



OECD Competition Assessment Reviews

VIET NAM

LOGISTICS SECTOR



OECD Competition Assessment Reviews: Logistics Sector in Viet Nam

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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.

Undertaken within the framework of the ASEAN Competition Action Plan, the *OECD Competition Assessment Reviews: Logistics Sector in Viet Nam* 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 Viet Nam in the *OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Viet Nam*.

The OECD assessment was conducted in consultation with the Vietnamese 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 OECD assessment prioritises 44 pieces of legislation and identifies 36 regulatory barriers where changes could be made to foster competition in the logistics sector. This is especially important for Viet Nam which is emerging as a key logistics hub in the region with the transportation and storage sector currently accounting for about 2.7% of the country's GDP. This report offers policy recommendations that can help the Vietnamese government address structural and regulatory shortcomings in this sector.

These structural reforms have become even more pressing as the Viet Nam economy is estimated to have grown by about 2.9% in 2020 and is forecast to rebound to 5.8% in 2021 compared to 7.1% in 2018 and 7% 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 Vietnamese economy resume sustainable growth and job creation by enhancing competitiveness, encouraging investment and stimulating productivity in the logistics service sector, with knock-on economy-wide effects and benefits for its consumers.

I congratulate the Vietnamese government, as well as the ASEAN Secretariat and the UK Foreign, Commonwealth & Development Office (UK Government), on their efforts to lift regulatory barriers to competition and to improve the business environment. The OECD looks forward to continuing and broadening its co-operation with ASEAN to support further its reforms to the benefit of its citizens.

Greg Medcraft



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Ms Alice Pham (Legal Adviser) provided valuable inputs.

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Antonio Capobianco, Acting Head of the OECD Competition Division, Stephen Thomsen and Fernando Mistura (OECD Investment Division) provided valuable comments throughout the process and on the final report.

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

Fostering competition in ASEAN

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

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

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

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

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

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

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Abbreviations and acronyms

ACAP	ASEAN Competition Action Plan
AEGC	ASEAN Experts Group on Competition
ASEC	ASEAN Secretariat
DONRE	District Department of Natural Resources and Environment
DRVN	Directorate for Roads of Viet Nam
FDI	Foreign Direct Investment
GSO	General Statistical Office
GVA	Gross Value Added
HGV	Heavy Goods Vehicle
IPR	Investment Policy Review
JV	Joint venture
LPI	Logistics Performance Index
LSBCI	Liner Shipping Bilateral Connectivity Index
LUR	land use rights
MFP	Multi-factor productivity
MIC	Ministry of Information and Communications
MIDA	Malaysian Investment Development Authority
MTO	Multimodal Transport Operator
NSW	National Single Window
PEC	Pilot Exemption Certificate
PFI	Policy framework for investment
SBIC	Shipbuilding Industry Corporation
VATA	Vietnam Automobile Transport Association
VCCI	Vietnam Chamber of Commerce & Industry
VIFFAS	Vietnam International Freight Forwarders' Association
VINAMARINE	Viet Nam Maritime Administration
VISABA	Vietnam Ship Agents and Brokers Association
VIWA	Viet Nam Inland Waterway Administration
VLA	Vietnam Logistics Association
VNRA	Viet Nam Railways Authority
VNSC	Vietnam Shippers' Council
VPA	Vietnam Seaports Association
VR	Vietnam Register
VNR	Viet Nam Railways
VSA	Vietnam Shipowners' Association

Units of measure

DWT	Deadweight tonnage
g	gramme
kg	kilogramme
km	kilometre
m²	square metre
t	tonne

Executive summary

Main economic characteristics of the logistics sector in Viet Nam

In 2019, the Vietnamese freight and logistics market was estimated at USD 61.83 billion with an expected annual growth rate of 4.89% by 2025. In terms of overall logistics performance, Viet Nam ranked 39 in the World Bank's Global Logistics Performance Index and third among ASEAN countries. Recognising the importance of the logistics industry to spur economic growth, Viet Nam adopted the Action Plan for the Improvement of Competitiveness and Development of Viet Nam's Logistics Services by 2025, which includes ambitious targets regarding infrastructure, policies, business capacity and human resources.

Key recommendations

This report makes 36 recommendations on specific legal provisions that should be removed or amended. It is important to note that the number of recommendations in this report is neither indicative of the overall restrictiveness of logistics regulations 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 very 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 of domestic stakeholders.

The main recommendations are summarised below.

Road freight transport

- Remove the requirement for a minimum number of vehicles in order to obtain a road transport licence for routes exceeding 300 kilometres, in order to reduce barriers to entry into the market.
- Remove prior notification of prices to lower administrative burden and allow prices to adjust flexibly to market conditions.
- Remove the requirement *to own* a parking lot. To prevent traffic congestion, applicants should not be required to own a parking lot, but rather only prove sufficient parking space once they start their operations.
- Enhance liberalisation efforts in the road transport sector, from which foreign investors remain partly barred, in order to benefit from potential economy-wide productivity gains from increased FDI.

Maritime freight transport

- Amend the cabotage law to increase competition in the transportation of domestic cargo. For instance, lift the ban on foreign vessels carrying domestic cargo, perhaps through reciprocity arrangements or, as a first step, for vessels from ASEAN members, or allow international ships to

operate on specific routes where there is demand. This would increase participation in the domestic shipping market.

- Enhance liberalisation efforts in the inland waterway transport sector, from which foreign investors remain partly barred, in order to benefit from potential economy-wide productivity gains from increased FDI.

Railway transport

- Separate the railway infrastructure operator from the freight transport provider by introducing accounting or ownership separation between the two entities. This will help avoiding foreclosure or discrimination strategies and allow new freight transport providers to enter the market on fair and non-discriminatory terms.
- Enhance liberalisation efforts in the freight services sector, from which foreign investors remain partly barred, in order to benefit from potential economy-wide productivity gains from increased FDI.

Freight forwarding

- Allow foreign businesses to obtain a multimodal transport licence in Viet Nam without the need to hold a licence in another ASEAN country. This will reduce entry costs and administrative burden for new foreign operators.

Warehousing

- Improve the efficiency of land allocation and administration by, for instance, keeping an up-to-date and reliable land registry. This will allow companies' needs to be met more easily and so reduce time and investment costs. Keeping an efficient land registry can reduce the time required to acquire land tenure rights, lower the risks of irregularities, facilitate tax collection and reduce the likelihood of land disputes.
- Revise more frequently the provincial People's Committees' land-price tables – which are based upon the government's land-price framework – to reflect more accurately land market value with the objective of discouraging land hoarding by firms.
- Remove the general minimum surface requirement applicable to bonded warehouses and leave decision to market participants. Bonded warehouses would still be subject to general land planning and land use rules.

Horizontal legislation

- Exclude logistics-relevant businesses from the list of conditional business sectors that are subject to FDI restrictions and prior investment screening. This will reduce barriers to entry and costs of investments by foreigners and so boost growth and jobs.
- Improve compliance with the law for the naming of both spouses in the certificate of property ownership or use, so that women can provide property as collateral when applying for business loans.
- Remove prohibitions on employing women in logistics activities, such as driving trains and trucks, when these prohibitions are not aimed at protecting women's health. Continue to place safeguards against potential safety issues. This will open new professional opportunities for women while still protecting their health.

International agreements

- Expand further the procedures covered by the National Single Window to reduce export and import times, and so lower costs for businesses involved in international trade.
- Regarding the limited number of vehicle permits for cross-border transport between Cambodia, Lao PDR and Viet Nam, the OECD recommends either to remove such restrictive provisions and grant a licence to all those that request it, based on qualitative criteria (e.g., the good repute of the operator, its adequate financial standing and its professional competence) or to assess regularly the market's need and demand, and consider increasing the number of licences that can be issued.

1 Introduction

1.1. Introduction to the ASEAN competition assessment project

Logistics plays a significant role in increasing a country's economic development. The Association of Southeast Asian Nations (ASEAN) chose the logistics sector as one of its 12 priority sectors in its ASEAN Framework Agreement for the Integration of Priority Sectors.¹ As part of the *ASEAN Competition Action Plan 2016-2025*, the ASEAN Secretariat asked the OECD to carry out: 1) an independent competition assessment of legislation in the logistic 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.

The OECD has been conducting competition assessments of laws and regulations in ten ASEAN member states, as well as a global 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 AMS, in particular, competition authorities. The work has been funded by the ASEAN Economic Reform Programme under the UK Foreign, Commonwealth & Development Office (UK Government).

The following study covers the first component of the project, the competition assessment of laws and regulation in the logistic sector in Viet Nam.

1.2. Introduction to the logistics sector

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

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 containers (TEUs) 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 for the efficient use of space and better cargo handling. Containerisation makes possible the so-called "intermodal system of freight transport"; this enables the uncomplicated movement of bulk goods from one mode of transport to another. TEUs 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 with each area involving a range of different actors and services.² This report will focus on five subsectors of logistics:

1. Freight transportation (excluding air transport).
2. Freight forwarding.
3. Warehousing.
4. Small-package service delivery.
5. Value-added logistics.

The exact scope of the logistics sector was agreed with the ASEAN Secretariat and each ASEAN member states in the context of the ASEAN Experts Group on Competition.

The report does not cover customs issues.

1.2.1. Freight cargo transport

Five principal modes of freight transport 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 that are most often regulated in bilateral or multilateral agreements. Transport by pipelines is usually not counted as logistics and is legislated 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 Viet Nam. 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, road use and congestion charges. 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; this 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 goods are transported by using inland waterways such as rivers or canals, transport is referred to as inland-waterway transport. Maritime transport refers to seaborne movement of goods on ships that link a large number of origin and destination points, either within a country's territorial waters, for instance within an archipelago, or for coastal trading (known as cabotage) or, more often, to other countries (OECD, 2016, p. 141_[3]).³ Ninety percent of global international trade is transported by sea as it 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 include vessels, handling equipment and terminals; variable costs are low due to economies of scale based on large volumes of freight (Mangan and Lalwani, 2016, p. 105_[1]).

On a global level, 60% of goods by value moved by sea are carried by liner vessels⁴ owned by shipping liners providing shipping services to shippers on fixed routes with regular schedules between ports

(International Transport Forum, 2018, p. 10^[5]). In the past, liners were often organised into conferences, formal groups of shipping lines operating routes that brought together all lines operating in a specific geographic area to set common freight rates and regulate capacity. This practice has been under scrutiny in some regions of the world, such as in the European Union,⁵ and its relevance has decreased over recent decades, mostly as a result of the United States' Ocean Shipping Reform Act of 1998 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, rail track, storage and stacking areas, repair facilities, as well as fences or walls to securely enclose the port. In addition, ports include superstructures constructed above main infrastructure, often comprising 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.

Typical port services include:

1. 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 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.
2. 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 a port's particular conditions for navigation, 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.
3. Towing, which is the service of moving ships within the port using tugboats, 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 vessel.
4. Other services such as bunkering (fuel supplies) and providing water and electricity.

Some shipping services, as well as shipping-related, port-based activities, are provided by the port administration under monopoly conditions, while others are subject to competition. In certain geographical regions, there is competition between ports, as well as within ports (OECD, 2018^[6]). In others, however, enhancing competition is more 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, especially since certain shipping sectors such as container shipping have recently become much more concentrated (OECD, 2018, p. 181^[6]; International Transport Forum, 2018^[5]).

Rail freight transport

Rail freight refers to freight, cargo or goods transported by railways and 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]). This report does not contain recommendations on rail transport for Viet Nam.

1.2.2. Freight forwarding

Freight forwarding means organising the transportation of items, on behalf of customers. 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 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 of goods in non-bonded warehouses or in bonded warehouses, where dutiable goods may be stored, manipulated, or undergo manufacturing operations without payment of duty. The main problem in the construction and operation of 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. A separate report (*OECD Competitive Neutrality Reviews: Small Package Delivery Services in Viet Nam*) analyses possible distortions to competition for postal services related to SOEs and so will not be covered here. The current 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, may harm a country's growth prospects. In particular, the project identifies regulatory provisions that:

1. are unclear, meaning they lack transparency or may be applied in an arbitrary fashion;
2. prevent new firms, including small- and medium-sized businesses from accessing markets;
3. 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;
4. 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 (Nickell, 1996^[7]; Blundell, 1999^[8]; 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.⁶ 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 and al., 2015_[11]; Fournier, 2015_[12]).⁷ 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]).⁸ The result also holds at aggregate level (Égert, 2017_[15]).⁹ 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]).¹⁰ 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]).¹¹

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]).¹² 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]).¹³ 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, p. 86_[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.¹⁴

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 PMR, as measured by the OECD PMR indicator, is associated with persistent profits.

The results described above hold in a variety of settings, but the specific estimates may differ depending on the country. For instance, a 2017 study 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]).¹⁵ Increased competition may also reduce gender discrimination and equality (Pike, C, 2018_[27]; Cooke, 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 suppliers (women) to provide a good or service or by significantly raising the cost of entry or exit by a supplier (women).

In summary, anti-competitive regulations that hinder 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 Viet Nam

Viet Nam is located in the eastern Indochinese peninsula in Southeast Asia. It covers an area of approximately 331 230 square kilometres.¹⁶ While Hanoi, located in the north part of the country, is the capital city, Ho Chi Minh, located in the south part of the country, is the most populous city.

In 2020, Viet Nam's population was estimated at 97.34 million; it has been growing at an average annual rate of 1 % since 2000.¹⁷ It is the 15th most populated country in the world.¹⁸

1.4.1. GDP and economic growth

With a nominal GDP of USD 271.2 billion in 2020,¹⁹ Viet Nam was ASEAN's sixth largest economy after Indonesia, Thailand, Singapore, Malaysia and the Philippines, and the 42nd largest economy in the world.²⁰ The country recorded annual GDP growth of 6.5% in the first half of 2021.²¹ Economic and political reforms launched in 1986 have spurred rapid economic growth and have transformed one of the world's poorest nations into a lower middle-income country based on the World Bank's classification.²²

Viet Nam is an active trading country with total merchandise exports of USD 287.8 billion in 2020.²³ Viet Nam's exports have constantly increased since the 1980s and account for more about 106% of its GDP in 2020.²⁴ Its main trading partners are the United States, the EU, China, Japan and Korea.²⁵

Before the Covid-19 outbreak, the country's annual GDP growth was already expected to decelerate slightly, led by weaker external demand and continued tightening of credit and fiscal policies, while still remaining at around 7.0% in 2019.²⁶ Although Viet Nam managed to contain the outbreak so far, its economy was heavily hurt and registered a 2.9% growth in 2020, which, despite being still positive compared to other countries, is Viet Nam's lowest performance over the past decades. Furthermore, in the immediate future, the two main drivers of Viet Nam's growth, namely foreign demand and private consumption, will most likely be heavily affected, given households' risk-adversity and international mobility restrictions. However, overall, Viet Nam is still one of the most dynamic economies in the world and, despite the outbreak, prospects remain positive for both the short and the medium term.²⁷

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

In 2020, the services sector accounted for 41.6% of Viet Nam's GDP, industry for 33.7% and agriculture for 14.9%.²⁸ While the contribution of agriculture and industry to the country's GDP has been declining, the share of services has been slightly growing and has increased by 4.7% since 2010.

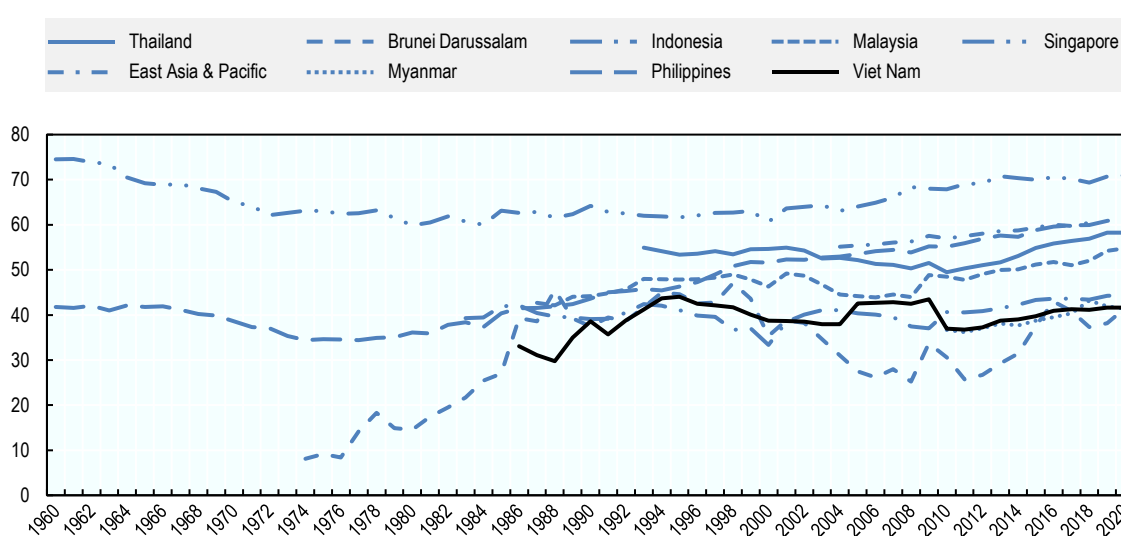
In 2020, the employed population aged 15 years and above reached 54.7 million, of which 19.7 million (36%) were in the service sector, 18.9 million (34.5%) in the agriculture, forestry and fishing sector, and 16.1 million (29.5%) in the industry and construction sector.²⁹

The contribution of the services sector to Viet Nam's GDP (41.1%) is relatively low compared to other ASEAN countries (Figure 1.1), where the growing relevance of the services sector is a widespread trend. In 2016, services accounted for 73% of ASEAN inward FDI stock, similar to the OECD member country

average (70% in 2015) and to global trends (OECD, 2019, p. 27^[29]). More generally, this is also the result of an ASEAN-wide strategy of strengthening co-operation among member countries under the ASEAN Framework Agreement on Services (AFAS).³⁰ Under this framework, all countries are required to move forward with commonly agreed liberalisation programmes, with a view to removing restrictions to trade in services and boosting ASEAN services-based economies. In previous reports, the OECD has highlighted that AFAS contained relatively deep liberalisation commitments (particularly in certain service sectors, such as transport) and has achieved some positive results in terms of liberalisation. 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^[29]).

Figure 1.1. Services as a percentage of GDP in ASEAN countries, 2000-20



Source: World Bank.

1.4.3. Business environment

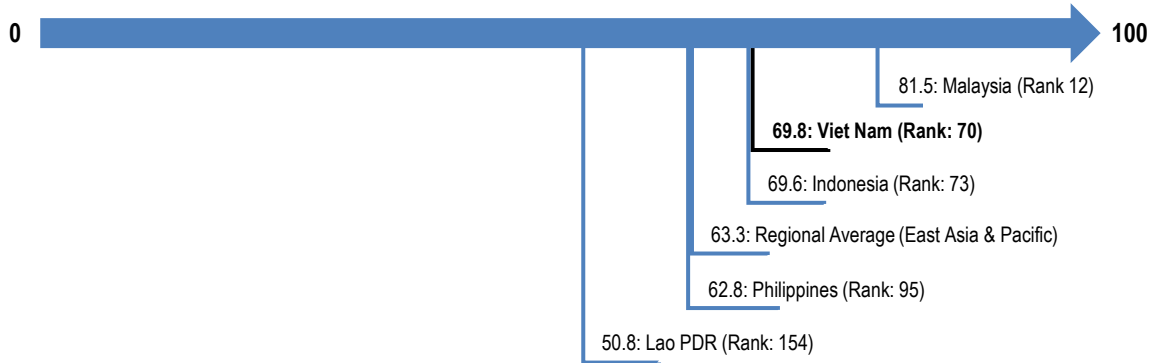
The World Economic Forum’s *Global Competitiveness Report 2019* ranks Viet Nam 67 on the Global Competitiveness Index 2019 out of 140 survey economies and 47 in terms of the extent of market dominance, 72 for competition in services, and 72 for distortive effect of taxes and subsidies on competition (World Economic Forum, 2019^[30]).³¹

The World Bank’s *Doing Business 2020* report ranks Viet Nam 70 out of 190 surveyed economies for the ease of doing business (World Bank Group, 2020, p. 16^[31]). On the global level, New Zealand, Singapore and Hong Kong SAR, China make up the top three, while in the ASEAN region, the top performer after Singapore and is Malaysia (12), followed by Thailand (21) and Brunei Darussalam (66).³²

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.³³ Regulations regarding the launch of a new business can affect market entry more generally. In particular, the World Bank collects data on the number of days needed to complete all the necessary procedures to operate a legal business in the country. As shown in Figure 1.3, since 2015, almost all ASEAN member states have significantly reduced the 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, 31 calendar days in the Philippines, 17 in Viet Nam). These steps bring

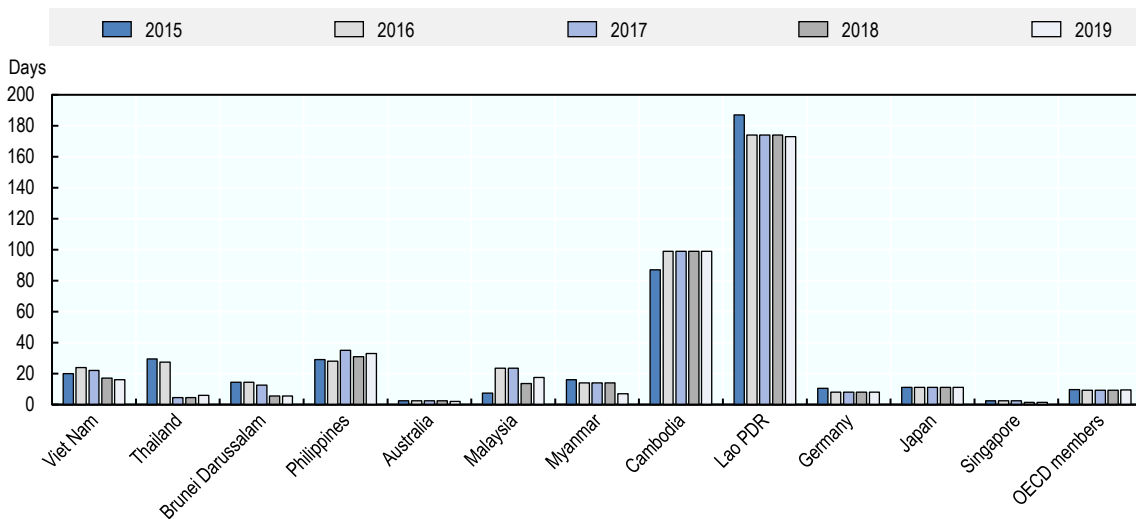
most ASEAN countries closer to the OECD members' average of 9.2 days; certain, such as Brunei Darussalam, Singapore and Thailand, are already performing better than the OECD average.

Figure 1.2. Doing Business Ease of Doing Business score, 2019



Source: World Bank, www.doingbusiness.org/en/rankings.

Figure 1.3. Time required to start a business (days)



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

2 Economic and institutional overview of the logistics sector in Viet Nam

The logistics sector is a crucial sector for the development of any economy, connecting firms to both domestic and international opportunities (World Bank, 2018^[32]). Apart from its large contribution to GDP, the existence of a well-developed logistics network ultimately impacts upon most 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.³⁴

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 Vietnamese 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^[33]).

A well-functioning logistics sector underpins most economic activities and is fundamental for productivity and growth.

2.1. Key figures of the logistics sector

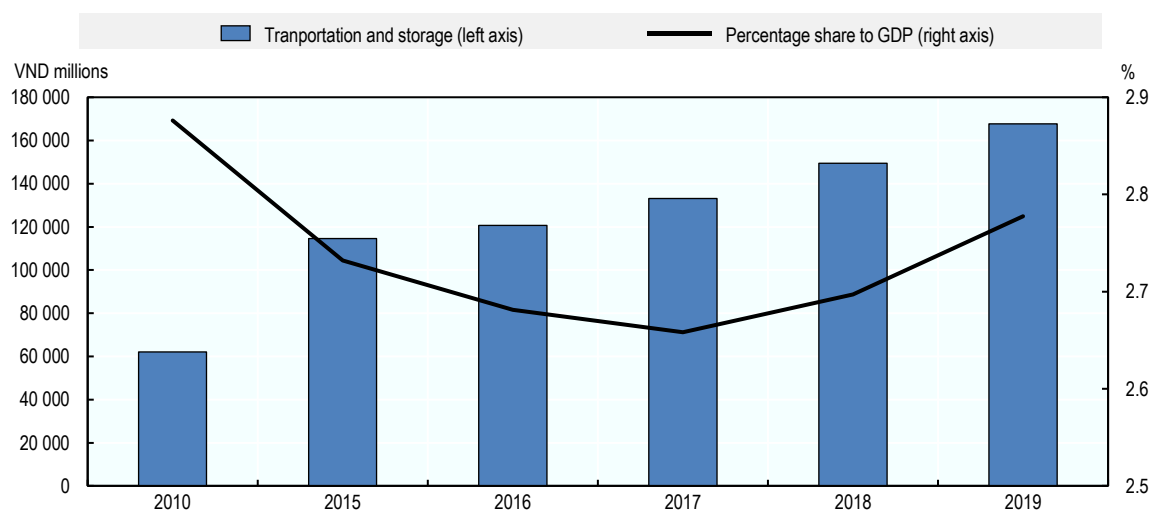
2.1.1. Employment and value added of logistics sector

In 2019, Viet Nam's transport and storage services employed 1.97 million people, representing around 3.5% of the employed population.³⁵ GDP of transport and storage services was estimated at VND 167 682 billion in 2019, accounting for 2.8% of the total GDP (Figure 2.1).

Most of the workers in the logistics sector are employed by SMEs. According to the 2019 Viet Nam Logistics Report published by the Ministry of Trade and Industry, firms with less than 50 employees account for about 32.4% of human resources in logistics while large enterprises with more than a thousand people only employ 10.8% of logistics workers.

Logistics costs as a percentage of GDP were estimated at 18% in 2017;³⁶ this compares favourably to some ASEAN countries such as the Philippines (27.2%), which however is significantly higher compared to other countries such as Thailand (8.5%) or other developed countries (Ken Research, 2018, p. 41^[34]). Stakeholders also highlighted that transportation costs account for 30-40% of production costs, and this negatively affects the competitiveness of Vietnamese goods and services.

Figure 2.1. GDP contribution of transport and storage services, 2010 and 2015-19



Source: General Statistics Office of Viet Nam, Statistical Yearbook of Viet Nam 2018, National Accounts, State Budget and Insurance, p. 188, http://gsoweb.gso.gov.vn/Modules/Doc_Download.aspx?DocID=24515.

2.1.2. Market turnover

In 2019, the Vietnamese freight and logistics market was valued at USD 61.83 billion in with an estimated growth rate of 4.89% by 2025 (Mordor Intelligence, 2020^[35]). In 2017, freight transport and forwarding accounted for 86.5% of the logistics market, followed by warehousing (9.7%), and value-added services (3.8%) (Ken Research, 2018^[34]).

The freight transport and forwarding market in Viet Nam is largely dominated by road and sea transport.

2.1.3. Market volumes

According to recent statistics from the Viet Nam Logistics Business Association, there are currently more than 3 000 domestic enterprises active in the logistics sector. Approximately 80% of Vietnamese enterprises active in logistics sector have a legal capital between VND 1.5 and 2 billion, and are concentrated in the Ho Chi Minh City area, which attracts over 70% of imported and exported goods in the country. Such logistics SMEs are mainly active in certain segments of the logistics supply chain, in particular warehousing, freight transport, freight forwarding and specific value-added services such as loading and unloading, and packaging. Among the top 35 logistics players in the world, thirty of them are currently active in Viet Nam and account for approximately 75% of the market, in particular in high added value segments.

As mentioned above, freight transport by road is the second largest contributor to logistics revenues after maritime freight transport. The number of registered trucks in Viet Nam has been constantly growing over the last ten years and it increased by almost 186% between 2008 and 2017.

Similarly, the importance of maritime transport is confirmed both by the constant increase of merchant vessel registrations in Viet Nam (Table 2.1) and by the increasing amount of freight handled by maritime transport in Viet Nam (Figure 2.2).

By contrast, freight by railway has a negligible market share and volumes transported by rail have been shrinking in the last few years (Figure 2.3). While road freight transport registered an average growth of 11.9% a year between 2005 and 2014, the decline in freight volumes transported by railway is the consequence of several factors, such as the costs of transporting goods from the production areas to the

train stations and the low speed and weight limits resulting from the use of non-standard gauge in Viet Nam (Clean Air Asia, 2017^[36]).³⁷ In recent years, the average speed of freight trains has been indeed approximately half of the average inter-city truck speed, thus making it more convenient in terms of speed to transport goods by road (OECD, 2018, p. 305^[37]).

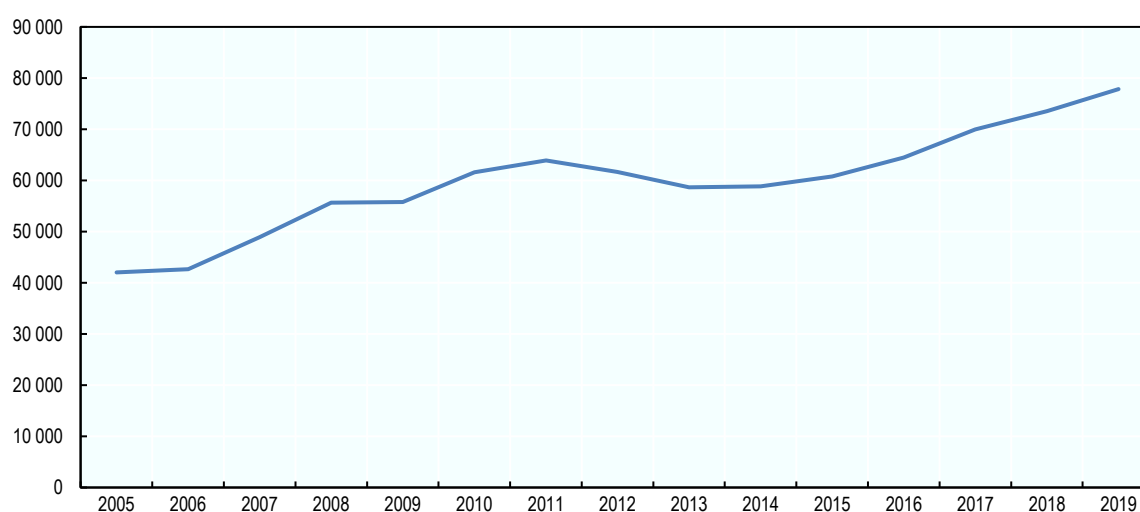
Furthermore, state investments in railway infrastructure have been limited compared to those in the road sector, resulting in a shorter railway network that was reduced by 25% between 2000 and 2011 and poor quality of infrastructure, rolling stock, and signalling and telecom systems (OECD, 2018, p. 305^[37]).

