No.	Title of regulation	Article	Description of the obstacle	Harm to competition	Policymakers' objective	Recommendation
4	Ministry of Transportation Regulation Number 89/2018 concerning Norma, Standards, Procedures, and Criteria of Electronic Integrated Businesses Licensing in Sea Transportation Sector (Attachment II)	Attachment II	<p>Foreign equity for the provision of domestic shipping is limited to 49%. Joint ventures are allowed provided that 51% of capital is controlled by an Indonesian business entity.</p> <p>The legislation provides for specific technical requirements for joint ventures (between national and foreign persons or entities). Joint ventures must have one unit of Indonesian-flagged motorized vessels with the smallest size of GT. 5000 and vessels must be manned by a crew of Indonesian citizens.</p> <p>All sea transportation business licensees in Indonesia (formed as part of a JV or otherwise) must have their ships manned by Indonesian crew (Law 17/2008, Article 8). However, Indonesian sea transportation companies are required to have a vessel with a gross tonnage of only 175.</p>	<p>The joint venture (and majority Indonesian equity) requirement may prevent or make it more difficult for foreign companies to enter the market, and so reduce competition. As a consequence, less competition in the market may result in reduced innovation and quality and potentially higher prices. Higher technical requirements and any associated discretion for such joint ventures results in discrimination and increases costs for these companies.</p>	<p>The limitations on foreign involvement in the domestic shipping sector is likely aimed at developing and supporting Indonesian firms domestic shipping and supports the general cabotage policy.</p> <p>Specific technical requirements for joint ventures between foreign and local partners are likely in place to ensure a higher standard.</p>	<p>The OECD recommends one of three options. Remove foreign-equity restrictions. Progressively relax foreign-equity limits towards allowing up to 100% foreign ownership in the long term. Relax foreign-equity restrictions on a reciprocal basis, allowing foreign ownership by nationals of countries that allow Indonesian nationals to hold 100% shares in a company. The OECD also recommends removing different technical requirements currently imposed on firms with foreign equity.</p>
5	Ministry of Transportation Regulation No. 152/2016 regarding Freight Loading and Unloading Operational (Cargo Handling)	2,5	<p>Foreign companies are required to enter into a joint venture with a local firm in order to operate a cargo handling company in Indonesia. Foreign equity is limited to 67% while ASEAN foreign ownership is limited to 70% in specific ports.</p> <p>The joint venture companies are also limited in where they are allowed to operate. Article 5(3) provides that "Companies holding business licenses in the form of joint ventures can carry out loading and unloading of goods only at certain ports determined by the government".</p>	<p>The joint venture requirement may prevent or make it more difficult for foreign companies to enter the market, and so reduce competition. As a consequence, less competition in the market may result in reduced innovation and quality and potentially higher prices.</p> <p>The geographical restriction discriminates against joint ventures with foreign equity, who have already satisfied the requirements to obtain a business licence like domestic businesses.</p>	<p>The limitations on foreign involvement in the cargo handling sector is likely aimed at developing and supporting Indonesian firms providing cargo handling services. Indonesia has already implemented the agreed change towards the AFAS target of 70% ASEAN foreign ownership in relation to specific ports. The OECD understands that the reasoning behind choosing Bitung Port, Ambon Port, Kupang Port and Sarong Port is to accelerate the economic growth in the Eastern part of Indonesia, as it is lower compared to Western part of Indonesia.</p>	<p>The OECD recommends one of three options. Remove foreign-equity and geographical restrictions. Progressively relax foreign-equity limits and geographical restrictions towards allowing up to 100% foreign ownership in the long term. Relax foreign-equity restrictions on a reciprocal basis, allowing foreign ownership by nationals of countries that allow Indonesian nationals to hold 100% shares in a company.</p>

