FOSTERING COMPETITION IN ASEAN

OECD Competition Assessment Reviews

MALAYSIA

LOGISTICS SECTOR

OECD
BETTER POLICIES FOR BETTER LIVES

UK Government

ASSOCIATION OF SOUTHEAST ASIAN NATIONS

OECD Competition Assessment Reviews: Logistics Sector in Malaysia

Foreword

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

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

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

The OECD assessment was conducted in consultation with the Malaysian authorities and local stakeholders, and with the support of the ASEAN Secretariat and the ASEAN Economic Reform Programme under the UK Foreign, Commonwealth & Development Office (UK Government). The assessment prioritises 31 pieces of legislation and identifies 76 regulatory barriers where changes could be made to foster greater competition in the logistics sector. This is especially important for Malaysia where logistics currently accounts for about 3.8% of the country's GDP. This report offers 63 policy recommendations that can help the Malaysian government address structural and regulatory shortcomings in this sector.

These structural reforms have become even more pressing with the Malaysian economy contracting by 5.6 % in 2020 (compared to a growth rate of 4.3% in 2019) due to the COVID-19 pandemic, with containment measures severely affecting key economic activities such as exports and tourism. These policy recommendations contribute to reforms that can help the Malaysian 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 Malaysian government, as well as the ASEAN Secretariat and the UK Government, on their efforts to lift regulatory barriers to competition and to improve the business environment. The OECD looks forward to continuing and broadening its co-operation with ASEAN to further support its reforms to the benefit of its citizens.

Greg Medcraft

Director, OECD Directorate for Financial and Enterprise Affairs

Acknowledgements

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

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The OECD would also like to thank the following representatives of associations and private companies that it met during the country mission: Association of Malaysian Hauliers (AMH); Federation of Malaysian Freight Forwarders (FMFF); Malaysian Ship Owners' Association (MASA); Malaysian National Shippers Council (MNSC); Malaysia Institute of Transport (MITRANS) and Women in Logistics and Transport Malaysia (WiLAT).

The OECD project team in Paris consisted of Ruben Maximiano, Senior Competition Expert and ASEAN Project Co-ordinator; Michael Saller, Senior Competition Expert and Competition Assessment Project Leader; Federica Maiorano, Senior Competition Expert; Sophie Flaherty, Competition Analyst; Takuya Ohno, Competition Analyst; Gaetano Lapenta, Competition Analyst; Wouter Meester, Competition Expert and Competitive Neutrality Project Leader; and Matteo Giangaspero, Competition Expert, all from the OECD Competition Division. The OECD external consultant was Shila Dorai Raj. The report was drafted by Sophie Flaherty and Takuya Ohno, under the supervision of Federica Maiorano. It was edited for publication by Tom Ridgway and prepared for publication by Eleonore Morena, Claudia Gemmel and Erica Agostinho.

Antonio Capobianco, Acting Head of the OECD Competition Division, Ruben Maximiano, Senior Competition Expert, Stephen Thomsen (OECD Investment Division) and OECD staff from the Global Relations Secretariat (GRS) provided valuable comments throughout the process and on the final report.

Fostering competition in ASEAN

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

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

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

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

a) Freight transportation, including transport by road, inland waterways and maritime, and rail.
b) Freight forwarding.
c) Warehousing.
d) Small-package delivery services.
e) 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
ADB	Asia Development Bank
AEC	ASEAN Economic Community
AECG	ASEAN Experts Group on Competition
AFAMT	ASEAN Framework Agreement on Multimodal Transport
AFAS	ASEAN Framework Agreement on Services
AGC	Attorney General's Chambers
AMH	Association of Malaysian Hauliers
APAD	Land Public Transport Agency
ASEAN	Association of Southeast Asian Nations
ASEC	ASEAN Secretariat
ATISA	ASEAN Trade in Services Agreement
BIMP-EAGA	Brunei Darussalam, Indonesia, Malaysia and Philippines East ASEAN Growth Area
CVLB	Commercial Vehicles Licensing Board
DSLB	Domestic Licensing Board, Ministry of Transport
ESPO	European Sea Ports Organisation
ESPO	European Sea Ports Organisation
FDI	Foreign direct investment
FMFF	Federation of Malaysian Freight Forwarders
GDP	Gross domestic product
GLC	Government-linked company
GLIC	Government-linked investment company
GVA	Gross value added
HMRC	Her Majesty's Revenue and Customs, UK
IILS	International Integrated Logistics Services
IMP3	Third Industrial Masterplan
JPJ	Road Transport Department
KTMB	Malayan Railways
LPI	Logistics performance index
LSBCI	Liner Shipping Bilateral Connectivity Index
LTSSWG	Logistics & Transport Services Sectoral Working Group Meeting
MASA	Malaysian Shipowners' Association
MCMC	Malaysian Communications and Multimedia Commission
MEA	Ministry of Economic Affairs
MEF	Multifactor productivity
MIDA	Malaysian Investment Development Authority
MIMA	Maritime Institute of Malaysia
MMEA	Malaysian Maritime Enforcement Agency
MISR	Malaysian International Ship Registry
MOT	Ministry of Transport
MPC	Malaysia Productivity Corporation
MyCC	Malaysian Competition Commission
NKRA	National Key Result Area
PKA	Port Klang Authority
PKFZ	Port Klang Free Trade Zone
PMR	Product market regulation
PPP	Purchasing power parity
RAC	Railway Assets Corporation
RMCD	Royal Malaysian Customs Department
SME	Small -and medium-sized enterprise

SOE	State- owned enterprise
SSM	Companies Commission of Malaysia
TEU	Twenty-foot equivalent
TFP	Total factor productivity
UNCTAD	United Nations Conference on Trade and Development
USP	Universal service provider

Executive summary

Main economic characteristics of the logistics sector in Malaysia

In 2019, the transport and storage sector accounted for 3.8% of GDP and gross value added was estimated at MYR 57.2 billion. The sector employed 667 600 people, representing around 4.4% of the employed population in 2019. According to the Global Competitiveness Report, Malaysia scores well in terms of quality of infrastructure and compares very favourably within ASEAN. Moreover, based on the World Bank's Logistics Performance Index the country performs well on international shipments, while timeliness is the most challenging area. Malaysia's liner-shipping connections with other countries have significantly improved since 2006. Malaysia has a developed port sector, with two of its ports, Port Klang and the Port of Tanjung Pelepas ranked 12 and 18 worldwide in terms of throughput. The Malaysian government has classified logistics as a priority industry and there are several government initiatives in the sector, including the Third Industrial Masterplan (IMP3) for 2006-2020, the Logistics and Trade Facilitation Masterplan (2015-2020) and the National Transport Policy 2019-2030.

Key recommendations by sub-sector

This report makes 63 recommendations on specific legal provisions that should be removed, amended or reviewed. 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

1. Create a single licence for the carriage of both general cargo and containers, so that operators can acquire a single licence for a single vehicle and operate more efficiently. This will reduce costs and facilitate entry in the market.
2. Publish guidelines that set out how the authority determines licence duration.
3. Remove an applicant's viability from the criteria for renewing licences to avoid discrimination through the subjective application of the law.
4. Remove the authorities' power to set freight rates, in line with current practice in which rates are determined by market conditions, to increase price competition.
5. Progressively relax foreign-equity limits with the long-term goal of allowing up to 100% foreign ownership without the requirement for a specific licence. A first step may be to implement the agreed changes towards the (AFAS) target of 70% ASEAN foreign-ownership in entities providing road transport services and then applying and extending this threshold to non-ASEAN nationals. In the long term, Malaysia may consider full liberalisation by allowing 100% foreign-ownership in entities providing road transport services, which will facilitate entry into the market.

Maritime freight transport

1. Introduce clear requirements for applicants requesting a licence for maritime transport to reduce costs and facilitate market entry.
2. Publish clear guidelines that set out how the authority determines licence duration for maritime transport.
3. Amend the cabotage policy to increase competition in the transportation of domestic cargo, to increase participation in the domestic shipping market. For instance, allow international ships to operate on specific routes where there is demand or lift the ban on foreign vessels carrying domestic cargo; as a first step, this could apply to vessels from ASEAN member states.
4. Assess whether there is private interest in providing pilotage services. If so, create an appropriate legal framework so that piloting services can be tendered on fair and non-discriminatory terms to guarantee competition for the market. All pilots would need to have local knowledge and fulfil quality standards to guarantee safety.
5. Replace fixed prices for pilotage services with maximum prices, to allow negotiations between pilots and ships and consequently price competition.

Freight forwarding

1. Remove the licence freeze for customs brokers that has been in place since 2007 to allow market entry.
2. Review and revise the requirements for obtaining a licence for International Integrated Logistics Services (IILS), including the minimum infrastructure requirements and nationality requirements. This would increase market entry, for example, of smaller, less well-resourced companies.

Warehousing

1. Publish all the requirements for obtaining a licence for a bonded warehouse. This will reduce costs and facilitate market entry.
2. Revise the requirements for obtaining a licence for bonded warehouses, including requisites for minimum space and minimum value. This may encourage market entry.

Small-package delivery services

1. Ensure that courier services undertaken by the universal service provider (USP) are not subject to price regulation to increase competition in the courier services market.
2. Clarify that non-USP are not subject to price regulation to encourage competition on price.

International agreements

1. Implement the ASEAN Framework Agreement on Multimodal Transport in national legislation, which would decrease costs for operators and increase their ability to provide services across ASEAN Member States, enabling the geographic flow of goods and services.
2. Facilitate the cross-border flow of freight, for instance, by reviewing the requirements for trucks to unload and load and the ban on Indonesian trucks circulating outside ports at the border, increasing efficiency.

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, signed in 2004. 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 Expert Group on Competition (AEGC), as well as with the responsible authorities within each AMS, in particular, competition authorities. For Malaysia, the analysis was carried out with the support of the Malaysia Competition Commission (MyCC) and 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 Malaysia.

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

Generally, logistics is a cluster of activities with each area involving a range of different actors and services.[1] 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 and
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 bi-lateral or multilateral agreements. Transport by pipelines is usually not counted as logistics and is legislated for under energy law. For that reason, this report does not cover the transport of oil and gas.

Road freight transport

The road freight transport sector encompasses the transportation of goods between economic enterprises and between enterprises and consumers, including bulk goods and goods requiring special handling, such as refrigerated and dangerous goods. The law covering road transport usually distinguishes between transport for own-account, which is freight transportation between establishments belonging to the same business, and transport for hire or reward. As in many countries, road freight transport continues to be the dominant mode of domestic transport in Malaysia. 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, which results in lower costs for senders and recipients, as well as in reduced risks of possible loss or damage from cargo transfers.

Inland waterway and maritime freight transport

Waterborne freight transport refers to goods transported on waterways using various means, including boats, steamers, barges and ships, both within and outside the country. When the goods are transported by using inland waterways such as rivers or canals, transport is referred 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]). 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 the goods by value moved by sea are carried by liner vessels 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 EU, 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.

The main ports in Malaysia are Port Klang, Penang Port, Port of Tanjung Pelepas, and Kuantan Port.

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. Towage, 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 (International Transport Forum, 2018[5]; OECD, 2018, p. 181[6]).

Rail freight transport

Rail freight refers to freight, cargo or goods transported by railways and does not include parcel- 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 Malaysia.

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 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 bonded warehouses, where dutiable goods may be stored, manipulated, or undergo manufacturing operations without payment of duty, or in non-bonded warehouses. 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 OECD report on the *Impact on Competition of State-Owned Enterprises in Logistics: A Focus on Small-Package Delivery Services in Malaysia* (2020) 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, see for instance Nickell (1996[7]), Blundell (1999[8]) and Griffith (2006[9]). Industries in which there is greater competition experience faster productivity growth. These conclusions have been demonstrated by a wide variety of empirical studies and summarised in the OECD's "Factsheet on how competition policy affects macro-economic outcomes" (OECD, 2014[10]).

Competition stimulates productivity primarily because it provides the opportunity for more efficient firms to enter and gain market share at the expense of less efficient firms.

In addition to the evidence that competition fosters productivity and economic growth, many studies have shown the positive effects of more flexible product market regulation (PMR), the area most relevant to this report. These studies analyse the impact of regulation on productivity, employment, research and development, and investment, among other variables. Differences in regulation also matter and can reduce significantly both trade and foreign direct investment (FDI) (Fournier et al., 2015[11]; Fournier, 2015[12]). 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 et al. (2011[14])). The result also holds at aggregate level (Égert, 2017[15]). 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]). 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 et al. (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]).

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]). A 10-year, 18-country OECD study published in 2014 concluded that small firms that are five years old or less on average contribute about 42% of job creation (Criscuolo, Gal and Menon, 2014[24]). As noted in the OECD report *Economic Policy Reforms 2015*:

> *"such a disproportionately large role by young firms in job creation suggests that reducing barriers to entrepreneurship can contribute significantly to income equality via employment effects" (OECD, 2015[25])*

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

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

The results described above hold in a variety of settings, but 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])13*

Increased market competition may also reduce gender discrimination and equality (Pike (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 Malaysia[14]

Malaysia is composed of two regions divided by the South China Sea: Peninsular Malaysia (or West Malaysia) and East Malaysia. The country covers an area of approximately 330 000 square kilometres[15] and is a federation made up of 13 states and 3 federal territories.

In 2019, Malaysia's population was estimated at 31.94 million. The population has been growing at an average annual rate of 1.3 % since 2013.[16]

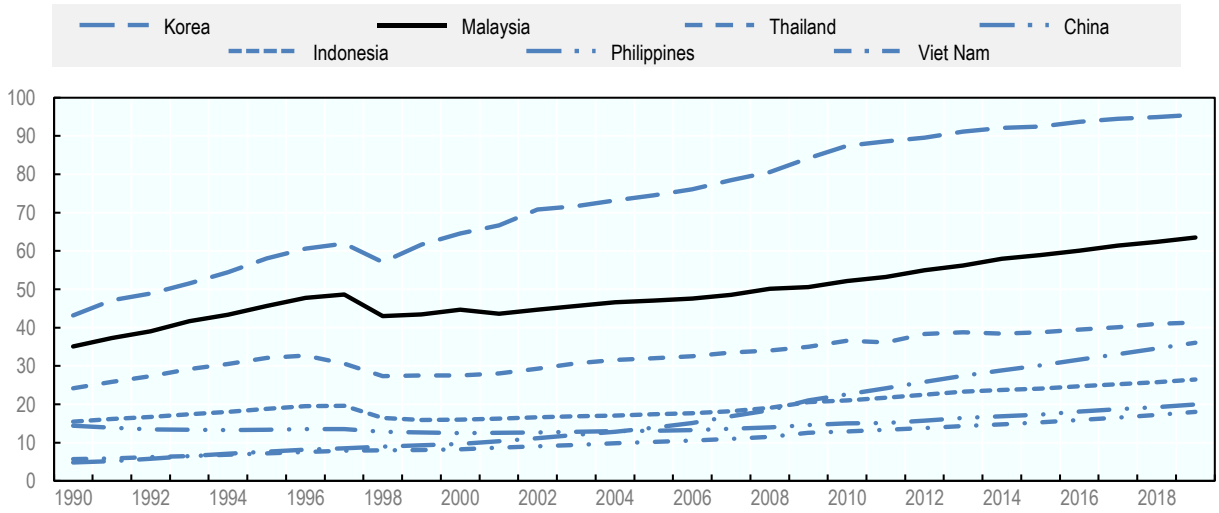
1.4.1. GDP and economic growth

With a 2019 nominal GDP of USD 364 702 billion, Malaysia is Southeast Asia's fifth-largest economy after Indonesia, Thailand, Philippines and Singapore, and is the 36th largest economy in the world.[17] After the Asian financial crisis of 1997-1998, Malaysia's economy has been improving, with average annual growth rates of 5.4% since 2010. It is expected to transition from an upper middle-income economy to a high-income economy by 2024, according the World Bank's classification.[18]

Malaysia's living standards have improved significantly in recent years. As highlighted by the OECD in previous reports, Malaysia's 2019 per capita GDP (about USD 28 000 in 2017 PPP prices) was close to two-thirds of the OECD average (Figure 1.1) and exceeded levels in Mexico, Turkey, Thailand and Indonesia (OECD, 2019, p. 15[29]).

GDP growth was 4.8% in 2018 and 4.3% in 2019, following a spike of 5.8% in 2017 (World Bank, 2020[30]). A World Bank report published in January 2020 expected growth to remain around 4.5% per year in 2020-21, with weak export growth partly offset by strong domestic demand, a rebound in investment, stable labour market conditions, and low inflation (World Bank, 2020, p. 66[30]). However, since the COVID-19 pandemic, growth has weakened. Like other ASEAN nations such as the Philippines and Thailand, Malaysia was subject to strict travel restrictions and lockdowns in 2020 (Asian Development Bank, 2020, p. 193[31]) In April 2021, the Asia Development Bank recorded a GDP contraction of 5.6% for 2020 with an expected recovery of 6% in 2021 and 5.7% in 2022 (Asian Development Bank, 2021, pp. 302-305[32]). The recovery will be suported by a vaccination program and "continued accomodative fiscal and monetary policies" (Asian Development Bank, 2021, p. 304[32]).

Figure 1.1. Per capita GDP, relative to the OECD average, computed at 2017 USD PPP



Source: World Bank, World Development Indicators database; OECD StatLink, www.dx.doi.org/10.1787/888933967872.

Malaysia is an active trading country and recorded a total goods and services exports of USD 266.6 billion in 2019.[19] In 2019, Malaysia recorded a 1.1% contraction in annual growth of exports. However, Malaysia's exports have increased steadily since the 1980s and currently account for just under two thirds of Malaysia's GDP.[20] Malaysia's main trading partners are China, Singapore, the EU, the United States and Japan. Malaysia's trade with ASEAN makes up 26.9% of total trade. [21]

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

In 2019, the service sector accounted for 54.0% of Malaysia's GDP, industry for 37.4% and agriculture for 7.2%. While the contribution of agriculture and industry to the country's GDP has been declining, the share of services has been growing and increased by almost 10% since 2008. Wholesale and retail trade account for 30.2% of the services' contribution to GDP; finance and insurance services for 11.3%; transportation and storage for 6.5%.[22]

Malaysia's service sector employs over 60% of its workforce, making services a major contributor to the country's economic growth, productivity, and earnings. Open and well-regulated services markets also facilitate access to information, skills, technology, funding, and enable the movement of skilled labour across borders (OECD, 2019, p. 50[29]).

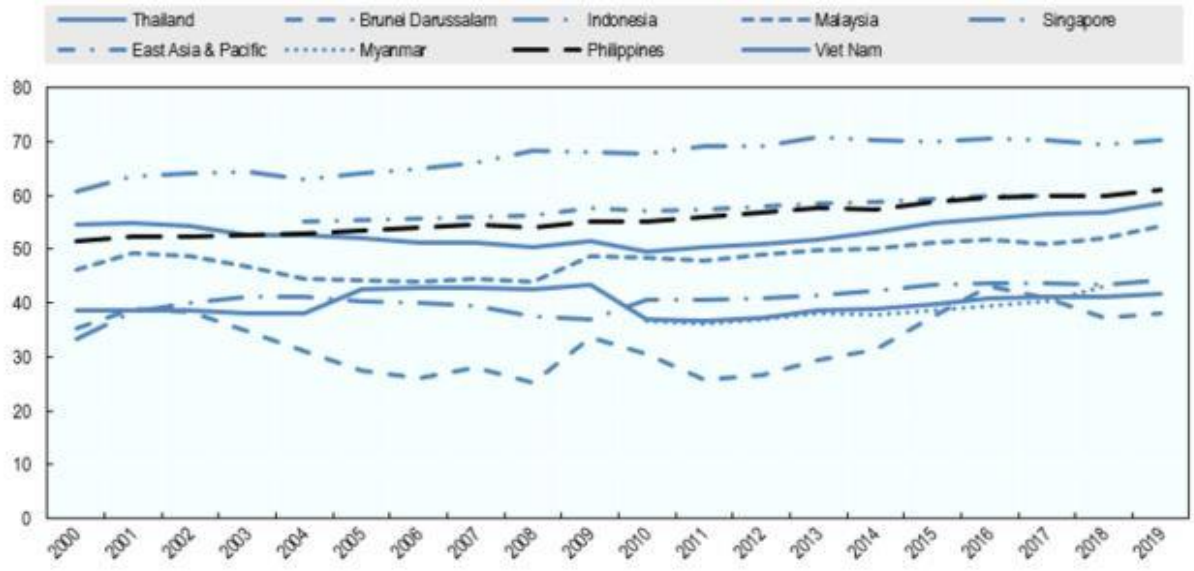
In 2018, in terms of the percentage of GDP produced by services, Malaysia was fourth in ASEAN after Singapore, the Philippines and Thailand (see Figure 1.2).

The growing relevance of the services sector is a widespread trend across ASEAN, as highlighted in 2012 by the Asian Development Bank: in ASEAN countries, services contributed 28.1% to GDP in 2000; this had reached 70% by 2007 (Park and Shin, 2012, p. 35[33]; OECD, 2019, p. 27[34]). In 2016, services accounted for 73% of ASEAN inward foreign direct investment (FDI) stock in Malaysia, similar to the OECD member country average (70% in 2015) and to global trends (OECD, 2019, p. 27[34]). More generally, this growth results from an ASEAN-wide strategy of strengthening co-operation among member countries under the ASEAN Framework Agreement on Services (AFAS).[23] 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[34]).

On 7 October 2020, ASEAN member states signed the ASEAN Trade in Services Agreement (ATISA), which affirms ASEAN's commitment to free and open trade and regional economic integration and will supersede AFAS.[24] This agreement deepens the integration of the services sector by building on the achievements made under AFAS. It also introduces some changes to the traditional AFAS approach, by mandating AMS to transition from the existing schedules of commitments (where commitments do not apply unless a sector or sub-sector is specifically included) to a schedule of non-conforming measures (with the opposite presumption, which assumes that the sector falls within the liberalisation commitment, unless otherwise specified, and lists measures that run counter the liberalisation commitments).

Figure 1.2. Services, value added, as a percentage of GDP in ASEAN countries, 2000-2019



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

1.4.3. Business environment

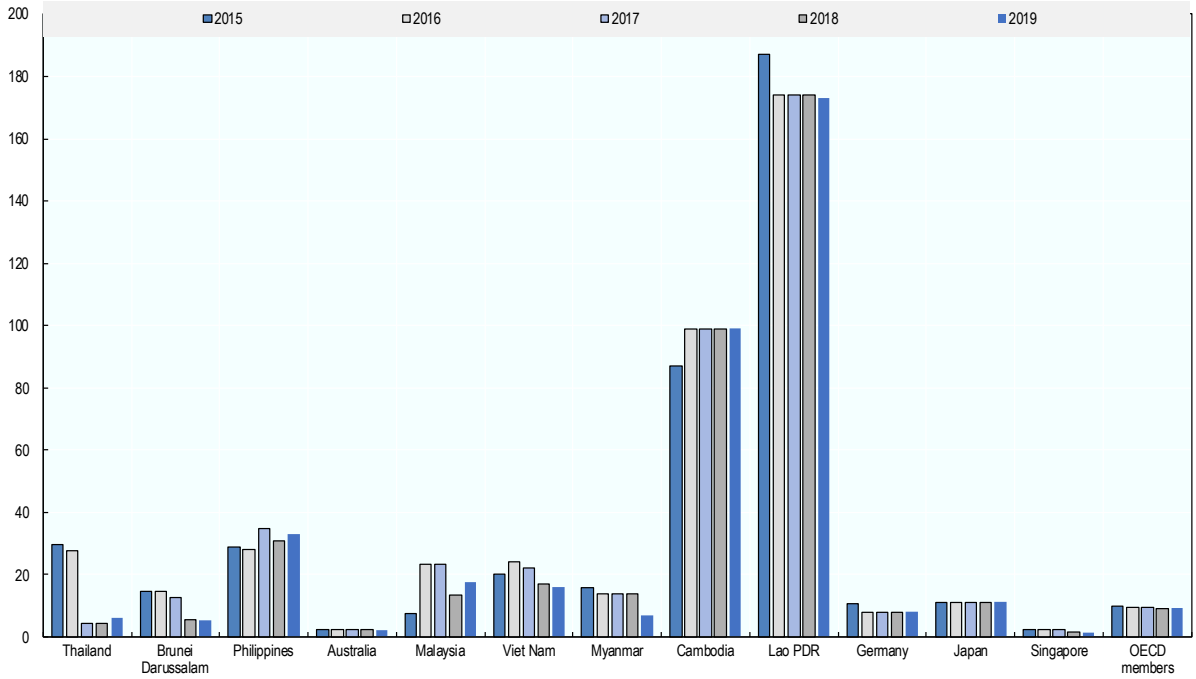
The World Economic Forum's *Global Competitiveness Report* ranks Malaysia 9 out of 141 survey economies in terms of the extent of market dominance, 55 for trade openness, and 12 for competition in services (World Economic Forum, 2019, p. 366[35]).[25]

The World Bank's *Doing Business 2020* report ranks Malaysia 12 out of 190 surveyed economies for the ease of doing business with an overall score of 81.5; this is an improvement from 2019, when the country was ranked 15 (World Bank Group, 2020[36]). On the global level, New Zealand, Singapore and Hong Kong, China make up the top three, while in the ASEAN region, the top performers after Singapore are Malaysia, followed by Thailand (21) and Brunei Darussalam (66).[26]

The time required to open a new business is one factor the World Bank takes into account in its calculations of the ease of doing business in a country.[27] 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 amount of time required to

start a business and in most of these countries, it is now possible to conclude all the necessary procedures within one month. This is the case for Malaysia (17.5 days), which brings it closer to the OECD member average of 9.1 days. Certain AMS, such as Brunei Darussalam, Singapore and Thailand, are already performing better than the OECD average.

Figure 1.3. Time required to start a business (days) in selected ASEAN and OECD countries, 2015-2019



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 Malaysia

The logistics sector is a crucial sector for the development of any economy, connecting firms to both domestic and international opportunities (World Bank, 2018[33]). Apart from its large contribution to GDP, a well-developed logistics network ultimately affects 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.

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 Malaysian 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[37]).

Similarly to other ASEAN member States, Malaysia will suffer from the socio-economic impact of the COVID-19 outbreak. Growth has slowed in the region in 2020. The pandemic has resulted in the disruption of supply chains, travel and limited the flows of trade and investments. Logistics companies have been affected by operational constraints (delivery delays, congestion and higher freight rates) and a lower demand in certain sectors.