Table 2.1. Total merchant fleet ships by flag of registration, 2011-20

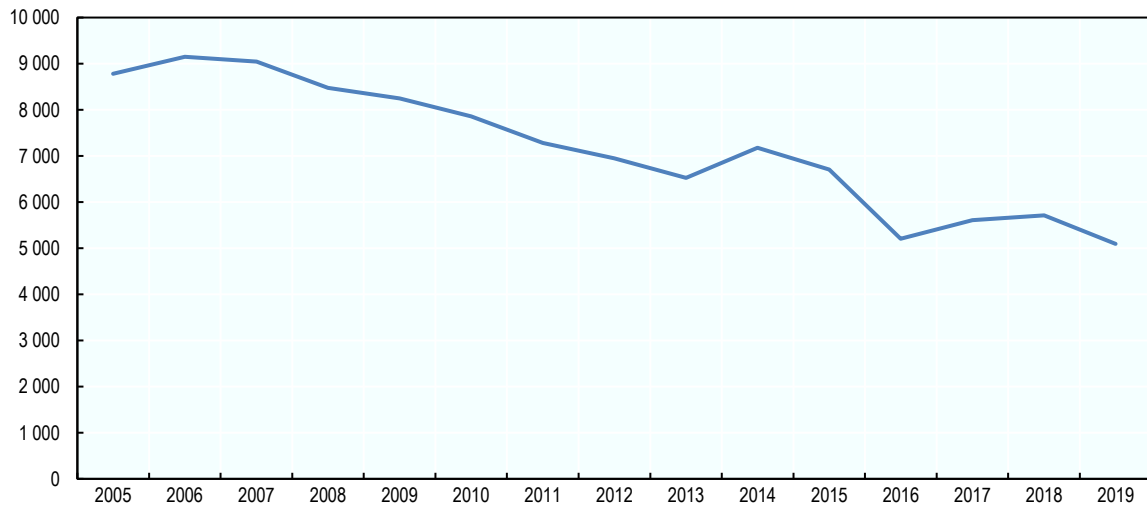
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Brunei Darussalam	82	82	81	81	97	100	106	96	94	93
Cambodia	836	754	758	699	606	591	321	270	254	248
Indonesia	5 960	6 341	6 941	7 542	8 132	8 255	9 461	9 734	10 047	10 282
Lao PDR	1	2	1	1	1	1	1	1	1	1
Malaysia	1 405	1 456	1 500	1 561	1 617	1 670	1 691	1 732	1 747	1 770
Myanmar	83	86	84	88	98	99	98	97	98	95
Philippines	1 407	1 403	1 403	1 436	1 461	1 494	1 620	1 698	1 779	1 817
Singapore	2 772	3 117	3 239	3 166	3 339	3 484	3 465	3 454	3 376	3 387
Thailand	769	746	746	767	776	786	798	828	845	845
Viet Nam	1 756	1 774	1 752	1 752	1 761	1 800	1 791	1 831	1 864	1 903

Source: UNCTAD, <https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=93>.

Figure 2.2. Volume of freight carried by maritime transport, thousand tonnes, 2005-19



Source: General Statistics Office of Viet Nam, Statistical Yearbook of Viet Nam 2018, Transport and Postal Service, Telecommunication, p. 717, http://gsoweb.gso.gov.vn/Modules/Doc_Download.aspx?DocID=24521.

Figure 2.3. Volume of freight carried by railway, thousand tonnes, 2005-19

Source: General Statistics Office of Viet Nam, Statistical Yearbook of Viet Nam 2018, Transport and Postal Service, Telecommunication, p. 717, http://gsoweb.gso.gov.vn/Modules/Doc_Download.aspx?DocID=24521.

2.1.4. Infrastructure

The World Bank's Logistic Performance Index (LPI) is a benchmarking tool that collects data on the quality of trade and transport-related infrastructure to provide an aggregate indicator across 160 countries. The LPI captures logistics professionals' perception of the quality of a country's trade and transport-related infrastructure, including ports, railways, roads and information technology. Its ratings go from one (very low quality) to five (very high quality).

As shown in Figure 2.4, 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.

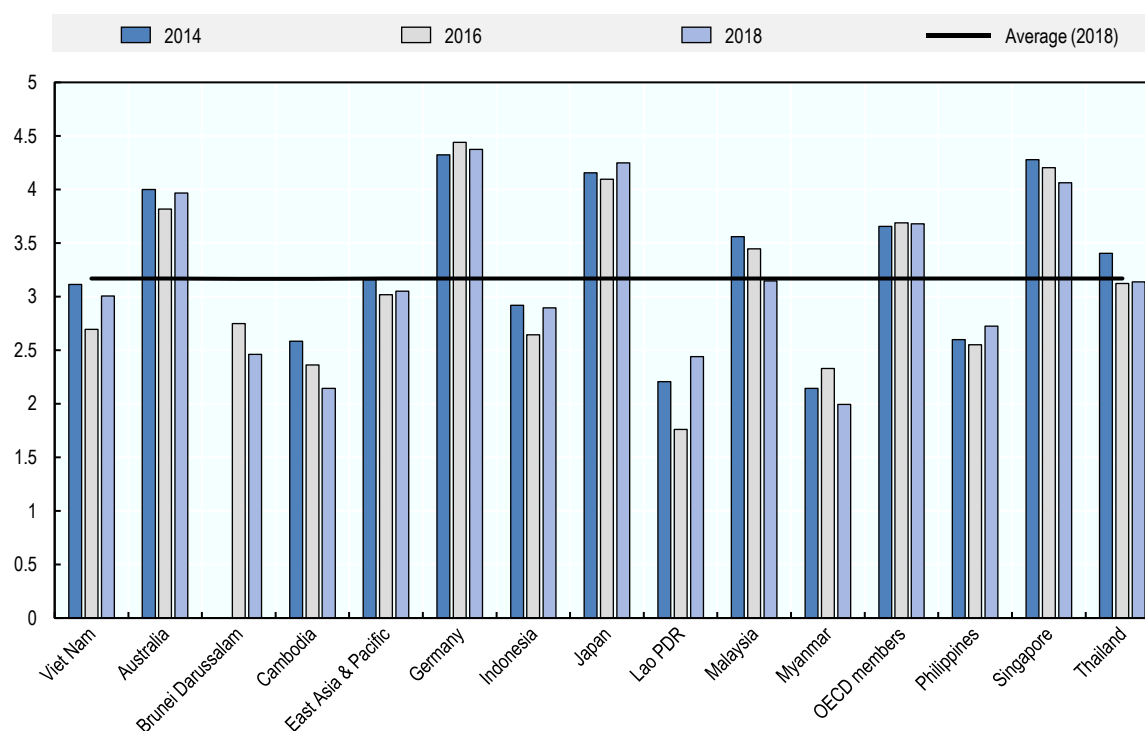
Roads

Viet Nam's road transport infrastructure lags behind some of the more advanced regional competitors, such as Malaysia and Thailand. Viet Nam's total road network consists of 200 000 kilometres, of which only about 65% are paved, compared to over 77% in its neighbouring countries peers. Nearly 93% of national roads are only two-laned (including for the most part the main national road linking Hanoi and Ho Chi Minh City) (OECD, 2018, p. 303^[37]).

Ports

Port infrastructure in Viet Nam currently consists of 281 port terminals, which are geographically distributed across the country's territory and have a total capacity of over 550 million tonnes per year. Most of the activity takes place in two of those groups, notably the northern (Haiphong, Dinh Vu and Cai Lan) and southern (Ho Chi Minh City and Cai Mep-Thi Vai) ports, which accounted for roughly 29% and 58% of total cargo throughput in 2014 and 26% and 70% of total container throughput in 2014, respectively (OECD, 2018, pp. 305-306^[37]). The government is heavily investing in the development of certain ports, namely Cai Mep deep-water port, Lach Huyen deep-water port, and Van Phong international transit port.

Figure 2.4. Quality of trade and transport-related infrastructure, 2014-18



Note: The index varies between 1 (low) to 5 (high).

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

Railways

The railway sector in Viet Nam accounted for only 2% of total freight movements in 2016 (Ken Research, 2018_[34]). As shown in Figure 2.3, the volume of freight carried by railway has fallen recently. Limited investment in the maintenance and upgrading of the existing railway network in Viet Nam has left the network in poor condition relative to alternative transport modes, such as roads and coastal shipping, which provide greater flexibility and faster transport (OECD, 2018, p. 305_[37]).

2.1.5. International trade and connectivity

Following a similar positive trend as global markets in recent years,³⁸ Viet Nam's exports of all transport services have been growing for over ten years. According to the most recent figures, exports reached approximately USD 3.3 billion in 2019, with a 31.8% increase since 2015 (Table 2.3).

Table 2.2. Viet Nam's total exports and imports of transport services, in USD million, 2015-19

	2015	2016	2017	2018	2019
Transport-service exports	2 508	2 529	2 608	3 290	3 306
Transport-service imports	7 797	8 133	7 960	7 866	8 330

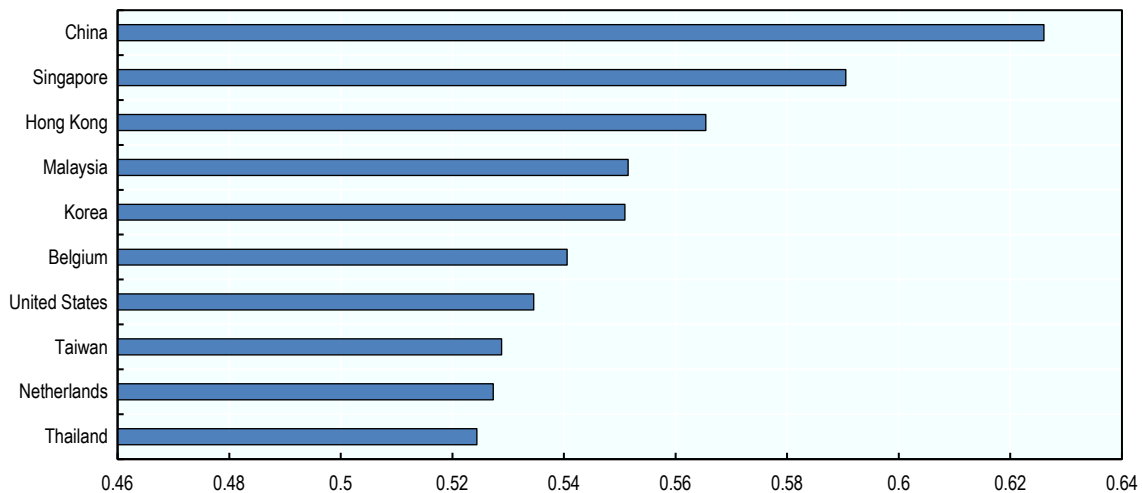
Note: They include all transport services involving the carriage of people and objects from one location to another (by sea, by air and other modes of transport) as well as related supporting and auxiliary services and postal and courier services.

Source: UNCTADStats, <http://unctadstat.unctad.org/wds/TableViewer/tableView.aspx>.

Viet Nam's liner shipping connections with other countries have significantly improved over time.³⁹ Since 2006, Viet Nam's connectivity index (which reveal countries' levels of integration into the global networks of liner shipping) has been increasing, passing from 21.3 out of 100 in 2006 to 66.5 in 2019.

Figure 2.5 shows Viet Nam's position on the Liner Shipping Bilateral Connectivity Index (LSBCI), which tracked with which countries Viet Nam had the strongest bilateral connections in 2020.⁴⁰ This is a crucial determinant of bilateral exports, as there is a close relationship between bilateral maritime liner-shiping connectivity and exports in containerised goods: evidence shows that a lack of a direct maritime connection with a country results in lower values of exports with that country (Fugazza and Hoffmann, 2017^[38]).

Figure 2.5. Liner Shipping Bilateral Connectivity Index (LSBCI), 2020



Note: Leading partners: 0 minimum, 1 maximum.

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

2.1.6. Logistics rankings

Box 2.1. Logistics Performance Index

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

According to the World Bank, the LPI: "is the weighted average of the country scores on the six key dimensions:

1. Efficiency of the clearance process (i.e., speed, simplicity and predictability of formalities) by border control agencies, including customs.
2. Quality of trade and transport related infrastructure (e.g., ports, railroads, roads, information technology).
3. Ease of arranging competitively priced shipments.

4. Competence and quality of logistics services (e.g., transport operators, customs brokers).
5. Ability to track and trace consignments.
6. Timeliness of shipments in reaching destination within the scheduled or expected delivery time".

Source: (World Bank, 2018^[32]).

As seen in Table 2.3, in 2018, Viet Nam ranked 39 out of 160 countries in the Logistics Performance Index (LPI), a significant improvement from 64 in 2016. With the overall LPI score of 3.27, it ranked 3 among ASEAN countries, following Singapore (7) and Thailand (32) and is the top performer in its lower-middle income group.⁴¹ Viet Nam's LPI score fluctuated slightly between 2007 and 2018 when it reached an all-time high, which shows that the country has a strong potential to develop logistics services over the upcoming years.

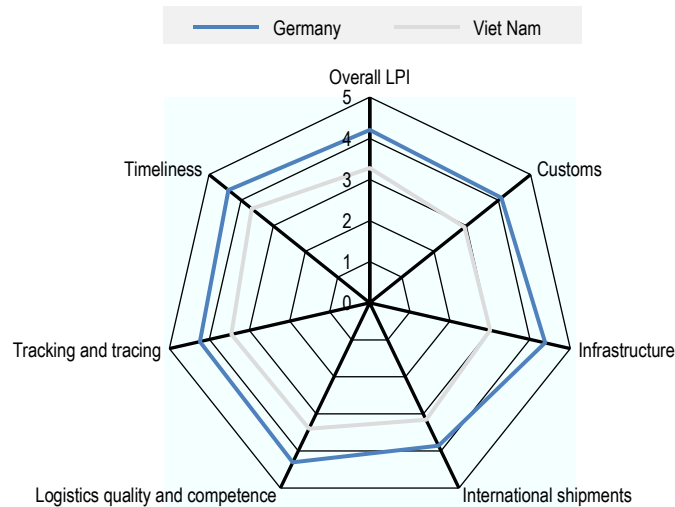
Table 2.3. LPI overall ranking, 2018

Overall ranking	Country
1	Germany
2	Sweden
3	Belgium
4	Austria
5	Japan
6	Netherlands
7	Singapore
8	Denmark
9	United Kingdom
10	Finland
	[...]
32	Thailand
39	Viet Nam
41	Malaysia
46	Indonesia
60	Philippines
80	Brunei Darussalam
82	Lao PDR
98	Cambodia
137	Myanmar

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

Figure 2.6 shows Viet Nam's LPI overall score and sub-indicators against the top performer at the global level (Germany) in 2018. As noted in Box 2.1, the score ranges between 1 (lowest) and 5 (highest). Analysis of each of the six indicators suggests that efficiency of the clearance process (with a score of 2.95) is the most challenging area for Viet Nam. Its timeliness (3.7) and logistics quality and competence (3.4) scored relatively high among ASEAN countries, ranking third after Singapore and Thailand.

Figure 2.6. Viet Nam's LPI score against top performer worldwide (Germany), 2018



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

2.1.7. Policy developments: action plan on logistics services and the National Digital Transformation Programme

Recognising that the logistics industry is a key to spur economic growth, the Vietnamese Prime Minister, at the request of Minister of Industry and Trade, adopted an Action Plan for the Improvement of Competitiveness and Development of Viet Nam's Logistics Services by 2025.⁴²

According to this Action Plan, the government plans to develop the logistics service sector into a high value-added sector to support the national development of manufacturing, import, export and commercial activities. The Action Plan aims to achieve the following targets by 2025: 1) the contribution of the logistics sector to GDP reaching 8-10%; 2) a 15-20% annual growth of the logistics sector; 3) 50-60% rate of outsourcing logistics; 4) logistics costs reduced to 16-20% of GDP; and 5) ranking 50 or above across the world, according to the Logistics Performance Index (LPI).⁴³

The Action Plan also sets out specific tasks to achieve the above-mentioned targets, focusing on the following areas: 1) improving policies and law on logistics services; 2) completing the logistics infrastructure; 3) strengthening business capacity and service quality; 4) developing the market of logistics service; and 5) training, raising awareness and quality of human resources.

However, although scoring better than some peers, Viet Nam still lags behind other ASEAN countries in terms of firms' innovation performance. For example, when looking at the business sophistication index (which shows how conducive firms are to innovation activity), in 2020 Viet Nam ranked 34th, thus behind Singapore (6th), the Philippines (29th), Malaysia (31st) and Thailand (36th).⁴⁴

Recognising the importance of logistics for the national economy, the National Digital Transformation Programme to 2025, which aims to develop a digital economy and support the establishment of Vietnamese digital businesses with global capacity, includes logistics among its eight prioritised sectors. In particular, the programme aims to develop intelligent transportation systems and infrastructure, set up platforms to connect shippers and customers to enable the former to find the optimal means to deliver their goods, and to facilitate the grant of licences through digital means.⁴⁵ To implement this programme, the Vietnam Logistics Association (VLA) has already launched a number of projects concerning for example electronic delivery orders and electronic bills of lading.⁴⁶

2.2. Key stakeholders

2.2.1. Government stakeholders and institutional framework

Viet Nam's administrative bodies dealing with transportation planning and management are structured at national, provincial and local levels, as shown in Figure 2.7.

The **Ministry of Transport** is responsible for State management of road, rail, inland waterway, sea and air transport infrastructure nationwide, and of services by the same means. Its functions include:⁴⁷

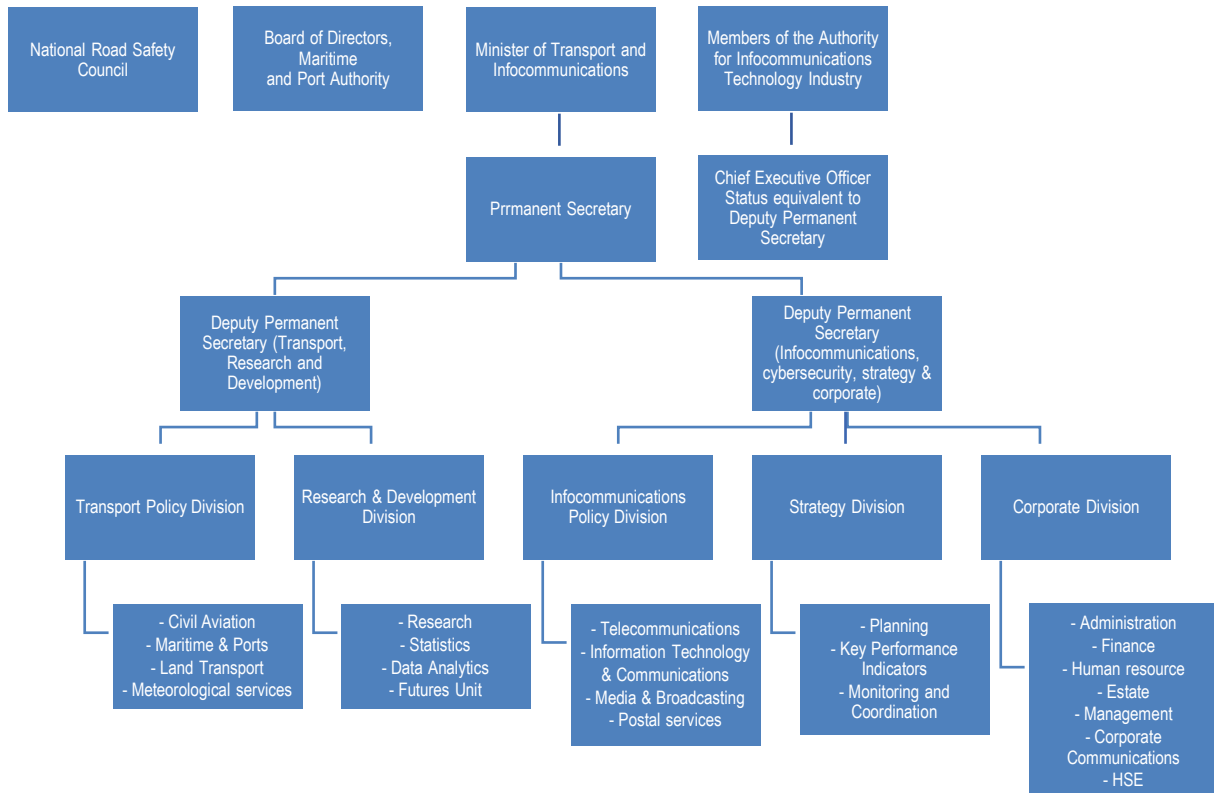
- promulgating decisions, directives and circulars;
- developing national standards, and issuing national technical regulations and economic-technical norms;
- directing the implementation of master plans and plans on the development of transport infrastructure, already approved by the prime minister;
- prescribing the training, coaching and examination of, and the grant, recognition and withdrawal of professional permits, diplomas and certificates for drivers and operators;
- supervising and examining compliance with transport business conditions and mechanisms and policies on transport development and transport-related services;
- implementing international co-operation and treaties on road, rail, inland waterway, sea and air transport, which Viet Nam has signed or acceded to;
- supervising and examining the implementation of service conditions regulations and handling violations within its remit.

The ministry is further organised in specialised agencies responsible for roads, railways, maritime, and inland waterways. Furthermore, it comprises horizontal general administrations dealing for instance with planning and investment, safety and international co-operation.

The specialised agencies relevant for this Project are:

- **Directorate for Roads of Viet Nam (DRVN)**, with the function of advising and assisting the Minister of Transport in state management and enforcement of the law on road transportation, pursuant to Prime Minister's Decision No. 35/2018 / QD-TTg.
- **Viet Nam Railways Authority (VNRA)** responsible for assisting the ministry in State organisation and enforcement of transport by rail, pursuant to Decision 1890 / QD-BGTVT.
- **Viet Nam Inland Waterway Administration (VIWA)**, with the function of advising and assisting the Minister in state management and organisation, and enforcement of specialised laws on inland waterway transportation throughout the country, pursuant to Ministry of Transport's Decision No. 4409/QD-BGTVT.
- **Viet Nam Maritime Administration (VINAMARINE)**, responsible for management and enforcement of maritime laws, pursuant to Ministry of Transport's Decision No. 2818 / QD-BGTVT.
- **Vietnam Register (VR)**, responsible for keeping the registry of all transport vehicles and equipment for loading and unloading and for use on construction sites, as well as vehicles used on railway, and for inland waterway and maritime transportation throughout the country. It also oversees the quality and technical safety registration of all transport vehicles and equipment as well as vehicles and equipment for oil and gas exploration, exploitation and transportation by sea in accordance with law.
- **Provincial departments** are in charge of implementing transportation projects and policies in their areas of competence with the ministry's support and under the guidance of the Provincial People's Committees.⁴⁸

Figure 2.7. Structure of relevant institutions in the transport sector



Note: The figure only includes the departments and agencies that are relevant for the purposes of this Project.

Source: Ministry of Transport, <http://mt.gov.vn/en/pages/Organization.aspx>.

2.2.2. State-owned enterprises

SOEs are important market players in the Vietnamese transport sector. For the purposes of this project, the main corporations owned by the state are:

- **Viet Nam Maritime Corporation (VIMC)**, the national shipping company that also operates ports and offers maritime services, trucking services, freight-forwarding and warehousing.
- **Viet Nam Railways (VNR)**, responsible for the management, exploitation and maintenance of the railway infrastructure as well as to provide agent and transport services by railway, including certain related services such as warehousing and transport support services.
- **Shipbuilding Industry Corporation (SBIC)**, building merchant vessels, platform-supply vessels and other made-to-order ships.

2.2.3. Main trade associations

The main trade associations active in the logistics sector are:

- Vietnam Logistics Association (VLA);
- Vietnam International Freight Forwarders' Association (VIFFAS);
- Vietnam Automobile Transport Association (VATA);
- Vietnam Chamber of Commerce & Industry (VCCI);
- Vietnam Ship Agents and Brokers Association (VISABA);

- Vietnam Seaports Association (VPA);
- Vietnam Shipowners' Association (VSA);
- Vietnam Shippers' Council (VNSC).

2.2.4. Logistics companies

According to VLA, at the end of 2019 there were more than 4 000 transport and logistics firms in the country. They were mainly active in international freight forwarding, maritime transport agency and road transport and 36% of them were located in Ho Chi Minh City. Furthermore, most of them are SMEs with a capital of less than VND 10 billion.

Table 2.4. Number of logistics companies in Viet Nam, 2015

Subsector	Total	Location				
		Ha Noi	HCM City	Da Nang	Hai Phong	Others
Total number of transport agencies	2 253	273	821	246	89	824
International freight forwarding	1 885	257	1 139	36	48	405
Maritime transport agencies	963	103	486	36	65	273
Road transport	633	51	164	11	17	390
Air freight services	417	47	220	11	14	125
Customs clearance services	367	43	183	5	19	117
Other logistics services	287	28	144	4	18	93
Postal and courier services	286	52	108	6	1	119
Container transport	283	20	124	7	21	111
Warehousing	127	10	60	1	2	54
Loading, unloading	125	4	56	5	20	40
Rail freight transport	97	4	56	3	2	32
Percentage of each location in total (%)	100	12	36	11	4	37

Source: VLA (2015).

The market is dominated by foreign firms. Major players in the logistics market include large international players such as Deutsche Post DHL Group, Yusen Logistics and CEVA Logistics and Vietnamese companies, including Transimex and Gemadept. While domestic service providers represent 80% of the active logistics companies, they only account for approximately 20-30% of the total market in terms of revenue.⁴⁹

2.3. Overview of the legislation in the logistics sector in Viet Nam

The OECD has identified 44 pieces of legislation related to the logistics sector, including international agreements, acts and regulations.

It is important to note that the number of recommendations in this report is not indicative of the overall restrictiveness of logistics regulation in the country, nor is it a good basis for comparisons between countries. Some restrictions to competition identified by the OECD are more harmful than others, making country comparison difficult and often not meaningful. Also, the number of recommendations depends on several factors including the number of pieces of legislations available and reviewed, and the amount and depth of contributions and feedback of domestic stakeholders.

Table 2.5. Number of screened pieces of legislation, restrictions and recommendations

Sector	Legislation analysed	Restrictions found	Recommendations
Road	7	8	6
Maritime	8	10	9
Freight forwarding	5	5	5
Rail		2	2
Warehouses	6	8	6
Small package delivery	2	2	2
International agreements	4	3	3
Horizontal/Others	12	3	3
Total	44	41	36

Note: Legislation analysed currently includes only those where restrictions were found.

Source: OECD project team.

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 6, while all barriers and recommendations are set out in Annex B.

3 Road freight transport

3.1. Requirements to enter the market

3.1.1. Minimum number of vehicles

Description of obstacle. Pursuant to Decree No. 86/2014/ND-CP, in order to provide goods transport services in containers, or services using vehicles, trailers or semi-trailers to transport goods beyond a 300 kilometre distance, operators need to own a minimum number of vehicles as specified in their licence application, as follows:

1. 10 or more if the head office is in one of the "centrally-run cities";
2. 5 or more if the head office is located in other localities;
3. 3 or more if the head office is located in poor districts.⁵⁰

Harm to competition. Requiring a minimum number of vehicles raises costs, especially for SMEs, which may be forced to own assets above their actual needs and may deter certain SMEs from entering the market in the first place. These requirements also limit the operators' flexibility to respond to changing market conditions by scaling down their activities. The inability to maintain the minimum fleet size may result in exit of otherwise healthy competitors.

International comparison. In the *OECD Competition Assessment Review: Portugal* (OECD, 2018^[6]), the OECD found that to perform long-distance bus services, in scheduled direct routes above 100 kilometres (locally called "high-quality services"), the law required companies to have at least six buses of category III (heavy passenger vehicles with more than nine seats) and an employee as a crew member of each bus. Similarly, to be allowed to offer car rental services operators had to have a minimum number of seven vehicles for the rental of passenger cars and three vehicles for the rental of motorcycles, tricycles and quadbikes. Finally, licensing of truck-rental services required operators to have a minimum number of vehicles, with a Portuguese licence plate. To rent trucks below 6 tonnes, they had to have 12 vehicles, or 6 vehicles, if they were also renting cars. To rent trucks above 6 tonnes, they had to have 6 vehicles, unless the company has a minimum tonnage of 50 t gross weight in total.

In the OECD's views, the imposition of a minimum number of vehicles to start a business limited the ability of these operators to enter the markets and increased their operational costs, which could lead to higher prices charged to consumers. The initial associated investment could particularly deter SMEs or entrepreneurs from entering the market.

Similarly, in the *OECD Competition Assessment Review: Tunisia* (OECD, 2019, p. 161^[39]), the OECD found that regulations on freight transport by road imposed restrictions on the size of vehicle fleets according to the type of entity and market segment. In particular, a sole proprietorship could only use one heavy goods vehicle (HGV, which could be a truck, an articulated vehicle or a double-articulated vehicle) to provide road freight services, while road freight companies had to use or lease a minimum of 18 HGVs,

at least 6 of which had to be motor vehicles. Furthermore, such companies were also subject to a minimum total tonnage requirement for the fleet of 300 tonnes.

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

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

Policymaker's objective. The higher entry requirements aim to reduce the atomisation of road transport companies, 70% of which are small scale.⁵¹ This is also confirmed by a recent report of the World Bank on *Promoting open and competitive markets in road freight and logistics services* (World Bank, 2018, p. 29_[40]). Table 3.1 below shows the level of fragmentation of the trucking sector in Viet Nam and an average size of 5.3 trucks per operator, possibly resulting in their inability to invest in fleets and operational efficiency.

Table 3.1. Fragmentation of the trucking sector in Viet Nam, 2018

Region	Average number of trucks per company
Northwest	1.9
Northeast	2.6
Red River Delta	3.4
North Central Coast	5.8
South Central Coast	4.4
Central Highlands	12.8
Southeast	9.8
Mekong River Delta	16.3
Viet Nam (average)	5.3

Source: (World Bank, 2019, p. 37_[41]).

However, the current ambiguous formulation of the provision and the difficulty in tracking distances travelled by trucks make this provision difficult to enforce, and the policy has only had limited success. Moreover, by way of comparison, fragmentation is a common feature also in some developed markets. For instance in the US, 55% of freight carriers have one vehicle.⁵² Similarly, in the EU the market is characterised by “a large number of small companies generally offering basic freight transport services for own- and third-party use, and a limited number of major hauliers providing more sophisticated logistics services” (OECD, 2019, p. 156_[39]).

Recommendation. The OECD recommends removing this provision. Viet Nam may achieve the legitimate policy objective of reducing atomisation, for instance by granting incentives to those that get into partnerships or increase their size.

3.1.2. *Obligation to own a parking lot*

Description of obstacle. Pursuant to Article 67(3) of the Law on Road Traffic, enterprises and co-operatives wishing to provide commercial cargo transport services need to own a parking lot suitable for their size. Circular No. 63/2014/TT-BGTVT provides a broad definition of a parking lot as a “road transport infrastructural construction where vehicles are parked.”

Harm to competition. Requiring a new entrant to the road freight transportation market to own a parking lot significantly raises the cost of entry, especially in areas where land is scarce or expensive. As a result, it may prevent new players from entering the market and so limit competition, possibly leading to higher consumer prices and reduced quality service. The requirement may be especially harmful for smaller players and prevent them from entering the market. Finally, as highlighted in the box below, the requirement to own parking lots may run counter other policy objectives, which in turn could increase costs and have an impact on competitiveness.

Box 3.1. Traffic congestion and centralised parking areas around ports

According to the Directorate for Roads of Viet Nam (DRVN), small and medium trucks represent between 50% and 60% of the trucks moving in and out of some key ports (Hai Phong, Ho Chi Minh, Da Nang, and Can Tho). The use of small trucks for last-mile connectivity to ports has resulted in increased traffic congestion in and out of these ports, which in turn has led to delays in transit time.

For this reason, some studies suggest creating centralised truck parking bays near ports that would be used also as freight consolidation areas. This would in turn increase utilisation rates of trucks and provide incentives for larger trucks, thus reducing traffic near ports.

The use of digital tools can provide alternative ways to address congestion. In Singapore, GPS-based tracking systems to monitor trucks within the port have been introduced in several ports, for instance by Jurong Port in the Combi Terminal.⁵³ This system aims to address traffic congestion within the port, by regulating the circulation of trucks in such frequently congested areas. For instance, the objective of Jurong Port’s booking initiative is to achieve a turnaround time of 30 minutes for every container trucked and reduce traffic congestion at yard blocks so as to increase vessel productivity. As such, this and similar company-led platforms can function as alternatives to truck bans imposed by regulations in other countries to address traffic congestion during certain times and/or in certain areas.