No.	Title of regulation	Article	Description of the obstacle	Harm to competition	Policymakers' objective	Recommendation
6	Presidential Regulation 44/2016 regarding Negative Investment List	Appendix III, point 248, 263, 270, 271, 274	<p>The ports allowed in this regulation are in line with the ports allowed for ASEAN investment regulated in negative list regulation, namely Bitung Port, Ambon Port, Kupang Port and Sarong Port. The maximum of 70% for ASEAN investment is only applied at Bitung Port, Ambon Port, Kupang Port and Sarong Port.</p> <p>Foreign equity for the provision of harbour facilities is limited to 49%. Harbour Facilities are defined as jetties, buildings and tugs located at cargo container terminals, liquid-bulk terminals, dry-bulk terminals, and Roll of (Ro-Ro) terminals. In addition to this foreign equity restriction, the negative investment list provides that investors seeking to provide harbour facilities are subject to an additional special permit from the Ministry of Transportation in relation to minimum capital requirements.</p>	<p>The equity restrictions may prevent or make it more difficult for foreign companies to enter the market, and so reduce competition. As a consequence, less competition in the market may result in reduced innovation and quality and potentially higher prices. Higher requirements (i.e. the additional permits) and any associated discretion results in discrimination and increases costs for these companies.</p>	<p>To develop Indonesian companies in the port services sector.</p>	<p>The OECD recommends one of three options. Remove foreign-equity restrictions. Progressively relax foreign-equity limits towards allowing up to 100% foreign ownership in the long term. Relax foreign-equity restrictions on a reciprocal basis, allowing foreign ownership by nationals of countries that allow Indonesian nationals to hold 100% shares in a company The OECD also recommends removing additional specific permits in relation to minimum capital requirements currently imposed on firms with foreign equity.</p>

No.	Title of regulation	Article	Description of the obstacle	Harm to competition	Policymakers' objective	Recommendation
7	Ministry Regulation No. 49 of 2017 concerning Implementation and Management of Transportation Management Services Regulation Of The President Of The Republic Of Indonesia Number 44 Year 2016 Concerning Lists Of Business Fields That Are Closed To And Business Fields That Are Open with Condition To Investment List Of Business Fields That Are Open Under Specific Conditions (Appendix III)	8	There are restrictions of foreign ownership in the freight-forwarding sector. Foreign equity is limited to 67% and 70% for ASEAN investors.	The purpose of this provision is likely to protect national operators against international competition. Community welfare is cited as an additional objective. ASEAN foreign equity is limited to 70%, a higher amount than for other foreign investors; this is in line with AFAS.	These equity restrictions may prevent or make it more difficult for foreign companies to enter the market, and so reduce competition. As a consequence, less competition in the market may result in reduced innovation and quality and potentially higher prices.	The OECD recommends one of three options. Remove foreign-equity restrictions. Progressively relax foreign-equity limits towards allowing up to 100% foreign ownership in the long term. Relax foreign-equity restrictions on a reciprocal basis, allowing foreign ownership by nationals of countries that allow Indonesian nationals to hold 100% shares in a company
8	Appendix III. Regulation Of The President Of The Republic Of Indonesia Number 44 Year 2016 Concerning Lists Of Business Fields That Are Closed To And Business Fields That Are Open with Condition To Investment List Of Business Fields That Are Open Under Specific Conditions	Appendix 3	There are restrictions of foreign ownership for multimodal transport operators for 49% and 70% for ASEAN investors.	The purpose of this provision is likely to protect national operators against international competition. Community welfare is cited as an additional objective. ASEAN foreign equity is limited to 70%, a higher amount than for other foreign investors; this is in line with AFAS.	The provision may prevent or make it more difficult for foreign companies to enter the market, and so reduce competition. As a consequence, less competition in the market may result in reduced innovation and quality and potentially higher prices.	The OECD recommends one of three options. Remove foreign-equity restrictions. Progressively relax foreign-equity limits towards allowing up to 100% foreign ownership in the long term. Relax foreign-equity restrictions on a reciprocal basis, allowing foreign ownership by nationals of countries that allow Indonesian nationals to hold 100% shares in a company.