Competition policy and regional co-operation plays and will continue to play a key role in this context. ASEAN has put in place a framework for COVID-19 responses across multiple sectors (United Nations, 2020[38]). On 9 June 2020, the ASEAN Expert Group on Competition (AEGC) released a joint statement in Response to the COVID-19 Pandemic.[28]

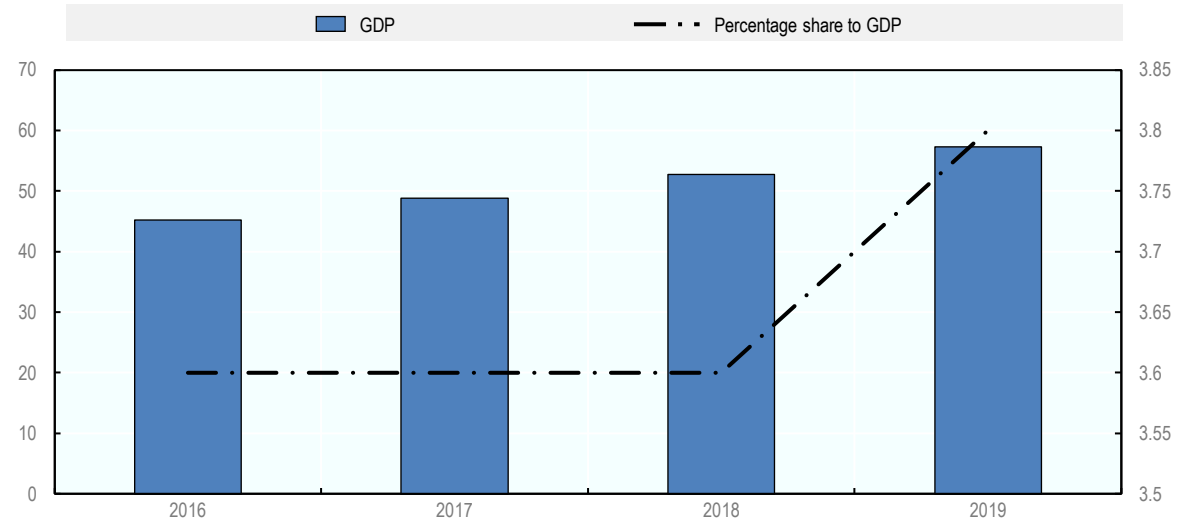
According to Malaysia's Department of Statistics, revenue in the "Information & Communication and Transportation & Storage" sector decreased by 21.3% in Q2 of 2020 compared to Q2 of 2019.[29] According to the ADB, the government has announced that it will "continue implementing the large scale infrastructure projects announced in Budget 2020" but that despite this "private investment is expected to be sluggish with the disruptions and uncertainties from the COVID-19 outbreak" (Development Bank, 2020, p. 281[39]). As noted by the ADB, "a key risk to the forecast would be any delay in implementing large infrastructure projects". Absent second wave of COVID-19 pandemic, the economy should gradually improve, with support from government stimulus and post lockdown measures.

2.1. Key figures of the logistics sector

2.1.1. Gross value added, GDP and gross output of the sector

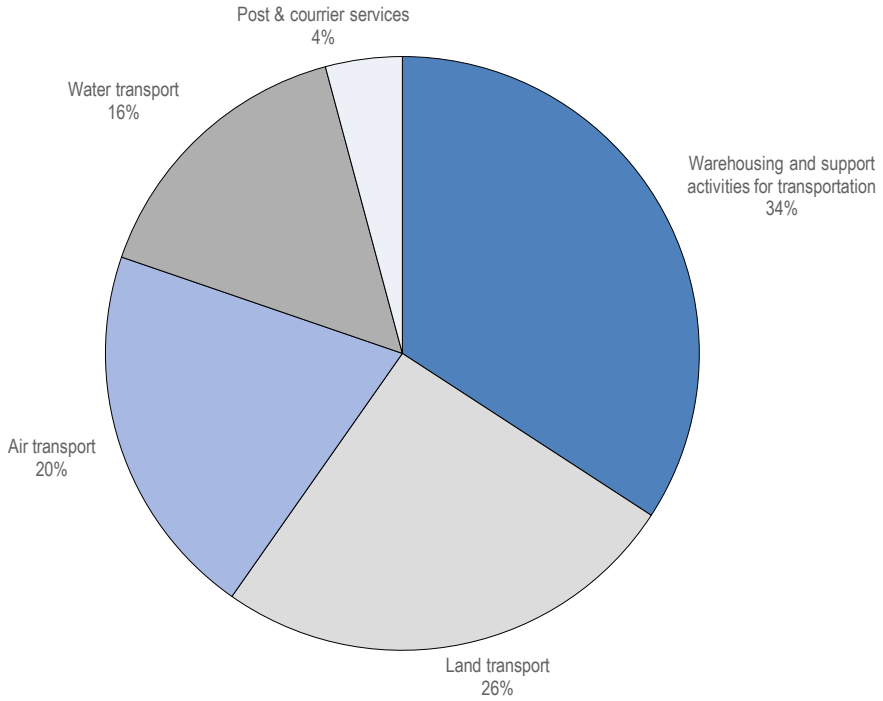
In 2019, Malaysia's transport and storage services employed 667 600 people, representing around 4.4% of the employed population (Mordor Intelligence, 2020, p. 416[40]). Transport and storage services' gross value added (GVA) was estimated at MYR 57.2 billion in 2019, accounting for 3.8% of total GDP (Figure 2.1). The GVA of the land transport and water transport sub-sectors was MYR 14.5 billion and 6.7 billion respectively. Support activities for transportation and postal and courier services GVA was 9.3 billion and 2.7 billion (Mordor Intelligence, 2020, p. 411[40]).

Figure 2.1. Value of transport and storage sectors (MYR billion) and as a percentage of GDP



Source: Department of Statistics Malaysia, Quarterly National Accounts, Q4 2019 National Accounts: Gross Domestic Product, Table 4A.

Figure 2.2. Gross output of transportation and storage services by sector, 2017



Source: Annual economic statistics, transportation and storage services 2018, Exhibit 2, https://newss.statistics.gov.my/newss-portalx/ep/epProductFreeDownloadSearch.seam

Transportation and storage services recorded gross output value of MYR 120.7 billion in 2017 compared to MYR 109.2 billion in 2015, with an annual growth rate of 5.1%. As shown in Figure 2.2, warehousing and support activities were the largest contributor of gross output value, followed by land transport, air transport, water transport. The Malaysian logistics sector is fragmented with a large number of players.

2.1.2. Road fleets and vessels

Small and Medium Enterprises and independent truckers represent around 70% of the Malaysian trucking industry (Mordor Intelligence, 2020, p. 223[40]). The number of commercial vehicle registrations has been decreasing over the years according to data from the Malaysian Automotive Association (Table 2.1).

Table 2.1. New commercial vehicles registered in Malaysia

Year	New registrations
2010	61 562
2011	65 010
2012	75 575
2013	79 104
2014	78 139
2015	75 402
2016	65 491
2017	61 950
2018	65 512
2019	54 108

Note: Commercial Vehicles include trucks, prime movers, pick-up, panel vans, buses and others.
Source: Malaysian Automotive Association, www.maa.org.my/statistics.html.

The number of merchant vessels registered in Malaysia has however been increasing.

Table 2.2. Total merchant fleet ships by flag of registration

	2011	2012	2013	2014	2015	2016	2017	2018	2019
Brunei Darussalam	82	82	81	81	97	102	104	100	104
Cambodia	836	754	740	699	606	580	351	364	268
Indonesia	5 960	6 341	6 768	7 542	8 132	8 472	8 974	9 053	9879
Lao PDR	1	2	1	1	1	1	1	1	1
Malaysia	**1 405**	**1 456**	**1 525**	**1 561**	**1 617**	**1 658**	**1 682**	**1 704**	**1748**
Myanmar	83	86	86	88	98	98	96	95	95
Philippines	1 407	1 403	1 390	1 436	1 461	1 534	1 565	1 615	1706
Singapore	2 772	3 117	3 306	3 166	3 339	3 419	3 480	3 526	3433
Thailand	769	746	747	767	776	795	795	807	825
Viet Nam	1 756	1 774	1 776	1 752	1 761	1 798	1 836	1 863	1868

Source: UNCTAD, https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=93.
Note: The figures cover seagoing propelled merchant ships of 100 gross tons and above, excluding inland waterway vessels, fishing vessels, military vessels, yachts, and offshore fixed and mobile platforms and barges (with the exception of floating production, storage and offloading vessels - and drill ships).[30]

2.1.3. Other logistics services

Freight forwarding

The Malaysian freight forwarding market is fragmented. There are approximatley 3 000 service providers that hold customs brokerage licences, around half of which are members of The Federation of Malaysian Freight Forwarders (FMFF) (Mordor Intelligence, 2020, p. 121[40]). The FMFF was recognised by the MOT as a "national association to represent the logistics industry" in 2010. There are also regional freight forwarding associations.

Small package delivery services

The Courier, Express and Parcel market recorded a total revenue of USD 1.4 billion in 2019. It is expected reach in USD 3.2 billion by 2025, recording a growth rate of 14.4% (2009-2025). In 2019, Malaysia's revenue share represented 17.8% of the ASEAN market. (Mordor Intelligence, 2020, pp. 147, 160[41]).

2.1.4. Infrastructure

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

There are significant differences across ASEAN countries concerning the quality of their infrastructure. As shown in Table 2.3, Malaysia fares better than many other ASEAN countries. Overall, it ranks 29 out of 141 countries for 'transport infrastructure'.

Table 2.3. Global ranking by transport infrastructure type of selected ASEAN countries, 2018-2019

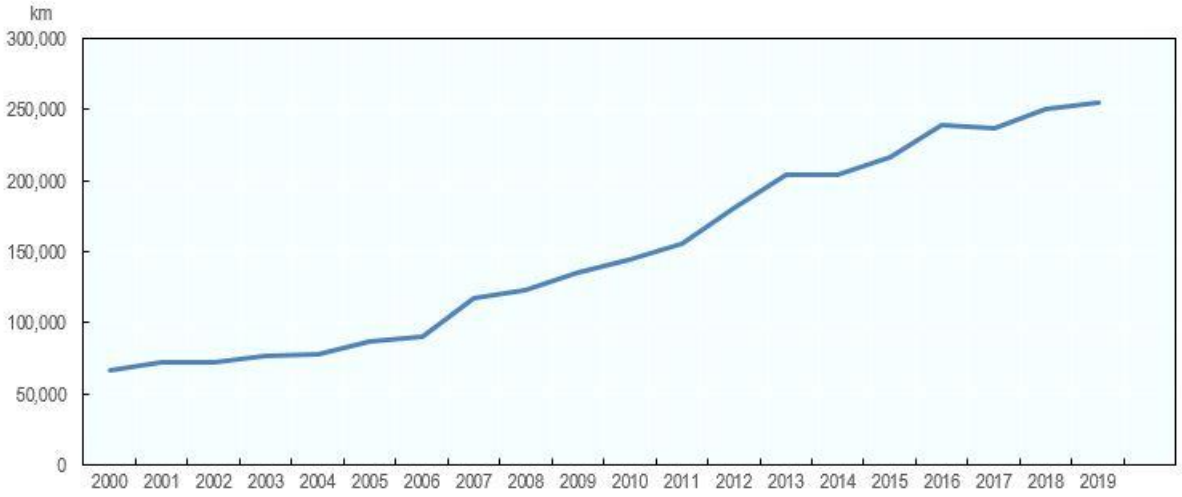
	Malaysia	Thailand	Philippines	Indonesia	Singapore	Cambodia
Overall ranking for transport infrastructure	29	53	102	55	1	96
Road connectivity	133	54	125	109	.	107
Quality of road infrastructure	19	55	88	60	1	97
Railroad density	63	55	91	85	1	.
Efficiency of train services	13	75	88	19	5	.
Liner shipping connectivity	5	35	59	36	2	93
Efficiency of seaport services	19	73	88	61	1	91

Source: Global Competitiveness Report, 2018-2019, 2nd pillar Infrastructure.

Roads

Malaysia's road network more than tripled between 2000 and 2019, from 66 445 km to 254 479 km (Figure 2.3). In 2019, 74.8% of the road network was paved.

Figure 2.3. Road length in Malaysia, in kilometres



Source:
Department of Statistics, Malaysia, https://newss.statistics.gov.my/newss-portalx/ep/epFreeDownloadContentSearch.seam?cid=341325.

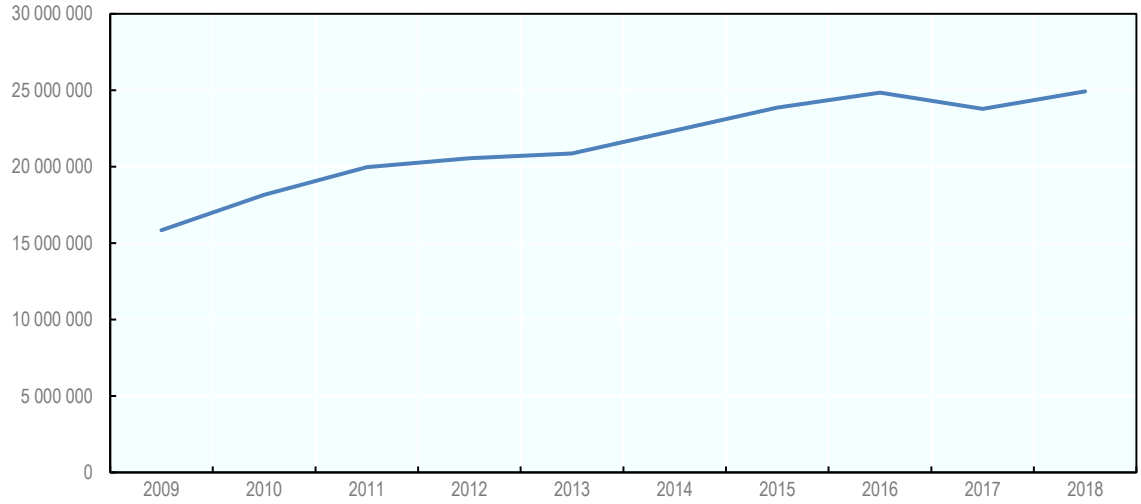
Ports

Malaysia has seven major Federal ports: Port Klang, Johor Port, Port of Tanjung Pelepas, Kuantan Port, Penang Port, Bintulu Port, and Kemaman Port. These were established as Federal Statutory Bodies under the Ministry of Transport. Under the Port Privatisation Act 1990, the Federal Ports were corporatized or privatised. The port authorities play a regulatory role in Federal ports that have been privatised.

The ports in Sabah and Sarawak are under the jurisdiction of their respective state governments, as State Statutory Bodies. The OECD understands that ports in Sabah have been privatised while the ports in Sarawak are owned and operated by the port authorities

In 2018, based upon the throughput of twenty-foot-equivalent unit containers (TEUs), Port Klang was the 12th busiest port in the world and Port of Tanjung Pelepas the 18th busiest; both have contributed to the growth of Malaysian ports' total container throughput (Figure 2.4). Within ASEAN, based on throughput, 9 of the association's ports are within the world's top 100 ports, 2 of which are located in Malaysia (Table 2.4).

Figure 2.4. Total container throughput in Malaysia, in TEUs



Source: Ministry of Transport Malaysia, *Transport Statistics Malaysia 2018*, https://www.mot.gov.my/en/maritime/reports-and-stats

Table 2.4. Ranking of ASEAN ports (named among the top one hundred ports) based on throughput, 2018

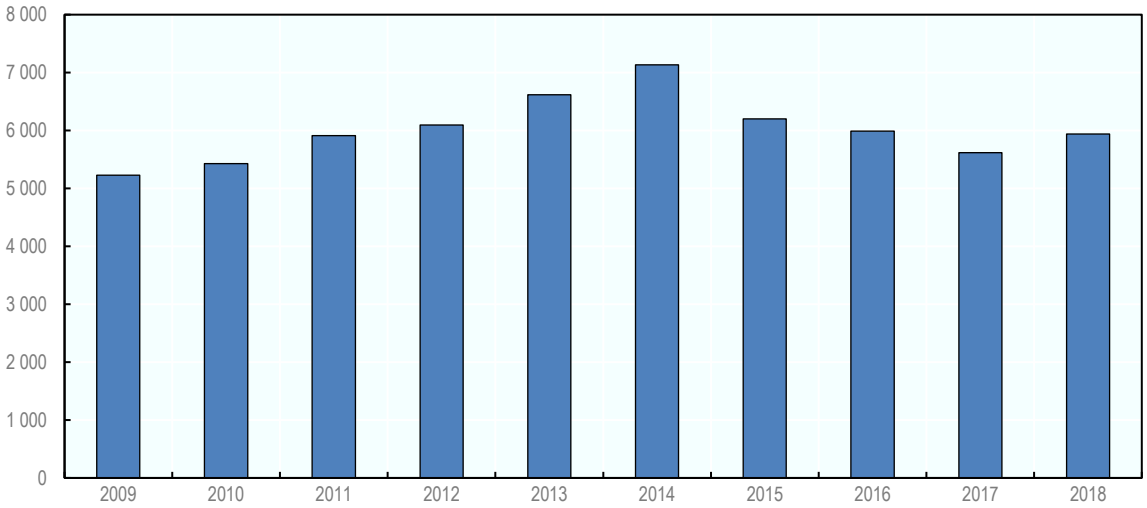
Ranking	Port
1	Singapore
2	**Port Klang (Malaysia)**
3	**Tanjung Pelepas (Malaysia)**
4	Laem Chabang (Thailand)
5	Tanjung Priok (Indonesia)
6	Ho Chi Minh City (Viet Nam)
7	Manila (Philippines)
8	Tanjung Perak (Indonesia)
9	Cai Mep (Viet Nam)

Source: Lloyd's List One hundred ports 2019, https://lloydslist.maritimeintelligence.informa.com/one-hundred-container-ports-2019

Railways

In 2019, the total length of railway track in Malaysia was 1 775 kilometres, a small network when compared to OECD countries with similar populations. The Railways Act 1991 (Act 463) governs the railway sector. There is a limited amount of freight transport by rail in Malaysia, and the main operator is Malayan Railways (KTMB), a corporation wholly governed by the Ministry of Transport. As shown in Figure 2.5, in the period of 2009 to 2018, total freight handled by Malayan Railways has remained relatively constant. The Malaysian government has recognised that, despite the numerous benefits of rail transport in the haulage of large quantities of long-distance freight, connectivity access to rail freight services throughout Malaysia is still limited.

Figure 2.5. Total freight handled by Malayan Railways, millions, tonnes



Source: Ministry of Transport Malaysia, *Transport Statistics Malaysia 2018*, www.mot.gov.my/en/Statistik%20Tahunan%20Pengangkutan/Transport%20Statistics%20Malaysia%202018.pdf, p. 22.

2.1.5. International trade and connectivity

Following a similar upward trend in global markets in recent years, the value of Malaysia's exports of transport services are estimated to have increased to just over USD 5.2 billion in 2019, a growth rate of 2.9% compared to 2018. Transport-service imports amount to just over USD 11.4 billion (Table 2.5).

Table 2.5. Malaysia's total trade in transport services, 2005-2019, USD, millions

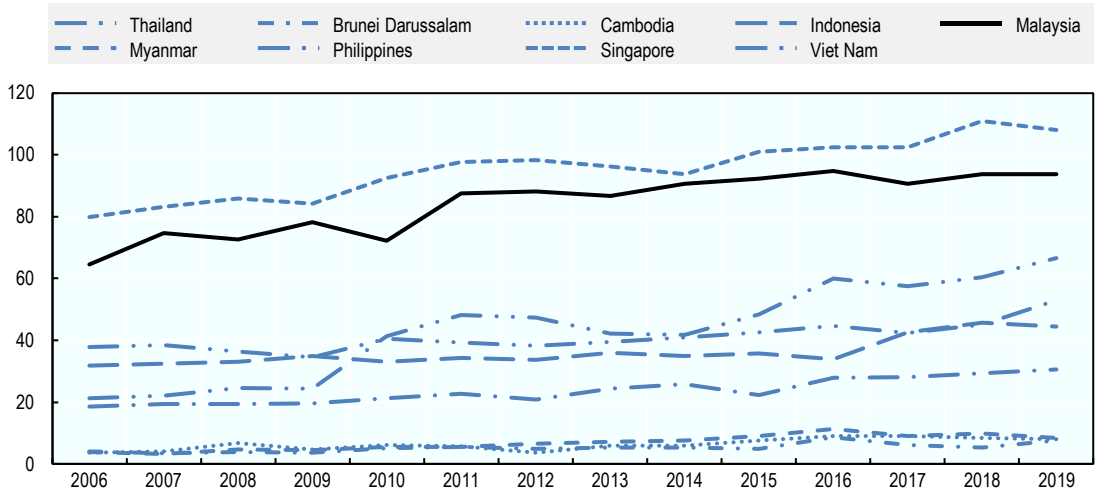
	2005	2010	2015	2016	2017	2018	2019
Transport-service exports	4 056	4 880	4 199	4 160	4 485	5 065	5 211
Transport-service imports	8 396	10 228	10 499	9 812	11 378	11 895	11 441
Transport-service trade balance	-4 340	-5 348	-6 300	-5 652	-6 893	-6 830	-6 230

Source: UNCTADStat, https://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/458/index.html.
Note: Data for 2019 is estimated.

Malaysia's liner-shipping connections with other countries have also improved. Figure 2.6 shows connectivity indexes of Malaysia and other comparable ASEAN countries; these reveal countries' levels of integration into the global networks of liner shipping. Since 2006, Malaysia's connectivity index has been increasing, passing from 64.6 out of 100 in 2006 to 93.8 in 2019.

Figure 2.6. Annual liner-shipping connectivity index

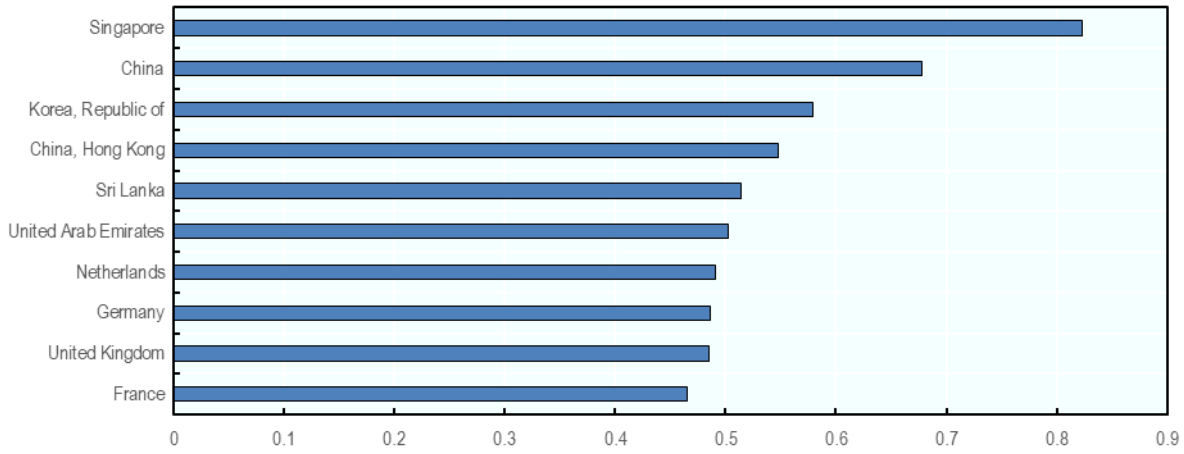
Maximum 2006=100



Note: The index is based upon the country – China – that had the highest score in 2006; this is set at 100 and all other indices are calculated in relation to this.
Source: UNCTADStat, generated from data provided by MDS Transmodal, https://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx?IF_ActivePath=P%2C11%2C45&sCS_ChosenLang=en.

Figure 2.7 shows the countries with which Malaysia has the strongest bilateral connections in 2019, a crucial determinant of bilateral exports. Literature shows that there is a close relationship between bilateral maritime liner-shipping connectivity and exports in containerised goods. A lack of a direct maritime connection with a country results in lower values of exports with that country (Fugazza and Hoffmann, 2017[42]).

Figure 2.7. Liner Shipping Bilateral Connectivity Index, 2019



Note: Leading partners = 0 minimum, 1 maximum.
Source: https://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/458/index.html

2.1.6. Logistics rankings

In 2018, Malaysia ranked 41 out of 160 countries in the World Bank's Logistics Performance Index (LPI) (Table 2.6), a drop from 25 in 2014 and 32 in 2016 when it was the second best performing ASEAN country after Singapore. With the overall LPI score of 3.22 in 2018 and its rank of 41, it was behind ASEAN countries including Singapore (7), Thailand (32) and Viet Nam (39).

Table 2.6. LPI overall ranking, 2018

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

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

As noted in Box 2.1, the LPI 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 2.9) is the most challenging area for Malaysia. Its infrastructure scored relatively high among ASEAN countries (with a score of 3.2), ranking second to Singapore. Malaysia also scores relatively well in international shipments and almost as high as the top performer of the same income group. Figure 2.8 shows Malaysia's LPI overall score and sub-indicators against the top performer in its income group (China) and the top performer at the global level (Germany) in 2018.

Box 2.1. Logistics Performance Index

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

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

1. Efficiency – speed, simplicity and predictability – of clearance processes by border-control agencies, including customs.
2. Quality of trade- and transport-related infrastructure.
3. Ease of arranging competitively priced shipments.
4. Competence and quality of logistics services, such as transport operators and customs brokers.
5. Ability to track and trace consignments.
6. Timeliness of shipments arriving within the scheduled or expected delivery time.

Source: World Bank (2018[43]), *Connecting to Compete, the Logistics Performance Index Report*.

Figure 2.8. Malaysia's LPI score against top performers, 2018

Note: Top performer in income group is China and worldwide top performer is Germany.
Source: World Bank LPI 2018, https://lpi.worldbank.org.

2.1.7. Government initiatives

The Malaysian government has classified logistics as a priority industry and there are several government initiatives in the logistics sector, such as:

- The Third Industrial Masterplan (IMP3) for 2006-2020, which identified logistics as one of the eight non-Government services sub-sectors targeted for greater development and promotion. This plan is coordinated by the Ministry of International Trade and Industry and aims to develop the industry to upgrade capacity and increase Malaysian participation in global supply chains.