In order to reduce the time that trucks spend on roads close to the port and/or within the port area, the system enables trucking carriers to schedule their truck trips to the ports. They will therefore be required to book time slots in advance to drop off or pick up freight in the port. By using a GPS-based tracking technology, terminals will receive a notification when trucks are approaching their facilities and they will be able to provide them with directions on how to proceed. Once the trucking company has booked its time slot, it is allowed to enter the port within a certain “grace period” before or after its booked time slot, subject to the payment of specific charges. Beyond this grace period, entry is not allowed and charges will be imposed for no show.

Source: (World Bank, 2019, p. 108₍₄₁₎).

Policymaker’s objective. The requirement to own a parking lot is likely aimed at preventing parking in public areas, which could possibly lead to traffic congestion.

International comparison. In the Philippines, the law requires operators to have a garage before they can operate. A garage is likely required, in part, to avoid traffic congestion. For example, it is provided in the Citizen’s Charter that trucks for hire entering Metro Manila need to show “proof of garage or authority to use garage within Metro Manila to avoid traffic congestion”.

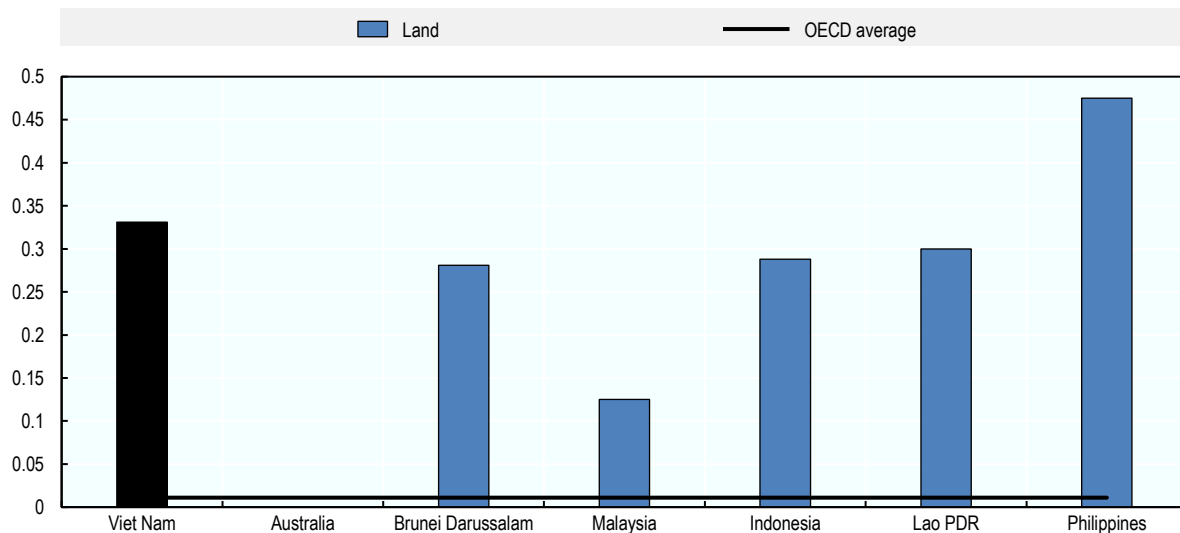
Recommendation. The OECD recommends removing the requirement *to own* a parking lot and clarify that operators providing commercial cargo transport services by container only need to show proof of sufficient parking space when they start operations, irrespective of whether they own it or rent it.

3.2. FDI restrictions in road transport

Description of obstacle. If a foreign investor wishes to provide road transport services, it must sign a co-operation agreement or enter a joint venture (JV) with a Vietnamese entity. A foreign investor may not, however, own more than 51% of a company. In addition, it is subject to the horizontal provisions on investment licensing discussed in Section 6.1.

The figure below reflects Viet Nam and other selected ASEAN countries’ score according to the OECD FDI Regulatory Restrictiveness Index in the land transport sector. It shows that, although being less restrictive than other ASEAN countries such as the Philippines, Viet Nam still has more restrictions than the OECD average and other ASEAN peers.

Figure 3.1. OECD FDI Regulatory Restrictiveness Index in land transport, 2018



Note: Data refer to foreign equity limitations and discriminatory screening or approval mechanisms in the land transport sector. Restrictions are evaluated on a 0 (open) to 1 (closed) scale.

Source: <https://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#>.

Harm to competition. This provision restricts access by foreign companies and may result in a lower number of suppliers in Viet Nam, potentially leading to higher consumer prices and reduced quality.

Policymaker’s objective. It seems that this provision aims to protect national industry against foreign competition.

Recommendation. Viet Nam should focus on enhancing liberalisation efforts in the transport sector, which remains partly off limits to foreign investors, holding back potential economy-wide productivity gains. The OECD therefore recommends one of the following options:

1. Progressively relax foreign equity limits towards allowing up to 100% foreign ownership in the long term. A first step may be to extend the current AFAS requirement of 70% ASEAN foreign-ownership in entities providing logistics services also to non-ASEAN nationals.
2. Relax foreign equity limits on a reciprocal basis for nationals of those countries that allow Vietnamese nationals to hold 100% shares in a company.
3. Allow 100% ownership and apply the screening system of foreign direct investments (see Section 6.1.1) when the investment goes beyond a certain value threshold.

3.3. Frequent training requirements for drivers

Description of obstacle. Although truck drivers already hold a driving licence, every six months they must attend a training course on traffic laws and regulations. The same requirement applies to transport business operators and attendant staff.

The content of this training is defined in the material and framework programme issued by the DRVN. It currently includes driving techniques, traffic rules, truck repairs, vehicle knowledge and transport techniques. To provide this training, the company for which the driver or the other staff work has to send a written notice to the Department of Transportation three days before the date of the training.

Article 7 of the Circular No.63/2014/TT-BGTVT provides that any transport company is eligible to organise the training or co-operate with a local automobile transport association or driver training institutions to organise the training for its drivers and staff. The Services of Transport (managing transport at the local level, including issuing licences for goods transport companies) are charged with the training and co-operate with the local automobile transport association in organising training for transport managers of local transport companies.

Harm to competition. This requirement may result in an administrative burden for companies, and so increase costs for drivers and operators already in the market. Also, it makes drivers unavailable during the time of the training, thus reducing the company's output.

Policymaker's objective. The mandatory training aims to ensure that truck drivers and transport operators are aware of the latest laws and safety requirements.

International comparison. Imposing regular staff trainings is common in sectors involving serious risks for health and safety. For instance, in *OECD Competition Assessment Review: Romania* (OECD, 2016^[3]), the OECD found that all staff involved in production, processing, storage, transport and sale of foodstuffs had to attend a training course and pass an examination every three years. The OECD found that "this imposes costs on market participants that go beyond what appears necessary to attain the legitimate policy goals of ensuring a high level of food safety."

Recommendation. The OECD recommends considering the possibility of making this training less frequent and more focussed on safety requirements while strictly limiting it to those whose tasks may benefit the most from it. In addition, consider introducing tests to assess the achievements of the training, for instance, upon renewal of the driving licence.

3.4. Obligation to notify tariffs

Description of obstacle. Cargo transport operators must notify the competent authority of their tariff five days before they are applied. Operators must then comply with their declared tariffs.⁵⁴ More specifically, cargo transport operators must submit a declaration containing the following tariffs:

1. Average tariffs in VND/tonne-kilometre.
2. Tariffs for container shipping (amount in VND/container 20 feet/km; VND/container 40 feet/km; VND/container 20 feet; VND/container 40 feet).
3. Tariffs for main routes according to each specific cargo and distance (VND/tonne) or other tariff measurements as appropriate, according to type of transport services.

If operators increase or decrease their rates by more than 3% of the declared tariffs, they must re-declare their service tariffs. If they do not comply with declared tariffs, a fine can be imposed.

In practice, this system works as follows. On 1 June 2019, Enterprise A notifies its tariffs to the competent receiving body. On 1 January 2020, the enterprise increases its tariffs by 2%. No second declaration is required, but a written notice of adjusted fares must be sent to the authorities before the new tariffs are applied. On 1 June 2020, the enterprise again increases its tariffs, this time by 2.5% on the top of the January 2020 adjustment. Together, the two adjustments result in an aggregate increase of 4.5% compared with the declaration made in June 2019. The enterprise should file therefore a second declaration of tariffs with the authorities.

Harm to competition. This provision creates an administrative burden and may reduce firms' flexibility to react to changes in market demand and supply. For instance, transport operators may not be able to react quickly to a significant downturn in demand by lowering their prices by more than 3%.

Policymaker's objective. Although the operator is free to set its tariffs, the need to declare them to the relevant agencies aims to ensure transparency and facilitate, if needed, state intervention to protect consumers, for instance, in cases of exploitative prices.

International comparison. With very few exceptions,⁵⁵ the OECD has not found a similar notification requirement or price regulation for transport services by truck in other ASEAN countries. Similarly, with the exception of Colombia and Turkey, no OECD member state regulates retail tariffs of road freight services.

Recommendation. The OECD recommends removing this requirement.

4 Water freight transport

4.1. Shipping

4.1.1. Time required for ship registry to issue a certificate

Description of obstacle. The ship registrar under the Ministry of Transport issues the registration certificate for a ship, after inspection. The law provides for statutory limits for the Vietnamese registrar to issue the certificate: two days from the completion of the initial survey or periodic survey or one day from the completion of an annual survey, docking survey, intermediate survey or occasional survey. In practice, however, the time for issuing certificates can be significantly longer.

Harm to competition. An applicant cannot know when the certificate will be issued in practice, creating uncertainty as to when it will be allowed to use its purchased asset. This may delay market entry and impose higher costs. The OECD understands that this is an issue of non-compliance with the law rather than a purely regulatory issue.

Recommendation. The OECD recommends improving compliance with the statutory time limits laid down in the law.

4.1.2. FDI restriction for inland waterway transport

Viet Nam has a total of 41 900 kilometres of navigable inland waterways, 224 river ports and 8 000 landing stages and inland waterway transport accounts for 17.8% of its cargo movements.⁵⁶ This mode of transport is more fuel-efficient than other means of transport and could therefore be a way to address the likely increase in transportation needs brought about by GDP growth.⁵⁷

Box 4.1. Inland waterway transport low utilisation

Some studies highlight that inland waterway transport is still underutilised. This is due to several factors such as:

- Shippers prefer point-to-point flexibility of trucking.
- Viet Nam's old fleet of 30 years on average.
- Small 100 DWT cargo vessel size, compared to the average of 2 400 DWT of countries with well-established inland waterway networks such as Germany and the Netherlands.
- Poor container handling facilities in river ports, that are not equipped for container handling.

Source: (World Bank, 2019, p. 111^[41]).

Description of obstacle. A company operating inland waterway transport must be at least 51% owned by Vietnamese nationals or companies, otherwise it needs specific approval by the Ministry of Planning and Investment.⁵⁸

Harm to competition. This equity limit restricts foreigners' access to the market and may result in a lower number of suppliers in Viet Nam, potentially leading to higher consumer prices and lower service quality.

Policymaker's objective. The OECD understands that this provision aims to protect domestic operators and to ensure that the state retains control over business sectors or businesses they consider as having strategic importance.

Recommendation. Viet Nam should focus on enhancing liberalisation efforts in the transport sector, which remains partly off limits to foreign investors, holding back potential economy-wide productivity gains. The OECD therefore recommends one of the following options.

1. Progressively relax foreign equity limits towards allowing up to 100% foreign ownership in the long term. A first step may be to extend the current AFAS target of 70% ASEAN foreign-ownership in entities providing logistics services also to non-ASEAN nationals.
2. Relax foreign equity limits on a reciprocal basis for nationals of those countries that allow Vietnamese nationals to hold 100% shares in a company.
3. Allow 100% ownership and apply the screening system of foreign direct investments (see Section 6.1.1) when the investment goes beyond a certain value threshold.

4.1.3. Cabotage

Description of obstacle. In order to provide shipping services within Viet Nam, the vessel needs to have been registered in Viet Nam and its owner have an office in Viet Nam. Articles 14 to 16 of the Maritime Code lay down the conditions for ship registration in Viet Nam.

Harm to competition. This provision may restrict access of foreigners to the market and so reduce the number of active suppliers, potentially leading to higher consumer prices and lower quality.

Today, domestic cargo transport using coastal shipping is limited in Viet Nam, partly due to a lack of service providers. VIMC is one of the few operators providing scheduled coastal shipping services from north to south-Viet Nam.

Policymaker's objective. This provision aims to grant some protection to Vietnamese operators before they acquire the necessary strength to compete with international players.

International comparison. In the EU, restrictions to cabotage were lifted in 1993 by Council Regulation No. 3577/92/EEC, creating a free market in maritime transport services within the EU. A 2014 European Commission report assessing the developments between 2001 and 2010, before and after all restrictions were lifted, concludes, however, that removing maritime cabotage market-access barriers has not led to a significant increase in the number of operators providing cabotage services.

Similarly, New Zealand introduced cabotage liberalisation in 1994 in order to increase competition and improve shipping services. International vessels visiting New Zealand were allowed to deliver imports or pick up exports in different ports within the country. As a result of those reforms, prices dropped by 20-25% between 1994 and 2000. National carriers were, however, able to keep the vast majority of the market, although they also had to reduce their rates. Upon review of this reform, the government decided not to re-introduce cabotage restrictions.

Most ASEAN countries appear to have restrictions on cabotage in place but allow exceptions if there is strong demand. Malaysia removed cabotage restrictions for Sabah and Sarawak in 2017 due to an insufficient number of vessels to carry goods from East Malaysia. The Philippines allows foreigners to

apply for authorisation to provide domestic services if no Filipino vessels are available. The OECD noted in its *Economic Outlook for Southeast Asia, China and India* that:

“generally, cabotage is practised by ASEAN countries that are either archipelagic or have an extensive coastline. Brunei Darussalam, Cambodia, Lao PDR and Singapore do not practise cabotage restrictions, while other ASEAN countries continue to do so” (OECD, 2018, p. 100^[42]).

In Mexico, although only Mexican shipping companies are allowed to provide cabotage services, the Communications and Transport Secretary can issue temporary licences allowing foreign vessels to be used by Mexican companies if suitable Mexican vessels are unavailable or if public interest so requires.

Recommendation. The OECD recommends one of the following options.

1. Open the domestic shipping market to foreign competition by lifting the ban on foreign vessels to provide shipping services between ports in Viet Nam, possibly based on reciprocity arrangements or as a first step, between ASEAN members.
2. Amend the provisions to allow foreign ships to carry their own cargo (and other foreign cargo) domestically: after arriving at a first port of entry, they could travel domestically to a final port call. A further step would then be to allow foreign ships to carry other domestic cargo from the port of entry to the port of final call if the foreign vessel has capacity after unloading goods at the port of entry.
3. Allow international ships to operate in the domestic shipping market on specific routes where there is demand.

Foreign shipping crew cannot exceed a third of the personnel

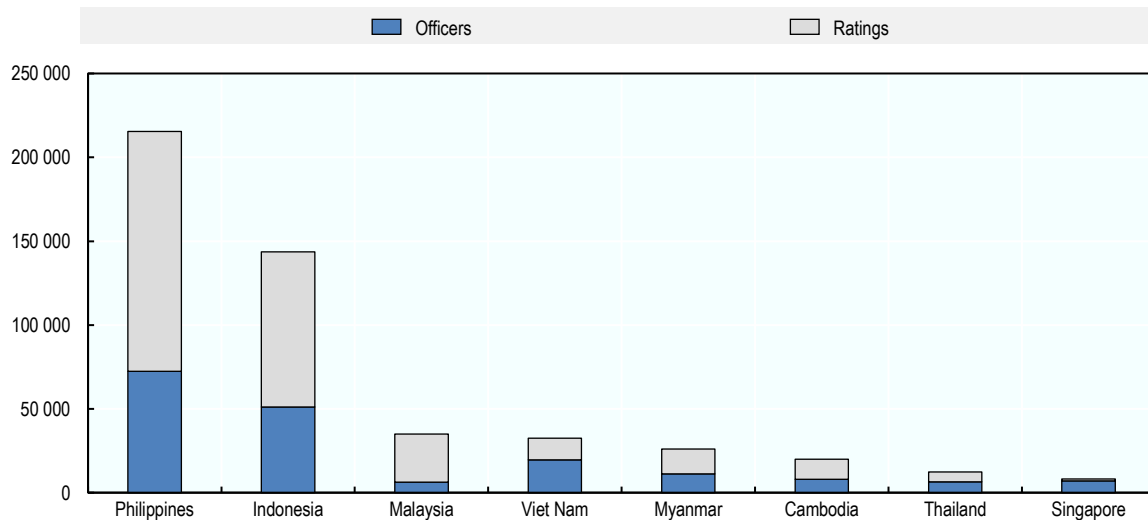
In the past, Viet Nam's shipping industry faced a shortage of seafarers to operate its own fleet (Nguyen et al., 2014^[43]).

Figure 4.1 shows the number of seafarers in Viet Nam and other ASEAN countries. Given the significant growth in the number of vessels (Table 2.1) and freight transported by sea (Figure 2.2), a shortage of seafarers may make it difficult to meet the increasing demand associated with such expansion. For example, Vietnam Ocean Shipping Joint Stock Company (VOSCO), one of Viet Nam's leading shipping companies, is continually expanding its fleet, creating greater demand for seafarers and increasing pressure on the recruitment, training and retaining highly skilled seafarers to operate its fleet (Nguyen et al., 2014, p. 227^[43]).

Description of obstacle. The total number of foreign seafarers working on the ship flying Vietnamese flag and registered in Viet Nam shall not exceed a third of the ship's personnel. The captain or first mate must be Vietnamese citizens. Furthermore, specific conditions apply to foreign seafarers working on Vietnamese seagoing ships, namely pursuant to Circular 17/2017/TT-BGTVT:

1. Being physically fit and of eligible working age.
2. Having a work permit issued by the competent Vietnamese state agency, except for those entitled to exemption as prescribed by the labour law.
3. Having a seafarer labour contract as prescribed by Vietnamese law and in accordance with the 2006 Maritime Labour Convention of the International Labour Organization.
4. Having a passport issued by the competent agency of the foreign seafarer's country of citizenship.
5. Having a seafarer book.
6. Holding a post on board the ship.
7. Having the necessary professional certificates granted by competent Vietnamese agencies or competent agencies of countries or territories for which Vietnam has agreed to recognise professional qualifications; for the latter, written proof of expertise certificate is required.

Figure 4.1. Seafarer supply in ASEAN, 2015



Note: "Officers" refers to deck officer, engineer officer, telecommunications personnel holding certificates of competency issued by competent authorities. "Ratings" refers to seafarers other than officers.

Source: UNCTADStat, <https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx>.

Harm to competition. Although stakeholders have explained that currently there is no shortage of seafarers in Viet Nam and that, to the contrary, national seafarers can meet domestic labour demand and even export labour force, there is a risk that this requirement creates a shortage in the future (as it was already the case in the past (Nguyen et al., 2014^[43])). In the extreme, Vietnamese vessels may not be able to operate and would be placed at a disadvantage compared with other nationalities' vessels that are not subject to similar requirements. Stakeholders reported that Vietnamese seafarers often lack the necessary foreign language skills to expand businesses beyond national borders.

Policymaker's objective. The existence of nationality requirements likely aims to support national labour and ensure that Viet Nam workers acquire the necessary skills as seafarers.

International comparison. In Denmark, only the captain of the ship must be a Danish or EU citizen; there is no nationality requirement for other crewmembers. In Germany, only the captain of merchant ships under German flag has to be an EU/EEA citizen. For ships over 8 000 gross tonnes, there is a requirement to have one officer who is an EU/EEA citizen. In Malaysia, there are no restrictions on a crew's nationality if the ship manager or ship-management company operating the ship is incorporated in Malaysia.

Recommendation. The OECD recommends conducting annual surveys of demand and supply for crews and, in the case of shortages, allowing exemptions from nationality requirement.

4.2. Ports

4.2.1. Issues relating to the institutional framework

Description of obstacle. Government institutions involved in sea-freight transport are

- Vietnam Inland Waterway Administration (**VIWA**), with the function of advising and assisting the Minister in state management and organisation, and enforcement of specialised laws on inland waterway transportation throughout the country.

- Vietnam Maritime Administration (**VINAMARINE**), responsible for management and enforcement of maritime laws.

Certain competency overlaps between VIWA and VINAMARINE exist for inland rivers that lead to seaports. In principle, VINAMARINE manages all the facilities and activities concerning seaports, but certain ports are located on inland rivers that lead to the sea rather than directly on the coast and are jointly managed by VIWA and VINAMARINE.

Vessels also need to deal with port operators (often VIMC but also other SOEs) and, for the hinterland side, with local governments. Certain authors have noted that this may result in longer policy implementation or unsuccessful investments due to insufficient or late co-investments concerning the support infrastructure surrounding ports (Blancas and El-Hifnawi, 2013, p. 83^[44]).

Harm to competition. The unclear institutional framework and allocation of competences may delay market entry, for instance because authorities may require separate permissions, or have different requirements. This may concern maritime safety and security and environmental safety, which fall under the port authority's responsibilities under Article 19 of Decree No. 58/2017/ND-CP. Although at the time of writing the OECD has not found any port-specific harm, the existence of this provision gives rise to a potential risk for the future. For example, vessels operating in a port where there are two different port authorities may be required to seek permission from both of them, increasing delay and their administrative costs.

Recommendation. The OECD recommends clearly separating the competencies between VINAMARINE and VIWA.

4.2.2. Regulation of charges for port services

Description of obstacle. Regulated maximum and minimum fees are set for port services.⁵⁹ Pursuant to Article 1 of Circular 54/2018/TT-BGTVT, these provisions apply to different seaport service charges, such as those for pilotage and towage services, for using the bridges, berths and anchors, and for container loading and unloading services.

Following a proposal by the operator and approval by the Ministry of Finance, VINAMARINE approves prices for four categories: container charges; pilot charges; port charges; and tugboat charges. The government provides a framework and a port operator can choose to raise or reduce tariffs within this maximum-minimum range.

Harm to competition. As previously noted, setting minimum or maximum prices instead of allowing them to adjust to supply and demand, can lead to inefficient outcomes.

Policymaker's objective. Price regulation may be justified in traditional monopoly sectors where a counterweight is needed to the lack of competing alternatives. Minimum rates are generally introduced to help port operators to raise sufficient funds to increase service quality through investment in advanced technology and infrastructure upgrades. In 2018, increases of cargo handling charges in Viet Nam were approved with the aim of raising investment and putting charges on a par with those at a regional level.⁶⁰

According to market participants, until these rises Viet Nam's container-handling service charge was approximately USD 30, significantly lower than those in Singapore (USD 111), which in their opinion made it impossible for investors to recoup investments. Following a recommendation made to the national assembly, container-handling service charges in certain ports were thus raised by 10% in 2018.

The World Bank confirms that:

“Vietnam’s Ministry of Transport introduced minimum port tariffs—so-called floor rates—for services in which competition among terminal operators would be viable. This policy is aimed to help private and state operators recoup some of their heavy investment in cargo terminal infrastructure at Cai Mep Port, where overcapacity is

putting operator's sustainability at risk. [...] In August 2014, following a steep decline in prices, Vietnam's Ministry of Transport set a mandatory two year minimum handling rate of \$46 per 20-foot loaded container to prevent prices from spiralling even lower, according to Bloomberg News (2014). While this measure limits the potential fiscal implications of losses incurred by state-run operators, it reduces competitive pressure among port operators and could harm competitiveness over the long term." (World Bank, 2018, p. 39^[40])

Recommendation. The OECD recommends considering the removal of the minimum floor and keeping only maximum prices in the government framework for setting port charges. Maximum prices should enable operators to recover their costs, including a reasonable rate of return. For this purpose, such maximum prices should also be regularly revised to ensure they are in line with market dynamics and provide the necessary incentives for innovation and investment. In parallel, the government could undertake a holistic review of its national strategy on ports and of the existing network of ports. Among other factors, the review could consider the benefits of inter-port competition while recognising the risks created by excess capacity.

4.2.3. *Obligation for foreign ships to use pilots in river ports*

Description of obstacle. Foreign boats operating on inland waterways and entering or exiting inland waterway ports are required to use piloting services offered by the port. In contrast, Viet Nam-flagged ships "may request the pilotage" when entering or leaving an inland waterway port only if they find it necessary.

Harm to competition. This provision may give rise to discrimination between Vietnamese and foreign companies and raise costs for the latter.

Policymaker's objective. Imposing the use of piloting services upon ships within the port area aims to ensure safety. Navigation condition in such areas are indeed particular and require specific knowledge.

Box 4.2. Discrimination against foreign pilots in Portugal

In Portugal foreign candidates could apply for a pilot exemption certificate (PEC) that allowed them to navigate and manoeuvre within a compulsory pilotage area without necessarily using the services of a maritime pilot. However, foreign applicants for a PEC had to demonstrate knowledge of the Portuguese language. The OECD recommended recognising English as an alternative language, to avoid foreign shipmasters being subject to discrimination, as they may have the necessary skills to navigate inside a port even if they do not speak Portuguese. The OECD found that, among the 22 coastal EU member states, Portugal was one of only four countries reported to have a requirement for exclusive knowledge of the national language.

Source: *OECD Competition Assessment Reviews: Portugal* (2018^[6]),

Recommendation. The OECD recommends providing derogations to the obligation to use port pilots based on fair and non-discriminatory conditions, such as actual experience in the specific port rather than on nationality.

5 Other transport services

5.1. Rail freight transport

As seen in Figure 2.3, transport of cargo by rail is minimal. The Viet Nam Railway Authority's "Vision to 2050" envisages the modernisation of the existing rail network including improved capacity for cargo transport.⁶¹ This would reduce transport costs, as according to the World Bank, in 2014 moving freight along the north-south corridor between Hanoi and Ho Chi Minh City by rail was about 20-30% less expensive than ocean transport (World Bank, 2014, p. 63^[45]). However, developing transport by rail may require certain amendments to current regulations to increase competition.

5.1.1. FDI restrictions

Viet Nam is making significant efforts to boost co-operation with national and international players and involve foreign investors in the development of its railway infrastructure, as well as its loading and unloading facilities and equipment. Viet Nam Railways (VNR) has recently signed, for instance, a co-operation agreement with Saigon Newport Corporation to develop the railway infrastructure and logistics services, with a view to reducing logistics costs and increasing economic efficiency.⁶²

Description of obstacle. Foreign ownership of a railway transport operator must not exceed 49%; similar restrictions apply to the ownership of railway infrastructure.

Harm to competition. The provision limits access by foreigners or makes it more difficult for them to provide railway transportation services.

The limits on foreign majority ownership of infrastructure could considerably diminish interest in these assets and reduce incentives to deploy newer technologies and modern management and organisational practices.

Policymaker's objective. The likely objective of this provision is to retain state control over key enterprises, such as railway transport operators.

The *OECD Investment Policy Reviews: Viet Nam* (2018, p. 329^[37]) noted, however, that "allowing majority-owned foreign investment could also enhance their participation in the government's SOE equitisation programme and help to secure greater value for money of infrastructure PPP projects by exposing such projects to greater competition during the bidding stages".

International comparison. In Australia, transport is defined as a "sensitive business", which permits the government to review foreign investment proposals against the "national interest" on a case-by-case basis. Approval from the Foreign Investment Review Board Foreign is only needed, however, when a foreign national or company attempts to acquire a substantial interest (20% and above) in an Australian entity valued above AUD 261 million.

Recommendation. Viet Nam should focus on enhancing liberalisation efforts in the transport sector, which remains partly off limits to foreign investors. There is a risk that this holds back potential economy-wide productivity gains. The OECD therefore recommends one of the following options for freight services:

1. Progressively relax foreign equity limits towards allowing up to 100% foreign ownership in the long term. A first step may be to extend the current AFAS target of 70% ASEAN foreign-ownership in entities providing logistics services also to non-ASEAN nationals.
2. Relax foreign equity limits on a reciprocal basis for nationals of those countries that allow Vietnamese nationals to hold 100% shares in a company.
3. Allow 100% ownership and apply the screening system of foreign direct investments (see Section 6.1.1) when the investment goes beyond a certain value threshold.

5.1.2. Overlap between infrastructure manager and transport service provider

Description of obstacle. Decision No. 34/2003 of the Prime Minister granted VNR the responsibility of managing infrastructure (Article 1) and the mandate to carry out transportation business on the infrastructure (Article 2) by providing transport services by rail besides offering other services (transport by road and waterways, warehousing, other transport support services). As a result, both the infrastructure and the operator belong to the same holding company, VNR, despite the Railway Law of 2017 providing for separation.

Harm to competition. As both manager of the rail network and provider of intercity railway transport services, VNR may have an incentive to foreclose downstream competitors, by preventing potential rail transport service providers from using rail infrastructure, or place them at a disadvantage by discriminating in favour of its own downstream business.

Box 5.1. Separation models in OECD countries

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 through different models across EU countries.

Privatisation or ownership separation may solve access and discrimination problems, and might accelerate investment in infrastructure. Several models exist in OECD countries, going from full ownership separation to 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 the latter case, accounting separation is of utmost importance to ensure that access to the infrastructure is granted to third parties on the basis of the actual costs rather than for the purposes of foreclosing downstream competitors.

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).

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

Recommendation. The OECD recommends one of the following:

1. Consider splitting the ownership or management of infrastructure and rail freight transport service operation. The OECD supports ongoing efforts to introduce accounting separation in accordance with the 2017 railway law. Accounting separation is necessary to ensure that the charges for the use of the infrastructure are based on actual costs.
2. As a less demanding remedy, introduce accounting separation between infrastructure management and rail freight transport-service operation.

5.2. Freight forwarding

5.2.1. Licensing requirements

Multimodal transport licence for foreigners

Description of obstacle. A specific licence is needed to operate as a multimodal transport operator (MTO). Vietnamese authorities only allow foreign businesses from signatories to the ASEAN Framework Agreement on Multimodal Transport to carry out activities in Viet Nam, on the condition that they hold a licence issued by the authorities of their own country. For a foreign entity to operate in Viet Nam, it must have a licence from another ASEAN country in order to obtain the equivalent authorisation in Viet Nam.

Harm to competition. This requirement may raise different barriers to entry, depending on whether an operator is from an ASEAN or non-ASEAN country. ASEAN operators may be subject to higher costs and administrative burden stemming from the requirement to obtain first a MTO licence in their country of origin. Non-ASEAN operators may not be able to obtain such licence in other ASEAN countries that provide for nationality requirements and therefore this requirement might prevent them from entering the market altogether.⁶³ Stakeholders highlighted that despite the growing demand of transshipment services between different modes of transport, Viet Nam still suffers from the absence of an efficient multimodal transport sector.

Policymaker's objective. The likely objective of this provision is to protect, to a certain extent, national businesses against international competition.

Recommendation. The OECD recommends allowing foreign businesses to be able to obtain a licence in Viet Nam without having to need a licence from another ASEAN country.

Application to include new services into the freight-forwarding transport licence

Description of obstacle. Each time a freight-forwarder licensee wants to offer a new service, such as adding means of transport, it needs to apply to include it into the scope of the licence. This despite the provision lacking clarity on the specific services that require a new application. As Decree No. 87/2009 refers to the Maritime Code, the Law on Road Traffic, the Law on Civil Aviation, the Law on Inland Waterway Traffic, and the Railways Law, the OECD understands that all these activities must be included in the licence if the freight-forwarder wants to offer services by any of these means of transport. If the MTO licensee wishes to add new modes of transport to its services, it needs to apply for the re-issuance of the MTO licence.

The World Bank seems to confirm the existence of this administrative burden in relation to multimodal transport services when stating that “any new business lines must be added to the business registration certificate with the appropriate authority” (World Bank, 2018, p. 44_[40]).