No.	Title of regulation	Article	Description of the obstacle	Harm to competition	Policy-makers' objective	Recommendation
9	Regulation of The President of The Republic of Indonesia Number 44 Year 2016 Concerning Lists of Business Fields That Are Closed To And Business Fields That Are Open with Condition To Investment Ministry of Trade's Regulation No. 9/2014	Appendix III, 197	<p>There are restrictions of foreign ownership in the warehousing sector. Foreign equity is limited to 67%.</p> <p>In the Ministry of Trade's Regulation No. 9/2014 concerning Warehouse Arrangement and Development, a warehouse owner is defined as 'an individual or business entity that owns a warehouse both for self-management and for rental' (Article 1) and a warehouse manager as 'a Business Actor that carries out business of storing goods intended for trading, both his own Warehouse and another party's Warehouse'. However, the OECD understands from stakeholders that this equity restriction only applies to for hire warehouses, and that it does not apply to warehouses used to store the goods of a company.</p>	The provision may prevent or make it more difficult for foreign companies to enter the market for providing warehousing services, thus reducing competition. It may also make it more difficult for established foreign companies, wishing to build or rent warehouses in order to store their own goods and this may lead to inefficiencies.	The purpose of this provision is likely to protect national operators against international competition and to encourage the development of Indonesian warehouse service providers.	The OECD recommends one of three options. Remove foreign-equity restrictions. Progressively relax foreign-equity limits towards allowing up to 100% foreign ownership in the long term. Relax foreign-equity restrictions on a reciprocal basis, allowing foreign ownership by nationals of countries that allow Indonesian nationals to hold 100% shares in a company
10	<p>Presidential Regulation No. 44 Year 2016 Concerning Lists Of Business Fields That Are Closed To And Business Fields That Are Open with Condition To Investment</p> <p>Law No. 38 /009 regarding Postal</p>	<p>Appendix III List Of Business Fields That Are Open Under Specific Conditions K.</p> <p>Law 38/009: Article 12 (1)</p>	<p>Foreign investment in the postal services sector is limited to 49% equity. Foreign firms are required to create a joint venture with a domestic postal operator.</p> <p>Article 12(1) of Law 38/2009 provides that Foreign Postal Operators may provide postal services in Indonesia as long as:</p> <p>a. they co-operate with domestic Postal Operators;</p> <p>b. they operate through joint-venture mechanism with the majority shares owned by domestic Postal Operators;</p> <p>c. the shares of domestic Postal Operators that will co-operate with the foreign Postal Operators shall not be owned by foreign citizens or business enterprises affiliated with domestic Postal Operators;</p>	<p>The foreign equity restriction may prevent or make it more difficult for foreign companies to enter the market, and so reduce competition.</p> <p>As a consequence, less competition in the market may result in reduced innovation and quality and potentially higher prices. Higher technical requirements and any associated discretion for such joint ventures results in discrimination and increases costs for these companies.</p>	The foreign equity restriction is likely in place to support the development of Indonesian firms, notably SMEs. The OECD understands that the government is currently formulating a policy to relax foreign equity restrictions, with the aim of promoting ease of doing business.	The OECD recommends one of three options. Remove foreign-equity restrictions. Progressively relax foreign-equity limits towards allowing up to 100% foreign ownership in the long term. Relax foreign-equity restrictions on a reciprocal basis, allowing foreign ownership by nationals of countries that allow Indonesian nationals to hold 100% shares in a company The OECD also recommends removing different technical requirements currently imposed on firms with foreign