- The Logistics and Trade Facilitation Masterplan (2015-2020), which sets out five strategies: 1) Strengthening the institutional and regulatory framework, 2) Enhancing trade facilitation mechanisms, 3) Developing infrastructure and freight demand, 4) Strengthening technology and human capital and 5) Internationalising logistics services. It has 21 action items, the implementation of which is divided into three phases 1) Debottlenecking (2015-2016), 2) Enhancing Domestic Growth (2016-2019) and Creating Regional Footprint (2020 and beyond). The Masterplan is overseen by the National Logistics Taskforce. Proposed initiatives are part of the Eleventh Malaysia Plan (2016-2020),
- The National Transport Policy 2019-2030, which aims to develop a sustainable transport sector, encouraging economic growth and citizen wellbeing. The three principles of the policy's vision are economic competitiveness, social impact and environmental impact. The policy sets out five "policy thrusts": 1) Strengthen governance to create a conducive environment for the transport sector, 2) Optimise, build and maintain the use of transport infrastructure, services and networks to maximize efficiency, 3) Enhance safety, integration, connectivity and accessibility for seamless journey for passenger and goods, 4) advance towards a green transport ecosystem and 5) Expand global footprint and promote internationalization of transport services. A total of 23 strategies are listed under the 5 policy thrusts. The OECD understands that strategy goal 1.3, which seeks to strengthen and streamline the regulatory framework, especially in light of new technologies and disruptive business models, is currently being implemented.

2.2. Key stakeholders

2.2.1. Government stakeholders and institutional framework

The Ministry of Transport (MOT) was established in 1956 and is the main ministry regulating the logistics sector. The MOT develops policies, strategic plans, enforces regulatory requirements, has a supervisory function over the logistics industry and enables public-private partnerships in the sector.

The Ministry of Transport is in charge of three sectors – aviation transport, land transport, and maritime transport – and is divided into 14 divisions. For the purpose of this report, two are most relevant: the Logistic and Land Transport Division and the Maritime Division.

MOT: The Logistics and Land Transport Division

MOT's Logistics and Land Transport Division, which is in charge of land transport including road and rail, is divided into two branches.

1. Logistics
   - Institutional Mechanism and Regulation Unit
   - Trade Facilitation Unit
   - Infrastructure Unit
   - Human Resource Development and Innovation Unit.
2. Land transport
   - Road Transport Unit
   - Rail Unit
   - Public Transport Unit
   - National Transit Transport Coordinating Committees (NTTCC)
   - Road Safety Unit
   - Rail Technical Section.

The Division's functions are described in Box 2.2.

MOT has jurisdiction over the following road transport legislation: the Road Transport Act 1987 (Act 333) and the Commercial Vehicles Licensing Board Act 1987 (Act 334). It administers the Railways Act 1991 (Act 463) and the Railways (Successor Company) Act 1991 (Act 464).

Relevant land transport departments and organisations under the MOT include the following.

1. **Road Transport Department** (JPJ) issues licences for vehicles and drivers and enforces the Road Transport Act 1987 (Act 333), Land Public Transport Act 2010 (Act 715) and parts of the Commercial Vehicle Licensing Act 1987 (Act 334). Its regulatory functions primarily relate to road transport (i.e. safety and revenue collection).
2. **Land Public Transport Agency** (APAD) has jurisdiction in peninsular Malaysia, under the Land Public Transport Act 2010 (Act 715). It was established on 3 June 2010 as SPAD and replaced the Commercial Vehicles Licencing Board (CVLB), Department of Railways, and certain vehicle licensing functions of the Ministry of Tourism.
3. **Sabah Commercial Vehicle Licensing Board and Sarawak Commercial Vehicle Licensing Board** are governed by the Commercial Vehicles Licensing Board Act 1987(Act 334). These agencies have jurisdiction over East Malaysia.
4. **Railway Assets Corporation** (RAC) is a federal statutory body, established by the Railways Act 1991 to help develop the Malaysian railway industry. It is in charge of railway infrastructure and supports Malayan Railways (KTMB) in its operation of the railways in Peninsular Malaysia.

Box 2.2. Functions of the Logistics and Land Transport Division

The functions of the Land Transport Division are to:

- formulate policies on driving licences, driving schools, vehicle registration, road safety and technical standards of vehicles conforming to international standards
- formulate transport policies in order to increase the quality of land transport services
- plan, co-ordinate and implement communication plans, promotions, publicity and engagement of the Ministry and its associated agencies
- develop an integrated rail transportation infrastructure network and multi-modalism
- implement Malaysia's obligations under the ASEAN agreement and cross border policies related to road and rail transportation
- ensure all rules under Railways Act 1991 and Road Transport Act 1987 are in line with current needs
- enforce the Land Public Transport Act 2010 (Act 715) and the Commercial Vehicles Licensing Board Act 1987 (Act 334)
- monitor and co-ordinate infrastructure development projects in the rail-based transport sector
- formulate policies on fare rates for railway services.

The functions of the Logistics Unit are to:

- champion the development of the logistics industry in the country
- manage the Secretariat for National Logistics Task Force
- strengthen the effectiveness of the transport and logistics industry and support the economic growth of supply chain management

- act as the focal point for the Logistics & Transport Services Sectoral Working Group Meeting (LTSSWG) at ASEAN level
- review and assess the implementation, compliance and effects of the transport sector charges and tariffs on the logistics sector
- identify and adopt international best practices to ensure progress in terms of logistics and integrated supply chain
- act as the focal point for research and issues affecting the logistics sector within the Ministry of Transport
- co-ordinate consultation with relevant stakeholders in monitoring and managing the development of the logistics industry
- act as the focal point for the Royal Malaysian Customs Department's uCustoms, a national single-window project that will replace the Customs Information System and facilitate the management of cargo for import and export activities and cross-border trade.

Source: Adapted from the MOT website, https://www.mot.gov.my/en/browse-by-topic/agencies

MOT: The Maritime Division

MOT's Maritime Division is divided into six units:

1. Port Services Unit
2. Maritime Safety Unit
3. Maritime Economy Unit
4. Domestic Commerce Licensing Unit
5. International Convention Unit
6. Maritime Attaché Office (London).

The functions of the Maritime Division include the issuance of domestic shipping licences; oversight of the activities of federal ports; the formulation of policies related to safety, marine activities and pollution; support of Malaysian participation in domestic and international shipping industries; strengthening international co-operation through maritime transport agreements; and the implementation of other programmes and international conventions.

The MOT oversees the following maritime specific legislation: Penang Port Commission Act 1955 (Act 140); Bintulu Port Authority Act 1981 (Act 243); Federation Light Dues Act 1953 (Act 250); Ports (Privatization) Act 1990 (Act 422); Port Authorities Act 1963 (Act 488); Merchant Shipping (Oil Pollution) Act 1994 (Act 515); Carriage of Goods by Sea Act 1950 (Act 527); and the Langkawi International Yacht Registry Act 2003 (Act 630).

In Malaysia, port operators are regulated by their relevant Port Authority under the respective Port Authorities Act. Seven federal port authorities and one Commission are supervised by the MOT:

1. Port Klang Authority
2. Johor Port Authority (overseeing Johor Port and Port of Tanjung Pelepas)
3. Kuantan Port Authority
4. Kemaman Port Authority
5. Malacca Port Authority
6. Teluk Ewa Port Authority
7. Bintulu Port Authority
8. Penang Port Commission.

Other government transport and logistics related departments and agencies

- **Malaysian Maritime Enforcement Agency** (MMEA). Previously known as the Malaysian Coast Guard, it polices Malaysia's coastline and has enforcement powers under the Malaysian Maritime Enforcement Agency Act 2004.
- **Royal Malaysian Customs Department** (RMCD). It collects revenue and facilitates trade and industry, through its 11 divisions. According to the RMCD website, it administers seven main and 39 subsidiary laws and implements 18 laws for other government agencies. The main pieces of customs legislation administered by RMCD are the Customs Act 1967; Goods and Services Tax Act (2014); Excise Act 1976; and Free Zone Act 1990.
- **Malaysian Communications and Multimedia Commission** (MCMC). Created pursuant to the Malaysian Communications and Multimedia Commission Act (1998), it is the country's regulator for the communications and multimedia industry. Since 1 November 2001, MCMC has been sectoral regulator for postal and courier services. It is currently responsible for the application and implementation of the Postal Services Act 2012, which governs postal and courier services, including small-package delivery services, in Malaysia.
- **Maritime Institute of Malaysia** (MIMA) is a government policy research institute, carrying out research in the maritime sector. Its research areas include coastal and marine environment, maritime security and diplomacy, the straits of Malacca, Maritime economics & industries and ocean law & policy.

2.2.2. State-owned enterprises

In Malaysia, state-owned enterprises (SOEs) are divided into two categories: government-linked investment companies (GLICs) and government linked companies (GLCs), both either directly or indirectly owned by the federal government or state governments.[31]

GLICs are investment companies in which the Malaysian government has influence over the management through the appointment of board members and senior management. Further, the Minister of Finance, the prime minister or other ministers usually sit on GLICs' boards. GLCs, including their subsidiaries and affiliates, are defined as companies with a primary commercial objective, in which the Malaysian government has a controlling stake that gives it the ability to appoint board members and senior management, and to make major decisions, directly or indirectly through GLICs (OECD, 2013, p. 70[44]).

For the purposes of this assessment, the SOEs active in the logistics sector are Pos Malaysia, KTM Distribution and KTMB.

1. Postal-services provider **Pos Malaysia** was corporatised in 1985 and listed in 2001. In 2011, Khazanah, the Malaysian government's sovereign wealth fund, divested its entire 32.31% stake to DRB-HICOM, a Malaysian conglomerate with activities in sectors including automotive manufacturing, assembly and distribution industries. DRB-HICOM now owns 53.5% of Pos Malaysia. Despite this, the OECD considers Pos Malaysia remains a GLC for the purpose of this report as the Ministry of Finance retains a Special Rights Redeemable Preference Share or Special Share in the company. Pos Malaysia's articles of association also exclude the possibility of foreigners acquiring control. Article 3 states that Pos Malaysia "shall not enter into any combination, amalgamation or other arrangement which will have the effect of transferring the management or control of the Company to any foreigner or any foreign corporation or any corporation under foreign control". Taken together, these provisions seem to reflect the strategic importance of postal services for Malaysia.[32]

Under the Postal Services Act 2012, Pos Malaysia is the designated Postal Operator awarded the Universal Service License. It is able to perform commercial services as well under this licence. In the 2018-

2019 financial year, postal services accounted for 30% of Pos Malaysia's revenue, while courier services account for 35%. According to Pos Malaysia, the remaining revenue is generated through:

1. logistics services (container haulage services, freight forwarding, shipping agency, chartering, warehousing and distribution)
2. aviation services (flight-related services, such as air cargo handling, in-flight catering, aircraft maintenance and engineering, and facilities equipment), and
3. international services (cross border solutions).

In the 2018-2019 financial year, Pos Malaysia's total revenue amounted to MYR 2 355 billion with a consolidated annual loss of MYR 158.4 million (Pos Malaysia, 2019, p. 31[45])

Pos Malaysia has a large fleet of 10 327 vehicles (including 3 020 delivery vehicles, 6 606 motorcycles and 344 trucks) and it has the largest network in the country with over 3 500 "touchpoints" and 250 "self-service terminals", reaching rural areas and islands (Pos Malaysia, 2019, pp. 6,14[45]). It also owns three freight aircraft, used for shipments to East Malaysia and two bulk-carrier ships; it has its own warehouses; and it manages a "district park" within the Westports terminal, Port Klang, where it performs packing and unpacking services for cargo, as well as value-added services.

2. **KTM** is the passenger and cargo rail operator in Malaysia; it is wholly owned by the Ministry of Finance.

3. KTM **Distribution** (KTMD), a subsidiary of KTM, is active in SPDS. It has annual turnover of approximately MYR 25 million, 300 employees and a fleet of 51 vehicles (trucks, vans and motorbikes). Active throughout the country, it also delivers to Singapore, outsourcing in certain cases the last-mile delivery services. It holds a "Class B" licence, meaning that it can provide international inbound and domestic small package delivery services. The Ministry of Finance appoints KTMD directors, and its board includes representatives of the Ministry of Transport, Ministry of Finance, and the Economic Planning Unit (EPU).

2.2.3. Main trade associations

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

1. Association of Malaysian Hauliers (AMH) was established in 2002 to represent the interests of the container haulage industry. The association has 146 registered company members, which all hold a container licence (KA) licence from APAD. The AMH is a member of various government task forces and committees.
2. Federation of Malaysian Freight Forwarders (FMFF) was established in 1987 and was recognised by the MOT as a "national association to represent the logistics industry" in 2010. The FMFF currently has 1 091 members and seeks to unify freight forwarders and represent their interests on both a national and international level.
3. Malaysian Shipowners' Association (MASA) was established in 1976 to represent and promote the interests of Malaysian shipowners; it currently has 113 ordinary members and 157 associate members. MASA is a member of the Domestic Shipping Licensing Board, the Malaysian Logistics Council, the Federal Light Dues Board and the Cluster Group for Marine Transport under the Ministry of International Trade and Industry. MASA is also represented on a number of port consultative committees and has several regional roles in ASEAN and in Asia.

2.3. Overview of the legislation in the logistics sector in Malaysia

The OECD has identified 31 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 neither indicative of the overall restrictiveness of logistics regulation in the country, nor a good basis for comparisons between countries. First, some restrictions to competition identified by the OECD are more harmful than others, making comparison between countries difficult and often not meaningful. Second, the number of recommendations depends on several factors including the number of pieces of legislation available and reviewed, as well as the amount and depth of contributions and feedback of domestic stakeholders.

A summary of the legislation reviewed by the OECD, the barriers identified, and the recommendations made in this report are summarised in Chapters 3 to 6, while all identified barriers and recommendations are set out in Annex B.

Table 2.7. Number of screened pieces of legislation, restrictions and recommendations

Sector	Legislation analysed	Restrictions found	Recommendations
Freight transport			
Road	12	22	20
Maritime	3	20	17
Freight forwarding	4	12	8
Warehouses	3	9	8
Small-package delivery	2	9	7
International agreements	3	3	3
Horizontal/others	4	1	0
Total	**31**	**76**	**63**

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

3 Road freight transport

The main pieces of legislation relating to road transport are the Road Transport Act 1987 (Act 333), the associated Road Transport Rules, the Commercial Vehicles Licencing Board Act 1987 (Act 334) and the Land Public Transport Act 2010 (Act 715); all are administered by the MOT. The Land Public Transport Agency (APAD) is governed by the Land Public Transport Act 2010.

3.1. Operational licences

In Malaysia, goods vehicle operators require an operating licence, and a vehicle licence. There are different operating licences for vehicles used to carry third-party cargo, known as trucks for hire, and vehicles used to carry an operator's own cargo. APAD has jurisdiction over licensing in Peninsular Malaysia under the Land Public Transport Act 2010, while the relevant Commercial Vehicles Licensing Board (CVLB) oversees the process in Sabah, Sarawak and the Federal Territory of Labuan under the Commercial Vehicles Licensing Board Act 1987. Unless otherwise indicated, the following discussion and recommendations relate to the regime in Peninsular Malaysia.

3.1.1. Restrictions relating to the licence requirements

Capital requirements

Description of obstacle. In Malaysia, there are minimum capital requirements to enter the goods vehicle sector. According to APAD's guidelines, an operator applying for a carrier licence A must have accumulated capital of 30% of the cost of the vehicle to be purchased; for individuals and partnerships and for private limited companies, limited companies and co-operatives, paid up capital must be not less than MYR 250 000. In order to be granted a container licence (KA), paid up capital must be not less than MYR 500 000 and accumulated capital must be equivalent to 30% of the value of the vehicle to be purchased.

Harm to competition. This provision may increase the entry costs of new companies and may discourage investment and market entry, reducing the number of operators in the market. It may notably restrict entry of small and medium enterprises (SMEs). Minimum capital requirements may have a discriminatory effect in favour of larger operators and have a direct impact on choice and product quality for consumers.

Policymaker's objective. This provision aims to ensure that a company has enough capital to operate as a freight transport operator, while protecting consumers and creditors from risky and potentially insolvent businesses. The OECD understood that certain stakeholders believe that these specific capital requirements do help to ensure safety, noting that if hauliers do not have sufficient capital, they may compromise on safety. However, capital does not guarantee that a company has sufficient assets to invest in safety. In Malaysia, there are no general minimum capital requirements.

Box 3.1. International comparison on capital requirements

Many countries have general minimum paid-up capital requirements for specific types of company, such as, for example, limited liability company or public limited-liability company, rather than capital requirements, which are specific to the sector in which the company is active.

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

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

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

In addition to being largely ineffective to achieve the policy maker's objective, higher minimum capital requirements are associated with lower business entry, as shown in the *2020 Doing Business* report.

International experience shows that an increasing number of countries have eliminated or lowered minimum capital requirements. In 2003, 124 countries provided for minimum capital requirements in order to start a company. Over time, 58 countries eliminated minimum capital requirements altogether. The World Bank finds that the most significant changes have occurred in the Middle East and North Africa, where average minimum capital requirements amounted to 466% of income per capita in 2003 and dropped to 5% of income per capita in the latest Doing Business report.

Source: World Bank (2014), *Doing Business 2014: Why are minimum capital requirements a concern for entrepreneurs*, www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB14-Chapters/DB14-Why-are-minimum-capital-requirements.pdf; World Bank (2020), Doing Business 2020: The effects of business regulation, https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402_Ch02.pdf.

Recommendation. Remove specific capital requirements for freight transport, as there appear insufficient reasons as to why this sector is singled out. Alternatively, an insurance requirement or bank guarantee could be introduced.

Foreign equity restriction and ethnic equity restriction

Description of the obstacle. APAD imposes equity conditions on companies wishing to provide transportation services. Trucks for hire are required to have 51% Malaysian equity (including 30% Bumiputera – or ethnic Malay origin – equity). Companies may have up to 49% foreign equity. These restrictions were set out in the licensing policy guidelines of SPAD, now APAD. An additional restriction to these foreign equity limitations is that APAD's licensing committee has a discretionary power to approve the amount of foreign equity. Foreign equity restrictions do not exist for other freight transport licences, such as those for courier-service providers and commercial vehicles carrying their own cargo, for which up to 100% foreign equity is allowed, even if it remains at the discretion of the licensing board.

APAD informed the OECD that the 30% Bumiputera equity requirement no longer applies to new entrants, but still applies to existing licence holders (whose licence was approved when these specific equity requirements were in force). This affects current licence holders' ability to transfer equity as they are required to maintain the 30% Bumiputera threshold.

Harm to competition. The provision may prevent or make it more difficult for foreign companies to enter the market, and so reduce competition. The board's discretionary powers also lead to uncertainty and discourages market entry. The differing equity requirements for new entrants discriminate against incumbents, as new entrants are not required to comply. Incumbents who obtained a licence when the Bumiputera equity restriction was enforced are required to continue to comply with the equity requirement.

Policymaker's objective. The purpose of this provision is likely to protect national operators against international competition. In terms of the specific Bumiputera requirements, these redistributive, affirmative-action policies are acknowledged to have contributed to social peace, but are increasingly coming under criticism, including within the government itself, for their unintended side effects. Various critics have pointed out, that positive discrimination towards Bumiputera could be addressed outside of equity requirements.

A recent OECD working paper found foreign equity limits and screening significantly deterred FDI and noted a larger effect in the service sector, in part because they are more common in this sector but noted the economy wide spill over effects. The authors "estimated that the introduction of reforms liberalising FDI restrictions by about 10% as measured by the *Index* could increase bilateral FDI inward stocks by around 2.1% on average" (Mistura and Roulet, 2019, p. 42[46]). FDI is a tool for economic growth; it creates jobs, brings innovative business practices and more generally enables the transfer of technology and knowledge. Liberalising FDI in services can foster inclusive growth and productivity (see Box 3.2 below).

International comparison. In Myanmar and Thailand, approval must be sought for new FDI acquisitions of more than USD 100 million or if the amount is greater than 50% of total equity. In Cambodia, there are no FDI restrictions in the road freight transport sector while in Indonesia and Lao PDR foreign equity is also limited to 49%.[33] In Australia, freight transport operators can be 100% owned by foreigners. Freight transport is defined as a "sensitive business", however, which permits the government to review foreign-investment proposals against the "national interest" on a case-by-case basis. Foreign persons must receive approval before acquiring a substantial interest (20% and above) in an Australian entity valued above AUD 261 million.

Box 3.2. FDI and productivity benefits

Services reforms raise manufacturing productivity

Recent empirical literature has identified a clear association between services reforms and productivity growth in the economy as a whole; as well as specifically in manufacturing (Low, 2016; OECD, 2013). A study of 15 OECD countries illustrates that anti-competitive upstream regulations in services and other non-manufacturing sectors curbed multi-factor productivity growth in downstream sectors between 1985 and 2007 (OECD, 2010). A recent study of Lao PDR confirms that services liberalisation benefits economic development across economic sectors, not just in services (Isono and Ishido, 2016).

Focusing on manufacturing, Duggan et al. (2013) employ the OECD *FDI Index* to assess the effects of FDI restrictions in services on the manufacturing productivity of Indonesian firms and find that service sector FDI liberalisation accounted for 8% of the observed increase in Indonesian manufacturers′ total factor productivity (TFP) from 1997 to 2009. Shepotylo and Vakhitov (2015) analyse the impact of services liberalisation on manufacturing productivity in Ukraine over 2001-07 and find that a one standard deviation in liberalisation in services is associated with a 9% increase in the TFP of manufacturing firms. The authors also find that the effect of services liberalisation is stronger for domestic and small firms. Arnold et al. (2012) find that India′s policy reforms in banking, telecommunications, insurance and transport services all had significant and positive effects on the productivity of Indian manufacturing firms from 1993 to 2005. Both foreign and domestic firms benefited from services reforms, but the effects were stronger for foreign-owned firms. A one standard deviation increase in services liberalisation resulted in a productivity increase of approximately 12% and 13% for domestic and foreign manufacturing firms, respectively. Relatedly, Berulava (2011) finds that liberalisation in telecommunications; electric power, transport, water distribution and banking stimulated the expansion of export activities of manufacturers in 29 transition economies from 2002 to 2009.

These findings are qualified by a recent study that argues that the effect of restrictions in upstream services is conditional on institutional quality (Beverelli, et al., 2015). Using sector-level data in a panel dataset of 58 countries spanning all stages of economic development, the study finds that countries with better economic governance benefit more from open services policies. That is, higher quality institutions attract more productive service providers and support higher levels of services performance, which then affect downstream manufacturing sectors.

A number of studies also show a positive association between FDI in services and manufacturing productivity. Arnold et al. (2011) illustrate that increased foreign participation in services improved manufacturing productivity in the Czech Republic from 1998 to 2003. A one standard deviation in foreign presence in services is associated with an approximately 8% increase in the productivity of Czech manufacturing firms relying on services inputs. Fernandes and Paunov (2012) conduct a similar study on the effects of FDI in services sectors on the productivity of Chilean manufacturing firms between 1995 and 2004. A one standard deviation increase in service FDI would increase Chilean firms′ TFP by 3%, and forward linkages from FDI in services explain 7% of the observed increase in the TFP of Chile ′s manufacturing firms during the period. Forlani (2011) finds that increased competition in network services in France improves the productivity of manufacturing firms.

Source: Reproduced from (OECD, 2019, p. 82[34])

Recommendation. The OECD proposes two options.

1. Remove foreign equity restriction

2. Progressively relax foreign equity limits and move towards allowing up to 100% foreign ownership in the long term. A first step may be to implement the agreed changes towards the AFAS target of 70% ASEAN foreign-ownership in entities providing road transport services and then applying or extending it to include non-ASEAN nationals. In the long term, Malaysia may consider full liberalisation by allowing 100% foreign-ownership in entities holding road transport services licences.

The OECD makes no recommendation for a policy objective behind Bumiputera. However, it does note that the application of this requirement discriminates between incumbents and new entrants. If the quota no longer applies to new entrants, the provision could be removed from the legislation. Incumbents wishing to change their equity should be allowed to do so and be subject to the same requirements as new entrants. Incumbents and new entrants should be treated alike.

Limits on number of activities per licence

Description of obstacle

Description of obstacle. An operator's licence, obtained under the Land Public Transport Act 2010, allows the holder to operate or use one class of goods vehicle. There are two different classes of goods vehicles: one for the carriage of containers, which requires a KA vehicle permit, and the other for the carriage of general cargo, which requires an A vehicle permit. Goods vehicles, such as trucks for hire, can be licenced to carry containers or cargo, but not both. As noted in the Malaysia Productivity Corporation's 2016 report *Reducing Unnecessary Regulatory Burdens on Business (RURB)*: Logistics: "currently a trucking licence is issued for a single-type haulage operation, e.g., prime-movers for containers haulage, prime movers for open trailers, etc. This means a prime mover for containers cannot haul other types of trailers and vice versa. This inflexible licensing prevents the efficient utilisation of prime-movers. […] empty containers are light-weight and can be carried by other 7-ton trucks, but this is currently illegal because of the single-type haulage licensing. This means that truckers have to use expensive, heavy-duty prime-movers to haul empty containers." Stakeholders have reported that trucks do ignore this licensing requirement and carry both general cargo and containers.

Harm to competition. The requirement to register a truck as either a container haulier or a general cargo haulier, and to require a vehicle permit for the chosen activity, is a barrier to entry and to efficient operation in the market. The requirement reduces utilisation of a single vehicle. If operators wish to transport both general cargo and containers, they must acquire separate vehicles with separate licences. International comparison shows that this distinction does not appear necessary.

International comparison. Other ASEAN countries, including the Philippines, Brunei Darussalam, Thailand and Viet Nam only require a single licence, which allows carriage of both containers and general cargo.

Policymaker's objective. Certain stakeholders have stated that this licensing distinction is important for safety and security, while others have noted concerns about the sector becoming saturated and the possibility that a single licence would pose security concerns.

Recommendation. A single licence should be created for the carriage of both general cargo and containers.

3.1.2. Restrictions relating to the licensing process

Evaluation of business viability

Description of obstacle. Under the Land Public Transport Act 2010, when deciding whether or not to renew licences, and the length of renewed licences, APAD considers the financial performance of an

applicant. The renewal process is more stringent than the initial licensing process and requires applicants to provide financial information and prove a minimum revenue of MYR 25 000 a month. Every month APAD has a licensing meeting and, the OECD understands, that it is "not uncommon" for licences not to be renewed. The OECD has not been able to identify any legislation or licensing policy guidelines that mention this requirement for minimum revenue, and it appears to be internal APAD policy.