Harm to competition. Freight-forwarders’ core activity is providing integrated transport services and they usually act as intermediaries (the transport service itself being provided by a licensed transport service operator). The requirement to amend the licence to include any new service within it may therefore constitute an unnecessary administrative burden that hinders market entry and raises costs of operators.

Recommendation. The OECD recommends removing this administrative requirement, while ensuring that licensees still comply with freight-forwarding sector legislation.

5.2.2. Customs brokerage

Article 5 of Circular No. 12-2015-TT-BTC defines a customs broker as an agent that “represents a goods owner to make the customs declaration, submits and presents the customs documents relating to the exported or imported goods according to the regulations and carries out partially or completely the activities relating to customs procedures according to the provisions in the contract with the goods owner”. This includes presenting the goods to customs authority for inspection and transporting and carrying out the customs procedures for bringing the goods in and out of customs controlled areas.⁶⁴

Nationality requirement

Description of obstacle. Pursuant to Article 20 of the 2014 Law on Customs and Articles 5-9 of the Circular No. 12/2015/TT-BTC, the licence for customs brokerage can only be granted to Vietnamese nationals.

Harm to competition. This requirement prevents access to customs brokerage activities to foreigners, and so limits the number of competitors in Viet Nam. Fewer operators may in turn mean higher prices, lower quality services and less choice for customers.

Policymaker’s objective. The likely objective of this provision is to protect national labour against international competition. Also, in certain countries, customs is a sensitive issue for the government and this may justify a prohibition on foreigners carrying out customs-related tasks.

Recommendation. The OECD recommends one of the following:

1. Removing nationality requirement and allow foreigners to provide these services, as long as they are subject to the same controls as nationals.
2. Removing nationality requirement on a reciprocity basis, for those countries that allow Vietnamese nationals to carry out customs brokerage.

Box 5.2. Licensing requirements for freight-forwarding in ASEAN countries

In **Malaysia**, foreigners can register as freight forwarders with up to 100% foreign equity is allowed, according to the Malaysian Investment Development Authority. If freight forwarders wish to undertake customs declarations and act as customs brokers, however, they must be Malaysian. Foreign freight forwarders registered in Malaysia must therefore work with local forwarding agents to make customs declarations.

A customs broker in Malaysia needs two referees and must obtain a licence from the customs authorities, which requires taking a 10-day course offered by the local customs and freight forwarders association. An applicant needs two referees. Once the certificate is granted, a firm can operate as a customs brokerage house.

Indonesia, Myanmar and Thailand do not allow foreigners to carry out customs brokerage services, while **Singapore** does.

Source: (Hollweg and Wong, 2009, p. 21^[46]).

Educational requirements

Description of obstacle. To become a customs broker, an applicant:

1. Hold a three-year undergraduate degree in economics, law or technique.
2. Obtain a profession qualification certificate in customs declaration.
3. Obtain customs employee's code granted by a customs office.⁶⁵

Harm to competition. The high requirements to become a customs broker may restrict access to the profession and so raise prices for their services. The restrictions discourage market entry and reduce competitive pressure on incumbents, enabling them to charge higher prices.

Policymaker's objective. These requirements aim to ensure high-quality customs broker services.

Recommendation. The OECD recommends removing the requirement of an undergraduate degree.

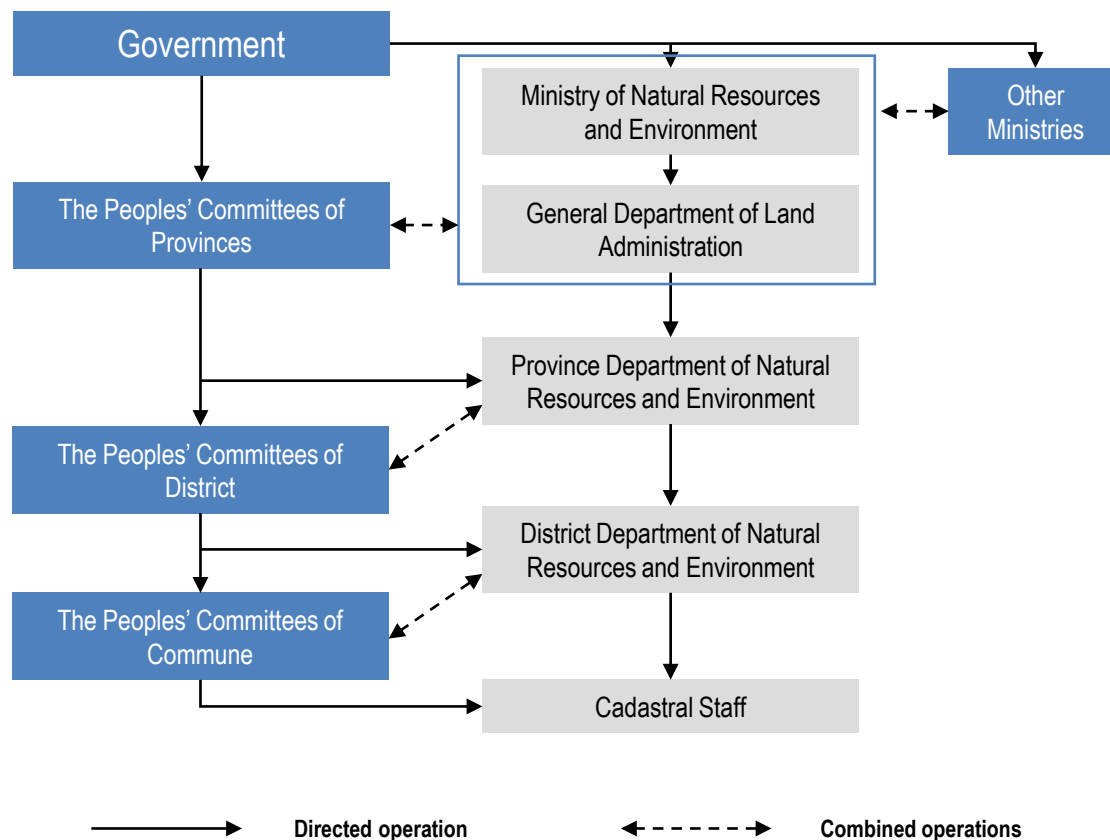
5.3. Warehouses

5.3.1. *Land rights, pricing and administration*

Land purchase and use

Description of obstacle. All land in Viet Nam belongs and is managed by the state. While private persons cannot own land, they can be granted land-use rights (LURs) for short-term or long-term use, including the right to exchange, transfer, lease, sub-lease, inherit, donate and mortgage such land use rights. The Ministry of Natural Resources and Environment's General Department of Land Administration is responsible for state land management in the country. At the local level, People's Committees and District Departments of Natural Resources and Environment (DONRE) are responsible for the management of land in the locality of their competence.

Figure 5.1. Organigram of central and local land administration bodies



Source: Reproduced from https://unstats.un.org/unsd/geoinfo/RCC/docs/rccap20/27_Presentation_Viet%20Nam_Luu%20Van%20Nang.pdf.

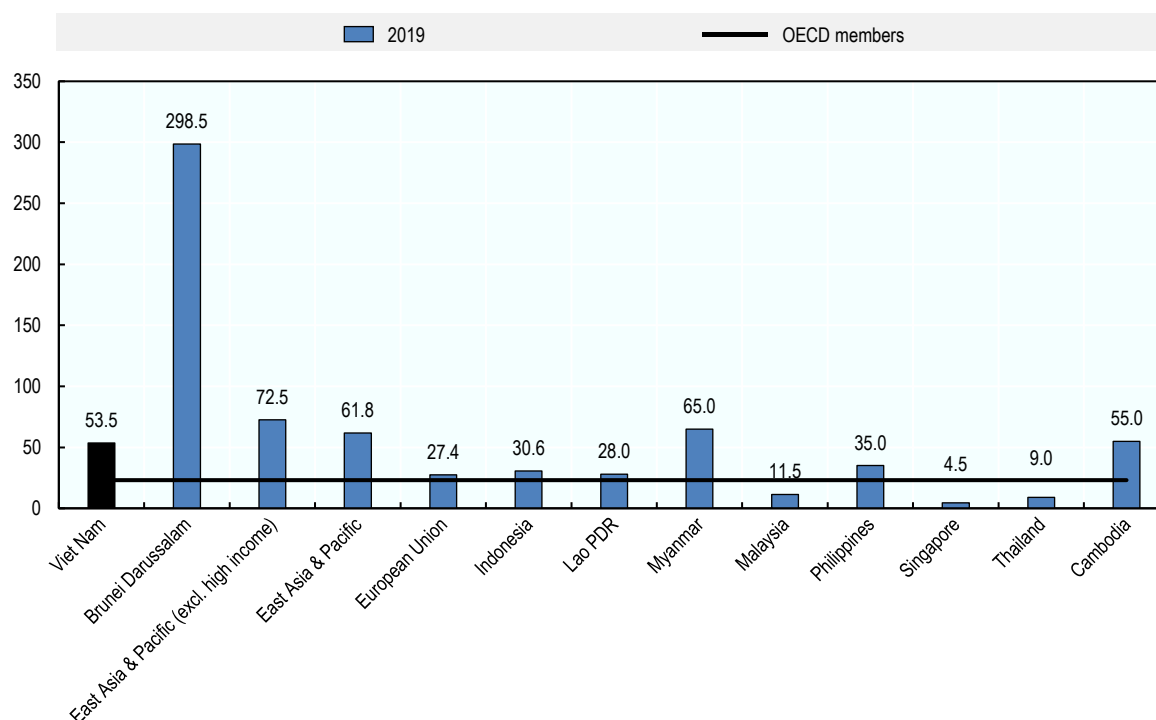
According to market participants, obtaining such LURs for business is difficult for the following reasons:

1. Pursuant to Article 52 of the Land Law, an application for land with the Land Registration Office through DONRE is necessary so that it can assign a location depending on availability and specific needs. According to market participants, decision on allocations do not always meet a company's needs, for example, the land may be far from the location requested by the company. Stakeholders report indeed that Viet Nam generally lacks warehouses in strategic locations such as ports, airports, areas close to national highways and production facilities and this affects in turn the competitiveness of Vietnamese companies.
2. The applicant's notary public checks the details of the land with the local authority (see Section on Unreliable land registry). By law, the notary public is required to check whether the transfer agreement contradicts social ethics or violates any other law or regulations. In practice, the notary public will also verify any other encumbrances on the property.

Certain market participants complained that certain companies take advantage of the low price of LURs and the lack of accompanying taxes to acquire rights on land with the aim of preventing competitors from acquiring such land and setting up a competing business.

According to the World Bank's *Doing Business 2020*, registering property in Viet Nam takes 53.5 days, compared to 23.6 days in OECD high-income economies (Figure 5.2). Viet Nam ranks 64 worldwide out of 190 surveyed economies with regards to its registering property score. Certain countries in the region like Malaysia rank higher (33), while others, including Thailand (67), Lao PDR (88) and Indonesia (106) rank lower (World Bank, 2020^[47]).

Figure 5.2. Days to register property, 2019



Source: World Bank, Doing Business Project, <https://data.worldbank.org/indicator/IC.PR.P.DURS?locations=BN-Z4-4E-ID-KH-LA-MM-MY-OE-PH-SG-TH-VN>.

Harm to competition. The inability to purchase land may prevent companies from entering the market or may result in increased investment costs. This may be aggravated if investors cannot then conclude long-term leasing contracts. For instance, it may be difficult to recoup the investment in a warehouse if they cannot buy the land and then cannot conclude a sufficiently long lease.

Also, certain companies' practice of acquiring land-use rights to prevent competitors from establishing their business results in a barrier to entry for potential competitors. For example, companies may purchase land within a 20-kilometre range from an airport, border gate or checkpoint in order to prevent competitors from opening a bonded warehouses in the same area as prescribed by the law.

Policymaker's objective. Land is historically a national good, collectively managed by the Vietnamese people.

As noted in the *OECD Investment Policy Reviews: Viet Nam*, "while private ownership of land is still not permitted in Viet Nam, restrictions on access to land have been progressively relaxed. The new Land Law, enacted in 2013 and in force since 2014, has brought a significant milestone towards further opening access to land to foreign investors" (OECD, 2018^[37]). For example, today both foreign-invested enterprises (FIEs) and domestic investors are allowed to hold freehold rights for residential land, and leasehold rights for commercial and residential land for lease. Since 2015, a FIE has also been allowed to purchase built real estate for business purposes on a freehold basis.

Recommendation. The government should improve the efficiency of land allocation and administration. This may include keeping an up-to-date and reliable land registry (see further below on Unreliable land registry).

Box 5.3. The importance of cadastre data in OECD countries

Land registration can support investment, productivity and growth, as it is a tool to map, prove and secure property and use rights. Properly registered titles are an incentive to invest in the local economy, and more efficient land use is often observed in economies with effective property registration systems. For example, property values in Thailand rose by 75-197% following a land title project that expanded property registration.

Besides the private sector, governments can also benefit from efficient land registration as precise cadastre data and land registries are essential to assess and collect taxes correctly. Reliable data can also help governments better map the needs of their citizens or plan the expansion of urban areas.

The quality of cadastre data varies significantly across OECD countries. While the majority of OECD member states has a precise and up-to-date cadastre maps in digital format that are often available online, in certain countries expert judge that the quality of cadastre is insufficient.

The degree to which such imprecise cadastres may pose problems for land-use planning depends on the severity of the issues as well as on the role that cadastre data play in the planning process. For instance, cadastre data are sometimes directly used to prepare land-use plans whereas in other countries, different sources are used to that purpose.

A lack of precise, up-to-date or digitally available cadastre data may also give rise to other issues that affect land management. These include title disputes, problems concerning the enforcement of planning decisions, problems in the collection of property taxes and in the planning of infrastructure, such as water and sewage pipes and electricity and telecommunication lines.

Source: (OECD, 2017, p. 41^[48]), World Bank, <https://www.doingbusiness.org/en/data/exploretopics/registering-property/why-matters>.

Price frameworks for land in transactions involving the State

Description of obstacle. There are limitations on the price that can be set by the parties when transferring a LUR, based on a government framework.

The government publishes these land-price frameworks every five years for each type of land such as agricultural or industrial and the different regions. Based on these principles, the provincial People's Committees develop and submit the land-price tables, which will include land prices applicable in their respective regions, to the People's Councils for review before promulgating them.⁶⁶ Such land price frameworks are used for actions of land by the State or when individuals return land to the State or in case of expropriation.

The most recent land-price framework decree – No. 96/2019/ND-CP – was issued in 2019. The new decree is the same as that issued in 2014, including subjects of application, types of land and activities for which price brackets are issued, economic regions concerned but price ranges have changed.

The government determines such land price frames based on the actual value of the land. If there is a large discrepancy between the government-set price and the “popular market price” of LUR (which is usually much higher than the price brackets set by the government), the government must adjust the price. More specifically, the popular price must not be 20% higher than the maximum established price or 20% lower than the minimum established price in the government's framework.

According to some market participants, certain companies take advantage of the low price of LUR and the lack of taxes to acquire rights and prevent competitors from acquiring such land and setting a competing business in profitable areas.

Harm to competition. This price regulation for land-use rights may give rise to two main issues. First, large investors can implement a foreclosing strategy whereby they obtain long-term use of large areas of land in exchange of a low price in order to prevent other companies to establish their business in a neighbouring area. Second, Vietnamese companies might have an advantage over foreign companies as they are the incumbents and may be in an easier position to obtain land use rights in the most profitable locations.

Recommendation. The OECD recommends that price tables are revised more frequently or that a system is adopted whereby prices can vary more flexibly to reflect more accurately the land market value and so discourage land hoarding by firms.

Box 5.4. The relevance of land markets for investments

When carrying out investment policy reviews, the OECD takes into account the following factors in relation to land markets.

- What efforts have been made to support the development of a well-functioning land market while ensuring fair and equitable access to land?
- Have there been any recent efforts to promote transparent land management?
- Are there restrictions to the sale, transfer, leasing, bequeathing or mortgaging of land-tenure rights or their use as collateral? How long does it take and how much does it cost to sell, transfer, bequeath or mortgage land-tenure rights?
- Have land use plans been developed countrywide? Which stakeholders are involved in negotiating them?
- Can land users easily access land-use plans?

Source: (OECD, 2015^[49]).

Unreliable land registry

Description of obstacle. Information about land such as encumbrances, other rights existing on land is not always clear and available. It can be difficult to find out whether the land has already been rented as information contained in the national land registry is neither public (as it is only used for internal management purposes) nor up to date. Only a local authority has the correct information about status of land such as its destination, its managers, its users, and attached rights. The OECD understands that, pursuant to Article 62 of the Notary Law 2014 (No. 53/2014/QH13), the Department of Justice and LUR Office now have a system that notaries to check the encumbrance on the transferred property before notarising. However, this can only be used for land-use rights by households, individuals for residential houses and buildings, not by investors requiring large plots of land. As a result, it is difficult for companies to know which land is available for lease.

Harm to competition. The absence of a reliable publicly available land registry may create difficulties when acquiring land-use rights, for instance when checking whether a certain piece of land is available for businesses. This may increase time and investment costs. Also, the existing outdated and inaccurate land registers can lead to risks of fraudulent land titling.

In the *OECD Investment Policy Review: Viet Nam*, the OECD also noted that:

“the existing registers are often partially outdated and inaccurate. Full computerisation of the land titling and registration system will be needed to efficiently address common problems of fraudulent titling. It has recently started and has already been completed in a minority of districts. These modernisation efforts are essential to

enhance firms' ability to take securities on their land properties and thus improve their access to credit, when their LUR allows them to use the land parcel as a mortgage. Reliable land titling and property registrars also help individuals and businesses to seek legal redress in case of violation of property rights" (OECD, 2018, p. 161^[37]).

Policymaker's objective. The OECD was unable to identify the policy objectives of the current rules concerning land registration.

The OECD highlights in its *Policy Framework for Investment 2015 Edition* the importance of land rights registration. If properly undertaken, it can:

"enhance land tenure security by recording individual and collective land tenure rights, thereby facilitating the transfer of land tenure rights and allowing investors to seek legal redress in cases of violation of their tenure rights. Land titles can allow land rights holders to use land as collateral to access credit. Land registers and land information systems should be properly maintained and publicised. Comprehensive and up-to-date land registers can cut the time to acquire land tenure rights, reduce corruption and facilitate tax collection. If not properly maintained, land registers can actually increase the likelihood of land disputes" (OECD, 2015, p. 26^[49]).

Recommendation. The OECD recommends keeping an updated publicly available land registry. The OECD supports the modernisation and digitalisation efforts that have already started in a minority of districts. This is essential to enhance firms' ability to take securities on their land properties (and so improve their access to credit), to avoid fraudulent titling and to facilitate legal redress in case of violation of property rights.

Box 5.5. Assessing policy framework for investment (PFI): the relevance of land registries

When assessing countries' policy frameworks for investments, one of the key considerations is the existence of timely, secure and effective methods of ownership registration for land and other forms of property.

The rationale is that investors need to be confident that their ownership or right to use property is legally recognised and protected. Secure, verifiable and transferable rights to agricultural and other types of land and forms of property give an incentive for investors and entrepreneurs to shift into the formal economy, entitle the investor to participate in the eventual profits that derive from an investment and reduce the risk of fraud in transactions.

Essential to this process is the creation and maintenance of a registry of property ownership.

Key issues when assessing the effectiveness of a country's property ownership registration system include:

1. The **share of property formally registered** in a country or region. A low rate of property registration is a prima facie sign that the system in place to register property is not functioning but this needs to be interpreted with care, especially in countries where property ownership is asserted and held through informal processes.
2. To establish the reasons why property ownership titling is low, or limited to certain types of assets, the details of the processes involved need to be examined.
 - The **fees charged and taxes levied** to register or transfer a title to land and other forms of property, as well as the structure of these costs.
 - The **time taken officially to register** new property titles or transfer existing ones. This will depend on the number and types of procedures required, on the number of agencies involved in the property registration process and when multiple agencies exist, whether they

- are linked by computer or feed into a central database. It also depends on whether the operational practices of the registrar office are capable of accepting and working with time-saving technologies, such as digitised records and online internet-based property registration.
- The **compliance costs of registering or transferring the title of property**. This depends on the documentation requirements such as proof of property surveys or tax payments); the number and complexity of stipulated regulatory requirements; taxes on property registration and transfer; the ease with which documentation and information on all the property registration requirements are obtainable (such as whether online); and whether online lodging is allowed. The time taken by a business or individual to register or transfer title is also a part of the compliance cost.
 - Do **foreign individuals or corporations** have the same rights as nationals to own and register land, and, if not, do the restrictions depend on the type of land (rural, residential property or industrial real estate) or its intended use? Are administrative and compliance procedures for foreigners more burdensome or costly than for nationals?
3. No single indicator sheds light on the integrity of the property registration system, but insights can be gained by examining the details of the dispute resolution process and their outcomes. Confidence in the system will depend on:
- **Whether entries in the registrar are open to public inspection and may be relied upon by third parties.**
 - The **ability to challenge the validity of an entry** by filing an administrative appeal with the registrar itself or by bringing a court action against the registrar. In this case, whether the registrar office and, when called for, the judicial system provides an equitable, inexpensive and timely system for resolving property ownership disputes.
 - The incidence of **fraudulent or duplicate claims** to assets.
 - The number of **disputes** and the efficiency and speed with which they are resolved.
 - Analysis of the **causes of dispute** from court cases may also help to bring to light systemic weaknesses in the registrar system.
4. Where traditional and formal property ownership systems co-exist, the PFI user will need to assess whether there are clear boundaries and rules that delineate between the two systems.

Source: OECD Policy Framework for Investment, "Effective ownership registration"
www.oecd.org/investment/toolkit/policyareas/investmentpolicy/effectiveownershipregistration.htm.

5.3.2. Bonded warehouses

Minimum space requirement

Description of obstacle. Bonded warehouses must satisfy several conditions, including being located in a specific area prescribed by Article 62 of the Customs Law 2014 (No 54/2014/QH13) and receiving approval from competent authorities.

Furthermore, bonded warehouses and warehouses for parcel delivery and express-delivery operations must be at least 5 000 m² (including warehousing, storage yards and auxiliary works) of which the area specifically dedicated to warehousing should be no less than 1 000 m². For bonded warehouses specialised for storage of one or several types of goods with special storage conditions, the minimum area is 1 000 m² or minimum storage volume 1 000 m³.

Based on publicly available information, none of the express delivery operators currently has volumes that justify having a warehouse of this size close to a border gate or checkpoint.

Market participants have told the OECD that the government is aware of this concern and is currently in the process of amending this requirement. They mentioned that the draft proposal to amend Decree No. 68/2016/ND-CP provides that an individual warehouse operator must have a minimum of 2 000 m² (instead of 5 000 m²). However, the version dated 23 July 2018 available on the government's website for consultation still provides for 5 000 m² size requirement.

Harm to competition. Setting minimum storage spaces could lead to high initial and operational costs for both new entrants and incumbents, reducing competitive pressure as fewer operators enter the market. Market participants have told the OECD that certain operators do wish to have their own smaller warehouse but the surface-area requirement is preventing.

As no express-delivery operator has sufficient volumes to justify having such a big warehouses close to a border, express carriers tend to use shared warehouses. This creates quasi-monopolies close to the airports where such warehouses must be located. Consequently, there is a risk of warehouse operators exploiting their position to increase rent and other costs.

International comparison. In the recent *OECD Competition Assessment Review: Tunisia*, the OECD found that the requirement for freight forwarders to purchase or lease a warehouse of at least 1 000 m² within the port area might have increased market entry and fixed operational costs, while reducing the number of companies in the market (OECD, 2019^[39]). Furthermore, given that port space is necessarily limited, any negotiations between companies and the port authority to obtain such space would likely be in favour of the latter. The OECD therefore recommended eliminating the obligation of owning or renting a warehouse.

In the same report, the OECD also found that imposing a minimum covered surface of 750 m² for freight centres' warehouses may inflate costs for operators and stop smaller companies from operating with the desired degree of flexibility. Given that such standards could limit competition, the OECD recommended abolishing them.

Recommendation. The OECD recommends removing the general minimum surface requirement and leaving decision to market participants. Bonded warehouses would still be subject to general land planning and land use rules.

Time required to assess an application and carry out inspections

Description of obstacle. In order to open a bonded warehouse, an applicant must submit an application to the General Department of Customs. Within ten working days, the Department shall complete its assessment of the application and inspection of the warehouse. Within the following five working days, the director of the Department of Customs shall issue its decision on the recognition of the bonded warehouse. However, if the application is incomplete, the General Department of Customs shall notify in writing the applicant, who has 30 working days to submit the missing information. In case of failure to submit it, the application is rejected.

Market participants stressed that, irrespective of the statutory time limits laid down in the law, the procedure to open a warehouse can take up to 2 years in practice. The World Bank in *Promoting Open and Competitive Markets in Road Freight and Logistics Services*, has also noted that in Viet Nam "there is a maximum statutory time period for issuing licenses, but actual timelines are usually prolonged, particularly for foreign companies (World Bank, 2018, p. 31^[40])".

Harm to competition. Delays in issuing a licence for bonded warehouses may increase time and costs of entry. For example, operators may have to wait for significant a period before being allowed to use their

purchased assets such as storage facilities and machines. This may in turn impose higher costs upon market entrants.

Recommendation. The OECD recommends improving compliance with the statutory time limits laid down in the law.

Maximum storage time

Description of obstacle. Pursuant to Article 61 of Law No. 54/2014/QH13, items can only be kept in bonded warehouses for one year, renewable for one more year. Heads of Customs sub-departments in charge of bonded warehouses may grant an extension of the time limit, if reasonable grounds exist according to requirement of the production process.

Harm to competition. The time limit for storing goods in bonded warehouses may make it difficult or economically burdensome to import slow-moving items. Also, the requirement to seek authorization of storage-time extension may give rise to an administrative burden.

Policymaker's objective. The likely policy objective of this provision is to ensure availability of space in bonded warehouses, by limiting the time during which items can be stored.

International comparison. In Thailand, pursuant to Article 107 of the Customs Act, B.E. 2560 (2017), permission is required to hold cargo in bonded warehouses for longer than 30 days. According to market participants, however, obtaining the documents needed to file the permission request usually takes longer than 30 days.

In Singapore, goods can be kept in warehouses licensed by the Singapore Customs for an indefinite period of time, with duty and goods and services tax (GST) suspended.

In other countries such as Turkey,⁶⁷ or Belgium,⁶⁸ there is no time limit for storing goods in bonded warehouses.

Recommendation. The OECD recommends one of the following options.

1. Completely remove time limit for storage in bonded warehouses.
2. Introduce a specific licensing scheme, whereby a whole or part of a warehouse is licensed by the customs authority to store goods for an indefinite time with suspended taxes. Specific requirements for such licensed warehouses can be imposed such as an obligation to have a computerised system, specific approval procedures, and the application of annual fees.

5.4. Small-package delivery services

E-commerce in Viet Nam is rapidly growing. According to the 2019 Viet Nam Logistics Report published by the Ministry of Trade and Industry, the increase in the volume of goods traded through online channels will increase demand for logistics services and in particular for delivery services. In 2015, e-commerce sales were estimated at VND 11 624 billion and reached VND 23 196 billion in 2017, driven by rapid Internet-access uptake (iDEA, 2018, p. 83^[50]). .

5.4.1. Minimum capital requirement

Description of obstacle. To provide domestic delivery services, a licensee must have a minimum paid-up capital of VND 2 billion (approximately USD 85 000), while an international delivery services licensee must have a minimum paid-up capital of VND 5 billion (approximately USD 21 000).

Besides specific capital requirements for conditional business sectors (see Section 6.1.1), there is no general minimum capital requirement in Viet Nam.

Harm to competition. The minimum capital requirements may be excessive and may make entry by small firms more cumbersome, and so raise a barrier to entry for SMEs. Even if, as stakeholders did note, there are currently approximately between 450 and 500 licensed operators that have not been prevented from entering the market by minimum capital requirements, this provision does nevertheless require tying up a certain amount of capital, thus making it more burdensome for firms to enter the market. Furthermore, potentially this legal basis could be used in the future to increase the amount of minimum capital requirements, which would raise a barrier to entry for SMEs. Economic downturns may also have an impact on the effects of this requirement, making it excessive in periods of low demand.

Policymaker's objective. This provision aims to ensure that a company has enough capital to operate as a domestic or international delivery service provider, and to protect consumers and creditors from risky and potentially insolvent businesses.

International comparison. General minimum capital requirements that depend on a company's legal form, rather than its sector, are common. In Germany, for instance, a limited liability company must make a bank deposit of at least EUR 12 500 when registering a new company. In its 2018 *OECD Competition Assessment Review of Portugal*, the OECD recommended that Portuguese authorities remove the minimum capital requirements imposed on freight forwarders and shipping agents in order to promote market entry and operational efficiency. For freight transport by road, the OECD also recommended 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 according to the activity (OECD, 2018, p. 79^[6]).

As explained in the box, in general, minimum share capital is not an effective measure of a firm's ability to fulfil its debt and client-service obligations (World Bank, 2014^[51]).

Box 5.6. Minimum capital requirements often fail to achieve their objectives

The original rationale for countries adopting minimum capital requirements was to protect consumers and creditors from risky and potentially insolvent businesses (World Bank, 2014^[51]). In particular, the requirement for a minimum amount of invested capital aims to ensure that investors have a stake in the continued operation of the company, including the fulfilment of any incurred obligations. Evidence points to a number of shortcomings of minimum capital requirements, notably that they can prevent the entry and expansion of smaller firms, with some notable exceptions such as for banking and insurance.

Minimum paid-in capital requirements, as often stipulated by the commercial code or company law, do not take into account variations in firms' economic activities, size or risks, making them of limited use for addressing default risks. Creditors prefer to rely on objective assessments of a company's commercial risks based on the analysis of financial statements, business plans and references, as many other factors can affect its 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, evidence has shown that minimum capital requirements do not help the recovery of investments, as they are negatively associated with creditor recovery rates. Credit recovery rates tend to be higher in economies without minimum capital requirements, which suggest that other alternative measures, 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 longer periods; they also tend to diminish firms' growth potential.

Source: Adapted from (OECD, 2017^[52]); (World Bank, 2014^[51]).

Recommendation. The OECD recommends one of the following options.

1. Remove specific minimum capital requirements that single out delivery services.
2. Consider allowing the fulfilment of this requirement by means of bank guarantees or insurance contracts.

5.4.2. Licensing requirements and application procedure

Description of obstacle. Pursuant to Article 25 of the 2010 Law on Post (No. 49/2010/QH12), potential providers of small-package delivery services must submit an application to the Ministry of Information and Communications (MIC). The application can be initially submitted online while original documents can be sent at a later stage by post.

To be deemed complete and so accepted,⁶⁹ the application must include a business plan containing information about the expected area of service provision, the service-provision process, the service-management system and the modes of co-operation with other companies to provide the service. Furthermore, the business plan must provide an analysis of the feasibility and socio-economic benefits of the plan through the targets of output, revenue, cost, number of employees, taxes paid to the national budget, the rate of return on the investment in the three years following the application for the licence. Public stakeholders explained that this information is necessary for the competent agency to grasp information, method of operation and service-provision process when it grants a postal licence.

Harm to competition. First, the requirement to submit a business plan is burdensome and subjects applicants to an economic assessment on the viability of their business. In a competitive market with many licensed operators currently active it is unclear why authorities need such detailed information in order to select operators. Furthermore, authorities may not be best placed to decide who should enter the market and this assessment may reduce potential competitors in the future.

Recommendation. The OECD recommends removing the requirement to submit a business plan as part of the process for granting a right to operate.