No.	Title of regulation	Article	Description of the obstacle	Harm to competition	Policy-makers' objective	Recommendation
			d. foreign Postal Operators and their affiliates may only co-operate with one domestic Postal Operator; and e. the operational areas of co-operation between foreign Postal Operators and domestic Postal Operators shall be restricted within the provincial capitals with international airports and/or seaports. These restrictions are discussed under small packages.			equity
11	<p>Presidential Regulation No. 70/2017</p> <p>Ministry of Transportation Regulation No. 10/2020</p> <p>Decree of the Ministry of Transportation No. 95/2020</p>	Various	<p>Presidential Regulation No. 70/2017 creates a public service obligation (PSO) for road transportation to transport goods to underdeveloped, remote, outermost and border areas of Indonesia. The regulation states that the implementation of this PSO is held by the government and assigns responsibility for it to the SOEs DAMRI, active in land freight transportation; The PSO relates to the carriage of basic and essential goods, as stipulated by the Ministry of Trade. Under this scheme, the budget required for PSO is part of the Ministry of Transportation's national revenue and expenditure budget, with contracts with relevant SOEs and business entities signed once it has been finalised.</p> <p>Ministry of Transportation Regulation No. 10/2020 sets out the relevant guidelines, with article 7 providing that the ministry is charged with implementing the PSO transportation of goods by road and can assign it to DAMRI. If it has insufficient fleet numbers, DAMRI can be replaced by other service providers, who are chosen in accordance with government procurement rules (See:</p>	Third parties may carry out a PSO (or parts of it) only if the assigned provider cannot carry out its duties. This regulation restricts market entry. In most cases, the PSO is assigned to an SOE without a tender, which may lead to a service provider being chosen that is not the most efficient or the best in terms of price and quality. As a result, consumers may suffer. If the costs and potential benefits of a PSO are not assessed in a transparent way, the result may be an excessive burden for the state budget.	The objective behind the appointment of a PSO provider is to ensure that goods are transported throughout Indonesia. One aim, set out in the National Medium-Term Development Plan for 2015-2019, was to reduce price disparity by ensuring the availability of goods and improving the welfare of the community, and ensuring the continuity of the transport services for goods from and to underdeveloped, remote, outermost and border areas in supporting the implementation of the "sea-toll" programme.	<p>Ensure that SOEs providing PSO comply with accounting separation and reporting requirements to ensure that PSO funds cannot be used to cross-subsidise other freight services that are in competition with private players.</p> <p>In addition, the OECD recommends that the authorities consider identifying and implementing an alternative PSO model for the provision of basic and essential goods to remote areas. If such a model were found, it should promote efficiency of public services and minimise distortions to competition. For example, the policymaker could assess the costs and benefits of allowing competitive tendering of PSO contracts, to provide incentives for lowering costs and improving quality. Any tender processes should be fair and non-discriminatory,</p>

No.	Title of regulation	Article	Description of the obstacle	Harm to competition	Policymakers' objective	Recommendation
			Regulation of the Ministry of Transportation No. 10/2020). The ministry assigned the PSO for road transportation to DAMRI for the period 1 January 2020 to 31 December 2020 through a Ministry of Transportation Decree (See: Decree of the Ministry of Transportation No. 95/2020 concerning the Assignment of Public Companies (Perum) DAMRI to Carry out Public Service Obligations for Transportation of Goods on the Roads from and to Disadvantaged, Remote, Outermost, and Border Areas for 2020 Fiscal Year).			and contracts should have a set duration.
12	<p>Presidential Regulation No. 70/2017</p> <p>Ministry of Transportation Regulation No. 4/2018</p> <p>Ministry of Transportation Decree No. 4/2020</p> <p>Government Regulation 16/2018</p> <p>Directorate General of Sea Transportation Decree No. KP.631/DJPL/2019 concerning the Third Amendment to the Decree of the Directorate General of Sea Transportation and No. UM.002/109/2/DJPL-18 concerning the Route Network for the Implementation of Sea</p>	Various	<p>Presidential Regulation No. 70/2017 creates a public service obligation (PSO) for maritime transportation to transport goods to underdeveloped, remote, outermost and border areas of Indonesia. The regulation states that the implementation of this PSO is held by the government and assigns responsibility for it to the SOEs PELNI, active in maritime freight transportation; and ASDP Indonesia Ferry, for goods carried by ferry. The PSO relates to the carriage of basic and essential goods, as stipulated by the Ministry of Trade. Under this scheme, the budget required for PSO is part of the Ministry of Transportation's national revenue and expenditure budget, with contracts with relevant SOEs and business entities signed once it has been finalised.</p> <p>Costs are calculated according to rules set out in Ministry of Transportation Regulation No. 4/2018. In 2020, a decree was issued that determines freight rates</p>	Third parties may carry out a PSO (or parts of it) only if the assigned provider cannot carry out its duties or if a specific route has been opened up to wider participation, as is the case for certain maritime-freight routes. This regulation restricts market entry. In most cases, the PSO is assigned to an SOE without a tender, which may lead to a service provider being chosen that is not the most efficient or the best in terms of price and quality. As a result, consumers may suffer. If the costs and potential benefits of a PSO are not assessed in a transparent way, the result may be an excessive burden for the state budget.	The objective behind the appointment of a PSO provider is to ensure that goods are transported throughout Indonesia. One aim, set out in the National Medium-Term Development Plan for 2015-2019, was to reduce price disparity by ensuring the availability of goods and improving the welfare of the community, and ensuring the continuity of the transport services for goods from and to underdeveloped, remote, outermost and border areas in supporting the implementation of the "sea-toll" programme. ² For maritime, a similar concept is mentioned in the Shipping Law (Law No. 17/2008), which explains that transportation in waters of underdeveloped or remote areas should be carried out by government and regional governments.	<p>Ensure that SOEs providing PSO comply with accounting separation and reporting requirements to ensure that PSO funds cannot be used to cross-subsidise other freight services that are in competition with private players.</p> <p>In addition, the OECD recommends that the authorities consider identifying and implementing an alternative PSO model for the provision of basic and essential goods to remote areas. If such a model were found, it should promote efficiency of public services and minimise distortions to competition. For example, the policymaker could assess the costs and benefits of allowing competitive tendering of PSO contracts, to provide</p>