Harm to competition. During the licensing process, APAD makes a judgement on who should enter and remain in the market by evaluating financial viability. APAD's assessment of the viability of an applicant's business and the consequence this may have on the granting or renewal of a licence may restrict the number of suppliers, reduce competition between suppliers, and result in higher prices or less desirable contract terms for customers.

Policymaker's objective. The aim appears to be to exercise control over the market and to ensure the efficiency of market players. Another likely objective is consumer protection.

Recommendation. The viability of the applicant's business should not form part of APAD's criteria for the renewal of a licence. Remove this requirement from the law and internal regulations. To ensure the financial strength of companies in this sector, as recommended in 3.1.1 above, APAD could require an insurance policy or letter of guarantee as an alternative.

Duration of awarded licences

Description of obstacle. The Land Public Transport Act 2010 states that APAD has the discretionary power to determine the length of the commercial vehicle licence up to a maximum of seven years. In an interview with the OECD, APAD representatives explained that the duration of a licence is typically between one and five years and on average three years. Following the documents required under the legislation, the OECD understands that for companies applying for a renewal, the duration is primarily dependent on their financial performance.

Harm to competition. The discretion to award licences for different durations might lead to discrimination. The operators who are awarded longer licences will gain an advantage as they will not have to go through the renewal process as often and so will not incur the related costs.

Policymaker's objective. The OECD has not been able to identify the policy objective for allowing APAD discretion over the duration of licences. The OECD has been informed by the Attorney General's Chambers that as long as the authorities exercise discretionary power reasonably (discretion must not be unfettered or arbitrary) there should be no legal issues (following the Federal Court decision of Itular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & Ors [2014] 4 SHLR 1).

Recommendation. In line with the recommendation above, the licence duration should not depend on the company's financial viability. Moreover, the authority should publish guidelines that set out how it determines licence duration.

3.2. Other requirements for commercial vehicle operation

3.2.1. Restrictions on vehicle fleet

Description of obstacle. As set out in SPAD's (now APAD) Licensing Policy Guidelines, the number of trailers that can be registered to each prime mover is limited. This policy is not set out in legislation. In addition, the guidelines state the general policy to be that certain business entities (for example, sole proprietorships and partnerships) can apply for a maximum of two sets of licences: this can be for two sets of vehicles (two prime movers and two trailers) or two licences for "rigid vehicles" (the guidelines provide a list of rigid vehicles) or 1 set of vehicles consisting of one prime mover and one trailer and one rigid

licence. For these business entities, this policy limits their fleet size and so limits the use of an operator's resources.

Harm to competition. Trailers are registered to a specific prime mover and so a company is limited in the number of trailers it can use for each truck. If a truck is unable to unload a container, then the trailer carrying it may not be utilised for a period of time. This might impact upon efficiency as the trailer would need to be unloaded to be used. More specifically, registering trailers for each prime mover could decrease its utilisation rate. If the maximum number of trailers for each prime mover is set too low, to operate efficiently the company may need more prime movers than it actually needs. No other ASEAN member state appears to have these restrictions.

In general, any provision that limits the size of an operator's fleet limits their ability to reach economies of scale and to better spread overheads. Permitting larger fleets may allow operators to reap economies of scale and lower unit costs for service provision. This could help increase efficiencies and lead to lower prices for consumers. The guidelines discriminate between business entities on the basis of their legal form. The different treatment for incorporated companies (i.e. private limited companies are not subject to these fleet limitations) is presumably aimed at encouraging incorporation, which can be associated to more structured and efficient entities. There appears to be no major barrier to incorporation (i.e. no minimum fleet size for companies).

Policymaker's objective. Stakeholders have suggested that APAD's policy is to reduce road damage due to excess capacity and to reduce the risk of vehicles contributing to accidents, congestion and air pollution. This rationale seems to be more relevant for rules relating to the maximum number of containers that a goods vehicle may transport (i.e. to avoid overloading). Academic literature indicates that there is a lack of clarity on the number of trailers that can be registered for each prime mover.

Recommendations. The OECD has two recommendations.

1. Clarify and remove the size restrictions on an operator's fleet.
2. Remove limitations on the number of trailers registered to each prime mover; this does not have any impact upon the rules for the number of trailers that can be towed simultaneously by a prime mover.

3.3. Operational challenges for commercial vehicles

3.3.1. Biannual vehicle inspections

Description of obstacle. The Road Transport Act 1987 provides for the inspection of commercial vehicles. The legislation does not specify the class of vehicles required to undertake the inspection or the frequency of inspections but this information is set out in Ministry rules. The 1995 rules explain that goods vehicles are required to undergo periodic inspection at a vehicle inspection centre. The frequency of inspection depends of the age of the vehicle, for example newly manufactured vehicles are required to be inspected once every year for the first two years and then once every 6 months while new trailers are to be inspected once a year for the first 10 years. Therefore, as explained by stakeholders, depending on the age of the vehicle, goods vehicles could be required to be inspected twice a year by commercial-vehicle inspection company PUSPAKOM. The average cost of inspection at a PUSPAKOM centre is MYR 58.3 for a prime mover and MYR 79.5 for a trailer. There is also a mobile service where companies can choose the time and place of the inspection for an additional charge.[34] Evidence of biannual inspections is shown by a truck's inspection certificate, which is issued by PUSPAKOM and needs to be fixed to and exhibited on the vehicle and contains the next date of inspection.

Harm to competition. Biannual inspections increase costs for market participants as they take trucks off the road and are also an administrative burden. The requirement potentially reduces the number of

participants in the market over time due to increased costs and could be a barrier to entry for new participants. Further, the requirement to have biannual inspections rather than annual inspections might be stricter than is necessary to ensure safety and consumer protection.

Policymaker's objective. According to the authorities, the frequency of inspections is required because of the wear and tear suffered by trucks in Malaysia. They highlighted that unlike in other countries (for example, the EU), Malaysia allows the use of re-treaded tyres and imports a large number of second-hand trucks. Further, in their experience, it is not uncommon for hauliers to try to cheat by renting good tyres and brake pads solely to pass the inspection.

International comparison. The principal factors determining the condition of goods vehicles are proper operation; kilometres covered; years in service; and regularity of technical inspections. Maintaining vehicles correctly becomes particularly important as they age and for those used on long international routes. Brunei Darussalam requires the licence for commercial vehicles to be renewed every six months, a process that includes an inspection process. In other ASEAN countries, annual inspections are common, such as in the Philippines, where it is linked with vehicle registration, and in Singapore, where commercial vehicles are inspected annually or every 6 months if the vehicle is more than 10 years old. In the EU, Directive 2014/45 of 3 April 2014 requires member states to carry out periodic safety and emission roadworthiness inspections. For vehicles over 3.5 tonnes, vehicles must be inspected no more than one year after initial registration and then annually.

ITF experience has shown that supplementing regular inspections with random on-road checks could be a helpful step to ensure roadworthiness, as well as the use of years in service criteria.

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

3.3.2. Truck ban

Description of obstacle. In certain areas of Malaysia, for example, in Kuala Lumpur, a truck ban means trucks are only allowed to operate at certain times of the day. Truck bans are enforced in accordance with the provisions under the Road Transport Act 1987. While truck bans are implemented by various agencies and are common practice around the world, they should be non-discriminatory and should not divide the market. The OECD has identified several issues outside the general ban.

1. **Geographical restriction on a certain class of vehicles**. APAD's Licensing Policy Guidelines state that for category-C licenced vehicles' area of operation is limited to the seven nearest states except when transporting the following: cars, motors and bicycles, chemicals and inflammable items, petroleum gas and oxygen, construction materials, medicines, furniture and machines.
2. **Individualised truck ban**. APAD's power to attach conditions to the award of a goods vehicle licence, which can include rules on the use of vehicles in certain areas or between certain times, could be interpreted as an individualised truck ban.

Harm to competition. Truck bans limit the use of heavy vehicles to certain times of the day and so when they can provide their services. The bans also reduce the utilisation rate of staff and trucks, which has the effect of increasing the average cost of transport for each freight unit. The geographical truck ban creates a geographic barrier for trucking companies to provide their services and to supply goods. The discretion to impose an individualised truck ban might limit the ability of certain vehicles to provide their services and is discriminatory in nature, favouring some providers over others.

Policymaker's objective. General truck bans aim at preventing traffic congestion during peak hours due to limited road capacity. The bans also limit pollution, addressing environmental concerns.

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

Recommendation. The OECD makes no recommendation in relation to the general truck ban as it is justified by the policy objectives and if necessary, express delivery can be carried out with smaller vehicles during the time of the truck ban. It does, however, recommend the removal of the geographical restriction, as well as the discretion to impose an individualised ban.

3.4. Broad regulatory powers

3.4.1. Power to regulate freight rates

Description of obstacle. The Land Public Transport Act 2010 provides that the APAD board has the power to determine freight rates for cargo. APAD confirmed that while theoretically it does have the power to set freight rates, in practice, rates are determined by the market.

Harm to competition. If APAD were to regulate freight rates and minimum prices were set, lower-cost suppliers who provide better consumer value would be prevented from winning market share. Similarly, if maximum prices were set, supplier incentives to innovate by providing new and or high-quality products would be substantially reduced, and suppliers may effectively co-ordinate their prices around the maximum price.

Policymaker's objective. The OECD did not identify a clear policy objective, but notes that the objective could be to support sustainability of industry players and affordability for consumers. With sufficient market players, affordability is enabled by competition.

International comparison. According to the 2018 OECD PMR Sector database, retail tariffs of road freight services are rarely regulated or approved by the government, regulator or other public body. Only 2 out of the 45 surveyed countries regulate road freight tariffs while 3 countries implement price setting guidelines.

Recommendation. The OECD proposes two options.

1. Remove APAD's power to set freight rates.
2. If APAD's power is maintained, any rates should reflect maximum prices only.

3.4.2. Approval required for trucking companies to change their equity structure

Description of obstacle. If the holder of a commercial-vehicle operating licence wishes to change its equity structure, it must first seek approval from APAD. It must also obtain permission if a proposed agreement would cause any changes in the board of director of the company or partners of a firm. According to the authorities, in practice, this is more of a notification procedure and the board has never rejected company structure changes, except for the transfer of equity from Bumiputera to non-Bumiputera.

Harm to competition. Requiring permission to change business structure is onerous for freight transport businesses.

Policymaker's objective. When a company makes it initial application, it has to declare to APAD its equity and ownership structure. To ensure effective monitoring, the company is required to inform the authority and seek approval for any changes to that structure. This requirement may also be linked to the evaluation of a business's viability during the renewal process. Further, it may exist to ensure there is no dilution of equity, especially if Bumiputera requirements are in place in the company. These redistributive policies are

widely acknowledged to have contributed to social peace but are increasingly coming under criticism, including within the government itself, for their unintended side effects. Various critics have pointed out (e.g. OECD Investment Policy Review of Malaysia 2016) that positive discrimination towards Bumiputera could be addressed outside of equity requirements. The licensee must inform the Commission of any change in the control of the licensee or licensed operator under 72(3)(a).

Recommendation: Remove requirement to seek approval for a change in directors or partners and any change in equity structure if it does not affect any Bumiputera requirements. If necessary, the law should state that this is a mere notification procedure.

4 Maritime freight transport

In Peninsular Malaysia, the main piece of legislation related to domestic shipping is the Merchant Shipping Ordinance 1952 (MSO 1952).[35] In Sabah and Sarawak, the relevant laws are the Merchant Shipping Ordinance of Sabah [Ord. No. 11 of 1960] and the Merchant Shipping Ordinance of Sarawak [Ord. No. 2 of 1960] respectively, which are State enacted laws.[36]

In Malaysia, there are two ship registries: the national shipping register and the Malaysia International Ship Registry (MISR). National shipping registration is governed by Part IIA of the MSO 1952 and vessels can be registered in the register if, among other things, specific Malaysian equity requirements are met. Majority foreign-owned vessels can be registered in the MISR if they incorporated as Malaysian companies. There are five ports of registry: Port Klang, Pulau Pinang, Kota Kinabalu, Kuching, and Labuan (for the MISR).[37]

Section 65L of MSO 1952 provides that ships wishing to engage in domestic shipping in Malaysia must obtain a licence; otherwise, they are subject to penalties.

4.1. Domestic shipping

Domestic shipping is defined in section 65A of the MSO 1952 to include the use of a ship to transport goods from any port or place in Malaysia to another port or place in Malaysia or to or from any place in an exclusive economic zone.

4.1.1. Restrictions concerning domestic shipping

Description of obstacle. Cabotage is generally known as the movement of goods between ports within the same country or coastal shipping. The MSO 1952 does not define “cabotage” but generally prohibits foreign vessels from engaging in domestic shipping, subject to exceptions, prescribed or directed by the Ministry.[38] The partial liberalisation of the Malaysian cabotage regime in 2009 saw foreign flagged ships allowed to perform transhipment activities between specified ports in East and West Malaysia. In 2017, cabotage restrictions were removed for shipments between East and West Malaysia, meaning regulations no longer apply to shipments from any ports in Peninsular Malaysia to any ports in Sabah, Sarawak and Labuan and vice versa, between any ports in Sabah and between any ports in Sarawak (with limited exceptions). This change occurred within the existing MSO framework.

Harm to competition. The prohibition on foreign vessels transporting domestic cargo between ports and places in Malaysia prevents foreign firms from entering the national freight transportation market. A special permit for foreigners may be obtained from the Domestic Shipping Licensing Board, but access to this permit is limited. In Peninsular Malaysia, foreign firms are therefore generally unable to participate in the domestic shipping market. According to market participants, cabotage restrictions may contribute to the accumulation of empty containers in some ports and a shortage of containers in others due to inefficient allocation of resources; this amplifies issues of trade imbalance. These were among the reasons behind the partial liberalisation of the market in Eastern Malaysia in 2017.

Policymaker’s objective. The legislation seeks to support the Malaysian domestic shipping industry, promoting the ownership of vessels operated under the Malaysian flag. A 2017 UNCTAD report explained that in the past cabotage restrictions had a security objective, but these days the policy objective is aimed more at “building supply-side capacity in shipping to derive revenue and employment benefits”.[39]

The OECD understands that there is a "Memorandum of Understanding between Malaysia, Brunei, Indonesia and Philippines on Transit and Inter-State Transport of Goods (BIMP-EAGA)". The objective of the BIMP-EAGA is to facilitate inter-State transport of goods in transit between and among the Participating Parties as well as to promote multi modal transport. Article 5 of BIMP-EAGA deals with traffic right and market access in Participating Parties which include cabotage. Article 5.4 states as follows: "Cabotage shall only be permitted upon special authorisation from the Host Country".

Box 4.1. Cabotage regimes around the world

Most countries have rules on cabotage. The United States has a strict cabotage regime thanks to the Merchant Marine Act of 1920 (Jones Act): "it requires that shipping of all goods transported between US ports be carried out by ships under the US flag. The ships must be constructed in the United States, owned by US citizens and crewed by US citizens and permanent residents" (UNCTAD, 2017, p. 24[47]). In Australia, under the Coastal Trading Act 2012, the cabotage regime is based on a three-tier licensing system, comprising:

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

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

The EU has a principle of freedom to provide maritime transport services within the EU territory. A 2014 European Commission report assessing the lifting of cabotage restrictions between 2001 and 2010, concluded that removing barriers to maritime cabotage market access barriers does not seem to have led to a significant increase in the number of operators interested in providing cabotage services (UNCTAD, 2017[47]).

New Zealand also introduced cabotage liberalisation in 1994 in order to increase competition. Following the reform, international vessels visiting New Zealand were allowed to deliver imports or pick up exports. As a result, prices dropped by 20-25% between 1994 and 2000. National carriers were however able to retain control of the vast majority of the market, although they were forced to reduce rates. In 2000, upon review of this reform, the government decided not to re-introduce cabotage restrictions (UNCTAD, 2017, p. 23[47]).

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

Recommendation. The OECD recommends one of three options.

1. Open the domestic shipping market to foreign competition by lifting the ban on foreign vessels carrying domestic cargo between ports in Malaysia, possibly based on reciprocity arrangements or, as a first step, between ASEAN members. As mentioned above some ASEAN members are party to agreements allowing for cabotage upon special authorisation.
2. Amend the cabotage law to allow foreign ships to carry their own cargo (and other foreign cargo) domestically, such as allowing ships to travel domestically to the port of final call after arriving at a first port of entry, such as is now in Philippine law to support import and exports, subject to impact analysis. 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 had capacity after unloading goods at the port of entry.
3. Allow international ships to operate in the domestic shipping market on specific routes where there is demand and subject to impact analysis.

4.1.2. Exceptions to cabotage in Malaysia

Description of obstacle. As an exception to the cabotage principle, foreign vessels may place a request with the Domestic Shipping Licensing Board to operate within the domestic shipping market. The board then consults the domestic ship owner's association, MASA, to confirm that no domestic vessels can carry out operations on the proposed route. If the request is approved, the board issues a temporary licence to the foreign vessel with a maximum duration of three months.

Harm to competition. Foreign ships are only allowed to operate in Malaysian territory if no domestic ship is available to provide the required specialised service. The exception privileges domestic firms and provides limited authorisation to foreign vessels to operate. It may be difficult for applicants to foresee whether they will be granted a special permit due to the Domestic Shipping Licensing Board's broad discretion and the need for MASA approval. Although applicants can now apply online for an electronic domestic shipping licence, the administrative burden of providing a long list of documents, the uncertainty surrounding the granting of the special permit, and the short duration of any eventual permit might discourage foreign shippers from applying for a special permit.

Policymaker's objective. The exception supports the Malaysian domestic shipping industry and promotes the ownership of vessels operating under the Malaysian flag. The legislation suggests that the special permit is specifically intended for specialised vessels, such as those used for 'repair services of submarine cables at any submarine cable landing centre in Malaysian waters.[40] Such vessels may not normally be available from the domestic fleet.

International comparison. In Australia, under the Coastal Trading Act 2012 (Division 2), Australia may grant temporary licences to foreign-flagged vessels, which are valid for a limited number of voyages in a 12-month period. The granting of the licence is subject to ministerial discretion. While the use of foreign-flagged vessels is restricted and the number of voyages is restricted, the licence is granted for a longer duration.

Recommendation. The OECD recommends the further opening up of the domestic shipping market. If restrictions are maintained, a more efficient application procedure should be introduced and guidelines provided to give applicants more legal certainty.[41] Any special permit granted should have a longer duration. It should also be clarified that MASA's response is only advice and that its decision is not binding on the ministry.

4.1.3. Minimum capital requirements

Description of obstacle. Ships registered under the Malaysian International Ship Registry (MISR) are required to have a minimum paid-up capital of 10% of the ship's value or MYR 1 million, whichever is

higher. The OECD understands that this requirement only applies to the first ship registered by the corporation.

Harm to competition. This requirement discriminates against foreign ship-owners, who are required to register their vessels in the MISR; ships registered in the Malaysian national ship registry do not face this capital requirement.

Policymaker's objective. This provision aims to ensure that a company is sufficiently capitalised to act as an international shipping operator. It also aims to protect consumers and creditors from risky and potentially insolvent businesses (see Box 3.1 for more information on international capital requirements).

Recommendation. The OECD recommends removing the capital requirement and replacing it with an insurance or a bank-guarantee requirement.

4.1.4. Operator licences

In 2018, 4 865 licences were issued by the Ministry of Transport's Domestic Licensing Board (DSLB): 2 728 Malaysian registered and 2 137 foreign registered ships.[42] All foreign registered vessels were granted temporary licences, while only 191 Malaysian-registered vessels were given temporary licences; the remainder were either granted a conditional (2 290) or unconditional licence (247).[43]

Duration of licences

Description of obstacle. Section 65H of MSO 1952 provides the Domestic Shipping Licensing Board with discretion on licences' terms and conditions, as well as their duration. Section 65D explains that the discretion lies with the board and is subject to the approval from the Minister, but the OECD has found no additional guidelines that would explain how this discretion is exercised. According to stakeholders, the duration of the licence given for domestic Malaysian vessels is dependent upon the age of the vessel and the number of Malaysian crew. A Malaysian ship licence may be granted with or without conditions for a period of between six months and two years. For example, a Malaysian ship with no Malaysian seafarers is given a six-month licence. There are Guidelines are available for applicants in Malay on the MOT's website; these provide clear criteria for applicants about the types of licences and conditions and criteria, but do not set out this discretion.

Harm to competition. The discretion to award licences for different durations could lead to discrimination. The operators who are awarded longer licences will gain an advantage as they will not have to go through the renewal process as often and so will not incur the related costs.

Policymaker's objective. It would appear to aim to exercise control over the market and to give preference to operators that meet certain criteria – such as number of Malaysian workers – in order to support the Malaysian labour market.

Recommendation. The authority should publish guidelines that set out how it determines licence duration.

4.1.5. Price regulation

Description of obstacle. The Domestic Shipping Licensing Board has broad powers to make regulations, specifically, the power to "prescribe the rates which may be charged for the carriage of passengers or cargo by any ship engaged in domestic shipping".[44] This implies that the board could set fixed, maximum or minimum prices, although the OECD has been unable to ascertain if this power is ever used in practice.

Harm to competition. Regulating prices by prescribing cargo rates to be charged in domestic shipping could deter market entry and decrease competition. If rates are set too high, lower-cost suppliers who provide better value for customers are prevented from winning market share. If rates are set too low,

supplier incentives to innovate are reduced and suppliers can effectively co-ordinate their prices around the maximum price.

Policymaker's objective. Allowing the board the possibility of setting rates likely exists to protect the domestic industry and consumers from high shipping rates. Governments often regulate prices in traditional monopoly sectors as price control serves as a counterweight to a lack of consumer alternatives, however, the shipping industry is not a traditional monopoly sector.

Recommendation. The OECD recommends one of two options.

1. Remove the board's ability to set freight rates and allow the market to set domestic shipping rates.
2. If the board's ability to intervene is maintained, price control should be in the form of maximum prices only. Guidelines should provide clear criteria for when the board can intervene as price control rarely constitutes the most efficient or effective means of achieving intended objectives.

4.2. Ports

Peninsular Malaysia has seven major federal ports. Ports located in Sabah and Sarawak are under the jurisdiction of the state. There are also private jetties and minor ports, which include fishing ports, private terminals and minor ports, which are under the jurisdiction of the Marine Department or Fishing Development Authority in Peninsular Malaysia.

The major ports in Peninsular Malaysia have been privatised.[45] Each major port has its own port authority, which is governed by the relevant Port Authority Act and by specific local by-laws.[46] There are nine port authorities in Malaysia, established under three different legislative instruments.[47]

In Sabah, ports have been privatised while in Sarawak, the ports remain state owned. There have been initiatives in the past to create a unitary port authority, but ultimately any benefits were not clear due to each port's different capacities and functions.[48]

Port Authorities may grant concession agreements to port operators (see Box 4.2 Best practices in public procurement and concessions).

Companies interested in becoming a port operator or providing port services, such as providing marine facilities or container operations, must follow a process:

1. Port authorities release a request for proposal (RFP), which follows Ministry of Finance guidelines, to companies interested in handling port activities.
2. Interested companies submit their proposals to the Public Private Partnership Unit at the Ministry of Finance.
3. The company selected through this tender process then signs an agreement, prepared by the Public Private Partnership Unit, that stipulates the terms and conditions, including the company's expected cash flow, capital expenditure, port development plans, and profit sharing.

The tender is based on the proposal made by MOT to the Cabinet.[49] Concessions are given for a minimum duration of 30 years and land must be leased for the same period of time. For example, in 2018, Northport, a subsidiary of utilities and infrastructure group MMC Corporation, received a 30-year extension for operations at Northport and Southpoint in Malaysia's Port Klang. According to stakeholders, this was granted through a privatisation agreement signed between the government, Port Klang Authority and Northport (theedgemarkets.com, 2018[48]).

Under the agreement, which is subject to government and Port Klang Authority terms and conditions, Northport is granted the right and authority to provide and carry out the operation, maintenance, management and control of the port operation in Northport and Southpoint. Northport is also granted the

right to charge and collect fees from the port users in relation to the port operation provided and carried out, pursuant to the Privatisation Agreement and the Licence, in accordance with the Port (Privatisation) Act 1990 and Port Authorities Act 1963.

Box 4.2. Best practices in public procurement and concessions

The OECD's comprehensive work on public procurement has led the organisation's council to make a number of recommendations, including: a public-procurement system should be transparent at all stages of the procurement cycle; the integrity of a public-procurement system should be preserved through general standards and procurement-specific safeguards, such as internal training, and compliance measures for relevant stakeholders; access to procurement opportunities for potential competitors of all sizes should be facilitated; transparent and effective stakeholder participation should be fostered in the design of public-procurement systems; to the extent possible, digital technologies should be employed to support appropriate e-procurement innovation throughout the procurement cycle; workforces should receive training to develop their public-procurement know-how; oversight and control mechanisms should be applied to support accountability throughout the public-procurement cycle, including appropriate complaint and sanctions processes. The OECD has also prepared a toolbox that uses the principles included in the recommendation to bring evidence-based tools and advice to stakeholders, as well as specific examples highlighting practices that have been successfully tested in different countries.

The OECD has also worked specifically on concessions and highlighted the importance of concession design. One crucial factor is the duration of the contract, as this can have a great effect on investment. For example, while a longer period encourages the concessionaire to make the necessary infrastructure investments at the beginning of the period, that incentive diminishes near the end of the concession. How a concession is awarded has also been deemed critical. Auctions are considered the most effective award method. Although negotiations are an option, experience has shown that public authorities are sometimes at a disadvantage with their private-sector counterparts. It is also important that a country's competition authority is involved in the concession process, including tender design.

Source: Reproduced from the OECD Recommendations of the Council on Public Procurement, www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf.

4.2.1. Fixed prices for port services

Description of obstacle. The Port Authorities Act 1963 applies to certain port authorities established under the Act and listed in the First Schedule.[50] A general clause in the Port Authorities Act 1963, allows a port authority "with the approval of the Minister from time to time prescribe charges or scales of charges and impose penalties or interests on outstanding dues".[51] This permits federal ports to set their tariffs for each port service, but does not require minimum or maximum charges. The OECD has been told that the formula used for fixing port tariffs is confidential. The OECD understands however that tariffs are set by the port authority in consultation with industry and that these tariffs are then published in the gazette.

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

Policymaker's objective. Port charges are likely set because competition is limited. Fixed or minimum rates likely aim to ensure a minimum income for operators while maximum prices aim to protect port users by avoiding excessive prices.