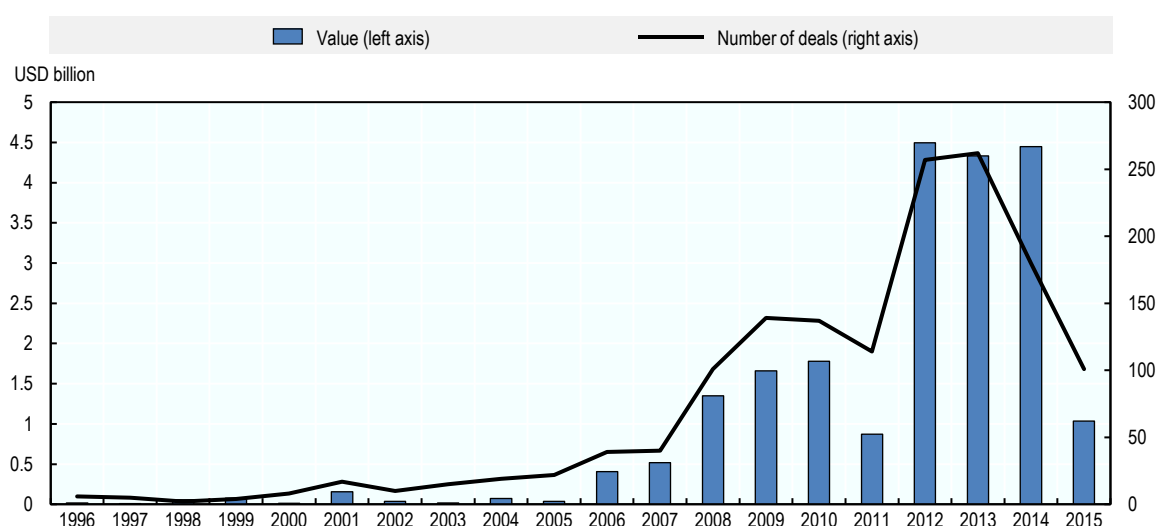
6 Horizontal legislation and international agreements

6.1. Horizontal legislation

6.1.1. Requirements for foreigners investing in conditional business lines

As noted in the 2018 *OECD Investment Policy Reviews: Viet Nam*, the country's overall mergers and acquisitions (M&A) activity increased significantly from 2005 (OECD, 2018^[37]). Between 1996 and 2005 there were on average 14 M&A deals annually with a total value of USD 90 million each year, and this increased to 143 a year between 2006 and 2015 and a total value of USD 2.3 billion each year. Annual growth in the total value of completed M&A transactions has been faster in Viet Nam than in comparable ASEAN economies, reflecting both rapid increases and the low starting point of the Vietnamese M&A market.

Figure 6.1. M&A deals involving a Vietnamese target firm, 1996-2015

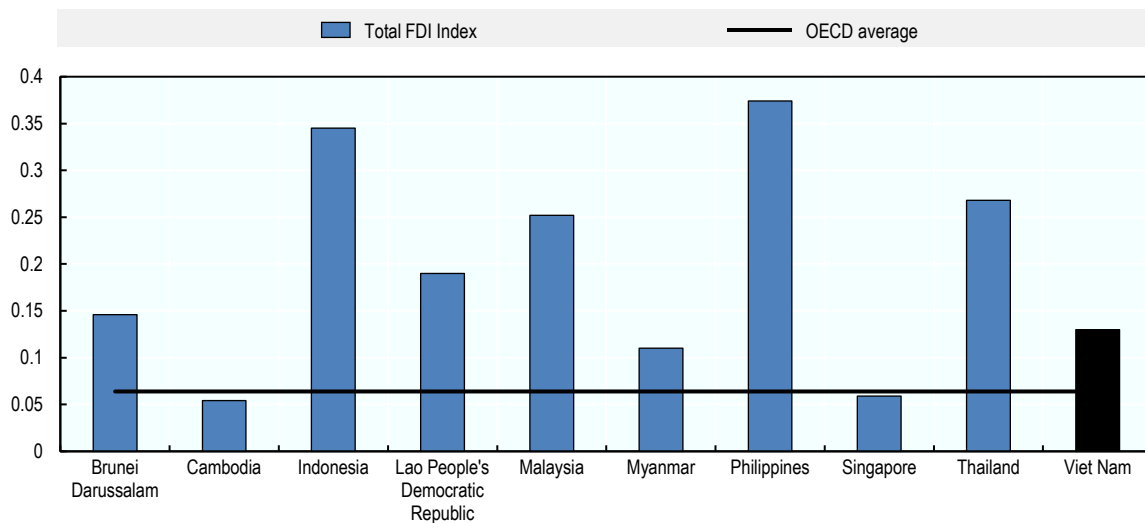


Note: Deals are identified as cross-border when the target and the acquirer are of different nationality.

Source: OECD calculations using Dealogic M&A data.

Although a higher share of total M&A in Viet Nam involving foreign acquirers compared to other ASEAN5 countries (Indonesia, Malaysia, Philippines, Thailand and Viet Nam), Viet Nam's total M&A activity is much less than theirs. This may be legacy of earlier restrictions on foreign equity shares in Vietnamese listed companies, which were lifted in 2015, but also the result of other regulatory barriers, as seen in Figure 6.2.

Figure 6.2. OECD FDI Regulatory Restrictiveness Index, 2019



Source: OECD, Regulatory Restrictiveness Index database, <https://data.oecd.org/fdi/fdi-restrictiveness.htm>.

In 2017-2018, the logistics sector in Viet Nam witnessed several transformations, such as the capital transfer from Gemadep to CJ Logistics and a new co-operation agreement between Samsung SDS and Minh Phuong Logistics. Similarly, in 2019 Sumitomo Corporation together with Suzuyo logistics company and a Japanese public-private fund spent about USD 37 million to buy 10% of capital in Gemadep Joint Stock Company.⁷⁰ Another example is provided by two Korean companies, Minae Financial Group and Naver Group, which purchased two supply centres in Viet Nam for USD 47.01 million.

Viet Nam authorities highlighted that the participation of global companies is expected to support capital, personnel and technology development for Vietnamese domestic enterprises.

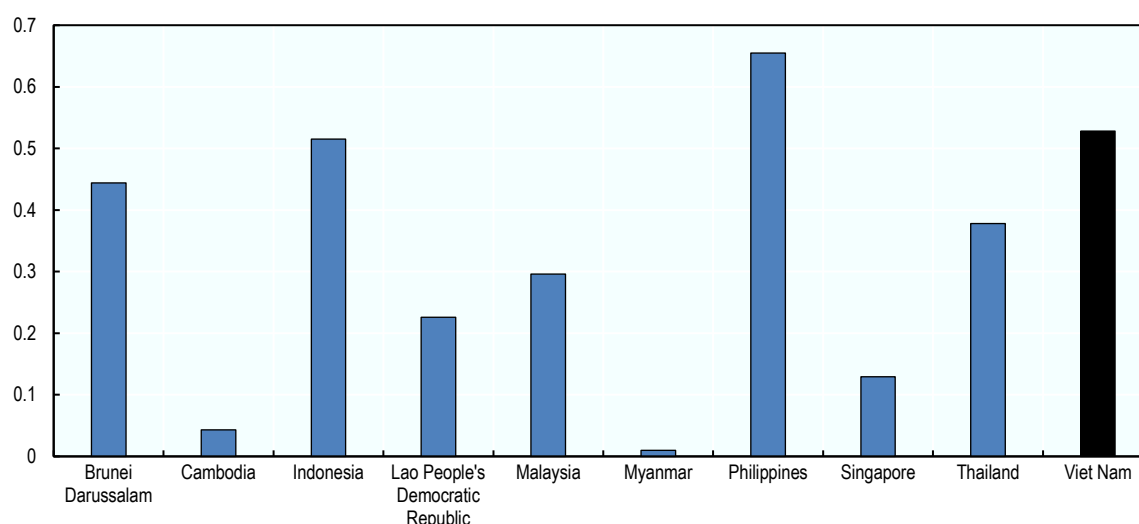
Description of obstacle. Viet Nam has made significant progress over time in liberalising its foreign direct investment (FDI) regime and, in terms of statutory restrictions, is now one of the most open economies to foreign investment in Southeast Asia in terms of statutory restrictions (OECD, 2018, p. 100^[37]). It has been among the most active countries in adapting to economic developments and reacting to trends in FDI flows. The first Foreign Investment Law was enacted in 1987, then revised in 1996, in 2005 to enact a unified Investment Law and most recently in 2014, with the current Law No. 67/2014/QH13 as amended by Law No. 03/2016/QH14 (known as the Investment Law).

For logistics, however, restrictions are higher as sector businesses are considered conditional business sectors (Appendix 4 of the Investment Law). Conditional businesses are, according to Article 7 of the law, those business sectors for which FDI must satisfy certain conditions for reasons of national defence and security, social order and security, social ethics, or public health.

In order to acquire equity interests in a domestic Vietnamese entity that is considered as a conditional business, a foreign investor must obtain M&A approval from the relevant provincial or municipal Department of Planning and Investment (DPI) and meet a number of requirements (economic needs test, national security, social order and safety, morality and community health). Foreign investors may also own no more than 49% limit of a public company. Local DPIs usually consult relevant central-government ministries about a proposed M&A transaction before issuing an M&A decision. This can result in an M&A approval process that is both lengthy (lasting weeks or even months) and uncertain.

Figure 6.3 shows the level of restrictions in the transport sector for eight ASEAN countries in 2018. Viet Nam maintains above average restrictions in this sector.

Figure 6.3. OECD FDI Regulatory Restrictiveness Index in the transport sector, 2018



Note: The Index covers only statutory measures discriminating against foreign investors such as foreign equity limits, screening and approval procedures, restriction on key foreign personnel, and other operational measures. Other important aspects of an investment climate such as the implementation of regulations and state monopolies are not considered.

Source: <http://www.oecd.org/investment/fdiindex.htm>.

Harm to competition

The 49% foreign equity limit may raise barriers to entry and increase cost of investment by foreigners in public companies that operate in a conditional business such as transport and logistics. The 2018 *OECD Investment Policy Reviews: Viet Nam* also confirmed that Viet Nam maintains above average restrictions in the transport sector compared to ASEAN9 and OECD countries. These are likely to hamper the competitiveness of local firms (OECD, 2018^[37]). The report notes that:

“FDI restrictions and stringent product market regulations constraining competition and contestability in service sectors raise service input costs, including notably for logistics and financial services, for other economic sectors and affect their ability to compete on a global scale, as well as limiting potential access to new technologies and evolving production techniques” (OECD, 2018, p. 113^[37]).

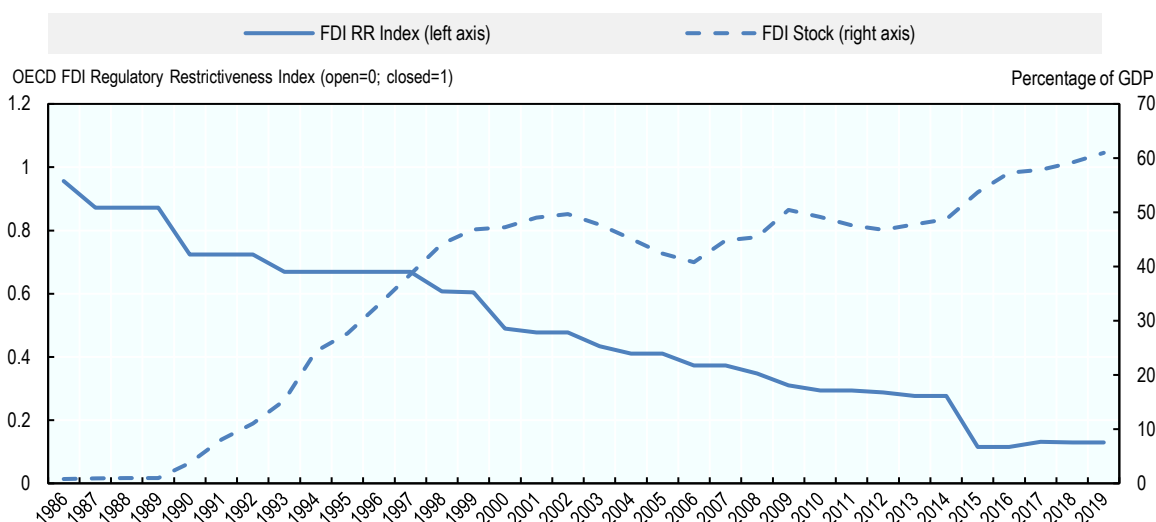
In addition, according to market participants, the lengthy and uncertain M&A approval process increases costs for foreign investors. The broad nature of the criteria may also result in uncertainty for foreign investors, which may in turn raise a barrier to entry and deter them from investing. As noted by the *OECD Investment Policy Reviews: Viet Nam*, empirical evidence shows that:

“economies tend to receive larger inflows of FDI where there is a relatively larger reduction in the length of investment procedures, which contributes to greater welfare gains through greater market competition and higher nominal wages. In contrast, welfare gains are lower for those economies lagging behind as other economies become relatively more attractive locations for foreign investors” (OECD, 2018, p. 107^[37]).

Figure 6.4 below shows how Viet Nam’s liberalisation efforts over time have corresponded to an increase in FDI stock as a percentage of GDP.

Policymaker’s objective. Certain provisions of the Investment Law provide that the public assessment of an investment project aims to guarantee its alignment with socio-economic development and industrial plans and evaluate its socio-economic effects and the fulfilment of conditions for investment, technology, incentives and land use. The same objectives may be relevant with regards to national investments, yet are not taken into account. Furthermore, with regards to discriminatory screening and approval of foreign investments, the OECD has noted that “its efficacy is likely to be impeded by the fact that civil servants often do not have the relevant expertise or training to effectively assess the merits of a project” (OECD, 2018, pp. 107-108^[37]).

Figure 6.4. FDI liberalisation in Viet Nam, 1986-2019



Source: OECD FDI Regulatory Restrictiveness Index and UNCTAD FDI statistics.

In light of these and other considerations, a draft law to amend the 2014 law on investment is currently under discussion. The draft bill proposes to remove logistics from the list of conditional business sectors. However, according to the draft law submitted to the National Assembly, the following logistics-related activities will still be included in the list of conditional businesses: customs broker, agent services, bonded warehousing services, road transport services, inland waterway transport services, maritime freight transport services, maritime port services, railway transport services, railway infrastructure services, multi-modal transport services, and postal services.

Box 6.1. Policy objectives of investment restrictions

Historically, the regulation of investment entry of both foreign and domestic investors has been justified by the need to ensure consumers are protected from low-quality products from “undesirable” sellers (Djankov et al., 2002^[53]).

Many countries impose discriminatory regulations on the entry of foreign investors, although this approach has vastly diminished over time. Currently, discriminatory restrictions on foreign investment are most often motivated by concerns over the loss of national sovereignty, the protection of essential security interests and the maintenance of public order or the protection of public health, morals and safety. While national security is a legitimate concern, as the OECD has noted, it should not be used as a cover for protectionism and discriminatory policies (OECD, 2008^[54]). Several of these concerns

are not directly related to the ownership of the investment and could be addressed through other non-discriminatory regulatory practices. Domestic investors can also act against the public interest in terms of environmental and labour policies, for instance, or with regards to security issues. The ex-ante regulation of investment entry can be an inefficient way to address public-policy objectives, which can be addressed by specific regulations, such as environmental protection, health and safety, or other measures preventing fraudulent practices by investors.

Countries also pursue other broad economic objectives through investment restrictions and entry regulation, such as the protection of starter industries, employment or technology transfer. The right of governments to favour some investors over others in order to achieve social, economic or environmental goals is widely accepted, but discriminatory measures only serve the broader public interest to the extent that their potential costs in terms of forgone investment and efficiency gains are compensated by broader economic and social benefits. For this reason, exceptions to non-discrimination need to be evaluated with a view to determining whether the original motivation behind an exception remains valid, supported by an evaluation of the costs and benefits, including an assessment of the proportionality of the measure to ensure they are not greater than needed to address specific concerns.

Source: Reproduced from *OECD Investment Policy Reviews: Viet Nam* (OECD, 2018, p. 108^[37]).

Recommendation. The OECD recommends that the Vietnamese government exclude logistics-relevant businesses from the list of conditional business sectors. This can be done by applying Article 8 of the Law on Investment, which provides that:

“Based on the socio-economic conditions and requirements for State administration in each period, the Government shall review the industries and trades in which business investment is prohibited and the list of industries and trades in which business investment is conditional and submit amendments to articles 6 and Article 7 of this Law to the National Assembly.”⁷¹

The OECD supports the draft bill currently under discussion that proposes to remove logistics from the list of conditional business sectors.

6.1.2. Gender-related issues

Women’s name on ownership or land-use right certificates

Description of obstacle. Although Article 34 of the Law No. 52/2014/QH13 on Marriage and Family provides that for a common property, both spouses shall be named on the ownership or land-use right certificate, in practice it is difficult to include the name of women on the title deeds.

Even when both spouses’ names are mentioned on the deeds, it is more difficult for the female partner to get the consent of her husband to use the house or land as collateral to obtain a loan from the bank. Market participants confirmed that this is only a cultural (as opposed to a legislative) issue.

Harm to competition. It is difficult for women to obtain bank loans on their own, as they will not have their own assets to use as collateral. This may constitute a barrier to women’s access to entrepreneurship.

Recommendation. Improve compliance with the law with regards to naming both spouses on the title deeds.

Prohibition of certain jobs

Description of obstacle. Pursuant to Article 160 of the Labour Code that provides for a legal basis to prohibiting women's employment in certain jobs, Circular No. 26/2013/TT-BLDTBXH contains a list of activities that women are restricted from doing at all or during specific times such as night shifts or during pregnancy. The following logistics-related activities are included in the list of prohibited activities during pregnancy period or while nursing children aged under a year:

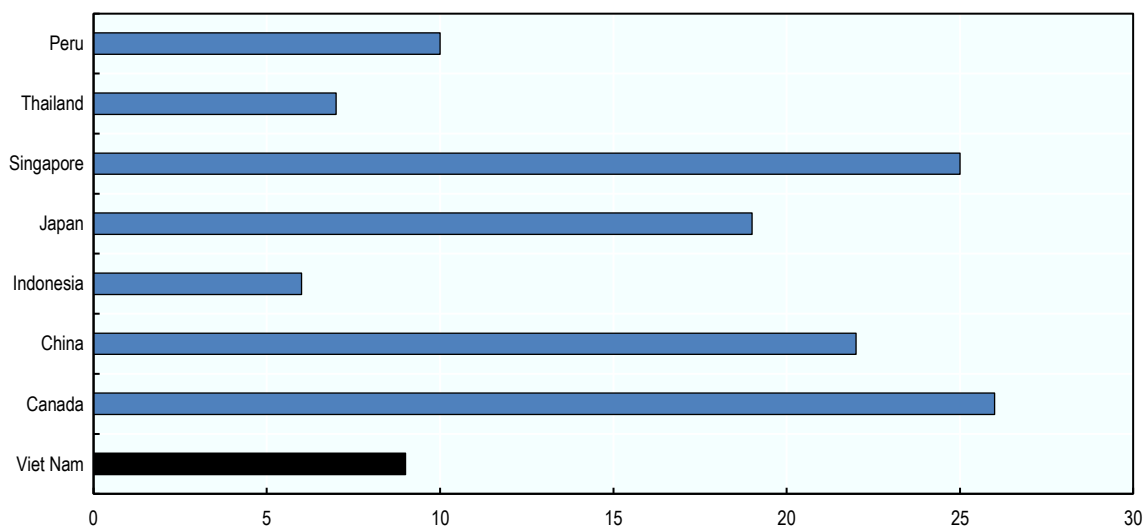
1. transporting pesticides, herbicides, termiticides and other specifically listed substances (item 41);
2. transporting rotten fish (item 66);
3. carrying or lifting weights of over 20 kg (item 64).

The following activities are generally prohibited to women:

1. driving trains (except automatically operated trains and trains running in inner cities and tourist routes) (item 26)
2. driving automobiles of a tonnage of over 2.5 tons (except power-assisted vehicles of a tonnage of under 10 tons) (item 30)
3. jobs requiring workers to carry or fix weights of 50 kg or more (item 31)
4. guarding and watching vessels in docks or on river banks (item 24)
5. Working on seagoing ships (except waiters in restaurants, housekeepers and receptionists in tourist ships) (item 23).

Harm to competition. This prohibition prevents women from doing certain logistics-relevant professions, and so raise barriers to entry. Data show indeed that the female representation in the transportation sector in Viet Nam is extremely low.

Figure 6.5. Percentage of women's participation in the transport sector



Source: Nathan Associates and USAID (2015), *APEC Women in Transportation Data Framework and Best Practices*, Washington, DC, USAID, <https://www.nathaninc.com/insight/apec-women-in-transportation-data-framework-and-bestpractices-report/>.

Policymaker's objective. The objective of certain prohibitions is to protect women's health. The current list of prohibited professions also seems to include, however, activities that are unlikely to pose particular dangers, such as driving trains.

Recommendation. Remove those logistics-relevant prohibitions that are not aimed at protecting women's health, such as driving trains and trucks. At the same time, place safeguards against potential safety issues and dangers, if any.

Box 6.2. Removing legal barriers to women's employment

Many countries have taken steps to remove legal barriers to women's employment, including in male-dominated sectors.

In India, for instance, women are not permitted to work at night unless they are provided with shelter, a rest room, a night crèche, a women's toilet, transportation, and protection from sexual harassment.

To increase female participation, other countries, including Argentina and Canada, have provided apprenticeships incentive grants and training in sectors such as construction and other male-dominated trades.

France has adopted sectorial action plans through social dialogue and established the specific target of reaching an employment share of one third of women in male-dominated sectors by 2025 (currently 12 per cent).

Source: OECD – ILO (2019), Women at Work in G20 countries: Progress and Policy Action, Paper prepared under Japan's G20 Presidency, <https://www.oecd.org/g20/summits/osaka/G20-Women-at-Work.pdf>.

6.2. International agreements

In 2004, the heads of state and government of all ASEAN countries signed the ASEAN Framework Agreement for the Integration of Priority Sectors.⁷² The purpose of this framework agreement was to identify measures, with precise timelines, that would enable progressive and systematic integration in different sectors ASEAN. Logistics was not included within the 11 priority sectors in the original agreement; it was added as the 12th priority sector in 2006, when ASEAN finance ministers began developing a Roadmap for the Integration of Logistics Services, which was adopted in 2007 and included specific measures aimed at creating an ASEAN single market by 2015 “by strengthening ASEAN economic integration through liberalization and facilitation measures in the area of logistics services”.⁷³

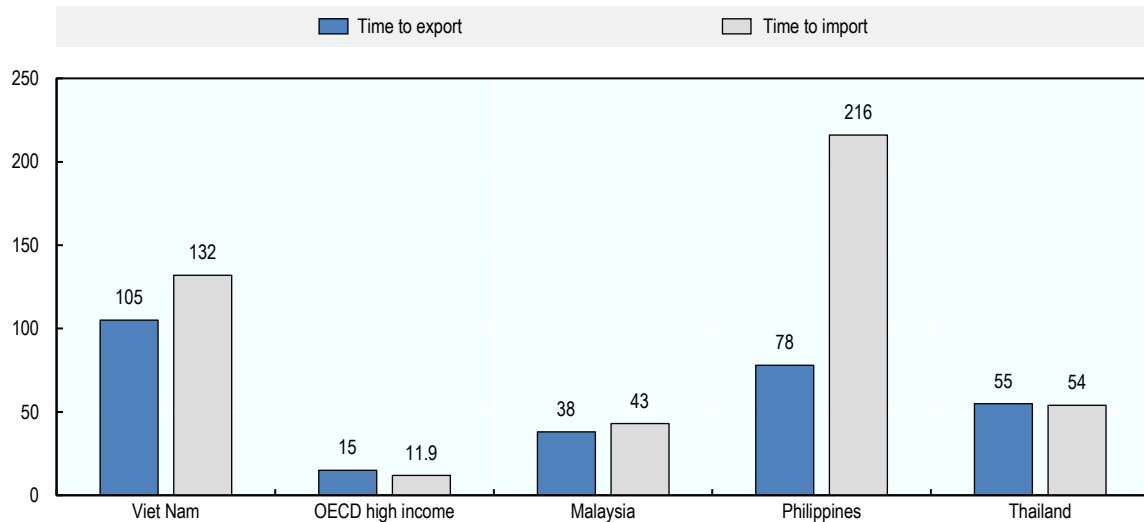
6.2.1. National Single Window

As shown in Figure 6.6, in 2019 Viet Nam's time to import and export is higher than some other countries in the region. More time spent importing and exporting goods may increase costs for companies.

To facilitate investments, Viet Nam has made significant progress in the development of the National Single Window (NSW) for imports and exports. As of May 2021, more than 3.08 million documents have been processed using the NSW. Since its launch in 2014, approximately 47 000 enterprises and 13 out of 18 ministries, including Ministry of Transport, have joined the NSW, and 226 administrative procedures have been connected to the system.

Description of obstacle. Notwithstanding the above-mentioned progress, the NSW system remains incomplete and many procedures are not yet included in the system.

Figure 6.6. Time to export and import (hours), 2019



Note: Data refers to the time necessary for border and documentary compliance.

Source: World Bank, Doing Business, <https://www.doingbusiness.org/en/data/exploretopics/trading-across-borders>.

Harm to competition. Since only some procedures can be done through the NSW, this results in higher time to trade compared to other countries in the region. More time spent on such procedures results in increased costs for companies, and therefore reduces their cost advantages and competitiveness.

Recommendation. The OECD supports the further development of the NSW and the implementation of the logistics-related policies referred to under Decision No.1254/QD-TTg, for instance perfecting policies on management of electronic cross-border trade, implementing the master plan of management of e-commerce activities; and, formulating policies for connection between government agencies and logistic enterprises.

6.2.2. Quotas on the number of licences for cross-border transport of goods

Description of obstacle. Pursuant to the Memorandum of Understanding (MoU) between the governments of the Cambodia, Lao PDR and Viet Nam, the quota of commercial motor vehicles of each contracting party is 150 vehicles for cross border transport. Article 7(2) explains that an increase in this quota can be agreed upon by the contracting parties 'on the basis of economic needs and mutual interest'. Article 7(3) provides that the agreed increase in quota may be determined in the Addendum signed by all parties to the MoU. The OECD understands that there has been no further amendment to this quota.

Harm to competition. The quota limits the ability of some operators to provide cross border transport. Restricting the number of operators may reduce competition between suppliers and result in higher prices or less desirable contract terms for customers. It is a barrier to entry if interested companies cannot then participate in the market.

Policymaker's objective. The MoU aims to facilitate cross border transport of goods and people by commercial and non-commercial motor vehicles. The MOU was signed on 17 January 2013 and Article 4 provides that it does not affect the rights or obligations of the contracting parties under any existing agreements to which they are parties. The likely objective of the quota is the protection of national road transport service providers against competition from other neighbouring countries.

Recommendation. The OECD recommends one of the following:

1. Remove this provision and grant a licence to all those that request it, based on qualitative criteria. Such qualitative criteria may include the good repute of the operator, its adequate financial standing and its professional competence. Each of these criteria should be clearly defined in the international agreement or implementing laws or regulations.
2. Regularly assess the market's need and demand, and consider increasing the number of licences that can be issued.

Both these recommendations would require negotiations between the contracting parties.

6.2.3. Quotas on the number of permits for inland waterway vessels

Description of obstacle. Pursuant to Article 10 of the Agreement between Viet Nam and Cambodia on waterway transport,⁷⁴ “cabotage shall be served to vessels of the Contracting Party in whose territory the relevant regulated waterways are located, unless the Competent Authority of that contracting party grants an explicit derogation”. Article 11 however allows consecutive calls at ports or terminals (e.g. loading goods consecutively at several ports or terminals within the territory of a contracting party for the purpose of carrying them to the territory of the other contracting party or discharging goods consecutively at several ports or terminals within the territory of a contracting party after having taken on board these goods within the territory of the other contracting party).

Harm to competition. The prohibition on vessels that are allowed to carry out cross-border transport to carry out general shipping within the domestic market of the contracting countries prevents foreign firms from entering the national freight transportation market.

Licensed vessels of the contracting parties are however allowed to make several stops within a foreign waterway to load/unload their goods. The OECD understands that they cannot pick up additional goods (i.e. operate in the domestic shipping market). A similar exemption was introduced in the Philippines to support imports and exports.

Policymaker's objective. The aim of this MoU is to facilitate water transport of cargo and passengers between the two countries and transit transportation to and from third states with the territory of the contracting parties. This agreement replaced the 1998 MOU on waterway transportation between Viet Nam and Cambodia.

The policy objective behind the cabotage principle is to support and develop the domestic shipping industries of the contracting parties, as the provision does not allow permit holders to operate in the domestic shipping market.

Recommendation. The OECD sets out three options:

1. Open the domestic shipping market to foreign competition by lifting the ban on foreign vessels carrying domestic cargo between ports in Viet Nam, possibly based on reciprocity arrangements (i.e. between the contracting parties to this agreement) or between ASEAN members.
2. Amend the cabotage law to allow foreign ships to carry their own cargo (and other foreign cargo) domestically. A further step would then be to allow foreign ships to carry other domestic cargo from the port of entry to the port of final call if the foreign vessel has capacity after unloading goods at the port of entry.
3. Allow international ships to operate in domestic shipping market on specific routes where there is demand.