No.	Title of regulation	Article	Description of the obstacle	Harm to competition	Policymakers' objective	Recommendation
	Transportation of Goods in 2019		<p>for each of the 376 relevant PSO routes (See: Ministry of Transportation Decree No. 4/2020).</p> <p>If contracted companies lack the capacity to carry out certain obligations – for example, because they have insufficient vessels – the government can select another service provider in accordance with general public procurement rules (see: Article 6 and 7, Ministry of Transportation Regulation No. 4/2018 concerning the Provision of Public Service Obligations for Sea Transportation. Article 7(1) states that the Directorate General evaluates the fleet operated by PELNI or other SOEs in the field of sea transportation and their capacity to carry out the assigned contract. Article 7(2) explains that if an SOE is unable to provide the service due to limitations of their fleet, other service providers can be selected “in accordance with the provisions of the legislation in the field of procurement of goods/services by the Government”).</p> <p>The parties implementing PSO for the transport of goods at sea must meet the following requirements: 1) have the ability to provide cargo service on the navigable route network; 2) own ships to transport the goods; and 3) be able to provide replacement vessels so that the PSO can be maintained if the main ship is damaged or docked (Article 10 Regulation No. 4/2018).</p> <p>Companies must also ensure a minimum service frequency as set out in the law</p>			incentives for lowering costs and improving quality. Any tender processes should be fair and non-discriminatory, and contracts should have a set duration.

No.	Title of regulation	Article	Description of the obstacle	Harm to competition	Policymakers' objective	Recommendation
			<p>(See, Directorate General of Sea Transportation Decree No. KP.631/DJPL/2019 concerning the Third Amendment to the Decree of the Directorate General of Sea Transportation and No. UM.002/109/2/DJPL-18 concerning the Route Network for the Implementation of Sea Transportation of Goods in 2019).</p> <p>The OECD understands that the government has opened certain routes to private entities under the programme, with the selection process regulated under Presidential Regulation No. 16/2018 on Government Procurement.</p> <p>On the remaining routes, private entities remain unable to provide the stipulated public services as the service has been delegated to named SOEs. The OECD understands that there is no time limitation on the PSO programme. Technical supervision and control of PSO implementation for the transportation of goods at sea is overseen by the Director-General of the Ministry of Transport (Article 13, Regulation 4/2018).</p>			

Notes:

1. See (OECD, 2020, p. 33[36]).
2. The sea-toll programme was introduced in 2014 to support inter-island connectivity, decrease shipping costs and address the economic inequality between the eastern and western regions.

OECD COMPETITION ASSESSMENT REVIEWS: LOGISTICS SECTOR IN INDONESIA

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 Indonesia 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.

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