The OECD understands that some port authorities, for example the Port Klang Authority regulates port tariffs, but only sets a ceiling or maximum rate that port operators can charge. In Port Klang, operators are therefore free to charge a lower tariff than what is prescribed. The OECD also understands that the Port Privatisation Act stipulates situations in which the port operator can vary charges or impose additional charges.[52]

Recommendation. The OECD recommends the elimination of fixed prices for services in ports. In cases where competition is limited – for example, due to the effects of cartelisation – prices could continue to be regulated, but a port authority should only set maximum charges. Rates and method of calculating charges should be published and stakeholders consulted.

Box 4.3. Fixed prices: An international comparison

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

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

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

4.2.2. Pilotage

Under the Port Authorities Act 1963, pilots are required to hold a licence to operate in a pilotage district for which they must pass an examination organised by the Pilotage Committee on behalf of the Port Authority.[53]

Description of obstacle. Pilotage is a service provided by a person with expert local knowledge and skills who is qualified to conduct the navigation and manoeuvring of a vessel approaching and inside a harbour (OECD, 2011, p. 7[49]). Under the Port Authority Act 1963, the port authority has the power to define a pilotage district (Section 29A) and may require any vessels to use pilotage services (Section 29B). Section 29C of the Act implies that the port authority is responsible for the provision of pilotage services as it states that it is able to employ "such number of pilots as it deems necessary or expedient for the purpose of providing an adequate and efficient pilotage service". The port authority does not necessarily have exclusive rights to provide pilotage services, but may also authorise the Pilotage Committee to issue licences to an employee of a licenced operator, and may even authorise any person to pilot vessels passing through its pilotage district subject to certain terms and conditions. The Port Klang Authority explained the current practice in Port Klang: terminal operators employ pilots, who are licenced by the port authority. According to the authority, any qualified individual can join the terminal and be trained as a pilot and subsequently licenced by the port authority. Piloting services are not currently outsourced to private companies.

Harm to competition. This provision gives the Port Authorities the power licence pilots operating in the port. While the terminal operator does not have a legal monopoly on the provision of pilotage services, currently pilotage is not outsourced to any private company. When there is a single service provider, there is potential for monopoly pricing and other problems associated with the exercise of market power.[54]

International comparison. Data collected in 2011 by the European Sea Ports Organisation (ESPO) from 116 ports from 26 European countries show that only around 25% of their piloting services are directly provided by port authorities. In the remaining 75% of ports, piloting services are provided through licensing regimes, concessions to public or private operators, and the existence of separate public entities providing such services.

Policymaker's objective. The Port Authorities Act 1963 gives the port authority power over pilotage to ensure pilots have an understanding of local conditions and the appropriate training to provide these services in the specific port concerned.

Recommendation. Authorities should investigate whether there is private interest in providing pilotage services. If so, they should create an appropriate legal framework so that piloting services can be tendered based on fair and non-discriminatory terms to guarantee competition for the market. The OECD understands that this would be within the scope of the Port Authorities Act. All pilots would need to have local knowledge and fulfil quality standards to guarantee safety.

4.2.3. Set prices for pilotage services

Description of obstacle. Under the Port Authorities Act 1963, the port authority, with approval of the minister by notification in the official *Gazette*, may prescribe charges or scales of charges for various services including pilotage services The OECD understands that these charges are prescribed in bylaws and may vary in form (i.e. fixed or maximum charges).

Harm to competition. The regulation of pilotage fees restricts the ability of firms to decide prices freely. If prices are fixed, this restricts competition as service providers have no incentive to compete on price.

Policymaker's objective. Price controls likely exist to prevent the monopoly of pilotage services in Malaysia creating excessive prices. The OECD understands that while there may be a monopoly in practice, the law allows for competition. The OECD understands that the tariffs prescribed by the Port Klang Authority are maximum rates that port operators can impose, so operators are free to charge lower than the prescribed tariff.

International comparison. In the Philippines, maximum prices are established, but the OECD understands that in practice, pilotage fees are negotiated.

Recommendation. In ports where this is not current practice, the OECD recommends that maximum prices be established instead of fixed prices, which would allow negotiations between pilots and ships on discounts.

5 Other logistics services

5.1. Freight forwarding

To act as a forwarding agent in Malaysia, a potential operator must first register with the Companies Commission of Malaysia (SSM). Foreigners can register as freight forwarders (up to 100% foreign equity is allowed, according to Malaysian Investment Development Authority, MIDA), but must be Malaysian if they wish to undertake customs declarations and so act as customs brokers. According to stakeholders, customs declarations are a common task for forwarding agents, as they are necessary to bring goods into the country. The regulations mean that, when working outside a free trade zone, foreign forwarding agents must create partnerships with local customs brokers or forwarders. The following restrictions focus on customs broker licences.

5.1.1. Freeze of issuance of customs brokerage licences

Description of obstacle. According to the Federation of Malaysian Freight Forwarders (FMFF), the issuance of customs brokerage licences is currently frozen. The only way to obtain such a licence is first to obtain the status of an International Integrated Logistics Services (IILS) provider (see Section 5.2). The Royal Malaysian Customs Department (RMCD) confirmed the freeze and, according to RMCD, it has been in place since 2007. Subject to RMCD's terms and conditions, companies who hold IILS status may apply for new customs broker licences.

Harm to competition. The current freeze blocks entry into the market and may artificially raise the price of customs brokerage services.

Policymaker's objective. According to stakeholders, the freeze was implemented because of a large number of inactive permits.

Recommendation. Lift freeze and allow applications from those without IILS status.

5.2. International integrated logistics services (IILS) status

In Malaysia, logistics players can seek to obtain an international integrated logistics services (IILS) status from MIDA, which defines an IILS as: "a company that provides integrated and seamless logistics services (door-to-door) along the logistics supply chain as a single entity on a regional or global scale."[55] To qualify as an IILS, the applicant must undertake the following three principal activities: "warehousing, transportation and freight forwarding, including customs clearance and at least one of the following activities 'distribution, other related and value added-logistics services/activities or supply chain management."[56] New entrants or existing logistic service providers may apply.[57] Currently, those wishing to apply for a customs broker licence must hold IILS status.

5.2.1. IILS status requirement

Description of obstacle. In order to obtain a customs brokerage licence from the RMCD, applicants must have obtained the IILS status from MIDA.[58] Certain qualifying criteria are restrictive.

Harm to competition. The requirement to obtain IILS status from MIDA before applying to RMCD for a customs broker licence is a barrier to entry. Such requirements increase entry costs for potential entrants, restrict entry into the market, limit the number of suppliers, and may lead to higher prices for consumers.

Policymaker's objective. The OECD has been unable to identify any policy objective for this requirement.

Recommendation. Remove the requirement first to obtain IILS status.

5.2.2. Minimum infrastructure, network and ICT requirements

Description of obstacle. To qualify for IILS, an applicant must "manage at least 20 units of commercial vehicles; and 5,000 sq. metres of warehouse space".[59] The OECD understands that applicants are able to lease, rather than buy, the vehicles and warehouse space. In addition, the applicant must have "good networks with logistic service providers abroad in order to provide seamless integrated logistics services for the regional market" and show "substantial usage of the ICT infrastructure throughout the logistics chain and value-added activities".[60]

Harm to competition. Requiring a minimum number of commercial vehicles and warehouse space likely imposes requirements that are stricter than necessary, particularly when this status must be obtained by applicants for a freight-forwarding agent licence. It is likely that these requirements reduce the number of potential operators seeking IILS status and therefore the number seeking to be licensed as freight-forwarding agents, reducing consumer choice and creating an artificial scarcity in the sector that may raises prices.

The network requirement may discriminate against new entrants and favour incumbents or larger companies that already have such networks in place. This may be especially so for new entrants from Malaysia who may not have extensive connections in the region.

The ICT requirements impose costs that may not be necessary to perform the economic activity, for instance, for small-scale operations. Moreover, the provision does not specify what is meant by "substantial" usage and therefore leaves significant discretion to the authorities.

Policymaker's objective. According to the authorities, the policy objective of these minimum requirements is to ensure that companies carry out logistic activities and to enable them to enjoy certain customs facilities such as custom clearance. It is likely that the policy objective of setting minimum requirements is to bring large businesses, active in several logistic areas, into the market. The network requirements may aim to encourage the establishment of internationally connected logistics companies in Malaysia. The objective of ICT requirements is likely to encourage modernisation and improvement of logistic services through the use of technology.

Recommendations. The OECD recommends removing minimum requirements, the network requirement, and the ICT requirement.

5.2.3. Employment restrictions

Description of obstacle. To qualify as an IILS, the applicant must "employ majority Malaysians and preference must be given to local professionals".[61] It is not clear what is meant by local professionals.

Harm to competition. This requirement likely puts internationally based participants at a disadvantage. It may lead to the most qualified or suitable candidate not being appointed as companies must discriminate between candidates based on nationality. This would likely restrict foreign investment as investors often want to be represented in a company.

Policymaker's objective. The policy objective is likely to encourage the employment of Malaysians in the logistics sector and provide employment to local residents in the relevant area. Government authorities explained that this condition is imposed on all approved projects in Malaysia to ensure the project creates spill over benefits, i.e. the creation of job opportunities for Malaysians.

Recommendation. The OECD recommends that the authorities consider revising local employment restrictions.

5.2.4. Place of business requirements

Description of obstacle. To qualify as an IILS, the applicant must "use Malaysia as a hub for logistic supply chain services in the region".[62] Providers with their hub outside Malaysia would not be able to qualify for this status.

Harm to competition. This may discriminate against foreign investors and make business more expensive as they are unable to use foreign hubs.

Policymaker's objective. The policy objective is likely to build up Malaysia as a logistics hub and allow national players to build expertise and capacity. The OECD understands however that the provider can have locations outside Malaysia but that the status can only be awarded for projects located in Malaysia.

Recommendation. The OECD recommends removing the place of business requirement. The OECD understands that if this requirement were removed, the requirement to be registered with SSM under the Companies Act 2016 [Act 777] should also be revised.

5.3. Warehouses

In Malaysia, there is no harmonised federal legal framework governing the warehousing sector.[63] As warehousing is not mentioned in the Federal Constitution, the OECD understands that control cannot be exercised over the sector at a national level.

The MPC has said that, except "for bonded or licensed warehouses, there is no specific regulation for warehousing".[64] This means, according to MIDA, that a company wishing to provide ordinary warehousing services must apply for a licence from the relevant local authority. This creates a fragmented regime with regulation imposed at a state or local level: the 13 states in Malaysia may have varying regulations or laws relating to warehousing. Further, within a state, there may be several local authorities that also have different regulations.

The OECD notes the difficulties actual and potential market participants have with inconsistent warehousing laws and in accessing warehousing legislation, and how this creates legal uncertainty and increases costs. The introduction of a federal warehousing law would require a change to the constitution but the authorities should consider drafting a model federal law that states and local authorities could adopt to encourage harmonisation on warehousing law and policy.[65] Any requirements should be limited to what is necessary in order to maximise warehouse operations.

5.3.1. Leasing procedure for warehouses in Port Klang Free Trade Zone

Description of obstacle. The leasing of an existing or "ready" warehouse in the Port Klang Free Trade Zone (PKFTZ) is subject to approval of the zone's CEO; market participants and the PKFTZ both state that

this process is straightforward. A warehouse is let on a maximum three-year lease, with the usual contract period being between one and three years. The cost of leasing a warehouse in the PKFTZ has not changed in 14 years, according to the PKFTZ.

Harm to competition. The short lease period may be a barrier to entry for firms wishing to carry out warehousing activities, such as storage, in the PKFTZ. The short duration creates uncertainty and may potentially undermine the business case of an investor wishing to enter the market.

Policymaker's objective. The OECD has not identified a policy objective for this short duration.

Recommendation. The OECD recommends that the duration of the lease should not be limited by statute and maximum lease durations should be made longer.

5.3.2. Bonded warehouses

Grant of licence

Description of obstacle. A "public bonded warehouse" or a "private bonded warehouse" licence is required to provide warehousing services for goods liable to customs duties.[66] The licence is granted at the "absolute discretion" of the director general of the RMCD.[67] The OECD understands that the following approvals must be obtained before applying to the RMCD:

1. Approval from the Department of Environment (DOE) when operators store hazardous goods.
2. Approval from the Fire and Rescue Department and other technical agencies.
3. Certificate of completion and compliance (CCC) from the local authority.[68]

Apart from licensed bonded warehouses, dutiable goods can be stored in "customs warehouses", which are warehouses or other places established by the minister under Section 63(1) of the Customs Law for the deposit of dutiable goods. When stored in either a "customs or licensed" warehouse, the goods are deemed under RMCD control.[69] A report by MPC states that bonded warehouses regulated under section 65 of the Customs Act are "located in a designated area and approved by the Royal Malaysian Customs".[70]

Harm to competition. A licence being subject to the "absolute discretion" of the Director General creates uncertainty and potentially discriminates between competitors. Potential new entrants do not have information on the licence requirements they need to satisfy, they are only aware of the three approvals sets out above which are needed prior to application to the RMCD.

Policymaker's objective. No policy objective is stated in the legislation. The requirement for a licence itself and the absolute discretion allowed in granting one is likely linked to the sensitive nature of customs and the responsibilities and obligations associated with the storage of dutiable goods.

International Comparison. In the UK, to operate a customs warehouse, potential warehouse keepers must apply to Her Majesty's Revenue and Customs (HMRC) and fulfil the following requirements: be a business registered in the EU; use the warehouse to mainly store goods; prove there is a real economic need and have enough clients or business to run the warehouse; be able to meet the conditions of authorisation; and provide a financial guarantee.[71] The operation of customs warehouses is generally tightly regulated, although many countries tend to publicise criteria and discretion is not absolute as it is in Malaysia.

Recommendation. Establish guidelines for the licensing process and criteria for licensed warehouses under the Customs Act 1967.

Minimum space requirements

Description of obstacle. Public bonded warehouses (licensed under section 65 of the Customs Act 1967) are, according to MIDA, subject to minimum space requirements. Public bonded warehouses are defined by MIDA as: "a central storage for the distribution of bonded goods (i.e. goods on which Customs duties and taxes have not been paid) in the country for international trade, catering for the general public."[72] For critical goods, the minimum space requirement is 4 645 square metres, and for non-critical goods, it is 1 860 square metres.[73] In order to operate a public bonded warehouse, operators must therefore comply with these measurements when building a warehouse. An internal customs standing order (Order 53) regulates these minimum space requirements for public bonded warehouses.

Harm to competition. Such space requirements may be higher than the actual space required and so pose an unnecessary burden.

Policymaker's objective. The OECD has not identified a policy objective for the minimum space requirement.

Recommendation. Remove minimum space requirements for public bonded warehouses.

Minimum value requirements

Description of obstacle. A private bonded warehouse (licensed under section 65 of the Customs Act 1967) must hold goods with a minimum value, according to MIDA. Private bonded warehouses are defined as: "a central storage for the distribution of bonded goods (i.e. goods on which Customs duties and taxes have not been paid) of the companies and its related companies."[74] For critical goods (which are not defined in the guidelines), the minimum value is MYR 5 million and for non-critical goods, MYR 2 million. According to the customs authorities, this is regulated in an internal standing order (Order 53).

Harm to competition. This requirement increases the costs of entering the market for potential operators, reduces the number of companies in the market, while increasing costs for established companies. This may result in less competitive pressure for these established companies already in the market, as well as to an increase in prices.

Policymaker's objective. The OECD has not identified a policy objective for the minimum value of goods, which must be stored in a warehouse.

Recommendation. The OECD recommends removing the minimum value requirements.

Minimum capital requirements

Description of obstacle. Public and private bonded warehouses have minimum paid-up capital requirements. For public bonded warehouses, they are:

1. Critical goods, MYR 1 million.
2. Non-critical goods, MYR 250 000.

For private bonded warehouses, they are:

1. Critical goods, MYR 5 million.
2. Non-critical goods, MYR 2 million.

Harm to competition. This provision may increase the entry costs of new companies and may discourage investment and market entry. This may reduce the number of operators in the market, particularly small and medium enterprises (SMEs) and have a discriminatory effect in favour of larger operators. Such requirements may also have a direct impact on consumer choice and product quality.

Policymaker's objective. This provision aims to ensure that a company has enough capital to act as a warehouse operator. It also aims to protect consumers and creditors from risky and potentially insolvent businesses.

Recommendation. The OECD recommends the removal specific capital requirements for public bonded warehouses and private bonded warehouses, as there appear insufficient reasons that this sector is singled out. Companies should only be required to comply with the general requirements under the Companies Act 2016. Alternatively, an insurance requirement or bank guarantee requirement could be introduced.

5.4. Small package delivery services

The Malaysian Communication and Multimedia Commission (MCMC) is responsible for overseeing and regulating postal and courier services in Malaysia. It issues two types of sectoral licences: universal-service licences and non-universal-service licences.[75] Universal service is defined as: "postal services, which may include basic postal services to be determined by the Commission to be provided to consumers throughout Malaysia, at the prescribed rates".[76] Postal services are defined as "the collection, transmission and delivery of any postal article" and courier services as: "postal services provided in an expedited manner with track and trace services".[77] Postal services are provided by Pos Malaysia, the universal service licensee, while courier services have been liberalised and can be performed by non-universal-service licensees. In 2018, the number of courier licences was 119, an increased from 88 in 2015 but a drop from 128 in 2017. Overall courier traffic nevertheless increased in 2018.[78]

Three types of non-universal licences exist:[79]

1. Licence A: the provision of international inbound and outbound courier service and domestic courier service in Malaysia.
2. Licence B: the provision of international inbound courier service and domestic courier service in Malaysia.
3. Licence C: the provision of intra-state domestic courier service in Malaysia.

Section 3 of the Postal Services (Licensing) Regulations provides that applications for these licences are made to the MCMC, which then submits the application to the Minister for approval. Applicants are required to submit the documents set out in Section 4 of Regulations, which include a proposed business plan, financial report, and proof of minimum paid-up capital (see Section 5.4.2). This provides the MCMC with a large amount of discretion.

5.4.1. Price regulation of courier services

Description of obstacle. The Malaysian courier service market is liberalised, meaning that operators may apply for and obtain a non-universal-service licence to provide certain courier services in Malaysia. The Minister and the Commission have discretion to impose minimum prices for both non-universal-service licensees and the universal service licensee. [80]

Under section 37 of the Postal Services Act 2012 (Act 741), the Minister may, on the recommendation of the Commission, prescribe postage rates to be charged by universal service or non-universal service licensees (minimum, maximum or actual rates to be charged). As part of the "standard conditions of licence" the Postal Services (Licensing) Regulations state that the holder of a universal service licence (currently, Pos Malaysia) has the obligation to comply with the minimum price for courier services set by the Commission,[81] as does the holder of a non-universal-service licence.[82]

Minimum prices for letters weighing 500 grammes and below were set in 2014 and in 2020 fixed rates for items up to 2 kilogrammes were published on the MCMC website. This price regulation only applies to the

universal service provider.[83] The OECD has found no evidence that the Commission regulates prices of courier services provided by non-universal service providers.

Harm to competition. The discretion to impose minimum prices may prevent service providers from decreasing the cost of their services and prevent lower-cost suppliers who could provide better value to consumers from winning market share. If minimum or fixed prices are only applied to the universal service licensee in practice, this may prevent it from winning market share as the courier market is liberalised. Further, the existence of the discretionary power to impose minimum rates or regulate prices generally may create legal uncertainty, and so discourage potential entrants.

Policymaker's objective. It is likely that the discretion to impose minimum prices is a means of protecting the universal service licensee from "unfair" competition. This would be the case if courier prices were regulated for both universal and non-universal licensees. Imposing price regulation on the universal service provider may have the objective to protect consumers from monopoly pricing (maximum prices) or to support the universal service obligation (minimum prices).

International comparison. In other ASEAN countries, including the Philippines, Thailand and Brunei Darussalam, there is no price regulation of courier services. In the EU, Article 12 of the Postal Directive provides guidelines for regulating prices of universal postal services only. Such prices should be regulated only "for each of the services forming part of the provision of the universal service".[84]

Recommendation. The OECD recommends removing discretion to regulate the prices of courier services undertaken by non-universal-service licensees. Legal provisions should be amended to limit price regulation solely to universal services.

5.4.2. Capital requirements

Description of obstacle. Applicants for a universal or non-universal licence must provide information set out in Section 4 of the Postal Services (Licensing) Regulations 2015, including "proof of the minimum paid up capital requirement as specified in the Second Schedule" unless this is waived by the Commission.

The capital requirements are:[85]

1. Universal licence: MYR 100 million.
2. Non-universal licence
    a. Licence A: MYR 1 million.
    b. Licence B: MYR 500 000.
    c. Licence C: MYR 100 000.

Harm to competition. These capital requirements may increase the entry costs of new companies and may discourage investment and market entry, reducing the number of operators in the market and leading to higher consumer prices, less choice and lower service quality for consumers. It may notably restrict entry of small and medium enterprises (SMEs). This may be of particular importance for Malaysia where, "SMEs represent the vast majority of firms in the Malaysian economy, outnumbering large enterprises, both in terms of number and employment.[86] Further, MCMC's ability to waive capital requirements may be discriminatory and result in a cost advantage to some firms over others.

Policymaker's objective. The objective may be to ensure that a company has sufficient resources to offer reliable and efficient courier services. It may also aim at protecting consumers and creditors from risky and potentially insolvent businesses.

Recommendation. The OECD recommends that the required minimum capital requirements for universal services be reviewed and specific capital requirements for non-universal services be removed, as there do not appear sufficient reasons to single out this sector. Companies should only be required to comply with the general requirements under the Companies Act 2016. Alternatively, an insurance requirement or bank guarantee could be introduced.

6 International agreements and horizontal issues

6.1. International agreements

6.1.1. ASEAN Framework Agreement on Multimodal Transport

Description of obstacle. Malaysia has not enacted the ASEAN Framework Agreement on Multimodal Transport (AFAMT), first agreed among ASEAN countries in 2005.[87] The framework regulates liability, documents and operations of multimodal transport operators across ASEAN countries and so facilitates their activities. AFAMT only concerns multimodal transport, which is defined as carriage of goods by at least two different modes of transport combined in a single multimodal transport contract. Outside the covered scope, it does not replace existing national regulations on liability and authorisations for maritime and road transport. The BLPD office has explained that "Malaysia is in the process of reassessing the draft Multimodal Transport Bill as the outcomes of the Gap Analysis […] to align with current policies. Malaysia has targeted to ratify the AFAMT in 2020/2021. Nevertheless, Malaysia has finalized and endorsed the Implementation Framework of the ASEAN Framework Agreement on Multimodal Transport."

Harm to competition. Failure to implement AFAMT increases costs for operators and limits their ability to provide services across ASEAN member states, restricting the flow of goods and services between states. Implementation of AFAMT would potentially increase the geographical area of competition for provision of goods and services and the number of suppliers. According to market participants, failure to implement the AFAMT makes it necessary to issue different documents for each leg of transport by different means (such as a bill of lading for the maritime leg); this makes it more burdensome to transfer cargo from one mode of transport to the other. Furthermore, the liability regime is unclear and the lack of implementation limits operators' ability to provide their services in other ASEAN countries.

International comparison. Seven ASEAN countries have ratified the AFAMT, which has entered into force among them. However, Brunei Darussalam, Malaysia and Singapore have not yet ratified the agreement.

Policymaker's objective. The objective of AFAMT is to facilitate "the expansion of international trade among the members of ASEAN" and "to stimulate the development of smooth, economic and efficient multimodal transport services adequate to the requirements of international trade".[88] The OECD understands that ASEAN members adopted a Declaration on The Adoption of The Implementation Framework of The ASEAN Framework Agreement on Multimodal Transport on 14 November 2019. Through this Declaration, AMS undertook to adopt the Implementation Framework of AFAMT, including its Regional Action Plan, which specifies the key activities, implementation mechanism and timeline for the realisation of AFAMT. Stakeholders have observed that one of the elements in the Regional Action Plan is that Malaysia has agreed to undertake domestic formalities to ratify AFAMT and to deposit its Instrument of Ratification to the Secretary General of ASEAN by 2021.

Recommendation. The OECD recommends that Malaysia ratifies the AFAMT, introduces specific provisions or a new law to implement it into the national legal system.

6.1.2. Cross border transport by commercial vehicles

Licence requirement for Bruneian operators

Description of obstacle. According to a report by the Asian Development Bank (ADB), "Bruneian transport operators serving the Brunei Darussalam-Sabah, Brunei Darussalam-Sarawak and Brunei Darussalam-Labuan routes are required to approach three CVLB offices in three different locations for permit renewal and for new permit applications, i.e. the CVLB in Sabah, CVLB in Sarawak and CVLB in Labuan, respectively".[89] Further, according to stakeholders interviewed in Brunei, approval is not granted immediately and drivers need to physically go to the offices of the other country at least twice. They claim that the whole process may take weeks or months.[90]

Harm to competition. The requirement to go to three separate branches of the same regulator for each application increases the cost of doing business and restricts the cross-border flow of goods and services. The practice does not encourage Bruneian transport operators to carry out cross-border transport, likely reducing the number of potential suppliers in Malaysia.

Policymaker's objective. The OECD has not identified an official policy objective for this practice, but it is likely that it is to ensure tight control over foreign transport operators entering Malaysia.

International comparison. This barrier relates to the administrative burden on Bruneian operators, seeking to apply for a licence in Malaysia. In order to simplify administrative processes, most OECD countries allow online application processes for transport and logistics-related licences and authorisations. In the UK, for instance, there is a user-friendly online procedure for transport operator licences (with possibility to pay fees online with a credit card), although it is also possible to file an application by post. Decisions are usually issued within shorter time in case of online application (seven weeks) compared to applications by post (nine weeks) (GOV.UK, 2020[50]).

Recommendations. The OECD recommends consolidating the permit application and renewal processes for Bruneian transport operators; introducing an online application process; and increasing co-operation with Brunei.

Unloading and loading cargo from Indonesia

Description of obstacle. According to the Asia Development Bank (ADB) and confirmed by stakeholders, Indonesian trucks must load and unload cargo at Tebedu Inland Port (located on the border between Malaysia and Indonesia on Borneo Island) and are not permitted to go beyond the port.[91] If trucks were to move beyond the port, they would be carrying out transport within Malaysia.

Harm to competition. Both requiring trucks to unload and load cargo at the port and banning Indonesian trucks moving beyond the port restricts the cross-border flow of goods and services and raises costs for Indonesian and Malaysian suppliers and ultimately the costs of goods for consumers. The requirement by the Sarawak Commercial Vehicle Licensing Board (CVLB) limits the flow of goods and services, reducing the number of suppliers and potentially allowing some suppliers to exercise market power and increase prices.