References

- Andrews, D. and C. Criscuolo (2013), “Knowledge-Based Capital, Innovation and Resource Allocation”, *OECD Economics Department Working Papers*, Vol. 1046. [19]
- Andrews, D., G. Nicoletti and C. Timiliotis (2018), *Digital technology diffusion: A matter of capabilities, incentives or both?*, OECD Publishing, Paris. [21]
- Andrews, D. and B. Westmore (2014), “Managerial Capital and Business R&D as enablers of productivity convergence”, *OECD Economics Department Working Papers*, Vol. 1137. [20]
- Arnold, J., G. Nicoletti and S. Scarpetta (2011), “Does Anti-Competitive Regulation Matter for Productivity? Evidence from European Firms”, *IZA Discussion Paper*, Vol. 5511. [14]
- Blancas, L. and M. El-Hifnawi (2013), *Facilitating Trade Through Competitive, Low-Carbon Transport: The Case for Vietnam’s Inland and Coastal Waterways*, World Bank Publications. [44]
- Blundell, R. (1999), “Market Share, Market Value and Innovation in a Panel of British Manufacturing Firms”, *Review of Economic Studies*, Vol. 66/3, <http://restud.oxfordjournals.org/content/66/3/529.short>. [8]
- Bourlès, R. et al. (2013), “Do product market regulations in upstream sectors curb productivity growth? Panel data evidence for oecd Countries”, *Review of Economics and Statistics*. [16]
- Boylaud, O. (2000), *Regulatory Reform in Road Freight and Retail Distribution*, OECD, Paris. [33]
- Cahuc, P. and F. Kamarz (2004), “De la précarité à la mobilité: vers une sécurité sociale professionnelle”, *Paris: Documentation Française*. [23]
- Causa, O., A. de Serres and N. Ruiz (2014), “Can Pro-growth Policies Lift all Boats?: An Analysis Based on Household Disposable Income”, *OECD Economics Department Working Papers*. [57]
- Cette, G., J. Lopez and J. Mairesse (2013), *Upstream product market regulations, ICT, R&D and productivity*. [17]
- Christopher, M. (2016), *Logistics and Supply Chain Management*, Financial Times. [2]
- Clean Air Asia (2017), *Viet Nam Freight Assessment Guidance for Developing a National Green Freight Program*. [36]
- Cooke, D. (2018), *Product market competition and gender discrimination*. [28]
- Criscuolo, C., P. Gal and C. Menon (2014), “The Dynamics of Employment Growth: New Evidence from 18 Countries”, *OECD Science, Technology and Industry Policy Papers*, Vol. 14. [24]
- Daude, C. and C. de la Maisonneuve (2018), *Network service deregulation and manufacturing exports in Greece*, OECD Publishing, Paris, <https://doi.org/10.1787/d35026d6-en>. [18]

- Djankov, S. et al. (2002), "The Regulation of Entry", *The Quarterly Journal of Economics*, Vol. 117/1, pp. 1-37, <http://dx.doi.org/10.1162/003355302753399436>. [53]
- Égert, B. (2017), *Regulation, institutions and productivity: New macroeconomic evidence from OECD countries*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/579ceba4-en>. [15]
- Eklund, J. and E. Lappi (2018), "Product regulations and persistence of profits: OECD evidence", *Journal of Regulatory Economics*, Vol. 54/2, pp. 147-164. [26]
- Fournier, J. (2015), "The Negative Effect of Regulatory Divergence on Foreign Direct Investment", *OECD Economics Department Working Paper*, Vol. 1268, <http://dx.doi.org/10.1787/5jrqqvg0dw27-en>. [12]
- Fournier, J. and al. (2015), "Implicit Regulatory Barriers in the EU Single Market: New Empirical Evidence from Gravity Models", *OECD Economics Department Working Papers*, Vol. 1181, <http://dx.doi.org/10.1787/5js7xj0xckf6-en>. [11]
- Fugazza, M. and J. Hoffmann (2017), "Liner shipping connectivity as determinant of trade", *Journal of Shipping and Trade*, <https://doi.org/10.1186/s41072-017-0019-5>. [38]
- Griffith, R. (2006), "The link between product market reform, innovation and EU macroeconomic performance", *Economic Paper n. 243 European Commission, Directorate-General for Economic and Financial Affairs*, http://ec.europa.eu/economy_finance/publications/publication12594_en.pdf. [9]
- Hollweg, C. and M. Wong (2009), *Measuring Regulatory Restrictions in Logistics Services*. [46]
- iDEA (2018), *Vietnam E-commerce White Book 2018*. [50]
- International Transport Forum (2018), *The Impact of Alliances in Container Shipping*. [5]
- Ken Research (2018), *Thailand Logistics and Warehousing Market Outlook to 2022 - By Freight Forwarding, Express Logistics, E-commerce Logistics and Warehousing Services (Industrial/Retail Freight, Container Freight, Cold Storage, Agricultural and Others), Third Party Logistic*. [34]
- Mangan, J. and C. Lalwani (2016), "Global Logistics", in *Global Logistics and Supply Chain Management*, Wiley. [1]
- Mordor Intelligence (2020), *ASEAN freight and logistics market (2020-2025)*. [35]
- Nguyen, T. et al. (2014), "Current challenges in the recruitment and retention of seafarers: an industry perspective from Vietnam", *Asian Journal of Shipping and Logistics*, Vol. 30/2, pp. 217-242. [43]
- Nickell, S. (1996), "Competition and Corporate Performance", *Journal of Political Economy*, pp. 724-746, <http://www.jstor.org/stable/10.2307/2138883>. [7]
- Nicoletti, G. and S. Scarpetta (2003), "Regulation, productivity and growth: OECD evidence", *Economic Policy*, Vol. 18/36, pp. 9-72. [13]
- OECD (2019), *Competition Assessment Reviews: Tunisia*, <https://www.oecd.org/daf/competition/oecd-competition-assessment-reviews-tunisia.htm>. [39]

- OECD (2019), *Competition Assessment Toolkit: Volume 1. Principles*, OECD, Paris, <http://www.oecd.org/competition/assessment-toolkit.htm>. [55]
- OECD (2019), *OECD Investment Policy Reviews: Southeast Asia*. [29]
- OECD (2018), *Economic Outlook for Southeast Asia, China and India 2018: Fostering Growth Through Digitalisation*. [42]
- OECD (2018), *OECD Competition Assessment Reviews: Portugal: Volume I - Inland and Maritime Transports and Ports*, <https://doi.org/10.1787/9789264300026-en>. [6]
- OECD (2018), *OECD Investment Policy Reviews: Viet Nam 2018, OECD Investment Policy Reviews*, <https://doi.org/10.1787/9789264282957-en>. [37]
- OECD (2017), *Land-use Planning Systems in the OECD: Country Fact Sheets*, <http://dx.doi.org/10.1787/9789264268579-en>. [48]
- OECD (2017), *OECD Investment Policy Reviews: Lao PDR*, <http://dx.doi.org/10.1787/9789264276055-en>. [52]
- OECD (2016), *OECD Competition Assessment Reviews: Romania*, <http://dx.doi.org/10.1787/9789264257450-en>. [3]
- OECD (2015), *Economic Policy Reforms 2015: Going for Growth*. [25]
- OECD (2015), *Policy Framework for Investment 2015 Edition*, <http://dx.doi.org/10.1787/9789264208667-en>. [49]
- OECD (2014), *Factsheet on how competition policy affects macro-economic outcomes*. [10]
- OECD (2008), *Freedom of Investment, National Security and 'Strategic' Industries: Progress Report by the OECD Investment Committee*. [54]
- Pike, C (2018), *What's gender got to do with competition policy?*. [27]
- Rushton, A., P. Croucher and P. Baker (2017), *The Handbook of Logistic and Distribution Management*, Kogan Page. [4]
- Vitale, C., C. Moiso and I. Wanner (2020), *A detailed explanation of the methodology used to build the OECD PMR indicators*. [56]
- Westmore, B. (2013), "Policy incentives for private innovation and maximising the returns", *OECD Journal: Economic Studies*, Vol. 1. [22]
- World Bank (2020), *Doing Business 2020: Viet nam*, <https://www.doingbusiness.org/content/dam/doingBusiness/country/v/vietnam/VNM.pdf>. [47]
- World Bank (2019), *Strengthening Vietnam's Trucking sector*. [41]
- World Bank (2018), *Connecting to Compete, the Logistics Performance Index Report*. [32]
- World Bank (2018), *Promoting open and competitive markets in road freight and logistics services*. [40]
- World Bank (2014), *Efficient Logistics: a key to Vietnam's competitiveness*. [45]
- World Bank (2014), "Why are minimum capital requirements a concern for entrepreneurs?", [51]

World Bank Doing Business.

World Bank Group (2020), *Doing Business 2020.*

[31]

World Economic Forum (2019), *The Global Competitiveness Report.*

[30]

Notes

¹ In 2004, AMSs signed the *ASEAN Framework Agreement of the Integration of Priority Sectors*. The framework identified 11 priority sectors, namely agro-based products, air travel, automotive, e-ASEAN, electronics, fisheries, healthcare, rubber-based products, textiles and apparels, tourism, and wood-based products. Noting the expansion of the ASEAN logistics market, in 2006 ASEAN economic ministers decided to include logistics as the twelfth priority sector for economic integration.

² See for instance EC merger case COMP/M.7630 – Fedex / TNT Express of 8 January 2016, EC merger case COMP/M.6570 – UPS/ TNT Express of 30 January 2013.

³ The separation between inland waterway transport and maritime transport is not always clear-cut, as shown for instance in Viet Nam by the overlap of responsibilities between the Vietnam Inland Waterway Administration (VIWA) and the Vietnam Maritime Administration (VINAMARINE).

⁴ See www.worldshipping.org/about-the-industry/how-liner-shipping-works.

⁵ See European Commission, Case AT.39850, Container Shipping, closed with commitments on 7 July 2016.

⁶ The methodology followed in this project is consistent with the OECD's Indicators of Product Market Regulations (PMR), which measure a country's regulatory stance and track progress of reforms over time. First created in 1998, this indicator was updated in 2003, 2008 and 2013. See (Vitale, Moiso and Wanner, 2020^[56]).

⁷ (Fournier and 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.

⁸ (Arnold, Nicoletti and Scarpetta, 2011^[14]) analysed firm-level data in 10 countries from 1998 to 2004 using the OECD's PMR index at industry-level, and found that more stringent PMR reduces firms' MFP.

⁹ (Égert, 2017^[15]) investigated the drivers of aggregate MFP in a sample of 30 OECD countries over a 30-year period.

¹⁰ The study of 15 countries and 20 sectors from 1985 to 2007 estimated the effect of regulation of upstream service sectors on downstream productivity growth. The productivity frontier refers to the most productive countries and sectors in the sample. The farther a sector is from the frontier, the less productive it is.

¹¹ (Égert, 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.

¹² Employment growth in France increased from 1.2% a year between 1981 and 1985 to 5.2% a year between 1986 and 1990. Between 1976 and 2001, total employment in the road transport sector doubled, from 170 000 to 340 000.

¹³ The sample includes 18 countries over a 10-year period.

¹⁴ Using the OECD's summary index of PMR in seven non-manufacturing industries in the energy, telecom and transport sectors (Causa, de Serres and Ruiz, 2014_[57]) found stringent PMR had a negative impact on household disposable income. This result held both on average and across the income distribution, and led to greater inequality. The authors noted that lower regulatory barriers to competition would "tend to boost household incomes and reduce income inequality, pointing to potential policy synergies between efficiency and equity objectives".

¹⁵ 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>).

¹⁶ World Bank, <https://data.worldbank.org/indicator/AG.SRF.TOTL.K2?end=2018&locations=VN&start=1961&view=chart>.

¹⁷ World Bank, <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=VN>.

¹⁸ World Bank, <https://databank.worldbank.org/data/download/POP.pdf>.

¹⁹ World Bank, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=VN>.

²⁰ World Bank, <https://databank.worldbank.org/data/download/GDP.pdf>.

²¹ IMF, https://www.imf.org/external/datamapper/NGDP_RPCH@WEO/OEMDC/ADVEC/WEOWORLD.

²² World Bank, <https://www.worldbank.org/en/country/vietnam/overview>.

²³ World Bank, <https://data.worldbank.org/indicator/NE.EXP.GNFS.CD?locations=VN>.

²⁴ World Bank, <https://data.worldbank.org/indicator/NE.EXP.GNFS.ZS?locations=VN>.

²⁵ General Statistics Office of Viet Nam, Statistical Yearbook of Viet Nam 2019, Trade and Tourism, <https://www.gso.gov.vn/wp-content/uploads/2019/10/00.-Nien-giam-2018.pdf> <https://www.gso.gov.vn/wp-content/uploads/2020/09/Nien-giam-thong-ke-day-du-2019.pdf>.

²⁶ World Bank, <https://www.worldbank.org/en/publication/global-economic-prospects>.

²⁷ See <https://www.adb.org/sites/default/files/publication/715491/ado-supplement-july-2021.pdf>. Viet Nam's economy is expected to grow by 5.8% in 2021 and 7.0% in 2022.

²⁸ World Bank, <https://data.worldbank.org/indicator/NV.IND.TOTL.ZS?locations=VN>, <https://data.worldbank.org/indicator/NV.AGR.TOTL.ZS?locations=VN>, <https://data.worldbank.org/indicator/NV.SRV.TOTL.ZS?locations=VN>.

²⁹ General Statistics Office of Viet Nam, Statistical Yearbook of Viet Nam 2018, Population and Employment, p. 157-160, <https://www.gso.gov.vn/wp-content/uploads/2020/09/Nien-giam-thong-ke-day-du-2019.pdf>.

³⁰ The ASEAN Framework Agreement on Services was signed in Bangkok on 15 December 1995; https://asean.org/?static_post=asean-framework-agreement-on-services.

³¹ The indicators used in the Global Competitiveness Report are based on a mix of hard data obtained from various international organisations and soft data collected through the global Executive Opinion Survey conducted by the World Economic Forum and its local partner institutions in the participating countries. The extent of market dominance is measured based on the response to the following survey question: “*in your country, how do you characterise corporate activity?*” [1 = dominated by a few business groups; 7 = spread among many firms]. The indicator for competition in services is based on the average of the scores of the three components of the following survey questions: “*In your country, how competitive is the provision of the following services: professional services (legal services, accounting, engineering, etc.); retail services; and network sector (telecommunications, utilities, postal, transport, etc.)?*” [1= not at all competitive; 7 = extremely competitive]. Trade openness is computed by taking the average of the scores in the following indicators: prevalence of non-tariff barriers, trade tariffs, complexity of tariffs and efficiency of border clearance. See Appendix A of the Global Competitiveness Report.

³² For the full list of countries with their respective rankings, see www.doingbusiness.org/en/rankings.

³³ Another factor is the time necessary to register property; see Section on Land purchase and use, p. 50.

³⁴ This master plan follows the adoption of an earlier version, *Master Plan on ASEAN Connectivity 2010*. See <https://asean.org/storage/2016/09/Master-Plan-on-ASEAN-Connectivity-20251.pdf> for the full *Master Plan on ASEAN Connectivity 2025* report.

³⁵ Statistical Yearbook of Viet Nam, p. 157, <https://www.gso.gov.vn/wp-content/uploads/2020/09/Nien-giam-thong-ke-day-du-2019.pdf>.

³⁶ See <https://www.giiresearch.com/report/stox422305-vietnam-logistics-market-report.html>.

³⁷ Eighty-five percent of Vietnam’s railway network uses meter gauge, instead of standard gauge (1.435m), and so does not support high-speed, high-stability, or double-stacked freight trains. The conversion to standard gauge would require significant investment (OECD, 2018, p. 305^[37]).

³⁸ Between 2015 and 2018, global exports of transport services increased from USD 902.8 billion to USD 1 trillion. See <https://unctadstat.unctad.org/wds/TableView/tableView.aspx?ReportId=135718>.

³⁹ 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: 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 the 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.

⁴⁰ 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://unctad.org/system/files/official-document/itcdtab74_en.pdf.

⁴¹ The World Bank classified Viet Nam as a lower middle-income economy. Besides the ASEAN member states of Cambodia, Indonesia, Lao, PDR, Myanmar, and the Philippines, this income group includes India,

Mongolia, Morocco, Pakistan, Senegal, Tunisia and Ukraine. For the full list of countries, see <https://data.worldbank.org/income-level/lower-middle-income>.

⁴² Decision No. 200/QĐ-TTg of 14 dated February 14 2017, <https://vanbanphapluat.co/decision-200-qd-ttg-action-plan-improvement-competitiveness-development-of-vietnam-s-logistics-services>.

The Vietnamese version is available at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=2&_page=1&mode=detail&document_id=188271.

⁴³ Viet Nam already achieved this target in 2018, ranking 39 out of 160 countries in the LPI.

⁴⁴ <https://www.globalinnovationindex.org/analysis-indicator>.

⁴⁵ <http://asemconnectvietnam.gov.vn/default.aspx?ID1=2&ZID1=14&ID8=99391> and <http://www.mpi.gov.vn/en/Pages/tinbai.aspx?idTin=49148&idcm=92>.

⁴⁶ <http://ven.vn/hastening-digital-transformation-in-logistics-industry-43999.html>.

⁴⁷ Government Decree No. 36/2012/ND-CP of 18 April 2012 lays down its tasks and powers.

⁴⁸ Article 114 of the Constitution provides that “The People’s Committee at a local administration level, which shall be elected by the People’s Council of the same level, is the executive body of the respective People’s Council and is the local state administrative body, and is responsible to the People’s Council and state administrative agencies at higher levels.” They are responsible for implementation of the Constitution and laws in their respective localities, and of their specific people’s council’s resolutions.

⁴⁹ See <https://www.mordorintelligence.com/industry-reports/vietnam-freight-logistics-market-study> (accessed on 6 May 2020).

⁵⁰ Pursuant to Article 3(18) of the Law on Road Traffic, road motor vehicles include automobiles, tractors, trailers or semi-trailers, motorcycles and three-wheeled motor vehicles.

⁵¹ See <https://vietnamnews.vn/economy/374109/mot-revises-transport-regulations.html>.

⁵² See Federal Motor Carrier Safety Administration at <https://ai.fmcsa.dot.gov/RegistrationStatistics/CustomerReports.aspx> (accessed on 4 June 2020). As of 24 April 2020, 913 943 out of 1 653 454 freight carriers have one power unit.

⁵³ See <https://www.bcg.com/fr-fr/publications/2018/to-get-smart-ports-go-digital> and <https://www.jurongportonline.com/JRPA/DisplayAnnouncement?Announceld=20200117181138148071>.

⁵⁴ Province-level People’s Committees determine which authority between the Department of Finance, the Department of Transport or the district-level People’s Committee is competent to receive the notification of transport fares.

⁵⁵ The OECD found that in Indonesia the government has issued a guideline which states how road transport companies should calculate their tariffs, and notes that businesses will be subject to an administrative penalty for failing to follow the guidelines.

⁵⁶ See https://www.unece.org/fileadmin/DAM/trans/doc/2017/itc/Panel_1_Mr._Hoang_Hong_Giang_Director_General_of_Inland_Water_Transportation_Department_of_Vietnam.pdf.

⁵⁷ See www.unece.org/fileadmin/DAM/trans/doc/2017/itc/Panel_1_Mr._Hoang_Hong_Giang_Director_General_of_Inland_Water_Transportation_Department_of_Vietnam.pdf.

⁵⁸ Article 4(3)(a) of Decree No. 163/2017/ND-CP on provision of logistics services.

⁵⁹ Chapter 2 of the Circular 54/2018/TT-BGTVT.

⁶⁰ See <https://www.hellenicshippingnews.com/vietnam-significantly-lower-port-charges-set-to-rise/>.

⁶¹ See <https://www.unescap.org/sites/default/files/Viet%20Nam%20country%20report-TAR%20WGM-5.pdf>.

⁶² See <http://www.vr.com.vn/en/investment/railway-industry-turning-to-foreign-investment.html>.

⁶³ For example, Article 39 of Multimodal Transport Act in Thailand requires being a limited company or public limited company incorporated under Thai laws.

⁶⁴ Article 5 of Circular No. 12/2015/TT-BTC contains the definition and lists the activities affected by this provision.

⁶⁵ The OECD understands that this code is granted to any customs broker and is similar to an ID number.

⁶⁶ For an example of these frameworks in English, see Decree No. 104/2014/ND-CP on Land Price Brackets.

⁶⁷ See https://www.academia.edu/35925799/BONDED_WAREHOUSING_IN_TURKEY_According_to_Customs.

⁶⁸ See https://finance.belgium.be/en/customs_excises/customs-warehousing-authorisation#q1.

⁶⁹ The statutory time of 30 days to issue the licence shall start from the day the application is deemed complete.

⁷⁰ See <https://customsnews.vn/two-main-trends-in-vietnams-logistics-development-12730.html#:~:text=According%20to%20the%202019%20Vietnam,growth%20in%202018%20and%202019.>

⁷¹ See www.economica.vn/Portals/0/Documents/67-2014%20Law%20on%20investment.pdf.

⁷² For the full text of the agreement, see https://www.parliament.go.th/aseanrelated_law/files/file_20170808165335_txtattactEN_.pdf. The priority sectors included in the ASEAN Framework Agreement were: agro-based products, air travel, automotive, e-ASEAN, electronics, fisheries, healthcare, rubber-based products, textiles and apparel, tourism, and wood-based products.

⁷³ See <https://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/services/logistics-services/>.

⁷⁴ See <http://www.mrcmekong.org/assets/Publications/policies/agreement-waterway-trans-btw-Cam-n-VN-Eng.pdf>.

Annex A. Methodology

The assessment of laws and regulations in these sectors and its subsectors has been carried out in four stages. The present annex describes the methodology followed in each of these stages.

Stage 1: Mapping the sectors

The objective of Stage 1 of the project, which started in the second half of 2018, was to identify and collect sector-relevant laws and regulations. The main tools used to identify the applicable legislation were the online databases, in particular the database provided by the Vietnamese Ministry of Justice (see <http://vbpl.vn/TW/Pages/vbpgen.aspx>). This was complemented by the websites of relevant Vietnamese authorities and of industry and consumer associations. 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, 44 different pieces of legislation were eventually identified.

Another important objective of Stage 1 was establishing contact with the market through the main authorities, industry associations and private stakeholders active in each sector. In March 2019, the OECD team conducted a fact-finding mission to Hanoi to meet with government and private stakeholders. Interviews with market participants contributed to a better understanding of how the sub-sectors under investigation work in practice and helped in the discussion of potential barriers deriving from the legislation.

Based on those meetings, a series of discussions with stakeholders about the practical problems they 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 where an impact on competition could 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 legislation to identify potentially restrictive provisions, as well as providing an economic overview of the relevant sectors. Every piece of legislation was scanned by an OECD team member and an outside national consultant (“four-eyes principle”).

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.

Box A.1. OECD Competition Assessment Toolkit

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 some well-informed customers would choose;
4. significantly raises the costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants).

C) Reduces the incentive of suppliers to compete

This may be the case if the piece of legislation:

1. creates a self-regulatory or co-regulatory regime;
2. requires or encourages information on supplier outputs, prices, sales or costs to be published;
3. exempts the activity of a particular industry or group of suppliers from the operation of general competition law.

D) Limits the choices and information available to customers

This may be the case if the piece of legislation:

1. limits the ability of consumers to decide from whom they purchase;
2. reduces the mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers;
3. fundamentally changes the information required by buyers to shop effectively.

Source: OECD (2019^[55]), *Competition Assessment Toolkit: Volume 1. Principles*, <http://www.oecd.org/competition/assessment-toolkit.htm>.

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 39 provisions across the logistic sector.

The OECD also prepared an extensive economic overview of the logistics sector, which was refined 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.

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 in Stage 4, taking account of the objective of the specific provisions when required. The objective of policymakers was researched 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, wherever available. The report was also shared with the OECD's International Transport Forum (which also contributed with international experience in the transport sector) and the Investment Division.

During a stakeholder consultation in March 2020, the OECD presented preliminary recommendations to the relevant Vietnamese authorities and asked for their views on recommendations. All those comments were taken into account when deciding on final recommendations and writing the final report.

In total, 36 recommendations were submitted to the Vietnamese stakeholders in October 2019.

Annex B. Legislation screening by sector

Road transport

	No. and title of regulation	Article	Brief description of obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
1	Decision No. 23/2018/QĐ-UBND of HCMC on restrictions and approvals for goods-transporting automobiles and trucks within the city boundaries	Article 3 (Subjects and timing of restrictions); Article 6 (Entitlements for approval to operate within the city boundaries in peak hours)	<p>During peak hours, trucks are not allowed to enter into Ho Chi Minh City, although volumes to be delivered to Ho Chi Minh are constantly increasing.</p> <p>Peak hours when the restrictions are applicable are between 06.00-09.00AM and 16.00-20.00 for light trucks, and between 06.00-22.00 for heavy trucks.</p> <p>Postal trucks/cars as well as express delivery service trucks/cars can apply for approval to operate within the city boundaries during such peak hours. However, market participants mentioned that it is difficult in practice to obtain such an authorisation.</p> <p>The law specifies who can apply for this authorisation, for instance light trucks owned by enterprises providing post delivery service which are granted a license for provision of delivery service or postal service by the Department of Information and Communications or Ministry of Information and</p>	Truck bans	This provision may restrict road transport companies to offer their transport services for a significant part of the day. It may also reduce the utilisation rate of their personnel and trucks, thus increasing the average cost of transport per freight unit.	<p>This provision aims to preserve free-flow movement of traffic during peak hours, due to limited road capacity. It likely aims also at addressing environmental concerns in the city.</p> <p>International comparison: Some EU countries also use truck bans of big vehicles 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 10pm on Sunday. This ban however has some exceptions (e.g., for carrying perishable goods or for trucks serving sporting events).</p> <p>Similarly, other ASEAN countries such as Thailand and the Philippines have similar provisions in place.</p>	No recommendation. Express on-time delivery can still be carried out by obtaining an authorisation to operate.

	No. and title of regulation	Article	Brief description of obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
			Communications; light trucks owned by enterprises transporting goods for import or export such as fresh food, fresh flowers or seeds; or light trucks used for transport of oxygen and vaccines provided for hospitals or medical centres.				
2	Circular No. 46/2015/TT-BGTVT load capacities and dimensional limits of roads and vehicles on public roads	Article 12	There is a maximum load for trucks of 32 tons.	Maximum load for trucks	The limitation existing in Viet Nam may raise costs and/or constitute a barrier to entry for cargo operators. It may indeed reduce the utilisation rate of the trailers, thus significantly increasing costs of transport. Also, if this limit is different from other neighbouring countries, it may result in the need to change truck at the border, thus increasing time and costs of cross-border transport (unless there is a specific agreement in place, such as Protocol 4 of the ASEAN Framework Agreement on the Facilitation of Goods in Transit that provides for a maximum weight of the vehicle/trailer).	<p>International comparison</p> <p>The World Bank and IRU's Guiding Principles for Practitioners and Policy Makers on "Road Freight Transport Services Reform" observes that "it is rather common for the maximum axle load and gross vehicle load limits to be much lower than the optimum. Strict enforcement would not allow efficient use of road transport vehicles and impose substantial additional transport costs. In practice, everyone ignores the regulations except when enforcement officers want favours from the truckers. This fails to check even extreme overloading and undermines enforcement efforts generally" (see p. 86).</p> <p>Malaysia: In Malaysia, the Federal Weight Restriction Order provides for specific weight restrictions for vehicles, depending on the wheelbase and the wheel spread. These limits are all above 16t.).¹</p> <p>ASEAN: Protocol 4 (Technical requirements of vehicles) annexed to the ASEAN Framework Agreement on the Facilitation of Goods in Transit provides</p>	No recommendation. Having load limits is commonplace and the limits existing in Viet Nam are in line with those in place in the region.

	No. and title of regulation	Article	Brief description of obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
						<p>for a maximum weight of the vehicle/trailer (including any load carried on it) rather than the maximum weight of the load itself. Such weight limits are between 21 and 38 tons, depending on the vehicle.</p> <p>Germany: In Germany, the law specifies the maximum permitted weight of vehicles, depending on the number of axles of the vehicle (in practice the length and resistance of the vehicle or trailer). For instance, such weight limit is between 18t and 24t for trailers and between 18t and 32t for motor vehicles.²</p>	
3	Decree No. 86/2014/ND-CP dated September 10, 2014, on business and conditions for transportation business by automobiles; Circular No. 63/2014/TT-BGTVT (English version attached)	Article 11 of the Decree No. 86/2014, Article 51 of the Circular No. 63/2014	<p>In addition to the business licence issued by the Provincial Department of the Ministry of Planning and Investment, in order to provide trucking services, one needs to register each truck and then obtain a label issued by the same provincial department certifying that the truck is used only for commercial purposes. This requirement is applicable to vehicles carrying containers, trailers or semi-trailers, tractors or any other vehicle transporting goods. The information to be displayed in this label is specified in Annex 26 of the Circular No. 63/2014. The label shall be displayed as per Article 51 of this circular.</p> <p>The process to obtain the label is time-consuming and gives rise to risks of irregularities. The procedure for submission (by an enterprise providing "goods transport involving containers, trailer tractors or semi trailer-tractors or</p>	Label for trucks	This label requirement may result in administrative burden for companies, thus unnecessarily increasing the costs for incumbents.	According to publicly available information, in the past a lot of cars, vans, small trucks (maybe not containers) in Viet Nam were used for commercial purposes but did not declare it in order to avoid paying certain tax and fees. Therefore, this label was introduced to make it easier for relevant authorities to monitor and stop this practice.	<p>Option1: Remove.</p> <p>Option 2: Reduce administrative burden, for instance by issuing the label, if necessary, together with the business registration or the licence for automobile transport.</p>

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			<p>goods transport vehicles") is laid down in Article 55(5) of Circular No. 63/2014. According to several market participants, this is an additional and unnecessary cumbersome administrative burden.</p> <p>However, stakeholders provided contradictory statements. While some consider the label necessary to facilitate the tasks of the traffic police and other State agencies (e.g., to identify the owner of the truck), others consider that there are other more efficient ways to achieve the same objective (e.g., different colours or plate number, employing specific technologies).</p>				
4	Decree No. 86/2014/ND-CP dated September 10, 2014, on business and conditions for transportation business by automobiles; Circular No. 63/2014/TT-BGTVT	Article 11 of the Decree No. 86/2014, Article 7 of the Circular No.63/2014/T T-BGTVT	<p>Although truck drivers already hold a driving licence, every 6 months they must attend a training course on traffic laws and regulations. The content of this training is defined in the material and framework program promulgated by Directorate for Roads of Vietnam. Pursuant to Article 7 of the Circular No.63/2014/TT-BGTVT, this training requirement applies to transport business operators, drivers and attendants.</p> <p>To provide this training, the company the driver works for has to send a written notice to the department of transportation 3 days before the date of the training.</p> <p>Article 7 of the Circular No.63/2014/TT-BGTVT provides that any transport company is eligible to organize the training or cooperate with a local automobile transport association or driver training institutions to provide training for</p>	Training for truck drivers	This requirement may result in administrative burden for companies, thus unnecessarily increasing the costs for incumbents. Also, it makes drivers unavailable during the time of the training, thus reducing the company's output.	<p>The mandatory training aims to ensure that truck drivers are aware of the latest laws and safety requirements.</p> <p>International comparison</p> <p>Imposing regular staff trainings is common in sectors involving serious risks for health and safety. For instance, in an OECD Competition Assessment of Laws and Regulations in Romania (2016), the OECD found that all staff involved in production, processing, storage, transport and sale of foodstuffs had to attend a training course and pass an examination every three years. The OECD found that "this imposes costs on market participants that go beyond what appears necessary to attain the legitimate policy goals of ensuring a high level of food safety."</p>	The OECD recommends considering the possibility of making this training less frequent and more focussed on safety requirements while strictly limiting it to those whose tasks may benefit the most from it. In addition, consider introducing tests to assess the achievements of the training, for instance, upon renewal of the driving licence.

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			its drivers and attendants. The Services of Transport shall preside the training and cooperate with the local automobile transport association (if any) in organizing training for transport managers of local transport companies.				
5	Joint circular No. 152/2014/TT LT-BTC-BGTVT dated October 15, 2014, providing guidance on auto transport fares and road transport support service charges	Article 3	<p>Cargo transport operators must notify the competent authority of their tariff five days before they are applied. Operators must then comply with their declared tariffs. More specifically, cargo transport operators must submit a declaration containing the following tariffs:</p> <ol style="list-style-type: none"> 1. Average tariffs in VND/tonne-kilometre; 2. tariffs for container shipping (amount in VND/container 20 feet/km; VND/container 40 feet/km; VND/container 20 feet; VND/container 40 feet); and 3. tariffs for main routes according to each specific cargo and distance (VND/tonne) or other tariff measurements as appropriate, according to type of transport services. <p>If operators increase or decrease their rates by more than 3% of the declared tariffs, they must re-declare their service tariffs. If they do not comply with declared tariffs, a fine can be imposed.</p> <p>In practice, this system works as follows. On 1 June 2019, Enterprise A notifies its tariffs to the competent receiving body. On 1 January 2020, the enterprise increases its tariffs by 2%. No second declaration is required, but a written notice of adjusted fares must be sent to the authorities before the new tariffs are applied. On 1 June 2020, the enterprise again increases its tariffs, this time by</p>	Price regulation	This provision may reduce firms' flexibility to react to changes in market demand and supply.	Although the operator is free to set its fares, the need to declare them to the relevant agencies aims to ensure transparency and facilitate, if needed, State's intervention to protect consumers, for instance in case of exploitative prices.	Remove.