Policymaker's objective. According to the report by the ADB, this regulation by Sarawak of "truck movements from West Kalimantan" is to "promote cargo consolidation and distribution at Tebedu Inland Port as well as to curb smuggling activities".[92] It prevents Indonesian trucks operating in Malaysia. The OECD understands that there is no bilateral MOU between Malaysia and Indonesia. Both countries are however party to a plurilateral agreement between Brunei, Indonesia, Malaysia and the Philippines, "Memorandum of Understanding between the Governments of Brunei Darussalam, Indonesia, Malaysia and the Philippines on Transit and Inter-State Transport of Goods" (BIMP-EAGA) signed in June 2009.

Recommendation. The OECD recommends Malaysia reviews the requirement for trucks to unload and load cargo at the port and the ban on cross-border movement, while ensuring safety considerations are upheld, with Indonesia.

6.2. Horizontal and others

6.2.1. Access to legislation and digitalisation

In Malayisa, all legislation made under Federal laws from 26 April 2011, is published in a single legal database, the e-Federal Gazette Official Portal. Primary legislation made prior to 26 April 2011 can be obtained from the Attorney General's Chambers' portal and Percetakan Nasional Malaysia Berhad's (PNMB) portal, as well as from the websites of the relevant ministries, departments and agencies of the Federal Government. Subsidiary legislation made prior to 26 April 2011 can be obtained from PNMB's portal.

Logistics legislation should be accessible and organised in a user-friendly way and all rules and regulations being enforced by logistics agencies should be publicly available. Government authorities should ensure that there is an up-to-date version of the legislation and guidelines they administer on their website and on the official government gazette website. This means that any amendments to a piece of legislation should be included in a new consolidated version (or alternatively a link should be provided to the new amendments) and obsolete legislation should be marked as such. Amending public legal databases like the government gazette might be costly and time consuming, but it should be a long-term goal for all ASEAN countries. Difficulties in accessing logistics legislation create legal uncertainty and increases costs for actual and potential market participants. Market participants need to have full transparency of the rules and regulations, which apply to them.

Box 6.1. Legal databases

International experience

Most OECD countries have an easily accessible public legal database.

Portugal

In 2016, Portugal launched its now successful legal database programme Simplex with the aim of reducing administrative burdens and improving the quality of regulations. It began with the Revoke + project, which reduced legislative stock by identifying and then repealing obsolete legislation. It later launched the Unilex project, for which “all new draft regulations are subject to a legislative consolidation test, and when possible new proposals for consolidation and unification of related legislation are adopted”.

Australia

All federal laws are published on the Federal Register of Legislation website. The latest consolidated version of the legislation is clearly marked, “in force – latest version”. Users are able to “View series”, which shows all the versions of the legislation in question and also can easily find any amending acts. Users can easily identify legislation currently in force, refer to previous versions (to know which law applied at a particular time), and can see which and when amendments were made. There is also a link to related bills.

6.2.2. Digitalising application procedures

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

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

From stakeholder interviews, the OECD understands that most agencies are in the process of introducing electronic application filing. Malaysia should continue with its efforts of digitalisation of all application procedures for logistics-related authorisations and allow online applications.

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 technolody 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]

Asian Development Bank (2021), *Asian Development Outlook 2021: Financing a green and inclusive recovery*, Asian Development Bank, http://dx.doi.org/10.22617/FLS210163-3. [32]

Asian Development Bank (2020), *Asian Development Outlook 2020 Update wellness in worrying times*, http://dx.doi.org/10.22617/FLS200256-3. [31]

Asian Development Bank (2020), *Asian Development Outlook Supplement*, Asian Development Bank, http://dx.doi.org/10.22617/FLS200389-3. [52]

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 upstreamsectors 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. [37]

Cahuc, P. and F. Kamarz (2004), "De la précarité à la mobilité: vers une sécurité sociale professionelle", *Paris: Documentation Française*. [23]

Causa, O., A. de Serres and N. Ruiz (2015), "Structural reforms and income distribution", *OECD Economic Policy Papers*, No. 13, OECD Publishing, Paris, https://dx.doi.org/10.1787/5js3777lbxzn-en. [54]

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]

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 Economics Department Working Papers*, No. 1474, OECD Publishing, Paris, https://dx.doi.org/10.1787/d35026d6-en. [18]

Development Bank, A. (2020), *Outlook What Drives Innovation in Asia? Special Topic: The Impact of the Coronavirus Outbreak-An Update Asian Development Outlook What Drives Innovation in Asia?*, http://dx.doi.org/10.22617/FLS200119-3 (accessed on 22 July 2020). [39]

Égert, B. (2017), "Regulation, institutions and productivity: New macroeconomic evidence from OECD countries", *OECD Economics Department Working Papers*, No. 1393, 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 Papers*, No. 1268, OECD Publishing, Paris, https://dx.doi.org/10.1787/5jrqgvg0dw27-en. [12]

Fournier, J. et al. (2015), "Implicit Regulatory Barriers in the EU Single Market: New Empirical Evidence from Gravity Models", *OECD Economics Department Working Papers*, No. 1181, OECD Publishing, Paris, https://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. [42]

GOV.UK (2020), *Apply for a Vehicle Operator Licence*, https://www.gov.uk/apply-vehicle-operator-licence (accessed on March 2020). [50]

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]

International Transport Forum (2018), *The Impact of Alliances in Container Shipping*. [5]

Mangan, J. and C. Lalwani (2016), "Global Logistics", in *Global Logistics and Supply Chain Management*, Wiley. [1]

MCMC (2018), "Industry Performance Report", https://www.mcmc.gov.my/en/resources/industry/industry-performance-report. [53]

Mistura, F. and C. Roulet (2019), "The determinants of Foreign Direct Investment: Do statutory restrictions matter?", *OECD Working Papers on International Investment*, No. 2019/01, OECD Publishing, Paris, https://dx.doi.org/10.1787/641507ce-en. [46]

Mordor Intelligence (2020), *ASEAN Courier, Express and Parcel (CEP) Market*. [41]

Mordor Intelligence (2020), *ASEAN freight and logistics market (2020-2025)*. [40]

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. (1999), *"Summary Indicators of Product Market Regulation with an Extension to Employment Protection Legislation"*. [51]

Nicoletti, G. and S. Scarpetta (2003), "Regulation, productivity and growth: OECD evidence", *Economic Policy*, Vol. 18/36, pp. 9-72. [13]

OECD (2019), *OECD Economic Surveys: Malaysia 2019*, OECD Publishing, Paris, https://dx.doi.org/10.1787/eaaa4190-en. [29]

OECD (2019), *OECD Investment Policy Reviews: Southeast Asia*, https://www.oecd.org/investment/oecd-investment-policy-review-southeast-asia.htm. [34]

OECD (2018), *OECD Competition Assessment Reviews: Portugal: Volume I - Inland and Maritime Transports and Ports*, OECD Competition Assessment Reviews, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264300026-en. [6]

OECD (2016), *OECD Competition Assessment Reviews: Romania*, OECD Competition Assessment Reviews, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264257450-en. [3]

OECD (2015), *Economic Policy Reforms 2015: Going for Growth*, https://www.oecd.org/economy/growth/going-for-growth-2015.htm. [25]

OECD (2014), *Factsheet on how competition policy affects macro-economic outcomes*, https://www.oecd.org/competition/factsheet-macroeconomics-competition.htm. [10]

OECD (2013), *OECD Investment Policy Reviews: Malaysia 2013*, OECD Publishing, https://doi.org/10.1787/9789264194588-en. [44]

OECD (2011), *Policy Roundtables: Competition in Ports and Port Services*, http://www.oecd.org/regreform/sectors/48837794.pdf (accessed on 23 March 2020). [49]

Park, D. and K. Shin (2012), "The Services Sector in Asia: Is it an Engine of Growth?", *ADB Economics Working Paper Series*, Vol. 322. [33]

Pike, C. (2018), *What's gender got to do with competition policy?*, https://oecdonthelevel.com/2018/03/02/whats-gender-got-to-do-with-competition-policy/. [27]

Pos Malaysia (2019), *Annual Report 2019*, https://www.pos.com.my/annual-reports. [45]

Rushton, A., P. Croucher and P. Baker (2017), *The Handbook of Logistic and Distribution Management*, Kogan Page. [4]

theedgemarkets.com (2018), *MMC Corp gets 30-year extension for Northport, Southpoint concession*, https://www.theedgemarkets.com/article/northport-gets-30year-extension-northport-southpoint-concession (accessed on 27 2020 March). [48]

UNCTAD (2017), *Rethinking maritime cabotage for improved connectivity*, https://unctad.org/en/PublicationsLibrary/dtltlb2017d1_en.pdf. [47]

United Nations (2020), *Policy Brief: The Impact of COVID-19 on South-East Asia, July 2020*, https://unsdg.un.org/resources/policy-brief-impact-covid-19-south-east-asia. [38]

Westmore, B. (2013), "Policy incentives for private innovation and maximising the returns", *OECD Journal: Economic Studies*, Vol. 1. [22]

World Bank (2020), *Global Economic Prospects, January 2020: Slow Growth, Policy Challenges.*, https://openknowledge.worldbank.org/handle/10986/33044. [30]

World Bank (2018), *Connecting to Compete, the Logistics Performance Index Report*. [43]

World Bank Group (2020), *Doing Business 2020 - Training for Reform*. [36]

World Economic Forum (2019), *Global Competitiveness Report*. [35]

Notes

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

[2] See, www.worldshipping.org/about-the-industry/how-liner-shipping-works.

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

[4] The methodology followed in this project is consistent with the product market regulations (PMR) index developed by the OECD. The methodology followed in this project is consistent with the product market regulations (PMR) index developed by the OECD. To measure a country's regulatory stance and track progress of reforms over time, the OECD developed in 1998 an economy-wide indicator set of PMR (Nicoletti, 1999[51]); this indicator was updated in 2003, 2008 and 2013.

[5] Fournier, et al. (2015[11]) find that national regulations, as measured by the economy-wide PMR index, have a negative impact on exports and reduce trade intensity (defined as trade divided by GDP). Differences in regulations between countries also reduce trade intensity. For example, convergence of PMR among EU member states would increase trade intensity within the European Union by more than 10%. Fournier (2015[12]) studied the impact of heterogeneous PMR in OECD countries and concluded that lowering regulatory divergence by 20% would increase FDI by about 15% on average across OECD countries. He investigated specific components of the PMR index and found that command-and-control regulations and measures protecting incumbents (such as antitrust exemptions, entry barriers for networks and services) are especially harmful in reducing cross-border investments.

[6] (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.

[7] Égert investigates the drivers of aggregate MFP in a sample of 30 OECD countries over a 30-year period.

[8] 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.

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

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

[11] The sample includes 18 countries over a 10-year period.

[12] Using the OECD's summary index of PMR in seven non-manufacturing industries in the energy, telecoms and transport sectors, (Causa, de Serres and Ruiz, 2015[54]) found stringent PMR had a negative impact on household disposable income. This result held both on average and across the income distribution, and led to greater inequality. The authors noted that lower regulatory barriers to competition would "tend to boost household incomes and reduce income inequality, pointing to potential policy synergies between efficiency and equity objectives".

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

[14] The information and figures in the report are current as of October 2019, while economic forecasts have been updated with more recent figures reflecting the impact of the COVID-19 pandemic.

[15] World Bank, https://data.worldbank.org/indicator/AG.SRF.TOTL.K2?end=2018&locations=MY&start=2018.

[16] World Bank, https://data.worldbank.org/indicator/SP.POP.TOTL?locations=MY.

[17] World Bank, https://databank.worldbank.org/data/download/GDP.pdf.

[18] World Bank, https://www.worldbank.org/en/country/malaysia/overview.

[19] World Bank, https://data.worldbank.org/indicator/NE.EXP.GNFS.KD?locations=MY

[20] World Bank, https://data.worldbank.org/indicator/NE.EXP.GNFS.ZS?locations=MY.

[21] Department of Statistics Malaysia, https://www.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=139&bul_id=L3phaEs0VEtrUUVVNWIybVJmUnUyZz09&menu_id=azJjRWpYL0VBYU90TVhpclByWjdMQT09.

[22] Department of Statistics Malaysia, 12 February 2020, Q4 2019 National Accounts: Gross Domestic Product, p.8.

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

[24] ATISA was signed by ASEAN Economic Ministers in Jakarta on 7 October 2020.

[25] 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 via 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 characterize 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 boarder clearance efficiency. For further information, please refer to Appendix A of the Global Competitiveness Report.

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

[27] Another factor is the time necessary to register property.

[28] Joint Statement by the ASEAN Experts Group on Competition (AEGC) in response to the coronavirus disease (COVID-19) pandemic (9 June 2020) https://www.mycc.gov.my/sites/default/files/pdf/newsroom/AEGC%20Joint%20Statement%20in%20Response%20to%20COVID-19%20-%209%20June%202020%20Malaysia.pdf

[29] Department of Statistics Malaysia: https://www.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=398&bul_id=aENUN2pzcC9xbVE2RllkeEUrZ1g4QT09&menu_id=b0pIV1E3RW40VWRTUkZocEhyZ1pLUT09

[30] See, UNCTAD, *Summary: Merchant fleet by flag of registration and by type of ship, annual*, https://unctadstat.unctad.org/wds/TableViewer/summary.aspx

[31] SOEs in Malaysia can be statutory bodies, which are incorporated companies that have their functions spelled out in specific legislation; companies, which are established under the Companies Act; and *yayasans* or foundations

[32] See Section 11: "Companies under the purview of the Strategic Sectors includes those under these industries/sectors: Transportation, Technology, Infrastructure, Utilities, Communication, Ports, Biotechnology and Information Technology".

[33] See ASEAN FDI Regulatory Restrictions Database (2018), https://qdd.oecd.org/subject.aspx?Subject=ASEAN_INDEX.

[34] This information was provided by the Association of Malaysian Hauliers (AMH) at a meeting with MyCC on 12 November 2020.

[35] The Merchant Shipping Amendment Act (2017) was gazetted and became law in December 2011, but has yet to come into force as of April 2019.

[36] According to the Attorney General's Chambers, selected parts of the MSO have been extended to the states of Sabah and Sarawak by the following legislation:

Merchant Shipping (Amendment and Extension) Act 1977 [*Act A393*] which has been amended by the *Merchant Shipping (Amendment and Extension) (Amendment) Act 1978* [*Act A433*];

Merchant Shipping (Amendment and Extension) Act 1984 [*Act A603*];

Merchant Shipping (Amendment and Extension) Act 2007 [*Act A1316*]; and

Merchant Shipping (Amendment and Extension) Act 2011 [*Act A1393*].

[37] See www.mot.gov.my/en/maritime/shipping/ship-registry.

[38] See Section 65KA of the MSO 1952.

[39] See UNCTAD (2017) Rethinking maritime cabotage for improved connectivity.

[40] This example was provided by the Legal Advisor Office of the Ministry of Transport.

[41] Following consultation with the Attorney General's Chamber, the OECD understands that for guidelines to be binding they need to be issued pursuant to a particular piece of legislation. Otherwise, guidelines are seen as an administrative instrument which cannot be enforced when there is a lack of compliance. See, for example, Ho Kok Cheong Sdn Bhd & anor v Lim Kay Tiong & Ors [1979] 2 MLJ 224, where the Federal Court decided: "The guidelines were issued not pursuant to any power given by law, and in my opinion, they have no force of law but are of advisory character merely. I do not think that non-compliance with the guidelines can be taken as an act opposed to public policy".

[42] Ministry of Transport Malaysia, *Transport Statistics Malaysia 2018*, Table 3.10 Total number of licences issued by Type of Cargo and Registration by Domestic Shipping Licensing Board 2014-2018, https://www.mot.gov.my/en/Statistik%20Tahunan%20Pengangkutan/Transport%20Statistics%20Malaysia%202018.pdf, pp. 50-51.

[43] Ministry of Transport Malaysia, *Transport Statistics Malaysia 2018*, Table 3.10 Total number of licences issued by Type of Cargo and Registration by Domestic Shipping Licensing Board 2014-2018, pp. 50-51.

[44] Section 65D (d) of the MSO 1952.

[45] See https://www.mot.gov.my/en/maritime/infrastructure/development-administration-of-ports.

[46] See 2.1.3 Infrastructure (Ports).

[47] The relevant legislation includes the Port Authorities Act 1963 [Act 488], Bintulu Port Authority Act 1981 [Act 243] and the Penang Port Commission Act 1955 [Act 140].

[48] Government sources explained to the OECD that the different ports have very different functions. For example, the Penang Port mainly deals with cruise traffic, Port Johor mainly deals with transhipments, and Port Klang is import-export orientated.

[49] The Port Authorities Act 1963 (Part V By Laws, section 29) allows the ports to prescribe the procedure relating to requests for tenders.

[50] The Port Authorities Act 1963 gives the port authorities established under this Act, the mandate to determine port charges, while MSO 1952 regulates port charges for public and smaller ports.

[51] Port Authorities Act 1963, Part III, Charges and Recovery of Charges, Section 16 (1).

[52] See, for example, section 20 (a) – (c) of Ports (Privatization) Act 1990 [Act 422].

[53] Port Authorities Act 1963, Part VA, Section 29CA (1) (2); 29C (2); and Section 29E.

[54] Market power of suppliers is the ability to profitably increase price, decrease quality, or decrease innovation relative to the levels that would prevail in a competitive market.

[55] MIDA Guidelines for Applying for International Integrated Logistics Services (IILS) Status, Section 1.

[56] MIDA Guidelines for Applying for International Integrated Logistics Services (IILS) Status, Section 3.

[57] MIDA Guidelines for Applying for International Integrated Logistics Services (IILS) Status, Section 2.

[58] The OECD understands that this requirement is not mentioned in any legislation, only in the Guidelines for applying for IILS Status. It is a policy initiative of MIDA. Under section 6(a) of the Malaysian Investment Development Authority (Incorporation) Act 1965 [Act 397], the authority may "lead, co-ordinate, monitor and evaluate the implementation of the policies, strategies, activities and development of investment in the manufacturing and services sectors (excluding financial and utilities)".

[59] MIDA Guidelines for Applying for International Integrated Logistics Services (IILS) Status, Section 3.

[60] MIDA Guidelines for Applying for International Integrated Logistics Services (IILS) Status, Section 3.

[61] MIDA Guidelines for Applying for International Integrated Logistics Services (IILS) Status, Section 3.

[62] MIDA Guidelines for Applying for International Integrated Logistics Services (IILS) Status, Section 3.

[63] The only federal legislation that could be applicable is the Street, Drainage and Building Act 1974, which may cover the construction and use of warehouses.

[64] Malaysia Productivity Corporation (2016), *Reducing Unnecessary Regulatory Burdens on Business (RURB): Logistics*, p. 86.

[65] MPC told OECD of a typical example of inconsistency in the administration of parking and building space requirements: under the Town and Country Planning Act 1976, in Kuala Lumpur, one car and motorcycle parking slot is required for every 185 square metres of floor space. This means that for a warehouse with an area of 9 250 square metres, 50 parking spaces must be built. In Selangor, though, one space is required per 93 square metres. See, Table 3 in Abdul Majid, M.Y., S.S. Goh and L.L. Lok (2018), 'Warehousing Services in Malaysia', in Gross, Jeremy and P.S. Intal, Jr. (eds.), *Reducing Unnecessary Regulatory Burdens in ASEAN: Country Studies*, Jakarta: ERIA, pp.176-219, www.eria.org/uploads/media/RURB_2018_Chapter_7_Warehousing_Malaysia.pdf.

[66] MIDA, *Malaysia: Investment in the Services Sector, Booklet 4: Logistics Services*, p. 3.

[67] Part VIII: Warehousing, Section 65 (1) of Customs Act 1967, www.mytradelink.gov.my/documents/10179/0/Customs-act.

[68] MIDA, *Malaysia: Investment in the Services Sector, Booklet 4: Logistics Services*, p. 4.

[69] Part I: Preliminary, Section 2 (2) of Customs Act 1967.

[70] Malaysia Productivity Corporation (2016), *Reducing Unnecessary Regulatory Burdens on Business (RURB): Logistics*, p. 115.

[71] See, www.gov.uk/guidance/customs-warehousing. The UK's departure from the European Union does not, as of 31 May 2020, appear to have altered these requirements.

[72] See, MIDA, *Malaysia: Investment in the Services Sector, Booklet 4: Logistics Services*, p. 3.

[73] In the guidelines, the dimensions are measured in feet, i.e. 50 000 feet and 20 000 feet.

[74] See, MIDA, Malaysia: Investment in the Services Sector, Booklet 4: Logistics Services, p. 3.

[75] Section 10 of Postal Services Act 2012 (PSA 2012), www.mcmc.gov.my/en/legal/acts/postal-services-act-2012-act-741.

[76] Section 2 of Postal Services Act 2012 (PSA 2012).

[77] Section 2 of Postal Services (Licensing) Regulations 2015, www.mcmc.gov.my/skmmgovmy/media/General/pdf/post_services_licensing.pdf (in Malay).

[78] MMC (2018), Postal and Courier Service: Pocket Book of Statistics, www.skmm.gov.my/skmmgovmy/media/General/pdf/Postal-Courier-Pocket-Book-of-Statistics-2018.pdf, p. 33.

[79] The application process for both the universal service licence and the non-universal service licence are outlined in the Postal Services (Licensing) Regulations 2015, Sections 3-4.

[80] Postal Services Act 2012, section 37 and Postal Services (Licensing) Regulations 2015, sections 8-9.

[81] Section 9 (1)(q) of the Postal Services (Licensing) Regulations 2015.

[82] Section 9 (2)(q) of the Postal Services (Licensing) Regulations 2015.

[83] See https://www.mcmc.gov.my/en/sectors/postal-courier/tariff

[84] Chapter 5, Article 12, Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31997L0067.

[85] See, Section 4(e), Second Schedule of Postal Services (Licensing) Regulations 2015.

[86] OECD (2019), "Malaysia", in *Financing SMEs and Entrepreneurs 2019: An OECD Scoreboard*, OECD Publishing, Paris, https://doi.org/10.1787/7d644d57-en, p. 2. The same report states that in 2016, SMEs made up 98.5% of the Malaysian economy (p. 155).

[87] See https://asean.org/storage/2019/11/Implementation-Framework-AFAMT_FINAL.pdf.

[88] See https://afamt.asean.org/afamt/.

[89] Asian Development Bank (2015), *Review of the BIMP-EAGA Land Transport MoUs, Asian Development Bank*, Manila, www.adb.org/sites/default/files/page/34232/review-bimp-eaga-land-transport-mou.pdf, p. 18.

[90] See Asian Development Bank (2015), *Review of the BIMP-EAGA Land Transport MoUs, Asian Development Bank*, p. 18.

[91] Asian Development Bank (2015), *Review of the BIMP-EAGA Land Transport MoUs, Asian Development Bank*.

[92] Asian Development Bank (2015), *Review of the BIMP-EAGA Land Transport MoUs, Asian Development Bank*, p. 18.

Annex A. Methodology

Stage 1: Mapping the sectors

The objective of Stage 1 of the project, which started in the first quarter of 2019, was to identify and collect sector-relevant laws and regulations. The main tools used to identify the applicable legislation were online databases, the websites of the relevant Malaysian authorities and sector specific reports by private or government bodies. Over the course of the project, the lists of legislation were refined, as additional pieces were discovered by the team or issued by the authorities, while other pieces initially identified were found not to be relevant to the sectors or no longer in force. In total, 31 different pieces of legislation were identified.

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

Based on those meetings and the discussion on practical problems stakeholders face, and backed up by further research, the OECD team identified the legislation to be prioritised for areas in which prima facie barriers to competition existed and an impact on competition could therefore be expected.

Stage 2: Screening of the legislation and selection of provisions for further analysis

The second stage of the project mainly entailed the screening of the legislation to identify potentially restrictive provisions, as well as providing an economic overview of the relevant sectors.

The legislation collected in Stage 1 was analysed using the framework provided by the OECD *Competition Assessment Toolkit*. This toolkit, developed by the Competition Division at the OECD, provides a general methodology for identifying unnecessary obstacles in laws and regulations and developing alternative, less restrictive policies that still achieve government objectives. One of the main elements of the toolkit is a competition-assessment checklist that asks a series of simple questions to screen laws and regulations with the potential to restrain competition unnecessarily.

Following the toolkit's methodology, the OECD team compiled a list of all the provisions that answered any of the questions in the checklist positively. The final list consisted of 76 barriers across the logistics sector.

The OECD also prepared an economic overview of the logistics sector (and refined it during later stages), covering industry trends and main indicators, such as output, employment and prices, including comparisons with other ASEAN and OECD member countries where relevant. It also analysed summary statistics on the main indicators of the state of competition typically used by competition authorities, especially information on the market shares of the largest players in each sector. Where possible, these statistics were broken down by sub-sector. The analysis conducted during this stage aimed to furnish background information to better understand the mechanisms of the sector, providing an overall assessment of competition, as well as explaining the important players and authorities.

Box A.1. OECD Competition Assessment checklist

Further competition assessment should be conducted if a piece of legislation answers "yes" to any of the following questions:

A) Limits the number or range of suppliers

This is likely to be the case if the piece of legislation:

5. grants a supplier exclusive rights to provide goods or services
6. establishes a licence, permit or authorisation process as a requirement of operation
7. limits the ability of some types of suppliers to provide a good or service
8. significantly raises the cost of entry or exit by a supplier
9. 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:

10. limits sellers' ability to set the prices of goods or services
11. limits the freedom of suppliers to advertise or market their goods or services
12. sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that certain well-informed customers would choose
13. 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:

14. creates a self-regulatory or co-regulatory regime
15. requires or encourages information on supplier outputs, prices, sales or costs to be published
16. 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:

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

Source: OECD, 2017.

Stage 3: In-depth assessment of the harm to competition

The provisions carried forward to Stage 3 were investigated in order to assess whether they could result in harm to competition. In parallel, the team researched the policy objectives of the selected provisions, so as to better understand the regulation. An additional purpose in identifying the objectives was to prepare alternatives to existing regulations, taking account of the objective of the specific provisions when required, in Stage 4. The objective of policymakers was identified in the recitals of the legislation, when applicable, or through discussions with the relevant public authorities.

The in-depth analysis of harm to competition was carried out qualitatively and involved a variety of tools, including economic analysis and research into the regulations applied in other OECD countries. All provisions were analysed, relying on guidance provided by the OECD's *Competition Assessment Toolkit*. Interviews with government experts complemented the analysis by providing crucial information on lawmakers' objectives and the real-life implementation process and effects of the provisions.

Stage 4: Formulation of recommendations

Building on the results of Stage 3, the OECD team developed preliminary recommendations for those provisions that were found to restrict competition. It tried to find alternatives that were less restrictive for suppliers, while still aiming to fulfil the policymakers' initial objective. For this process, the team relied on international experience– from the ASEAN region, and European and OECD countries – whenever available. The report was also shared with the OECD International Transport Forum (which also contributed with international experience in the transport sector).

In total, the report makes 63 recommendations.

Annex B. Legislation screening by sector

Road

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
1	The internal circular is in the national language. It is Proses Pengeluaran Lesen Pengendali Bil 1/2013 (Process for Issuing Operators Licence)		If a transport operator would like to increase the size of its fleet, by adding an additional vehicle, they must seek approval from APAD and obtain an additional permit for the new vehicle(s). According to stakeholders this is the same process as the initial permit process and can take 3-6 months and they must interact with various authorities. According to Malaysia Productivity Corporation (MPC), 'applicants have to deal with government agencies, government intermediaries and private businesses to get the licensing application approved. To complicate matters, there are different departments to deal with within one agency. For example, applicants have to deal with three different departments within JPJ itself. Even though regulators may have agreement, at the organisational level, over objectives, these may not be adequately implemented operationally, such as where departmental "silos" becomes barriers to decision making. Beyond this, even when individual agencies have achieved consistency inadequate interfacing between	We have not identified a policy objective for this provision.	The requirement to seek approval for new vehicles (via a permit application process) is burdensome (in terms of time and resources) and it means that goods vehicle operators are not able to quickly respond to changes in market demand, as they cannot quickly add additional units to their fleet when necessary. Further, the uncertainty surrounding the process and required approval likely deters new vehicle applications and therefore market entry and/or expansion. This issue was identified by the Malaysia Productivity Corporation (MPC) in its report titled 'Reducing Unnecessary Regulatory Burdens on Business (RURB): Logistics Sector': At page 142, MPC explained that "Regulatory requirements hamper business expansion as the approval for new vehicles is burdensome and takes too long. The hauliers claimed that approval may take three to six months and	Recommendation: The process for adding an additional vehicle to a fleet, where the operator has already obtained all the required approvals for that fleet, should be simplified. Further, we recommend: Option 1: Introduce one-stop shop for application. This 'single window' portal should be accessible online. Option 2: Online processes and use of databases should be introduced to improve coordination and communication between various agencies. Introduce guidelines that step through the required approvals and provide clear guidance for applicants.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
			regulatory agencies will impose burdens on the applicants' (See page 143, MPC Report cited under policy objective).		approvals are required different authorities e.g. SPAD, Local Authority. The lengthy approval means that hauliers cannot effectively respond to business opportunities speedily. Delays occurs when the processes are lengthy and involves a number of units within an agency and further exacerbated when more than one agency is involved"	
2	Land Public Transport Act 2010 (LPTA 2010) (Peninsula Malaysia) Commercial Vehicles Licensing Board Act 1987 (CVLB 1987) (Sabah/Sarawak)	s52 LPTA 2010 Section 15 CVLB 1987	Goods vehicles are required to obtain an operating licence from the Land Public Transport Agency - Agensi Pengangkutan Awam Darat (APAD) (Peninsula Malaysia) or the Commercial Vehicle Licensing Board (in Sabah and Sarawak) (Carrier Licence A). This is distinguished from Carrier Licence C - which can only be used by a business to carry an operator's own cargo. Carrier Licence A is used by goods vehicles to carry third party cargo.	An operator's licence for commercial vehicles seems to be standard practice worldwide.	The requirement to obtain a licence to operate a commercial vehicle is a barrier to entry. Such requirements restrict entry into the market, limiting the number of suppliers and increasing entry costs for potential entrants.	No recommendation
3	Licensing Policy Guidelines of SPAD (now APAD) (APAD Licensing Policy Guidelines)	Page 8 & 9 of the Guidelines	APAD imposes equity conditions on companies wishing to provide transportation services. Trucks for hire are required to have 51% Malaysian equity (including 30% Bumiputera – or ethnic Malay origin – equity). Companies may have up to 49% foreign equity. These restrictions were set out in the licensing policy guidelines of SPAD, now APAD. An additional restriction to these foreign equity limitations is that APAD's licensing committee has a discretionary power to approves the amount of foreign equity. Foreign equity restrictions do not	The purpose of this provision is likely to protect national operators against international competition. In terms of the specific Bumiputera requirements, these redistributive policies are widely acknowledged to have contributed to social peace but are increasingly coming under criticism, including within the government itself, for their unintended side effects. Various critics have pointed out (e.g.	The provision may prevent or make it more difficult for foreign companies to enter the market, and so reduce competition. The board's discretionary powers also lead to uncertainty and discourage market entry. The differing equity requirements for new entrants discriminate against incumbents, as new entrants are not required to comply. Incumbents who obtained a licence when the Bumiputera equity restriction was enforced are required to continue	The OECD proposes two options: 1: Remove foreign equity restriction 2: Progressively relax foreign equity limits and move towards allowing up to 100% foreign ownership in the long term. A first step may be to implement the agreed changes towards the AFAS target of 70% ASEAN foreign-ownership in entities providing road transport services and then applying or extending it to include non-ASEAN nationals. In the long term, Malaysia may consider full liberalisation by allowing 100%

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			exist for other freight transport licences, such as those for courier-service providers and commercial vehicles carrying their own cargo, for which up to 100% foreign equity is allowed, even if it remains at the discretion of the licensing board. APAD informed the OECD that the 30% Bumiputera equity requirement no longer applies to new entrants, but still applies to existing licence holders (whose licence was approved when these specific equity requirements were in force). This affects current licence holders' ability to transfer equity as they are required to maintain the 30% Bumiputera threshold.	OECD Investment Policy Review of Malaysia 2016) that positive discrimination towards Bumiputera could be addressed outside of equity requirements. **International comparison** In Australia, freight transport operators can be 100% owned by foreigners. Freight transport is defined as a "sensitive business", however, which permits the government to review foreign-investment proposals against the "national interest" on a case-by-case basis. Foreign persons must receive approval before acquiring a substantial interest (20% and above) in an Australian entity valued above AUD 261 million.	to comply with the equity requirement.	foreign-ownership in entities holding road transport services licences. The OECD makes no recommendation for a policy objective behind Bumiputera. However, it does note that the application of this requirement discriminates between incumbents and new entrants. If the quota no longer applies to new entrants, the provision could be removed from the legislation. Incumbents wishing to change their equity should be allowed to do so and be subject to the same requirements as new entrants. Incumbents and new entrants should be treated alike.
4	Land Public Transport Act 2010 Commercial Vehicles Licensing Board Act 1987	Section 51 LPTA 2010 and s 14 & 15 CVLBA 1987 See also s54 LPTA 2010 & s17 CVLBA 1987	An operator's licence, obtained under the Land Public Transport Act 2010, allows the holder to operate or use one class of goods vehicle.[1] There are two different classes of goods vehicles: one for the carriage of containers, which requires a KA vehicle permit, and the other for the carriage of general cargo, which requires an A vehicle permit. Goods vehicles, such as trucks for hire, can be licenced to carry containers or cargo, but not both. As noted in the Malaysia Productivity	Some stakeholders have mentioned that this licensing distinction is important for safety and security. Other stakeholders have noted the concern that the industry would be overcrowded otherwise and that a single licence would pose security concerns.	The requirement to register a truck as either a container haulier or a general cargo haulier (and in addition, to require a vehicle permit for the chosen activity) is a barrier to entry and to efficient operation in the market. The requirement decreases utilisation of a single vehicle. If operators wish to transport both general cargo and containers, they must acquire separate vehicles with	A single licence should be created for the carriage of both general cargo and containers.

[1] See Section 51(3) of the Land Public Transport Act 2010.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
			Corporation's 2016 report, *Reducing Unnecessary Regulatory Burdens on Business (RURB): Logistics*: "currently a trucking licence is issued for a single-type haulage operation, e.g., prime-movers for containers haulage, prime movers for open trailers, etc. This means a prime mover for containers cannot haul other types of trailers and vice versa. This inflexible licensing prevents the efficient utilisation of prime-movers. […] empty containers are light-weight and can be carried by other 7-ton trucks, but this is currently illegal because of the single-type haulage licensing. This means that truckers have to use expensive, heavy-duty prime-movers to haul empty containers."[2] Stakeholders have reported that trucks do ignore this licensing requirement and carry both general cargo and containers.	International comparison shows that this distinction does not appear necessary. The other ASEAN countries analysed so far (Philippines, Brunei, Thailand and Viet Nam) only have a single licence, which allows carriage of both general cargo and containers.	separate licences.	
5	APAD Licensing Policy Guidelines) Land Public Transport Act 2010	Page 6 of guidelines 52(d)	As set out in SPAD's (now APAD) Licensing Policy Guidelines, the number of trailers that can be registered to each prime mover is limited. This policy is not set out in legislation. In addition, the guidelines state the general policy to be that certain business entities (for example, sole proprietorships and partnerships) can apply for a maximum of two sets of licences: this can be for two sets of vehicles (two prime movers and two trailers) or two licences for "rigid	Stakeholders have suggested that APAD's policy is to reduce road damage due to excess capacity and to reduce the risk of vehicles contributing to accidents, congestion and air pollution. This rationale seems to be more relevant for rules relating to the maximum number of containers that a goods vehicle may transport (i.e. to avoid overloading). Academic	Trailers are registered to a specific prime mover and so a company is limited in the number of trailers it can use for each truck. If a truck is unable to unload a container, then the trailer carrying it may not be utilised for a period of time. This might impact upon efficiency as the trailer would need to be unloaded to be used. More specifically, registering trailers for each prime mover could decrease	The OECD has two recommendations. 1) Clarify and remove the size restrictions on a company's fleet. 2) Remove limitations on the number of trailers registered to each prime mover; this does not have any impact upon the rules for the number of trailers that can be towed simultaneously by a prime mover.

[2] Malaysia Productivity Corporation (2016), *Reducing Unnecessary Regulatory Burdens on Business (RURB): Logistics*, www.mpc.gov.my/wp-content/uploads/2016/04/RURB-Logistics-Draft-Full-Report.pdf, p. 136.

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			vehicles" (the guidelines provide a list of rigid vehicles) or 1 set of vehicles consisting of one prime mover and one trailer and one rigid licence. For these business entities, this policy limits their fleet size and so limits the use of an operator's resources.	literature indicates that there is a lack of clarity on the number of trailers that can be registered for each prime mover. A research paper by the Faculty of Industry Logistics, University Kuala Lumpur and the Faculty of Technology Management, and Business, Universiti Tun Hussein Onn, Malaysia, on Trailer Performance Measurement in the Malaysian Haulage Industry explains that the average truck to trailer ratio is 1:5.[3] Also another research paper by the Faculty of Business and Management, Universiti Teknologi MARA, Perak, Malaysia and Faculty of Computer and Mathematical Sciences, Universiti Teknologi MARA on The Trucking Classification Structure and the Effect of Deregulation, found that APAD (previously SPAD) maintained a one prime mover-one trailer rule but carriers are given an exemption where every prime mover can be assigned to seven trailers.[4]	its utilisation rate. If the maximum number of trailers for each prime mover is set too low, to operate efficiently the company may need more prime movers than it actually needs. No other ASEAN member state appears to have these restrictions. Any provision that limits the size of a company's fleet limits the ability of firms to reach economies of scale and to better spread overheads. Permitting larger fleets may allow firms to reap economies of scale and create lower unit costs for service provision. This could help increase efficiencies and lead to lower prices for consumers.	

[3] See https://ibima.org/wp-content/uploads/2017/08/paper-1.pdf.

[4] See https://www.idosi.org/wasj/wasj27(7)13/19.pdf.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
6	APAD Licensing Policy Guidelines Guidelines issued by MIDA		In order to carry general cargo as a haulier, a trucking company must apply for an 'A Permit' (for each truck that it wishes to use to carry general cargo). This license is renewable every 5 years. According to market participants, there is currently a freeze on Licence A for new entrants.	The OECD has not been able to identify a policy objective for this ban.	The market is closed to new entrants, preventing new companies from providing services. This limits the range of suppliers.	If there is currently a freeze, accept applications for new licenses in order to allow new entrants to enter the market.
7	Land Public Transport Act 2010 Commercial Vehicles Licensing Board Act 1987	Section 54 LTA 2010 Discretion as to the length of the licence (s17(1)(b)), Performance of company, a factor considered for determining licence length (s19(1)(e) iv)	The Land Transport Act 2010 states that APAD has the discretionary power to determine the length of the goods vehicle licence up to a maximum of seven years. In an interview with the OECD, APAD representatives explained that the duration of a licence is typically between one and five years and on average licence period three years. Following the documents required under the legislation, the OECD understands that for companies applying for a renewal, the duration is primarily dependent on their financial performance.	The OECD has not been able to identify the policy objective for allowing APAD discretion over the duration of licences. The OECD has been informed by the Attorney General's Chambers that as long as the authorities exercise discretionary power reasonably (discretion must not be unfettered or arbitrary) there should be no legal issues (following the Federal Court decision of *Itular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & Ors [2014] 4 SHLR 1).*	As the discretion to award licences for different durations might lead to discrimination, the length of the operating licence should be unified. If not, certain operators will gain an advantage as they will not have to go through the renewal process as often and so will not incur the related costs.	The licence duration should not depend on the company's financial viability. Moreover, the authority should publish guidelines that set out how it determines licence duration.

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8	Land Public Transport Act 2010 APAD licensing policy guidelines Commercial Vehicles Licensing Board Act 1987	Sections 59,60 Performance of company, a factor considered for determining licence length (s19(1)(e) iv), Section 21	Under the Land Transport Act 2010, when deciding whether or not to renew licences, and the length of renewed licences, APAD considers the financial performance of an applicant. Every month APAD has a licensing meeting and, the OECD understands, that it is "not uncommon" for licences not to be renewed. As noted above, the renewal process is more stringent than the initial licensing process and requires applicants to provide financial information and prove a minimum revenue of MYR 25 000 a month. The OECD has not been able to identify any legislation or licensing policy guidelines that mention this requirement for minimum revenue, and it appears to be internal APAD policy.	The aim appears to be to exercise control over the market and to ensure the efficiency of market players. Another likely objective is consumer protection.	During the licensing process, APAD makes a judgement on who should enter and remain in the market by evaluating financial viability. APAD's assessment of the viability of an applicant's business and the consequence this may have on the granting or renewal of a licence may restrict the number of suppliers, reduce competition between suppliers, and result in higher prices or less desirable contract terms for customers	The viability of the applicant's business should not form part of APAD's criteria for the renewal of a licence. Remove this requirement from the law and internal regulations. To ensure the financial strength of companies in this sector, APAD could require an insurance policy or letter of guarantee as an alternative. .
10	NA	NA	According to market participants, every time a haulier applies for a licence for a new/additional vehicle for their fleet or when they renew an existing licence, they are required to fill in a large amount of paperwork and re-submit the same paperwork they have already submitted (either for other vehicles in the fleet or for the same vehicle). The required documents which have to be re-submitted include all the forms describing the vehicles in the fleet and the business information. There seems to be no database which contains all the required data. Stakeholders explained that every department asks them for this information, separately.	The requirement is likely due to a lack of databases, which collates all the information.	It is expensive and takes time (decreasing efficiency) for hauliers to submit large volumes of paperwork each time they apply to add a new vehicle to their fleet or when they apply to renew an existing permit.	A database should be created so that information is registered within the system, so that for each application, only new or additional information is required to be submitted. With every new application, for example, hauliers could submit a declaration that no information has changed since their last application. The database should be accessible to all agencies involved.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
12	Road Transport Act 1987	Part IIA (66A, 66B, 66C,66D)	The Road Transport Act 1987 provides for the inspection of commercial vehicles. The legislation does not specify the class of vehicles required to undertake the inspection or the frequency of inspections but this information is set out in Ministry rules.[5] The 1995 rules explain that goods vehicles are required to undergo periodic inspection at a vehicle inspection centre. The frequency of inspection depends of the age of the vehicle, for example newly manufactured vehicles are required to be inspected once every year for the first two years and then once every 6 months while new trailers are to be inspected once a year for the first 10 years. Therefore, as explained by stakeholders, depending on the age of the vehicle, goods vehicles could be required to be inspected twice a year by commercial-vehicle inspection company PUSPAKOM. Evidence of biannual inspections is shown by a truck's roadworthiness sticker, which is issued by PUSPAKOM and needs to be changed every six months and contains the next date of inspection.	According to the authorities, the frequency of inspections is required because of the wear and tear suffered by trucks in Malaysia. They highlighted that unlike in other countries (for example, the EU), Malaysia allows the use of re-treaded tyres and imports a large number of second-hand trucks. Further, in their experience, it is not uncommon for hauliers to try to cheat by renting good tyres and brake pads solely to pass the inspection. **International Comparison** The principal factors determining the condition of goods vehicles are proper operation; kilometres covered; years in service; and regularity of technical inspections. Maintaining vehicles correctly becomes particularly important as they age and for those used on long international routes.[6] Brunei Darussalam requires the licence for	Biannual inspections increase costs for market participants as they take trucks off the road and are also an administrative burden. The requirement potentially reduces the number of participants in the market over time due to increased costs and could be a barrier to entry for new participants. Further, the requirement to have biannual inspections rather than annual inspections might be stricter than is necessary to ensure safety and consumer protection.	In general, replace bi-annual with annual inspections. If necessary, annual inspections could be used for trucks older than 10 years or an inspection system based upon the number of kilometres travelled. If there is a genuine risk of market participants cheating the system, surprise inspections or heavier fines for such behaviour could be introduced as a deterrent.

[5] Pursuant to its power under section 66B of The Road Transport Act 1987 (Act 333), the Minister has made the Motor Vehicles (Periodic Inspection, Equipment and Inspection Standard) Rules 1995 (*P.U.(A) 49/1995*). According to Rule of 3 P.U.(A) 49/1995, the categories of vehicles that are required to undergo periodic inspection at a vehicle inspection centre are as specified in the First Schedule and includes goods vehicles. Rule 4 of P.U.(A) 49/1995 further explains that the frequency of periodic inspection. The OECD understands that these rules were amended in 2018, see, Motor Vehicles (Periodic Inspection, Equipment and Inspection Standard) Rules [Amendment] 2018.

[6] See, for example, European Commission (2014), *Report from the Commission to the European Parliament and the Council on the State of the Union Road Transport Market*, https://ec.europa.eu/transport/sites/transport/files/modes/road/news/com%282014%29-222_en.pdf.

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				commercial vehicles to be renewed every six months, a process that includes an inspection process. In other ASEAN countries, annual inspections are common, such as in the Philippines, where it is linked with vehicle registration, and in Singapore, where commercial vehicles are inspected annually or every 6 months if the vehicle is more than 10 years old. In the EU, Directive 2014/45 of 3 April 2014 requires member states to carry out periodic safety and emission roadworthiness inspections. For vehicles over 3.5 tonnes, vehicles must be inspected no more than one year after initial registration and then annually. ITF experience has shown that supplementing regular inspections with random on-road checks could be a helpful step to ensure roadworthiness, as well as the use of years in service criteria.		

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
13	Road Transport (Prohibition of Use of Road) (Federal Roads) (No.3) Order 2019 under the Road Transport Act 1987	Gazette P.U.(A)221 Road Transport (Prohibition of Use of Road) (Federal Roads) (No.3) Order 2019 under s70 (2) Road Transport Act 1987	In certain areas of Malaysia, i.e. in Kuala Lumpur, trucks are only allowed to operate at certain times of the day (the truck ban). According to stakeholders, the truck ban is implemented by various agencies.	This provision aims at preserving free-flow movement of traffic during peak hours, due to limited road capacity. The bans also limit pollution, addressing environmental concerns in the city. **International comparison:** Truck bans are common worldwide. Other ASEAN nations have truck bans in place, including Thailand, Viet Nam, Myanmar and the Philippines. Some EU countries also use truck bans at certain hours. For instance, in France, most heavy goods vehicles over 7.5 tonnes are banned from the road every weekend from 10pm on Saturday to 10 pm on Sunday, with certain exceptions, such as for trucks carrying perishable goods or serving sporting events.	Truck bans limit the use of heavy vehicles to certain times of the day and so when they can provide their services. The bans also reduce the utilisation rate of staff and trucks, which has the effect of increasing the average cost of transport for each freight unit.	No recommendation. The policy objectives justify the truck bans. If necessary, express delivery can be carried out with smaller vehicles.
14	APAD Licensing Policy Guidelines	APAD Policy Guidelines	APAD's Licensing Policy Guidelines state that for category-C licenced vehicles' area of operation is limited to the seven nearest states except when transporting the following: cars, motors and bicycles, chemicals and inflammable items, petroleum gas and oxygen, construction materials, medicines, furniture and machines.	We have not been able to identify a policy objective for this geographic restriction. The policy objective behind general truck bans is set out above.	Creates a geographic barrier for trucking companies to provide their services and to supply goods.	Remove geographical restriction.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
15	APAD Licensing Policy Guidelines Commercial Vehicle Licensing Board Act 1987	19(1)(b)(i) CVLB Act	APAD has the power to attach conditions to the grant of a goods vehicle licence. This includes conditions related to the use of vehicles in certain areas or between certain times. This could be interpreted as an individualised truck ban.	The OECD did not identify any policymaker's objective for the individualised truck ban. The policy objective behind general truck bans is set out above.	The discretion to impose an individualised truck ban might limit the ability of certain vehicles to provide their services and is discriminatory in nature, favouring some providers over others.	Remove discretion to impose an individualised ban.
16	Land Public Transport Act 2010 Commercial Vehicles Licensing Board Act 1987	APAD Guidelines Section 52(2)(e) Land Transport Act s19(1)(b)(v) CVLB	The Land Transport Act 2010 provides that the APAD board has the power to determine freight rates for cargo. APAD confirmed that while theoretically it does have the power to set freight rates, in practice, rates are determined by the market.	The OECD did not identify a clear policy objective, but notes that the objective could be to support sustainability of industry players and affordability for consumers. With sufficient market players, affordability is enabled by competition.	If APAD were to regulate freight rates and minimum prices were set, lower-cost suppliers who provide better consumer value would be prevented from winning market share. Similarly, if maximum prices were set, supplier incentives to innovate by providing new and or high-quality products would be substantially reduced, and suppliers may effectively co-ordinate their prices around the maximum price.	Remove APAD's power to set freight rates.
17	Various	Various	Applicants are required to obtain manual approval (not online) for the licence to travel across the Thailand border. According to stakeholders, approval is required from many agencies in Malaysia as well as from the relevant Thai authority. Stakeholders complained that the process is very restricted and is not simple.	The OECD has not identified an official policy objective for this practice, but it is likely that it is to ensure tight control over foreign transport operators entering Malaysia. **International comparison** Most OECD countries allow online application processes for transport and logistics-related licences and authorisations. In the UK, for instance, there is a user-friendly online procedure for transport operator licences (with possibility to pay fees	Complicated approval processes restrict entry. Licence and permit processes should not be more onerous than what is required to achieve the desired regulatory objective	Implement online application processes and simplify processes. If possible, introduce a one-stop shop application system, which applies for Malaysia and Thailand.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
				online with a credit card), although it is also possible to file an application by post. Decisions are usually issued within shorter time in case of online application (seven weeks) compared to applications by post (nine weeks)		
18	APAD Licensing Policy Guidelines	Page 7	In Malaysia, there are minimum capital requirements to enter the goods vehicle sector. According to APAD's guidelines,[7] an operator applying for a carrier licence A must have accumulated capital of 30% of the cost of the vehicle to be purchased; for individuals and partnerships and for private limited companies, limited companies and co-operatives, paid up capital must be not less than MYR 250 000. In order to be granted a container licence (KA), paid up capital must be not less than MYR 500 000 and accumulated capital must be equivalent to 30% of the value of the vehicle to be purchased.	This provision aims to ensure that a company has enough capital to operate as a freight transport operator, while protecting consumers and creditors from risky and potentially insolvent businesses. The OECD understood that certain stakeholders believe that these specific capital requirements do help to ensure safety, noting that if hauliers do not have sufficient capital, they may compromise on safety. However, capital does not guarantee that a company has sufficient assets to invest in safety. In Malaysia, there are no general minimum capital requirements. Under the Companies Act 2016, a company is no longer required to state its authorised capital. Instead, it is required to notify its issued share capital and paid up	This provision may increase the entry costs of new companies and may discourage investment and market entry, reducing the number of operators in the market. It may notably restrict entry of Small and Medium Enterprises (SMEs). Minimum capital requirements may have a discriminatory effect in favour of larger operators. Such requirements may also have a direct impact on choice and product quality for consumers.	Remove specific capital requirements for freight transport, as there appear insufficient reasons as to why this sector is singled out. Alternatively, an insurance requirement or bank guarantee could be introduced.