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			2.5% on the top of the January 2020 adjustment. Together, the two adjustments result in an aggregate increase of 4.5% compared with the declaration made in June 2019. The enterprise should file therefore a second declaration of tariffs with the authorities.				
6	Decree No. 163/2017/N D-CP dated December 30, 2017 on provision of logistics services	Article 4 (3g)	If a foreign investor wishes to provide road transport services, it must sign a co-operation agreement or enter a joint venture (JV) with a Vietnamese entity. A foreign investor may not, however, own more than 51% of a company. In addition, it is subject to the horizontal provisions on investment licensing.	Foreign equity restriction	This provision restricts access by foreign companies and may result in a lower number of suppliers in Viet Nam.	<p>It seems that this provision aims to protect national industry against foreign competition.</p> <p>International comparison</p> <p>Australia: A foreign company that wants to carry out business in Australia must register with the Australian Securities and Investments Commission (ASIC). This is however only a procedural requirement to obtain a business name and number (called ABN, Australian Business Number) in Australia. In Australia, approval of investments by foreigners is necessary when foreigners acquire at least 20% interest in an Australian entity whose value is above AUD 261 million. This threshold applies to the transport sector without exceptions (i.e., even when there is an FTA) since transport is considered as a sensitive business. The treasurer has the power to prohibit an investment if satisfied it would be contrary to the national interest. However, "the general presumption is that foreign investment is beneficial, given the important role it plays in Australia's economy".³</p>	<p>Viet Nam should focus on enhancing liberalisation efforts in the transport sector, which remains partly off limits to foreign investors, holding back potential economy-wide productivity gains. The OECD therefore recommends one of the following options:</p> <p>Option 1: progressively relax foreign equity limits towards allowing up to 100% foreign ownership in the long term. A first step may be to extend the current AFAS requirement of 70% ASEAN foreign-ownership in entities providing logistics services also to non-ASEAN</p>

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						<p>Singapore: There is no restriction on foreign ownership in Singapore and the regulatory framework offers a level playing field for foreign investors. Foreign investors are not required either to enter into joint ventures or cede management or control to local entities.</p>	<p>nationals.</p> <p>Option 2: relax foreign equity limits on a reciprocal basis (i.e., for nationals of those countries that allow Vietnamese nationals to hold 100% shares in a company).</p> <p>Option 3: Allow 100% ownership and apply the screening system of foreign direct investments when the investment goes beyond a certain value threshold (like in Australia).</p>
7	Decree No. 86/2014 / ND-CP	Article 19	<p>Pursuant to Decree No. 86/2014/ND-CP, in order to provide goods transport services in containers, or services using vehicles, trailers or semi-trailers to transport goods beyond a 300-kilometre distance, operators need to own a minimum number of vehicles as specified in their licence application, as follows:</p> <ol style="list-style-type: none"> 1) 10 or more if the head office is in one of the "centrally-run cities" 2) 5 or more if the head office is located in other localities 3) 3 or more if the head office is located in poor districts. 		<p>Requiring to have a minimum number of autos significantly raises costs, especially for SMEs, which may be forced to have assets above their actual needs. This may also prevent such SMEs from entering the market.</p>	<p>The World Bank report on promoting competitive markets in road transport state that "<i>Vietnam recently increased entry requirements for commercial carriers to reduce atomization.</i>"</p>	<p>Remove.</p>

	No. and title of regulation	Article	Brief description of obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
8	Road Traffic Law	Article 67(3)	Pursuant to Article 67(3) of the Law on Road Traffic, enterprises and co-operatives wishing to provide commercial cargo transport services need to own a parking lot suitable for their size. Circular No. 63/2014/TT-BGTVT provides a broad definition of a parking lot as a "road transport infrastructural construction where vehicles are parked."		<p>Requiring a new entrant to the road freight transportation market to have a garage significantly raises the cost of entry.</p> <p>This requirement seems excessive and overly burdensome and may prevent new players from entering the market as it significantly raises the cost of entry. The garage requirement itself may prevent smaller players from entering the market.</p>	<p>The requirement to own or rent a garage is likely aimed at preventing traffic congestion.</p> <p>International comparison In the Philippines, law requires operators to have a garage before they can obtain a CPC to operate. A garage is likely required, in part, to avoid traffic congestion. For example, it is provided in the Citizen's Charter that trucks for hire entering Metro Manila need to show "proof of garage or authority to use garage within Metro Manila to avoid traffic congestion".</p>	<p>The OECD recommends removing the requirement to own a parking lot and clarify that operators providing commercial cargo transport services by container only need to show proof of sufficient parking space when they start operations, irrespective of whether they own it or rent it.</p>

Note:

1. For more details, see http://mddb.apec.org/Documents/2017/TPTWG/WKSP1/17_%20tptwg_wksp1_018.pdf.
2. See <https://www.iru.org/apps/infocentre-item-action?id=282&lang=en>.
3. See <https://cdn.tspace.gov.au/uploads/sites/82/2017/06/Australias-Foreign-Investment-Policy.pdf>.

Water freight transport

	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
1	Circular No. 40/2016/TT-BGTVT on Registration of Vietnamese sea-going ships	Article 10 on Inspection and Issuance of Registration certificates for sea-going ships	The ship registrar under the Ministry of Transport issues the registration certificate for the ship, after carrying out inspections of it. Although the law provides for a statutory limit of two days (from the completion of the initial survey or periodical survey) and 1 day (from the completion of the annual survey, docking survey, intermediate survey, or occasional survey) for the Vietnamese registrar to issue the certificate, in practice the time for issuing such certificate can be significantly long. In case of non-compliance, it shall notify the applicant.		This may delay market entry, increase costs and create uncertainty. However, the OECD understand that this is an issue of non-compliance with the law rather than a purely regulatory issue.		Improve compliance with the statutory time limits laid down in the law.
2	Circular-No. 01/2016/TT-BTC-schedules-marine-fees-charges; Circular No. 54/2018/TT-BGTVT on the bracket for service charges of pilotage, using bridges, wharves, mooring buoys, container handling in Viet Nam	Article 4 of the Circular No. 54/2018/TT-BGTVT on the Principles for Setting Service Charges in Seaports	Regulated maximum and minimum fees are set for port services. Pursuant to Article 1 of Circular 54/2018/TT-BGTVT, these provisions apply to different seaport service charges, such as those for pilotage and towage services, for using the bridges, berths and anchors, and for container loading and unloading services. Following a proposal by the operator and approval by the Ministry of Finance, VINAMARINE approves prices for four categories: container charges; pilot charges; port charges; and tugboat charges. The government provides a framework and a port operator can choose to raise or reduce tariffs within this maximum-minimum range.	Port charges	Setting minimum prices may restrict lower cost suppliers from winning market shares by providing better value to customers. Similarly, maximum prices may limit incentives to innovate by providing new and high-quality products.	Price regulation may be justified in traditional monopoly sectors where there is a need of a counterweight to a lack of competing alternatives. Also, minimum rates aim to help port operators to have sufficient funds to increase service quality by applying advanced technology and upgrading infrastructure. Furthermore, the recently approved increases of cargo handling charges in Viet Nam aimed to put charges on a par with the regional level. They were indeed significantly lower than those applied in Cambodia (\$65), Thailand (\$59), Malaysia (\$75), the Philippines (\$98), Indonesia (\$81), Singapore (\$111), Myanmar (\$165) and China (\$97). ¹ (At the time, as per Decision No.3863/QD/BGTVT issued by the	The OECD recommends removing the minimum floor and keeping only maximum prices in the government framework for setting port charges. Maximum prices should enable operators to recover their costs, including a reasonable rate of return. For this purpose, such maximum prices should also be regularly revised to ensure they are in line with market dynamics and provide the necessary incentives for innovation.

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						<p>MoT on December 1, 2016, the container handling service charge was \$30 for ports in Haiphong, \$45 for ports in the central city of Danang and \$41 for ports in Ho Chi Minh City..</p> <p>According to market participants, in the past in Viet Nam port charges were approx. 29 to 30 USD, much cheaper than e.g. for Singapore, so it was impossible for investors to recoup investments. Therefore, a recommendation was made to the national assembly to have minimum levels of fees. Now seaports are allowed to have service fee in four categories (container charges, pilot charges, port charges and tugboat), so that charges cannot be too high or too low. With regards to container handling service charges in some northern ports, they were raised by 10% in 2018.</p>	
3	Decree No. 146/2016/ND-CP dated November 02, 2016 of the Government on regulations on publishing of freights and surcharges of ocean container shipping and seaport charges	Article 6. Validity of price schedules	While price decreases are immediately effective, price increases only become effective 15 days after the above-mentioned approval.	Port charges	This provision reduces firms' flexibility to react to changes in market demand and supply. Also, the time required to implement prices may give firms the time and incentives to collude. Finally, the time required to increase prices again may reduce firms' incentives to reduce them in the first place, thus giving firms an incentive to keep prices high.	Based on publicly available information, it seems that this is to accommodate/protect the interests of exporters and importers, who might will have to bear significant costs in case of immediate/frequent price increases/fluctuation.	Remove.

	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
4	Decree No. 163/2017/ND-CP on provision of logistics services	Article 4(3)(e)	A company operating inland waterway transport must be at least 51% owned by Vietnamese nationals or companies, otherwise it needs specific approval by the Ministry of Planning and Investment.	Foreign equity	This equity limit restricts foreigners' access to the market and may result in a lower number of suppliers in Viet Nam.	The OECD understands that this provision aims to ensure that the State retain control over business sectors or businesses they consider as having strategic importance. However, no official information is available on this point.	<p>Viet Nam should focus on enhancing liberalisation efforts in the transport sector, which remains partly off limits to foreign investors, holding back potential economy-wide productivity gains. The OECD therefore recommends one of the following options:</p> <p>Option 1: progressively relax foreign equity limits towards allowing up to 100% foreign ownership in the long term. A first step may be to extend the current AFAS requirement of 70% ASEAN foreign-ownership in entities providing logistics services also to non-ASEAN nationals.</p> <p>Option 2: relax foreign equity limits on a reciprocal basis (i.e., for nationals of those countries that allow Vietnamese nationals to hold 100% shares in a company).</p> <p>Option 3: Allow 100% ownership and apply the screening system of foreign direct investments when the investment goes beyond a certain value threshold (like in Australia).</p>

	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
5	Decree 58/2017/ND-CP guiding the implementation of the Maritime Code	Article 19 of the Decree No. 58/2017/ND-CP	<p>Government institutions involved in sea-freight transport are Vietnam Inland Waterway Administration (VIWA), with the function of advising and assisting the Minister in state management and organisation, and enforcement of specialised laws on inland waterway transportation throughout the country; Vietnam Maritime Administration (VINAMARINE), responsible for management and enforcement of maritime laws.</p> <p>Certain competency overlaps between VIWA and VINAMARINE exist for inland rivers that lead to seaports. In principle, VINAMARINE manages all the facilities and activities concerning seaports, but certain ports are located on inland rivers that lead to the sea rather than directly on the coast and are jointly managed by VIWA and VINAMARINE.</p> <p>Vessels also need to deal with port operators (often VIMC but also other SOEs) and, for the hinterland side, with local governments. Certain authors have noted that this may result in longer policy implementation or unsuccessful investments due to insufficient or late co-investments concerning the support infrastructure surrounding ports.</p>	Competence overlap	The unclear institutional framework and allocation of competences may raise barriers to entry and/or delay market entry, for instance with regards to maritime safety and security and environmental safety, that the port authority is responsible for pursuant to Article 19 of Decree No. 58/2017/ND-CP.		Separate competencies of VINAMARINE and VIWA.

	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
6	Decree No. 110/2014/ND-CP on Conditions for Providing Inland Waterway Transport Services; Decree 128/2018/ND-CP amending some provisions of the Decree No. 110/2014/ND-CP	Article 1(2) & 1(4) of the Decree No. 128/2018/N D-CP	A company that wants to operate inland waterway transport needs to have a physical commercial presence in Vietnam in order to register with the Ministry of Planning and Investment.	Physical presence	This may increase costs of operation.	The likely objective of this provision is to ensure the legal presence of the company in Viet Nam to facilitate controls (e.g., for tax purposes).	No recommendation.
7	Circular 248/2016/TT-BTC dated November 11, 2016 of the Ministry of Finance providing for collecting rates, method of collection, remittance, management and utilization of fees applicable at inland waterway ports	Article 4	Fees for different inland waterway transport services are set by VIWA and the Ministry of Finance. In practice, these authorities provide for a framework for setting the prices and then the service operator (e.g., cargo handling service provider) must reach an agreement with the port operator concerning the level of the fees. Article 4 of Circular 248/2016/TT-BTC includes precisely defined prices for different services. This concerns tonnage fees, entrance and exit fees, as well as fees for inland waterway notification.	Price regulation	Setting fixed or minimum prices may restrict lower cost suppliers from winning market shares by providing better value to customers. Similarly, maximum prices may limit incentives to innovate by providing new and high-quality products. Generally, the requirement to conclude an agreement with the port operator concerning the supplier's fees may reduce the latter's flexibility to adjust to changes in market conditions.	Tariff regulation in case of natural monopoly or monopoly power aims to avoid exploitative prices. Ensuring high quality standards does not necessarily require lifting maximum prices.	Replace fixed prices with maximum prices as part of the framework established by VIWA and the Ministry of Finance. Maximum prices should enable operators to recover their costs, including a reasonable rate of return. For this purpose, such maximum prices should also be regularly revised to ensure they are in line with market dynamics and provide the necessary innovation incentives
8	Circular no. 50/2014/TT-BGTVT dated October 17th, 2014 of the Ministry of Transport on regulation on inland waterway ports and landing stages	Article 20. Mandatory piloting	Foreign boats operating on inland waterways and entering or exiting inland waterway ports are required to use piloting services offered by the port. In contrast, Viet Nam-flagged ships "may request the pilotage" when entering or leaving an inland waterway port only if they find it necessary.	Piloting services	This provision may give rise to discrimination between Vietnamese and foreign companies and raise costs for the latter.	Imposing the use of piloting services upon ships within the port area aims to ensure safety. Navigation condition in such areas are indeed particular and require specific knowledge. International comparison In the report on Competition Assessment in Portugal (2018), the OECD found that foreign candidates	The OECD recommends providing derogations to the obligation to use port pilots based on fair and non-discriminatory conditions, such as actual experience in the specific port rather than on nationality.

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						could apply for a Pilot Exemption Certificate (PEC) that allowed them to navigate and manoeuvre within a compulsory pilotage area without necessarily using the services of a maritime pilot. However, foreign applicants for a PEC had to demonstrate knowledge of the Portuguese language. The OECD recommended recognising English as an alternative language, to avoid that foreign shipmasters be subject to discrimination, as they may have the necessary skills to navigate inside a port even if they do not speak Portuguese. The OECD found that, among the 22 coastal EU Member States, Portugal was one of only four countries reported to have a requirement for exclusive knowledge of the national language.	
9	Decree No. 163/2017/ND-CP dated December 30, 2017 of the Government on provision of logistics services	Article 4. Conditions for provision of logistics services	In order to provide shipping services within Viet Nam, the vessel needs to have be registered in Viet Nam and its owner have an office in Viet Nam. Articles 14 to 16 of the Maritime Code lay down the conditions for ship registration in Viet Nam	Cabotage	This provision may restrict access of foreigners to the market, thus reducing the number of active suppliers.	<p>This provision aims at granting some protection to Vietnamese operators before they acquire the necessary strength to compete with international players.</p> <p>International comparison</p> <p>In the EU, there is a principle of freedom to provide maritime transport services within the EU territory. A European Commission's report in 2014 assessed the developments between 2001 and 2010, so before and after all restrictions were lifted. This report concludes that abolishing maritime cabotage market access barriers does not seem to have</p>	<p>The OECD recommends one of the following options.</p> <ol style="list-style-type: none"> 1. Open the domestic shipping market to foreign competition by lifting the ban on foreign vessels to provide shipping services between ports in Viet Nam, possibly based on reciprocity arrangements or as a first step, between ASEAN members. 2. Amend the provisions to allow foreign ships to carry their own cargo (and other foreign cargo) domestically: after arriving at a first port

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						<p>generally led to a significant increase in the number of operators interested in providing cabotage services.²</p> <p>New Zealand also introduced cabotage liberalization in 1994 in order to increase competition and ensure high quality shipping services. Following the reform, international cross-carrier 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 keep the vast majority of the market, although they also had to reduce their rates. Upon review of this reform, the government decided not to re-introduce cabotage restrictions.³</p> <p>It seems that most ASEAN countries have restrictions on cabotage in place. However, Malaysia removed cabotage restrictions for Sabah and Sarawak in 2017 because there were not sufficient vessels to carry goods from Eastern Malaysia. The Philippines allow foreigners to apply for the authorization to provide domestic services if there are no Filipino vessels available</p> <p>As noted by the OECD's Economic outlook for Southeast Asia, China and India (2018) (p. 100), "Generally, cabotage is practised by ASEAN countries that are either archipelagic or have an extensive coastline. Brunei Darussalam, Cambodia, Lao</p>	<p>of entry, they could travel domestically to a final port call. This has been introduced as an amendment to the cabotage law in the Philippines, 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.</p> <p>3. Allow international ships to operate in the domestic shipping market on specific routes where there is demand.</p>

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						<p>PDR and Singapore do not practise cabotage restrictions, while other ASEAN countries continue to do so. In Malaysia, however, Prime Minister Najib Razak recently announced a change in cabotage policy: Sabah, Sarawak and Labuan would be exempted from cabotage starting on 1 June 2017, although cabotage would still be applicable to cargo-shipping operations within Sabah, Sarawak and Labuan. Before this change, Malaysia's cabotage policy meant that only Malaysian-flagged vessels could ship goods from the Peninsula to Sabah and Sarawak. Malaysia introduced the practice in the 1980s to promote Port Klang as the nation's main trans-shipment hub. Then, all goods were required to go through the port before they were shipped to Sabah or Sarawak. This limitation is believed to have made goods more expensive in the Borneo states than in the Peninsular states."</p>	
10	Decree No. 163/2017/ND-CP dated December 30, 2017 of the Government on provision of logistics services	Article 4. Conditions for provision of logistics services	<p>The total number of foreign seafarers working on the ship flying Vietnamese flag and registered in Viet Nam shall not exceed a third of the ship's personnel. The captain or first mate must be Vietnamese citizens. Furthermore, specific conditions apply to foreign seafarers working on Vietnamese seagoing ships, namely pursuant to Circular 17/2017/TT-BGTVT:</p> <p>1. Being physically fit and of eligible working age;</p>	Nationality requirement	<p>The requirement to have a certain percentage of seamen being Vietnamese citizens may raise the costs for Vietnamese ships, which will be prevented from taking advantage of lower costs of foreign seamen.</p>	<p>The existence of nationality requirements likely aims at supporting national labour and ensuring that Brunei workers acquire the necessary skills as seafarers.</p> <p>International comparison</p> <p>Malaysia: In Malaysia, there is no restriction on crew's nationality if the ship manager or ship management Company operating the ship is incorporated in</p>	<p>The OECD recommends conducting annual surveys of demand and supply for crews and, in the case of shortages, allowing exemptions from nationality requirement.</p>

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		<p>2. Having a work permit issued by the competent Vietnamese state agency, except for those entitled to exemption as prescribed by the labour law;</p> <p>3. Having a seafarer labour contract as prescribed by Vietnamese law and in accordance with the 2006 Maritime Labour Convention of the International Labour Organization;</p> <p>4. Having a passport issued by the competent agency of the foreign seafarer's country of citizenship;</p> <p>5. Having a seafarer book;</p> <p>6. Holding a post on board the ship;</p> <p>7. Having the necessary professional certificates granted by competent Vietnamese agencies or competent agencies of countries or territories for which Vietnam has agreed to recognise professional qualifications; for the latter, written proof of expertise certificate is required.</p>			<p>Malaysia.</p> <p>Thailand: In Thailand, Thai vessels providing marine commerce services in territorial waters can only employ personnel of Thai nationality. When Thai vessels provide international transport services, 50% of the total crew must have Thai nationality.</p> <p>EU: In Denmark, only the master of the ship must be Danish or EU citizen, while there is no nationality requirement for other ship crew members. In France, 25% of the crew for ships registered under the French registry must be EU or EEA citizens. The master of the ships must also be an EU or EEA citizen and comply with certain conditions of knowledge of French language and law. In Germany, only the master of merchant ships under German flag has to be an EU/EEA citizen. For other officers, there is a requirement to have one EU/EEA citizen officer only for ships that are more than 8000 GT (see German Safe Manning Ordinance (Schiffsbesetzungsverordnung)).</p>	

Note:

1. See <https://www.vir.com.vn/significantly-lower-port-charges-set-to-rise-63002.html>.
2. See also https://unctad.org/en/PublicationsLibrary/dtftlb2017d1_en.pdf.
3. See https://unctad.org/en/PublicationsLibrary/dtftlb2017d1_en.pdf, p. 23.

Freight forwarding

	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
1	Decree 87/2009/ND-CP on Multi-modal transport; Decree No. 144/2018/ND-CP dated October 16, 2018 of the Government amending and supplementing certain decrees on multimodal transport	Article 5 of the Decree No. 87/2009; Article 1 of Decree No. 144/2018	A specific licence is needed to operate as a multimodal transport operator (MTO). Vietnamese authorities only allow foreign businesses from signatories to the ASEAN Framework Agreement on Multimodal Transport to carry out activities in Viet Nam, on the condition that they hold a licence issued by the authorities of their own country. For a foreign entity to operate in Viet Nam, it must have a licence from another ASEAN country in order to obtain the equivalent authorisation in Viet Nam.	Prohibition for foreigners to do multimodal transport	This requirement amounts to a foreign equity restriction and may raise a barrier to entry for foreign operators or at least make it more difficult for them to operate in Viet Nam.	The likely objective of this provision is to protect, to a certain extent, national labour against international competition.	The OECD recommends allowing foreign businesses to be able to obtain a licence in Viet Nam without having to need a licence from another ASEAN country.
2	Law on Customs 2014, Circular-No-12-2015-TT-BTC-detailing-issuance-certificate-training-customs-declaration-brokerage-agents	Article 20 of the Law on Customs 2014, Article 5-9 of the Circular No. 12/2015/TT-BTC	Pursuant to Article 20 of the 2014 Law on Customs and Articles 5-9 of the Circular No. 12/2015/TT-BTC, the licence for customs brokerage can only be granted to Vietnamese nationals. Article 5 of the circular lists the activities that customs brokers carry out. Pursuant to this provision, a customs brokerage agent "represents the goods owner to make the customs declaration; submit and present the customs documents relating to the exported/imported goods according to the regulations and carries out partially or completely the activities relating to customs procedures according to the provisions in the contract with the goods owner" (including presenting the goods to customs authority for inspection and transporting and carrying out the customs procedures for bringing the goods in and out the customs controlled areas)<	Prohibition for foreigners to do customs brokerage	This requirement prevents access to customs brokerage activities to foreigners.	The likely objective of this provision is to protect national labour against international competition. Also, in certain countries, customs is a sensitive issue for the government and this may justify a prohibition on foreigners carrying out customs-related tasks. International comparison In Malaysia, foreigners can register as freight forwarders (up to 100% foreign equity is allowed, according to MIDA) but if freight forwarders wish to undertake customs declarations (i.e. act as customs brokers), they must be Malaysian. Foreign freight forwarders registered in Malaysia must therefore engage with local forwarding agents in order to undertake customs declarations. To be a customs broker in Malaysia, a licence must be obtained from the customs	Option 1: Remove nationality requirement and allow foreigners to provide these services, as long as they are subject to the same controls as nationals. Option 2: remove nationality requirement on reciprocity basis, for those countries that allow Vietnamese nationals to carry out customs brokerage.

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						<p>authorities. It requires passing a 10-day course offered by the local customs and freight forwarders association. An applicant needs two referees. Once the certificate is granted, a firm can operate as a customs brokerage house. (Hollweg and Wong, ERIA Discussion Paper Series, Measuring Regulatory Restrictions in Logistics Services, 2009, page 21).</p> <p>Similarly, Indonesia, Myanmar and Thailand do not allow foreigners to carry out customs brokerage services.</p> <p>By contrast, Singapore allows foreign firms to provide brokerage services (Hollweg and Wong, ERIA Discussion Paper Series, Measuring Regulatory Restrictions in Logistics Services, 2009, page 21).</p>	
3	Law on Customs 2014, Circular-No. 12-2015-TT-BTC-detailing-issuance-certificate-training-customs-declaration-brokerage-agents	Article 20 of the Law on Customs 2014, Article 5-9 of the Circular No. 12/2015/TT-BTC	To become a customs broker, an applicant: <ol style="list-style-type: none"> 1. Hold a three-year undergraduate degree in economics, law or technique; 2. Obtain a profession qualification certificate in customs declaration; and 3. Obtain customs employee's code granted by a customs office. 	Requirements for customs brokers	Such high requirements to provide customs brokerage services may restrict access to the profession, thus possibly raising prices of such intermediation services.	These requirements aim to ensure high quality of customs brokerage services.	The OECD recommends removing the requirement of an undergraduate degree.

	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
4	Joint Circular No. 154/2014/TTLT-BTC-BGTVT	Article 3	Tariffs for freight-forwarding services must be published on the operator's website and the government's website if they fall within specific circumstances laid down in the law and local authorities decide so. Service providers cannot then charge more than the published rates. The new rates cannot be applied before 3 days from the declaration to the competent state agencies have elapsed.	Freight-forwarding rates	This requirement may amount to an administrative burden for companies and may limit their ability and flexibility to react immediately to changes in market demand and supply.	According to market participants, the idea was to ensure transparency and reduce costs, but in practice it is just administrative burden.	Remove.
5	Decree 87/2009/ND-CP on Multi-modal transport; Decree No. 144/2018/ND-CP dated October 16, 2018 of the Government amending and supplementing certain decrees on multimodal transport	Article 1 of the Decree 144/2018; Article 6 & 7 of Decree 87/2009, as amended by Decree 144/2018	Each time a freight-forwarder licensee wants to offer a new service, such as adding means of transport, it needs to apply to include it into the scope of the licence. This despite the provision lacking clarity on the specific services that require a new application. As Decree No. 87/2009 refers to the Maritime Code, the Law on Road Traffic, the Law on Civil Aviation, the Law on Inland Water-way Traffic, and the Railways Law, the OECD understands that all these activities must be included in the licence if the freight-forwarder wants to offer services by any of these means of transport. If the MTO licensee wishes to add new modes of transport to its services, it needs to apply for the re-issuance of the MTO licence. The World Bank seems to confirm the existence of this administrative burden in relation to multimodal transport services when stating that "any new business lines must be added to the business registration certificate with the appropriate authority".	Freight-forwarding licence	Since the core activity of freight-forwarders is providing integrated transport services and since they usually act as intermediaries (while the transport service itself is provided by a licensed transport service operator), the requirement to amend the licence to include any new service within it may constitute an unnecessary administrative burden, that raises time of entry and costs for operators.		The OECD recommends removing this administrative requirement, while ensuring that licensees still comply with freight-forwarding sector legislation.

Railway

	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
1	Railway Law 2017, Decree No. 65/2018/ND-CP providing for detailed implementation of some provisions of the Railway Law 2017, Decision No. 34/2003/QD-TTg on the establishment of Vietnam Railways Corporation	Railway Law 2017 - Art.50 on Railway Infrastructure Business, Art. 52 on Railway Transportation Business; Decree No. 65/2018/ND-CP - Art. 20 on Conditions for Businesses Operating Railway Infrastructure, Art. 21 on Conditions for Railway Transportation Businesses; Decision No. 34/2003/QD-TTg - Art. 1 & 2.	Decision No.34/2003 of the Prime Minister gave the Vietnam Railways Corporation the responsibility to manage infrastructure (Art.1) and the mandate to do transportation business on the infrastructure (Art.2). As a result, both the infrastructure and the operators belong to the same holding company, i.e., Vietnam Railways (VNR), although the new Railway Law of 2017 provides for separation.	Infrastructure/ operation separation	As both manager of the rail network and provider of intercity railway transport services, VNR may have an incentive to foreclose downstream competitors, by preventing potential rail transport service providers from using rail infrastructure.	<p>International comparison</p> <p>In the EU, 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.</p> <p>These acts have been implemented through different models across EU countries. Privatisation or ownership separation would likely solve the access and discrimination problems, and might accelerate investment into infrastructure.</p> <p>Several models exist in OECD countries, going from full ownership separation to vertical separation. Some countries such</p>	<p>Option 1: Consider splitting the ownership and management of infrastructure and rail freight transport service operation.</p> <p>Option 2: Introduce accounting separation between infrastructure management and rail freight transport-service operation.</p>

	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
						<p>as Sweden, have implemented full structural separation, while other countries, such as Germany and Italy, have organised infrastructure and operations into separate subsidiaries with a holding company structure.</p> <p>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).</p> <p>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.</p>	
2	Decree No. 163/2017/ND-CP on the provision of logistic services	Art. 4(3)(e)	Railway transport operators can only be held by foreigners within the limit of 49% share. The same applies to the ownership of infrastructure.	Foreign equity	<p>The provision limits access by foreigners or makes it more difficult for foreigners to provide railway transportation services.</p> <p>With regards to the infrastructure, the fact that foreign investors are not allowed majority</p>	<p>The likely objective of this provision is to keep State's control over key enterprises, such as railway transport operators.</p> <p>The OECD IPR of Viet Nam (2018) noticed that "allowing majority-owned foreign investment could also enhance their participation in the government's SOE equitisation programme and help to secure greater value for money of infrastructure PPP projects by exposing</p>	<p>Viet Nam should focus on enhancing liberalisation efforts in the transport sector, which remains partly off limits to foreign investors, holding back potential economy-wide productivity gains. The OECD therefore recommends one of the following options</p>

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				<p>ownership considerably diminishes their interest in these assets and potentially limits foreign investors' incentives to deploy newer technologies and modern management and organisational practices.</p>	<p>such projects to greater competition during the bidding stages."</p> <p>International comparison</p> <p>In Australia, transport is defined as a "sensitive business", which permits the government to review foreign investment proposals against the "national interest" on a case-by-case basis. Approval from the Foreign Investment Review Board Foreign is only needed, however, when a foreign national or company attempts to acquire a substantial interest (20% and above) in an Australian entity valued above AUD 261 million.</p>	<p>for freight services:</p> <ol style="list-style-type: none"> 1. Progressively relax foreign equity limits towards allowing up to 100% foreign ownership in the long term. A first step may be to extend the current AFAS requirement of 70% ASEAN foreign-ownership in entities providing logistics services also to non-ASEAN nationals. 2. Relax foreign equity limits on a reciprocal basis (i.e., for nationals of those countries that allow Vietnamese nationals to hold 100% shares in a company). 3. Allow 100% ownership and apply the screening system of foreign direct investments when the investment goes beyond a certain value threshold (like in Australia).

Warehouses

	No. and title of Regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
1	Law No. 45/2013/QH13 on Land	Article 4, 5, 52	<p>All land in Viet Nam belongs and is managed by the state. While private persons cannot own land, they can be granted land-use rights (LURs) for short-term or long-term use, including the right to exchange, transfer, lease, sub-lease, inherit, donate and mortgage such land use rights. The Ministry of Natural Resources and Environment's General Department of Land Administration is responsible for state land management in the country. At the local level, People's Committees and District Departments of Natural Resources and Environment (DONRE) are responsible for the management of land in the locality of their competence.</p> <p>According to market participants, obtaining such LURs for business is difficult for the following reasons.</p> <p>1. Pursuant to Article 52 of the Land Law, an application for land with the Land Registration Office through DONRE is necessary so that it can assign a location depending on availability and specific needs. According to market participants, decision on allocations do not always meet a company's needs, for example, the land may be far from the location requested by the company. Stakeholders report indeed that Viet Nam generally lacks warehouses in strategic locations</p>	Access to land	<p>Not being able to purchase and own land may prevent companies from entering the market or may result in increased costs of investment. This may be aggravated if they cannot conclude long-term leasing contracts either. For instance, it may be difficult for them to recoup the investment in a warehouse if they cannot buy the land and do not have a sufficiently long leasing contract.</p> <p>Also, the practice of certain companies that acquire land use rights only to prevent competitors from establishing their business thereon results in a barrier to entry for potential competitors. For example, companies may purchase land within a 20km range from the airport/border gate/checkpoint in order to prevent competitors from opening their bonded warehouses in that area as prescribed by the law.</p>	<p>Land is historically a national good, collectively managed by Vietnamese people.</p> <p>As noted by the OECD Investment Policy Review (2018), "While private ownership of land is still not permitted in Viet Nam, restrictions on access to land have been progressively relaxed. The new Land Law, enacted in 2013 and in force since 2014, has brought a significant milestone towards further opening access to land to foreign investors." For example, today both FIEs and domestic investors are allowed to obtain freehold rights for residential land, and leasehold rights for commercial and residential land for lease (not for sale). Since 2015, a FIE is also allowed to purchase constructed real estate for business purposes on a freehold basis.</p> <p><i>International comparison</i></p> <p>Similar provisions do not exist in Europe. For example, in Germany, every natural or legal person is allowed to purchase and own real estate. There are no restrictions on ownership of land by foreigners either. In Italy, legal entities are entitled to purchase and own land in the same manner as natural persons.</p>	The government should improve the efficiency of land allocation and administration. This may include keeping an up-to-date and reliable land registry.

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		<p>such as ports, airports, areas close to national highways and production facilities and this affects in turn the competitiveness of Vietnamese companies;</p> <p>2. The applicant's notary public checks the details of the land with the local authority. By law, the notary public is required to check whether the transfer agreement contradicts social ethics or violates any other law or regulations. In practice, the notary public will also verify any other encumbrances on the property;</p> <p>Certain market participants complained that certain companies take advantage of the low price of LURs and the lack of accompanying taxes to acquire rights on land with the aim of preventing competitors from acquiring such land and setting up a competing business.</p> <p>According to the World Bank's Doing Business 2020, registering property in Viet Nam takes 53.5 days, compared to 23.6 days in OECD high-income economies. Viet Nam ranks 64 worldwide out of 190 surveyed economies with regards to its registering property score. Certain countries in the region like Malaysia rank higher (33), while others, including Thailand (67), Lao PDR (88) and Indonesia (106) rank lower</p>				

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2	Law No. 45/2013/QH13 on Land	Article 112-114	<p>There are limitations on the price that can be set by the parties when transferring a LUR, based on a government framework.</p> <p>The government publishes these land-price frameworks every five years for each type of land such as agricultural or industrial and the different regions. Based on these principles, the provincial People's Committees develop and submit the land-price tables, which will include land prices applicable in their respective regions, to the People's Councils for review before promulgating them. Such land price frameworks are used for actions of land by the State or when individuals return land to the State or in case of expropriation.</p> <p>The most recent land-price framework decree – No. 96/2019/ND-CP – was issued in 2019. The new decree is the same as that issued in 2014, including subjects of application, types of land and activities for which price brackets are issued, economic regions concerned but price ranges have changed.</p> <p>The government determines such land price frames based on the actual value of the land. If there is a large discrepancy between the government-set price and the “popular market price” of LUR (which is usually much higher than the price brackets set by the government), the government must adjust the price.</p>		<p>This price regulation for land-use rights may give rise to two main issues. First, large investors can implement a foreclosing strategy whereby they obtain long-term use of large areas of land in exchange of a low price in order to prevent other companies to establish their business in a neighbouring area. Second, Vietnamese companies might have an advantage over foreign companies as they are the incumbents and may be in an easier position to obtain land use rights in the most profitable locations.</p>	<p>As the entity responsible for the management of land, the government also provides for price framework when leasing it out.</p>	<p>The OECD recommends that price tables are revised more frequently or that a system is adopted whereby prices can vary more flexibly to reflect more accurately the land market value and so discourage land hoarding by firms.</p>

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			<p>More specifically, the popular price must not be 20% higher than the maximum established price or 20% lower than the minimum established price in the government's framework.</p> <p>According to some market participants, certain companies take advantage of the low price of LUR and the lack of taxes to acquire rights and prevent competitors from acquiring such land and setting a competing business in profitable areas.</p>				
3	Law No. 45/2013/QH13 on Land	Article 96	<p>Information about land such as encumbrances, other rights existing on land is not always clear and available. It can be difficult to find out whether the land has already been rented as information contained in the national land registry is neither public (as it is only used for internal management purposes) nor up to date. Only a local authority has the correct information about status of land such as its destination, its managers, its users, and attached rights. The OECD understands that, pursuant to Article 62 of the Notary Law 2014 (No. 53/2014/QH13), the Department of Justice and LUR Office now have a system that notaries to check the encumbrance on the transferred property before notarising. However, this can only be used for land-use rights by households, individuals for residential houses and buildings, not by investors requiring large plots of land.</p>	Land registry	<p>The absence of a reliable publicly available land registry may give rise to difficulties when acquiring land use rights, for instance to check whether a certain piece of land is available for businesses. This may increase time and costs of investments. Also, the existing outdated nature and inaccuracy of land registers gives rise to risks of fraudulent titling over land.</p>	<p>The registry is not public, so nobody can know which land slots are available in principle. The OECD understands that there is a national database on land resources which is being built, but, once ready, it will not be freely accessible (Article 121-122 of the Land Law 2013).</p> <p>The OECD IPR of Viet Nam (2018) also noted that "The existing registers are often partially outdated and inaccurate. Full computerisation of the land titling and registration system will be needed to efficiently address common problems of fraudulent titling. It has recently started and has already been completed in a minority of districts. These modernisation efforts are essential to enhance firms' ability to take securities on their land properties and thus improve their access to credit, when their LUR allows them to use the land parcel as a mortgage. Reliable land titling and property registrars also help individuals and businesses to</p>	<p>The OECD recommends keeping an updated publicly available land registry. The OECD supports the modernisation and digitalisation efforts that have already started in a minority of districts. This is essential to enhance firms' ability to take securities on their land properties (and so improve their access to credit), to avoid fraudulent titling and to facilitate legal redress in case of violation of property rights.</p>

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			As a result, it is difficult for companies to know which land is available for lease.			seek legal redress in case of violation of property rights. As the entity responsible for the management of land, the government also provides for price framework when leasing it out.	
4	Law No. 45/2013/QH13 on Land	Article 126	<p>Individuals and companies can only lease Land Use Rights for a maximum period of 50 years, unless a special waiver for specific circumstances is granted that allows leasing up to 70 years. This is possible for instance in case of "large investment projects with slow recovery of capital, projects in areas with difficult socio-economic conditions or with especially difficult socio-economic conditions which require a longer term."</p> <p>The extension of the lease term may be allowed by the Government upon expiry if the lessee wants to continue to use the land, provided that (i) the lessee has complied with the land regulations during its use period; and (ii) the use of land is consistent with the approved land plan. Such an extension is subject to the same statutory time limits laid down in the law for the first grant.</p> <p>The OECD understands that Article 126 (3) provides that "at the expiry of the term, if the land users still have land use needs, the State shall consider an extension which must not exceed the term prescribed in this Clause." The OECD was unable to find out however whether leasing</p>	Maximum duration of lease	This limited time for lease contracts may prevent investments in warehouses which may require longer periods for recouping the investments. This may amount to raising a barrier to entry for such activities.	<p>The likely policy objective of this provision is to avoid occupation of land by the same tenant for too long periods, thus ensuring that the land will be made available again for other uses after a certain period of time.</p> <p>International comparison</p> <p>In Thailand, pursuant to the Civil and Commercial Code, the lease of immovable property cannot exceed 30 years. The Rental of Immovable Property of Commerce and Industry Act, B.E. 2542 introduces an exception to the general duration limit of 30 years. Namely, leasing contracts for commercial and industrial purposes can be up to 50 years. Section 5 provides that the determination of the category of commerce or industry for the purpose of lease will be prescribed in ministerial regulations.</p> <p>In Brunei, pursuant to the Land Code, legal persons can lease land for up to 60 years for industrial and commercial purposes. Pursuant to Article 23(2) of the Land Code, however, for long leases (i.e., of over 7 years), a registration with the Land Department with the Sultan's approval is necessary.</p> <p>In Germany, contractual lease</p>	No recommendation as duration of leasing contracts is already sufficiently long in Viet Nam compared to other ASEAN countries.

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			contracts are usually extended and, if not, what the main reason for not allowing extension upon expiry is.			provisions are freely negotiated and the parties enjoy liberty to deviate from statutory legal provisions regarding leases. Therefore, the parties can freely negotiate the length of the lease. If the length exceeds 30 years, each party can terminate the contract by giving notice to the other party after the 30-year period has elapsed.	
5	Law No. 45/2013/QH13 on Land	Article 167	<p>According to market participants, the transfer of Land Use Rights is burdensome due to several formal requirements. Indeed, the seller and the buyer must sign in duplicate the transfer contract. Such contract must then be notarized by a public notary, pursuant to Article 167(3) of the Law No. 45/2013/QH13 on Land. The dossier for the public notary must include:</p> <ul style="list-style-type: none"> (i) the request for notarization of the contract; (ii) the transfer contract; (iii) documents proving the transferor's title over the land (e.g., the Land Use Right Certificate issued by the Land Registration Office under the Department of Natural Resources and Environment); (iv) if one of the parties is a company, the business registration certificate of the transferor and/or the transferee; (v) copies of other documents relevant to the transfer contract, pursuant to Article 40(1) of the Law on Notarization. <p>Following this phase, the land-use right transferee must register the right</p>		The difficulties in transferring land use rights may constitute a barrier to market entry or exit. For instance, it may delay purchase and sale of the assets, and thus entry and exit from the market.	<p>All the different requirements to transfer land use rights aim to avoid conflicts among several lessees and ensure compliance with national laws and land policies.</p> <p>International comparison</p> <p>Based on the World Bank "Doing Business Report" on Viet Nam (p. 22),¹ registering property in Viet Nam takes 53.5 days, compared to an average of 72.6 days in East Asia & Pacific, and 20.1 days in OECD high income economies. Viet Nam ranks 60 overall and performs better than other countries (e.g., Philippines that rank 116th or Lao PDR that ranks 85th), although it is not the best performer in the region (e.g., Malaysia ranks 29th).</p> <p>In Germany, in order to transfer land ownership, no formal approval by any public authority is required. To transfer land ownership the following steps are required:</p> <ul style="list-style-type: none"> - concluding a sale and purchase agreement in a notarial deed; - the notary then applies to the local court holding the land register for the 	No recommendation as Viet Nam is already performing better than other countries in the region.

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			to use the land with the Land Use Right Registration Office under the Department of Natural Resources and Environment. In Ho Chi Minh City, there are several registration offices			property in order to change the ownership in such register; - once the change of ownership is registered in the land register, the transfer of ownership becomes actual.	
6	Decree No.68/2016/ND-CP regarding Conditions for Duty-Free Business, Warehouses, Sites for Customs Clearance, Customs Inspection and Supervision	Art. 10 (Conditions for recognition of bonded warehouses)	<p>Bonded warehouses must satisfy several conditions, including being located in a specific area prescribed by Article 62 of the Customs Law 2014 (No 54/2014/QH13) and receiving approval from competent authorities.</p> <p>Furthermore, bonded warehouses and warehouses for parcel delivery and express-delivery operations must be at least 5 000 m2 (including warehousing, storage yards and auxiliary works) of which the area specifically dedicated to warehousing should be no less than 1 000 m2. For bonded warehouses specialised for storage of one or several types of goods with special storage conditions, the minimum area is 1 000 m2 or minimum storage volume 1 000 m3.</p> <p>Based on publicly available information, none of the express delivery operators currently has volumes that justify having a warehouse of this size close to a border gate or checkpoint.</p> <p>Market participants have told the OECD that the government is aware of this concern and is currently in the process of amending this requirement. They mentioned that the</p>	Minimum size	<p>Operators may wish to have the possibility of having their own, though small, warehouse but this requirement prevents them from opening one.</p> <p>As no express delivery operator has sufficient volumes that justify having such big warehouses close to a checkpoint, express carriers tend to use shared warehouses. This creates quasi-monopolies close to the airports where such warehouses must be located. Consequently, there is a risk of warehouse operators exploiting their position to increase rent and other costs.</p>	<p>The OECD was not able to determine the policy maker's objective of setting minimum size for bonded warehouses.</p> <p>Market participants mentioned that the government is aware of this concern and is now in the process of amending it. According to them, the draft proposal to amend Decree No. 68/2016 provides that an individual warehouse operator must have 2 000 m2 (instead of 5 000 m2). However, the version dated 23 July 2018 available on the government's website for consultation still provides for 5 000 m2 size requirement.</p> <p>International comparison In a recent Competition Assessment Report on Tunisia (2019), the OECD recommended abolishing an excessive minimum size requirement for wholesale markets as "setting a minimum size for markets that is too high may make it difficult to create new markets and so limit competition between markets. This may limit consumer choice."</p>	The OECD recommends removing the general minimum surface requirement and leaving decision to market participants.

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			draft proposal to amend Decree No. 68/2016/ND-CP provides that an individual warehouse operator must have a minimum of 2 000 m2 (instead of 5 000 m2). However, the version dated 23 July 2018 available on the government's website for consultation still provides for 5 000 m2 size requirement.				
7	Decree No.68/2016/ND-CP regarding Conditions for Duty-Free Business, Warehouses, Sites for Customs Clearance, Customs Inspection and Supervision	Article 12 - Procedures for recognition of bonded warehouses	<p>In order to open a bonded warehouse, an applicant must submit an application to the General Department of Customs. Within ten working days, the Department shall complete its assessment of the application and inspection of the warehouse. Within the following five working days, the director of the Department of Customs shall issue its decision on the recognition of the bonded warehouse. However, if the application is incomplete, the General Department of Customs shall notify in writing the applicant, who has 30 working days to submit the missing information. In case of failure to submit it, the application is rejected.</p> <p>Market participants stressed that, irrespective of the statutory time limits laid down in the law, the procedure to open a warehouse can take up to 2 years in practice. The World Bank in Promoting Open and Competitive Markets in Road Freight and Logistics Services, has also noted that in Viet Nam "there is a maximum statutory time period for issuing licenses, but actual timelines are</p>		Delays in issuing the licence for bonded warehouses may increase time and costs of entry.	The statutory limit laid down in the law aims to ensure that the procedure to open a bonded warehouse is completed within reasonable delay. Although the statutory limit is not always respected, this is only an issue of non-compliance with the law.	The OECD recommends improving compliance with the statutory time limits laid down in the law.

	No. and title of Regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
			usually prolonged, particularly for foreign companies.				
8	Law No. 54/2014/QH13 on Customs	Article 61. Goods stored in bonded warehouses, tax suspension warehouses and CFSS	Pursuant to Article 61 of Law No. 54/2014/QH13, items can only be kept in bonded warehouses for one year, renewable for one more year. Heads of Customs sub-departments in charge of bonded warehouses may grant an extension of the time limit, if reasonable grounds exist according to requirement of the production process	Maximum time in bonded warehouses	This time limit for storing goods in bonded warehouses may make it difficult or economically burdensome to import slow-moving items. Also, the requirement to seek authorization of storage time extension may give rise to an administrative burden.	<p>The likely policy objective of this provision is to ensure availability of space in bonded warehouses, thus limiting the time during which items are stored therein.</p> <p>International comparison</p> <p>In Thailand, pursuant to Article 107 of the Customs Act, B.E. 2560 (2017), in order to hold cargo in bonded warehouses for longer than 30 days, a permission is required. Yet, according to market participants, obtaining the documents needed to file the permission request usually takes longer than 30 days.</p> <p>In Singapore, goods can be kept in warehouses licensed by the Singapore Customs for an indefinite period of time, with the duty and Goods and Services Tax (GST) suspended.</p> <p>In other countries such as Turkey, Belgium or the UK (the latter with the exception of Common Agricultural Policy goods), there is no time limit for storing goods in bonded warehouses.</p>	<p>The OECD recommends one of the following options.</p> <p>1) Completely remove time limit for storage in bonded warehouses.</p> <p>2) Introduce a specific licensing scheme similar to Singapore, whereby a whole or part of a warehouse is licensed by the customs authority to store goods for an indefinite time with suspended taxes. Specific requirements for such licensed warehouses can be imposed such as an obligation to have a computerised system, specific approval procedures, and the application of annual fees.</p>

Note:

1. Available at <https://www.doingbusiness.org/content/dam/doingBusiness/country/v/vietnam/VNM.pdf>.

Small parcel delivery

Number	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
1	Government Decree No. 47/2011/ND-CP providing for the detailed implementation of some provisions of the Law on Post	Article 5	<p>To provide domestic delivery services, a licensee must have a minimum paid-up capital of VND 2 billion (approximately USD 85 000), while an international delivery services licensee must have a minimum paid-up capital of VND 5 billion (approximately USD 21 000).</p> <p>Besides specific capital requirements for conditional business sectors, there is no general minimum capital requirement in Viet Nam.</p>	Capital requirement	<p>These minimum capital requirements may be excessive for small firms, thus raising a barrier to entry for SMEs.</p> <p>The government may consider standardising minimum capital requirements across sectors.</p>	<p>General minimum capital requirements that depend on a company's legal form, rather than its sector, are common. In Germany, for instance, a limited liability company must make a bank deposit of at least EUR 12 000 when registering a new company.</p> <p>In its 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, and 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 reduced access to financing for small- and medium-sized enterprises 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 should be the focus of any regulation seeking to promote a minimum level of business certainty for users.</p> <p>The World Bank also observed that minimum capital requirements, as often stipulated by the commercial code or company law, 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</p>	<p>The OECD recommends one of the following options.</p> <ol style="list-style-type: none"> 1. Remove specific minimum capital requirements that single out delivery services. 2. Allow the fulfilment of this requirement by means of bank guarantees or insurance contracts.

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						<p>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.</p> <p>The report states that, contrary to expectations, evidence has shown that minimum capital requirements do not help the recovery of investments, as they are negatively associated with creditor recovery rates. Credit recovery rates tend to be higher in economies without minimum capital requirements, which suggest that other alternative measures, 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.</p>	

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2	Decree No. 47/2011/ND-CP providing for the detailed implementation of some provisions of the Law on Post	Chapter III (Art. 5-15) of the Decree No. 47/2011/ND-CP on License to provide postal services and Notification document on postal services	Pursuant to Article 25 of the 2010 Law on Post (No. 49/2010/QH12), potential providers of small-package delivery services must submit an application to the Ministry of Information and Communications (MIC). The application can be initially submitted online while original documents can be sent at a later stage by post. To be deemed complete and so accepted, the application must include a business plan containing information about the expected area of service provision, the service-provision process, the service-management system and the modes of co-operation with other companies to provide the service. Furthermore, the business plan must provide an analysis of the feasibility and socio-economic benefits of the plan through the targets of output, revenue, cost, number of employees, taxes paid to the national budget, the rate of return on the investment in the three years following the application for the licence.		The requirement to submit a business plan is burdensome and suggests that applicants are subject to an economic assessment on the viability of their business. Authorities may not be best placed to decide who should enter the market and this assessment may reduce potential competitors.	The likely objective of the requirement is to allow authorities to screen the quality of applicants and to protect consumers.	The OECD recommends removing the requirement to submit a business plan as part of the process for granting a right to operate.

Horizontal and others

Number	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
1	Law on investment No. 67/2014/QH13 as amended by Law No. 03/2016/QH14	Article 7	<p>Viet Nam has made significant progress over time in liberalising its foreign direct investment (FDI) regime and, in terms of statutory restrictions, is now one of the most open economies to foreign investment in Southeast Asia in terms of statutory restrictions. It has been among the most active countries in adapting to economic developments and reacting to trends in FDI flows. The first Foreign Investment Law was enacted in 1987, then revised in 1996, in 2005 to enact a unified Investment Law and most recently in 2014, with the current Law No. 67/2014/QH13 as amended by Law No. 03/2016/QH14 (known as the Investment Law).</p> <p>For logistics, however, restrictions are higher as sector businesses are considered conditional business sectors (Appendix 4 of the Investment Law). Conditional businesses are, according to Article 7 of the law, those business sectors for which FDI must satisfy certain conditions for reasons of national defence and security, social order and security, social ethics, or public health.</p> <p>In order to acquire equity interests in a domestic Vietnamese entity that is considered as a conditional business, a foreign investor must obtain M&A approval from the relevant provincial</p>	Conditional business	<p>The 49% foreign equity limit may raise barriers to entry and increase cost of investment by foreigners in public companies that operate in a conditional business such as transport and logistics.</p> <p>In addition, according to market participants, the lengthy (weeks or even months) and uncertain 'M&A Approval' process increases costs for foreign investors that wish to invest in listed business sectors in Viet Nam. Also, the broad nature of the criteria results in uncertainty for foreign investors, which may in turn raise a barrier to entry and deter them from investing.</p> <p>The OECD IPR of Viet Nam also confirmed that Viet Nam maintains above average restrictions in the transport sector compared to ASEAN9 and OECD countries, which is likely to hamper the competitiveness of local firms. The report notices that "FDI restrictions and stringent product market regulations constraining competition and contestability in service sectors raise service input costs, including notably for logistics and financial services, for other economic sectors and affect their ability to compete on a global scale, as well as limiting potential access to new technologies and evolving production techniques."</p>	<p>As noted in the OECD IPR of Viet Nam (2018), "The rationale for requiring an investment registration certificate is not clearly stated in the law, nor are the objectives for applying an investment screening and approval mechanism, although for the latter some of the provisions in the law provide some elements behind the assessment: the project's alignment with socio-economic development and industrial plans; its socio-economic effects; and the fulfilment of investment, technology, incentives and land use conditions. These objectives could all ostensibly be achieved through the appropriate implementation of specific labour and environmental laws, health and safety regulations and so on. For discriminatory screening and approval of foreign investments, its efficacy is likely to be impeded by the fact that civil servants often do not have the relevant expertise or training to effectively assess the merits of a project."</p>	<p>The OECD recommends that the Vietnamese government exclude logistics-relevant businesses from the list of conditional business sectors. This can be done by applying Article 8 of the Law on Investment, which provides that:</p> <p>"Based on the socio-economic conditions and requirements for State administration in each period, the Government shall review the industries and trades in which business investment is prohibited and the list of industries and trades in which business investment is conditional and submit amendments to articles 6 and Article 7 of this Law to the National Assembly."</p> <p>The OECD supports the draft bill currently under</p>

Number	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
			<p>or municipal Department of Planning and Investment (DPI) and meet a number of requirements (economic needs test, national security, social order and safety, morality and community health). Foreign investors may also own no more than 49% limit of a public company. Local DPIs usually consult relevant central-government ministries about a proposed M&A transaction before issuing an M&A decision. This can result in an M&A approval process that is both lengthy (lasting weeks or even months) and uncertain.</p>		<p>(see OECD IPR of Viet Nam, p. 113). The report also touches upon the consequences of administrative costs and lengthy investment procedures. In particular, on p. 107, the OECD noticed that "empirical evidence suggests that the administrative costs of entry regulations raise the entry barriers for investors and can effectively influence the resulting productivity benefits. In a globally competitive environment, economies tend to receive larger inflows of FDI where there is a relatively larger reduction in the length of investment procedures, which contributes to greater welfare gains through greater market competition and higher nominal wages. In contrast, welfare gains are lower for those economies lagging behind as other economies become relatively more attractive locations for foreign investors (Arita and Tanaka, 2013). Contrary to expectations, stricter regulation of entry is not found to be associated with higher quality products, less pollution, improved health outcomes, or keener competition but rather with sharply higher levels of corruption and a larger share of the informal economy (Djankov et al., 2002)."</p>	<p>In 2015, the 49 per cent cap on foreign ownership in all public companies (including listed companies) was removed, thus a public company can now increase its foreign ownership cap up to 100 per cent. However, this does not apply when operating in a business line conditional for foreign investment, in which case the cap will be as prescribed by law or, in the absence of any cap specified under the law, a 49 per cent cap will apply.</p> <p>Law 03/2016/QH14 amended the list of conditional business sectors guiding the Law on Investment and the number of conditional business sectors has already been reduced from 267 to 243. However, logistics is still included within the list of conditional businesses.</p> <p>There is now a draft law to amend the law on investment 2014 once more. The draft bill under discussion proposes to remove logistics from this list of conditional business sectors. This draft law is currently published on the website of the National Assembly for stakeholder consultation.</p>	<p>discussion that proposes to remove logistics from the list of conditional business sectors.</p>

Number	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
2	Law No. 52/2014/QH13 on Marriage and Family	Article 34, para. 1	Although Article 34 of the Law No. 52/2014/QH13 on Marriage and Family provides that for a common property, both spouses shall be named in the ownership or use right certificate, in practice it is difficult to include the name of women into the title of the assets. Also, despite the regulation and despite having the name of both spouses on the ownership certificate, it is more difficult for the woman entrepreneur to get the consent of the husband to use the house/land as collateral to obtain loan from the bank. Market participants confirmed that this is only a cultural (as opposed to legislative) issue.	Women-related restriction	This practice makes it difficult for women to obtain bank loans on their own as they will not have their own assets to give as collateral. This may constitute a barrier for women's access to entrepreneurship.		Improve compliance with the law with regards to naming both spouses in the certificate.
3	Labour Code (2012); Circular No. 26/2013/TT-BLDTBXH promulgating the categories of jobs in which women are not to be employed.	Article 160 of the Labour Code and the List published together with the Circular No. 26/2013/TT-BLDTBXH	Pursuant to Article 160 of the Labour Code that provides for the legal basis to prohibit the employment of women for certain jobs, Circular No. 26/2013/TT-BLDTBXH contains a list of activities restricted to women <i>tout court</i> or restricted to them during certain times (e.g., night shifts, pregnancy period). The following logistics-related activities are included in the list of prohibited activities in pregnancy period or during nursing of under-12 month children: (i) transporting pesticides, herbicides, termiticides and other specifically listed substances (item 41); (ii) transporting rotten fish (item 66); (iii) carrying or lifting weights of over 20 kg (item 64).	Women-related restriction	This prohibition prevents women from doing certain logistics-relevant professions, thus raising barriers entry.	The objective of certain prohibitions is to protect women's health (e.g., carrying weights). However, the list of prohibited professions seems to include also activities that do not likely give rise to particular dangers, such as driving trains.	Remove those logistics-relevant prohibitions that are not aimed at protecting women's health, such as driving trains and trucks. At the same time, place safeguards against potential safety issues and dangers, if any.

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			<p>The following activities are generally prohibited to women:</p> <ul style="list-style-type: none"> (i) driving trains (except automatically operated trains and trains running in inner cities and tourist routes) (item 26); (ii) driving automobiles of a tonnage of over 2.5 tons (except power-assisted automobiles of a tonnage of under 10 tons) (item 30); (iii) jobs requiring workers to carry or fix weights of 50 kg or more (item 31); (iv) guarding and watching vessels in docks or on river banks (item 24); (v) Working on seagoing ships (except waiters in restaurants, housekeepers and receptionists in tourist ships) (item 23) 				

International agreements

Number	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
1	Decree No. 61/2018/ND-CP issued on April 23, 2018, on the implementation of the single-window mechanism in dealing with administrative procedures; Decision No.1254/QD-TTg of the Prime Minister in September 2018 approving the Action Plan to promote the National one-stop shop mechanism, the ASEAN one-stop shop mechanism, and reform specialized inspections with respect to exported or imported goods		<p>Viet Nam has made significant progress in the development of the National Single Window (NSW). As of June 2017, more than 328 000 administrative documents were processed in NSW with about 11 000 enterprises joining. 12 out of 18 Ministries, including Ministry of Transport, have joined the NSW, and 38 out of 380 administrative procedures are processed on the NSW.</p> <p>However, the NSW system is not yet complete. For instance some procedures related to import and export are not yet integrated into the NSW, e.g. quality inspections (as regulated in Decision 50/2006/QD-CP TTg dated 7 March 2006 of the Prime Minister on the list of products and goods need to be inspected quality (Decision 50)) or import licences (as regulated in Decree No. 77/2016/ND-CP).</p> <p>The Decision No. 1254 of the Prime Minister includes a list of administrative procedures to be implemented through the NSW system till 2018, which includes many procedures related to customs, taxation and transportation.</p>	National Single Window	Since only some procedures can be done through the NSW, this results in higher time to trade compared to other countries in the region. More time spent on such procedures results in increased costs for companies, thus reducing their cost advantages and competitiveness. According to the European Chamber of Commerce's Whitebook (2018) "research has shown that shortening customs procedures by just one day could save businesses USD 1.6 billion a year."		The OECD supports the further development of the NSW. It supports the implementation of the logistics-related policies referred to under Decision No.1254/QD-TTg, for instance perfecting policies on management of electronic cross-border trade, implementing the master plan of management of e-commerce activities, formulating policies for connection between government agencies and logistic enterprises.

Number	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
2	Memorandum of Understanding (MoU) between the governments of the Cambodia, Lao PDR and Viet Nam		The quota of commercial motor vehicles of each contracting party is 150 vehicles for cross border transport. Article 7(2) explains that an increase in this quota can be agreed upon by the contracting parties 'on the basis of economic needs and mutual interest'. Article 7(3) provides that the agreed increase in quota may be determined in the Addendum signed by all parties to the MoU. The OECD understands that there has been no further amendment to this quota		The quota limits the ability of some operators to provide cross border transport. Restricting the number of operators may reduce competition between suppliers and result in higher prices or less desirable contract terms for customers. It is a barrier to entry if interested companies cannot then participate in the market.	The MoU aims to facilitate cross border transport of goods and people by commercial and non-commercial motor vehicles. The MOU was signed on 17 January 2013 and Article 4 provides that it does not affect the rights or obligations of the contracting parties under any existing agreements to which they are parties. The likely objective of the quota is the protection of national road transport service providers against competition from other neighbouring countries.	The OECD recommends one of the following: <ol style="list-style-type: none"> 1. Remove this provision and grant a licence to all those that request it, based on qualitative criteria. Such qualitative criteria may include the good repute of the operator, its adequate financial standing and its professional competence. Each of these criteria should be clearly defined in the international agreement or implementing laws or regulations. 2. Regularly assess the market's need and demand, and consider increasing the number of licences that can be issued. Both these recommendations would require negotiations between the contracting parties.

Number	No. and title of regulation	Article	Brief description of the potential obstacle	Keyword	Harm to competition	Policymaker's objective	Recommendation
3	Agreement between Viet Nam and Cambodia on waterway transport		"Cabotage shall be served to vessels of the Contracting Party in whose territory the relevant regulated waterways are located, unless the Competent Authority of that contracting party grants an explicit derogation." Article 11 however allows consecutive calls at ports or terminals (e.g. loading goods consecutively at several ports or terminals within the territory of a contracting party for the purpose of carrying them to the territory of the other contracting party or discharging goods consecutively at several ports or terminals within the territory of a contracting party after having taken on board these goods within the territory of the other contracting party).		<p>The prohibition on vessels that are allowed to carry out cross-border transport to carry out general shipping within the domestic market of the contracting countries prevents foreign firms from entering the national freight transportation market.</p> <p>Licensed vessels of the contracting parties are however allowed to make several stops within a foreign waterway to load/unload their goods. The OECD understands that they cannot pick up additional goods (i.e. operate in the domestic shipping market). A similar exemption was introduced in the Philippines to support imports and exports.</p>	<p>The aim of this MoU is to facilitate water transport of cargo and passengers between the two countries and transit transportation to and from third states with the territory of the contracting parties. This agreement replaced the 1998 MOU on waterway transportation between Viet Nam and Cambodia.</p> <p>The policy objective behind the cabotage principle is to support and develop the domestic shipping industries of the contracting parties as the provision does not allow permit holders to operate in the domestic shipping market.</p>	<p>The OECD sets out 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 Viet Nam, possibly based on reciprocity arrangements (i.e. between the contracting parties to this agreement) or between ASEAN members. 2) Amend the cabotage law to allow foreign ships to carry their own cargo (and other foreign cargo) domestically. A further step would then be to allow foreign ships to carry other domestic cargo from the port of entry to the port of final call if the foreign vessel has capacity after unloading goods at the port of entry. 3) Allow international ships to operate in domestic shipping market on specific routes where there is demand.

OECD COMPETITION ASSESSMENT REVIEWS: LOGISTICS SECTOR IN VIET NAM

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 Viet Nam 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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