[7] The minimum capital requirements are spelt out in the policy guideline set out by APAD *i.e. Panduan Dasar Pelesenan Suruhanjaya Pengangkutan Awam Darat* ("*Panduan Dasar Pelesenan SPAD*"). See page 7 of guidelines, available on the APAD website in Malay. See e.g. https://www.apad.gov.my/en/source-of-information/guideline.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
				capital and the related changes through the return of allotments. There is therefore no minimum paid –up capital requirement to set up a business/company in Malaysia. The Companies Commission Malaysia (CCM) confirmed this (see also s9 - 14 and s69 of the Companies Act 2016). See Box 3.1. International comparison on capital requirements in the body of the report.		
19	Environmental Quality (Control of Emission from Diesel Engines) Regulations 1996 and Motor Vehicles (Periodic Inspection, Equipment and Inspection Standard) Rules 1995, Third and Fifth Schedule.	Regulation 17 & 18 (EQ 1996) and Third and Fifth Schedule MV Rules 1995	The OECD understands from stakeholders that there is double regulation in terms of the smoke test they are required to undertake for goods vehicles. It appears that hauliers are required, by the Department of Environment, to purchase a smoke machine (a detector to test emissions) and to hire qualified staff to test machines. However, this same smoke test is also carried out during the twice-yearly inspections, conducted by PUSPAKOM (the company appointed by the government to undertake the inspection of vehicles). There appears to be an overlap, and the tests are carried out twice. It is understood that this problem arises because both departments have their own bylaws. The Environmental Quality (Control of Emission from Diesel Engines) Regulations 1996 Regulation 17 states	The smoke tests are likely required for security and accident prevention.	Uncertainty around applicable laws and excessive regulation reduces the number of suppliers and decreases efficiency of market participants. Double controls add to administrative costs.	Harmonise so that there is only one annual control.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
			that a smoke test shall only be conducted by an approved facility and Regulation 18 states that a fleet operator can operate and maintain approved facility. There is no mention of purchase of smoke machine			
20	NA	NA	Stakeholders complained that there are too many regulators in the industry. They complained that sometimes different agencies provide conflicting rules, for example, in relation to road bans (along with JPJ, other organisations are also issuing road bans). Generally, stakeholders complained that regulation is not centralised and that there are too many agencies controlling the sector (i.e. MOT, MITI, enforcement -police, JPJ, Department of Environment, APAD).	Every authority likely has its own designated role, which historically made sense.	This is an administrative burden, which increases costs for market participants.	As much as possible, try to concentrate all regulation for road hauliers within the one agency or at least clarify responsibilities of different agencies in an accessible way for all stakeholders and also avoid any overlaps. Create a one stop agency for this sector.
21	NA	NA	Stakeholders complained about the lack of regulation of depots. Hauliers interact with depots when picking up containers (at the start of a journey) and returning them to the depot (at the end of a journey). The lack of regulation is said to cause inefficiency because the depots have limited opening hours, which are subject to change (at the last minute). The depots set these hours themselves.	In many other ASEAN countries (for example, Philippines and Myanmar) container depots are not regulated and similar problems have been reported.	This appears to be an infrastructure issue and there does not seem to be any discrimination. However, when services are poor, market participants may seek to ensure efficiency through other means (i.e. this may incentivise rent seeking behaviour).	Consider regulation of depots.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
22	Land Public Transport Act 2010 Commercial Vehicles Licensing Board Act 1987	Section 67 of the Land Transport Act. Article 52 (Reservation of Licences)	Section 67 of the Land Transport Act and Section 52 of the CVLB provides for the possible reservation of a proportion of licences granted under the Act, for Malays and natives, by the Yang di-Pertain Agong (King). The King has this discretion and the board must comply with any such direction. This power is in the Federal Constitution of Malaysia (See s 32 to 40 and s153). Section67(5) of the Land Transport Act explains that for the purposes of this section, the expression "Malays" or "natives" shall include a company, an association or a body of persons whether corporate or unincorporate, a majority part of whose capital is owned by and the management and employees are made up of Malays or natives.	Stakeholders explained that this provision is not used in practice. The policy objective is likely to provide for positive discrimination towards Bumiputera. These redistributive policies are widely acknowledged to have contributed to social peace but are increasingly coming under criticism, including within the government itself, for their unintended side effects. Various critics have pointed out (e.g. OECD Investment Policy Review of Malaysia 2016) that positive discrimination towards Bumiputera could be addressed outside of equity requirements.	The King has discretion to grant quotas to certain parts of the population. If this discretion were exercised, it could limit the ability of some suppliers (those who are not classified as 'Malays)' to provide services and to access the market. .	The use of quotas should be discouraged.
23	Commercial Vehicles Licensing Board Act 1987	s29	In Eastern Malaysia, the law contains a general power for the Ministry to overturn decisions of the Commercial Vehicle Licensing Board and any appeals.	The OECD does not know if this discretion is used in practice.	This discretion to overturn licence decisions and other decisions of the licensing board (even if limited on the basis of the documents relating to an appeal) may limit the ability of some providers to provide services or discriminate against certain suppliers, raising the cost for some suppliers relative to others.	Limit discretion in the law or introduce guidelines, which set out when and how the Minister can intervene. The decision of minister should be challengeable in court.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
24	Land Public Transport Act 2010 Commercial VehiclesLicensing Board Act 1987	Section 70 LPTA 2010, Section 20A CVLBA 1987	If the holder of a goods-vehicle operating licence wishes to change its equity structure, it must first seek approval from APAD. It must also obtain permission if a proposed agreement would cause any changes in the board of director of the company or partners of a firm. According to the authorities, in practice, this is more of a notification procedure and the board has never rejected company structure changes, except for the transfer of equity from Bumiputera to non-Bumiputera. Any change in the control of the licensee or licenced operator is covered under section 72(3) and instead requires a notification procedure.	When a company makes it initial application, it has to declare to APAD its equity and ownership structure. To ensure effective monitoring, the company is required to inform the authority and seek approval for any changes to that structure. This requirement may also be linked to the evaluation of a business's viability during the renewal process. Further, it may exist to ensure there is no dilution of equity, especially if Bumiputera requirements are in place in the company. These redistributive policies are widely acknowledged to have contributed to social peace but are increasingly coming under criticism, including within the government itself, for their unintended side effects. Various critics have pointed out (e.g. OECD Investment Policy Review of Malaysia 2016) that positive discrimination towards Bumiputera could be addressed outside of equity requirements. The licensee must inform the Commission of any change in the control of the licensee or licensed operator under 72(3)(a).	Requiring permission to change business structure is likely onerous for freight transport businesses.	Remove requirement to seek approval for a change in directors or partners and any change in equity structure if it does not affect any Bumiputera requirements. If necessary, the law should state that this is a mere notification procedure.

Maritime transport

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
1	Merchant Shipping Ordinance 1952	65H	Section 65L provides that ships wishing to engage in domestic shipping in Malaysia must obtain a licence; otherwise, they are subject to penalties. Section 65H gives the Domestic Shipping Licensing Board broad discretion to grant or refuse an application for a domestic shipping licence. The OECD is not aware of any guidelines, which set out the Board's discretion.	The licence requirement is a barrier to entry. The discretion to grant a licence could lead to discrimination.	The licence requirement is likely justified on safety grounds and is common worldwide. Most countries however have limited discretion in the decision-making process for the grant of a licence, they have clear criteria which can be met. According to the Ministry of Transport, the current licence requirement is based on the Domestic Shipping Licensing Board Regulation 1981. The OECD understands that the ministry is currently revising the regulation to provide detailed information on licensing process.	Recommendation: introduce guidelines or regulations, which clearly outline the licence criteria in order to guide discretion of the Board. Licences should be granted if specified criteria are satisfied.
2	Merchant Shipping Ordinance 1952	65L	According to the Merchant Shipping Ordinance 1952, 'Ships belonging to or in the employment of the Government of Malaysia or any State thereof or any Port Authority therein are not required to obtain a domestic shipping licence in order to engage in domestic shipping". According to stakeholders, government owned vessels are not active in the private market.	If active in the same market, government vessels have an advantage over other vessels, which are required to obtain a licence in order to operate in the domestic shipping market. This would raise the cost for some suppliers relative to others. Further, this provides an advantage to some suppliers not based on efficiency (quality or innovation) considerations but on ownership.	The preference for government vessels is likely to save the government costs that it would otherwise face if it was required to comply with domestic licensing requirements. The permit is only granted for the shipment of government goods. According to the Ministry of Transport, the exemption is not applicable to private players who carry government cargo. The exemption is only applicable to vessels listed under Section 65(L) 3 of Merchant Shipping Ordinance (MSO) 1952.	No recommendation.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
3	Merchant Shipping Ordinance 1952	65H	Section 65H of MSO 1952 provides the Domestic Shipping Licensing Board with discretion on licences' terms and conditions, as well as their duration. Section 65D explains that the discretion lies with the board and is subject to the approval from the Minister, but the OECD has found no additional guidelines that would explain how this discretion is exercised. According to stakeholders, the duration of the licence given for domestic Malaysian vessels is dependent upon the age of the vessel and the number of Malaysian crew. A Malaysian ship licence may be granted with or without conditions for a period of between six months and two years. For example, a Malaysian ship with no Malaysian seafarers is given a six-month licence. There are Guidelines are available for applicants in Malay on the MOT's website; these provide clear criteria for applicants about the types of licences and conditions and criteria, but do not set out this discretion.	The discretion to award licences for different durations could lead to discrimination. The length of the operating licence should be the same for all operators to prevent certain operators gaining cost advantages when required to apply for a licence less frequently.	It would appear to aim to exercise control over the market and to give preference to operators that meet certain criteria – such as number of Malaysian workers – in order to support the Malaysian labour market.	The authority should publish guidelines that set out how it determines licence duration
4	Merchant Shipping Ordinance 1952	65K	The Act provides for an appeal process however, the appeal is limited to an appeal to the Minister. No further appeal is provided for in the legislation.	Appeal to the Minister is effectively an internal appeal. This may mean that the appeal process is not unbiased and it could be discriminatory.	Minimise costs. By not allowing external merits review, it reduces potential pressure on the administration, tribunals and courts. Although not specified in the Act, according to general administrative law, judicial review is available.	If judicial review is available, no recommendation.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
5	Merchant Shipping Ordinance 1952	65U	The Minister of Transport has broad discretion (by notification in the Gazette) to 'exempt any ship from any of the provisions of this Part (PART IIB - THE DOMESTIC SHIPPING LICENSING BOARD) or any regulations made thereunder upon such terms and conditions as he may deem fit'. This means that the Minister can exempt ships from the licensing requirements of the Domestic Shipping Licensing Board. The OECD is unaware of any guidelines or limitations to this discretion (except, as provided in the Act, that the discretion is 'without prejudice to any other powers conferred by this Part').	The discretion could lead to discrimination. The exemption of some market participants to acquire a licence would decrease the cost of operating for some suppliers, relative to others.	According to the Ministry of Transport, the objective of such discretion is to support government policies made by other government agencies in order to support for national economic growth through domestic shipping. However, the same objective could be reached by transparency and clear criteria to encourage investment.	Remove this governmental discretion.
6	Merchant Shipping Ordinance 1952	16(3)	According to stakeholders when shipping operators purchase new vessels, most vessels purchased are second hand and are purchased from overseas. In such cases, a certificate is required from the first mission where the vessel originates. The OECD understands that this certificate is in effect a deletion certificate and an extract of its registration. The law requires a physical certificate, from the mission in the relevant country. The OECD understands that the problem is not obtaining a soft copy certificate from the mission where the ship comes from, but the fact that in Malaysia, it is not possible to provide a soft copy certificate to the authorities. The requirement to file the hard copy	This is an administrative burden and increases the cost for market players who wish to purchase second hand ships from overseas.	The Merchant Shipping Ordinance 1952 (MSO 1952) is currently in force however The Merchant Shipping (Amendment) Act 2017 (MSAA 2017) was passed by both the upper and lower houses of parliament in 2017 is to replace to MSO 1952. Section 68H(1) of the MSAA 2017 allows for the filing of documents electronically. However, section 68H(3) gives the director of Marine discretion as to determine the documents that may be filed electronically.	Once MSAA 2017 comes into force, the OECD recommends that a list of documents which may be filed electronically be publicly available, thus providing certainty to businesses and limiting the discretion of the Director of Marine. The OECD recommends that these certificates should be able to be filed electronically with the Malaysian authorities (so that this is possible if available from overseas authorities).

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			certificate is a burden according to stakeholders and increases their costs. The OECD has not however been able to identify the requirement in MSO 1952 under Part IIA Registry. Section 16(2) of MSO 1952 requires a statutory declaration only. Section 16(3) however states that the registrar may demand proof of ownership. It may be that the Registrar is exercising his/her power under this provision by demanding a physical certificate. The OECD has been unable to confirm this.			
7	Merchant Shipping Ordinance 1952	Section 66D(1)	Ships registered under the Malaysian International Ship Registry (MISR) are required to have a minimum paid-up capital of 10% of the ship's value or MYR 1 million ringgit, whichever is higher. The OECD understands that this requirement only applies to the first ship registered by the corporation.	This requirement discriminates against foreign ship-owners, who are required to register their vessels in the MISR; ships registered in the Malaysian national ship registry do not face this capital requirement.	This provision aims to ensure that a company is sufficiently capitalised to act as an international shipping operator. It also aims to protect consumers and creditors from risky and potentially insolvent businesses. (See Box 3.1. for more information on international capital requirements.)	The OECD recommends removing the capital requirement and replacing it with an insurance or a bank-guarantee requirement.
8	Merchant Shipping Ordinance 1952	65D	The Domestic Shipping Licensing Board has broad powers (with the approval of the Minister) to make regulations, for example, about the licence procedure, conditions to be satisfied to be granted a licence, fee, freight rates, fines. According to the Ministry of Transport, the board consists of representatives from several government agencies related to shipping including Ministry of International Trade and Industry. The OECD understands that many board	When regulations are not published but are enforced, this leads to uncertainty and deters market entry.	Broad powers to board as they are the body implementing the licensing process so are best placed to draft regulations relating to the process.	Publish all regulations. Regulations should be drafted in consultation with stakeholders (E.g. Industry).

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			regulations are not published.			
9	Merchant Shipping Ordinance 1952	65D(d)	As mentioned above, the Domestic Shipping Licensing Board has broad powers to make regulations. Specifically, it has the power to 'prescribe the rates which may be charged for the carriage of passengers or cargo by any ship engaged in domestic shipping'. The OECD is not aware whether this power is ever used in practice.	Regulating prices by prescribing the cargo rates to be charged in domestic shipping, could deter market entry and decrease competition. If rates are set too high, low-cost suppliers who provide better value for customers are prevented from winning market share. If rates are set too low, supplier incentives to innovate are reduced and suppliers can effectively co-ordinate their prices around the maximum price. We note the power in the Philippines to set rates and that this is potentially to be exercised with the drafting of new legislation.	Allowing the board the possibility of setting rates likely exists to protect the domestic industry and consumers from high shipping rates. Governments often regulate prices in traditional monopoly sectors as price control serves as a counterweight to a lack of consumer alternatives, however, the shipping industry is not a traditional monopoly sector.	The OECD recommends one of two options. 1) Remove the board's ability to set freight rates and allow the market to set domestic shipping rates. 2) If the board's ability to intervene is maintained, price control should be in the form of maximum prices only. Guidelines should provide clear criteria for when the board can intervene as price control rarely constitutes the most efficient or effective means of achieving intended objectives.
10	Merchant Shipping Ordinance 1952	65KA	Cabotage is generally known as the movement of goods between ports within the same country or coastal shipping. The MSO 1952 does not define "cabotage" but generally prohibits foreign vessels from engaging in domestic shipping, subject to exceptions, prescribed or directed by the Ministry. Domestic shipping is defined in S65A of the MSO 1952 the use of a ship – (a) to provide services, other than fishing, in the Federation waters or	The prohibition on foreign vessels transporting domestic cargo between ports and places in Malaysia prevents foreign firms from entering the national freight transportation market. A special permit for foreigners may be obtained from the Domestic Shipping Licensing Board, but access to this permit is limited. In Peninsular Malaysia, foreign firms are therefore generally unable to participate in the domestic shipping market. According to market participants,	The legislation seeks to support the Malaysian domestic shipping industry, promoting the ownership of vessels operated under the Malaysian flag. A 2017 UNCTAD report explained that in the past cabotage restrictions had a security objective, but these days the policy objective is aimed more at "building supply-side capacity in shipping to derive revenue and	The OECD recommends one of three options. 1) Open the domestic shipping market to foreign competition by lifting the ban on foreign vessels carrying domestic cargo between ports in Malaysia, possibly based on reciprocity arrangements or, as a first step, between ASEAN members. As mentioned above some ASEAN members are party to agreements allowing for cabotage upon special authorisation. 2) Amend the cabotage law to allow foreign ships to carry their own

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			the exclusive economic zone; or (b) for the shipment of goods or the carriage of passengers (i) from any port or place in Malaysia to another port or place in Malaysia; or (ii) from any port or place in Malaysia to any place in the exclusive economic zone or vice versa. The partial liberalisation of the Malaysian cabotage regime in 2009 saw foreign flagged ships allowed to perform transhipment activities between specified ports in East and West Malaysia. In 2017, cabotage restrictions were removed for shipments between East and West Malaysia, meaning regulations no longer apply to shipments from any ports in Peninsular Malaysia to any ports in Sabah, Sarawak and Labuan and vice versa, between any ports in Sabah and between any ports in Sarawak (with limited exceptions). This change occurred within the existing MSO framework.	cabotage restrictions may contribute to the accumulation of empty containers in some ports and a shortage of containers in others due to inefficient allocation of resources; this amplifies issues of trade imbalance. These were among the reasons behind the partial liberalisation of the market in Eastern Malaysia in 2017.	employment benefits".8 The OECD understands that there is a "Memorandum of Understanding between Malaysia, Brunei, Indonesia and Philippines on Transit and Inter-State Transport of Goods (BIMP-EAGA)". The objective of the BIMP-EAGA is to facilitate inter-State transport of goods in transit between and among the Participating Parties as well as to promote multi modal transport. Article 5 of BIMP-EAGA deals with traffic right and market access in Participating Parties which include cabotage. Article 5.4 states as follows: "Cabotage shall only be permitted upon special authorisation from the Host Country". See Box 3.2 in the body of the report for International Comparison (Cabotage regimes around the world).	cargo (and other foreign cargo) domestically, such as allowing ships to travel domestically to the port of final call after arriving at a first port of entry, such as is now in Philippine law to support import and exports, subject to impact analysis. 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 had capacity after unloading goods at the port of entry. 3) Allow international ships to operate in the domestic shipping market on specific routes where there is demand and subject to impact analysis.

[8] See, UNCTAD (2017) Rethinking maritime cabotage for improved connectivity.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
11	Merchant Shipping Ordinance 1952	65KA	As an exception to the cabotage principle, foreign vessels may place a request with the Domestic Shipping Licensing Board to operate within the domestic shipping market. The board then consults the domestic ship-owners association, MASA, to confirm that no domestic vessels can carry out operations on the proposed route. If the request is approved, the board issues a temporary licence to the foreign vessel with a maximum duration of three months.	Foreign ships are only allowed to operate in Malaysian territory if no domestic ship is available to provide the required specialised service. The exception privileges domestic firms and provides limited authorisation to foreign vessels to operate. It may be difficult for applicants to foresee whether they will be granted a special permit due to the Domestic Shipping Licensing Board's broad discretion and the need for MASA approval. Although applicants can now apply online for an electronic domestic shipping licence, the administrative burden of providing a long list of documents, the uncertainty surrounding the granting of the special permit, and the short duration of any eventual permit might discourage foreign shippers from applying for a special permit.	The exception supports the Malaysian domestic shipping industry and promotes the ownership of vessels operating under the Malaysian flag. The legislation suggests that the special permit is specifically intended for specialised vessels, such as those used for 'repair services of submarine cables at any submarine cable landing centre in Malaysian waters'.[9] Such vessels may not normally be available from the domestic fleet. International comparison In Australia, under the Coastal Trading Act 2012 (Division 2), Australia may grant temporary licences to foreign-flagged vessels, which are valid for a limited number of voyages in a 12-month period. The granting of the licence is subject to ministerial discretion. While the use of foreign-flagged vessels is restricted and the number of voyages is restricted, the licence is granted for a longer duration.	The OECD recommends the further opening up of the domestic shipping market. If restrictions are maintained, a more efficient application procedure should be introduced and guidelines provided to give applicants more legal certainty. Any special permit granted should have a longer duration. It should also be clarified that MASA's response is only advice and that its decision is not binding on the ministry.

[9] This example was provided by the Legal Advisor Office of the Ministry of Transport.

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12	Malaysian Maritime Enforcement Agency Act 2004	s7(2)(f)(g)	The OECD understands from stakeholders that the Malaysian Maritime Enforcement Agency (MMEA) often confiscates ships for minor mistakes (for example, a mistake on a shipping document). This causes delay and increases costs for operators.	These powers are potentially discriminatory because there are not clear guidelines and there appears to be a lot of discretion available to the MMEA.	MMEA is likely given enforcement powers for security reasons and to ensure proper functioning of the maritime sector. No other ASEAN country seems to have similar extensive confiscation provisions.	Revise guidelines to ensure confiscation is not for minor infringements and that rules are stricter/best practices are enforced. Confiscation should only occur in exceptional cases and fines should be used instead as the penalty for infringements.
13	NA	NA	There are 7 Port Authorities in Malaysia. Stakeholders explained that there are different procedures/implementation of the statutory requirements imposed by the port authorities but that as the ports have different functions, it makes sense for there to be distinct port authorities. The OECD was told by stakeholders that although there are different bylaws, the content is mostly the same across port authorities but that it is the implementation that differs. They explained that there is a need for effective communication, to harmonise implementation, for standard guidelines throughout Malaysia.	Difference in implementation of rules can be an administrative burden, increasing the cost of doing business across different ports. It may also create a geographical barrier.	The Ports have different functions and so it is considered appropriate that they be ruled by their own port authorities. In the OECD interview with the Ministry of Transport, Maritime Section, we were told that there are five federal ports and more than 30 private jetties. Most are governed by the Port Authority Act but they have their own by-laws. In Eastern Malaysia, the two main ports are state owned, for example, in Sabah/Sarawak the ports are owned by the government. We were told that there have been imitative to combine the port authorities, yet the benefits are not evident as all ports are very niche. The OECD was told, for example, that Penang mainly deals with cruise traffic, Johor, mainly transhipment; Port Klang is	Harmonise implementation of Acts and Bylaws as much as possible. This would allow companies dealing with more than one port to lower their administrative costs. As all Port Authorities report to the Ministry of Transport (MOT) (it falls under the MOTs portfolio) this avenue could be used to encourage harmonisation.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
					import/export orientated, main gateway to Malaysia.	
14	Port Authorities Act 1963 See also Port Privatisation Act 1990 [Act 422], section 20.	Part III, section 16 (Charges and Recovery of Charges)	This general clause allows port authorities to prescribe port charges (as set out in s 16(1)) with the approval of the Minister and also alter or vary charges. This is the general power, which allows for Federal Ports to set their tariffs for each of the relevant port services. It states set charges or scales of charges but does not state minimum or maximum charges. The OECD understands that the formula for fixing port tariffs is confidential. The Port Authorities Act 1968 gives the privatised ports the mandate to determine port charges and the MSO 1952 regulates port charges for ports, which are not privatised and small ports.	If charges are fixed, firms cannot decide prices freely. This restricts competition as service providers have no incentive (or ability) to compete on price and this may lead to higher prices.	Port charges are likely set because competition is limited. See Box 3.4 in the body of the report for international comparison.	The OECD recommends the elimination of fixed prices for services in ports. In cases where competition is limited – for example, due to the effects of cartelisation – prices could continue to be regulated, but a port authority should only set maximum charges. Rates and method of calculating charges should be published and stakeholders consulted.
16	Port Authorities Act 1963	Part VA s29A-D	Pilotage is a service provided by a person with expert local knowledge and skills who is qualified to conduct the navigation and manoeuvring of a vessel approaching and inside a harbour. (OECD, 2011, p. 7[49]) Under the Port Authority Act 1963, the port authority has the power to define a pilotage district (Section 29A) and may require any vessels to use pilotage services (Section 29B). Section 29C of the Act implies that	This provision gives the Port Authorities a monopoly over piloting services, which restricts other economic operators' market access. The port authority has an exclusive right to provide the services. Exclusive rights are an entry barrier and may lead to monopoly pricing and other problems associated with the exercise of market power.	This provision aims to ensure safety through a public monopoly. The Port Authorities Act 1963 gives the port authority power over pilotage to ensure pilots have an understanding of local conditions and the appropriate training to provide these services in the specific port concerned. International comparison	Authorities should investigate whether there is private interest in providing pilotage services. If so, they should create an appropriate legal framework so that piloting services can be tendered based on fair and non-discriminatory terms to guarantee competition for the market. The OECD understands that this would be within the scope of the Port Authorities Act. All pilots would need to have local knowledge

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			the port authority is responsible for the provision of pilotage services as it states that it is able to employ "such number of pilots as it deems necessary or expedient for the purpose of providing an adequate and efficient pilotage service". The port authority does not necessarily have exclusive rights to provide pilotage services, but may also authorise the Pilotage Committee to issue licences to an employee of a licenced operator, and may even authorise any person to pilot vessels passing through its pilotage district subject to certain terms and conditions. The Port Klang Authority explained the current practice in Port Klang: terminal operators employ pilots, who are licenced by the port authority. According to the authority, any qualified individual can join the terminal and be trained as a pilot and subsequently licenced by the port authority. Piloting services are not currently outsourced to private companies.		Data collected in 2011 by the European Sea Ports Organisation (ESPO) from 116 ports from 26 European countries show that only around 25% of their piloting services are directly provided by port authorities. In the remaining 75% of ports, piloting services are provided through licensing regimes, concessions to public or private operators, and the existence of separate public entities providing such services.	and fulfil quality standards to guarantee safety.
17	Port Authorities Act 1963	Part VA s29D	Pilots are required to have a licence to operate in a pilotage district. Section 29C(2) states that no person shall be employed as an authority pilot in a pilotage district unless he is in possession of a valid licence to act as a pilot in such district issued under s29H (examination for licence). A pilotage committee (s29E describes the constitution of the committee) holds an examination and issues, on	Requirement for licence is a barrier to entry.	Pilots are required to have specific knowledge of the maritime area and of safety issues and so pilotage is often highly regulated profession in terms of qualification requirements.	No recommendation, the licensing requirement is justified to ensure pilots are competent.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			behalf of the Port Authority, licences to act as an authority pilot or as a pilot employed by a licenced operator.			
18	Port Authorities Act 1963 Merchant Shipping Ordinance 1952	16(1), 17 Section 428	Under s17A of the Port Authorities Act 1963, the authority, with approval of the Minister by notification in the Gazette shall prescribe dues to be charged for pilotage services. The OECD understands that these charges are prescribed in bylaws and may vary in form (i.e. fixed or maximum charges). Under the MSO, section 430 provides that lower or higher rates cannot be accepted and imposes penalties for such behaviour.	The regulation of pilotage fees restricts the ability of firms to decide prices freely. If prices are fixed, this restricts competition as service providers have no incentive to compete on price.	Price controls likely exist to prevent the monopoly of pilotage services in Malaysia creating excessive prices. The OECD understands that while there may be a monopoly in practice, the law allows for competition. The OECD understands that the tariffs prescribed by the Port Klang Authority are maximum rates that port operators can impose, so operators are free to charge lower than the prescribed tariff. International Comparison In the Philippines, maximum prices are established, but the OECD understands that in practice, pilotage fees are negotiated.	In ports where this is not current practice, the OECD recommends that maximum prices be established instead of fixed prices, which would allow negotiations between pilots and ships on discounts.
19	Merchant Shipping Ordinance 1952	58,57	Section 57 allows the Minister to make recommendations in a number of technical but broad situations and section 58 allows the Minister to exempt any ship or the owner of the ship therein from any of the regulations specified in section 57 upon such terms and conditions as he may deem fit. It does not seem that recommendations made under Article	Broad discretion may lead to discrimination.	Government control. We have not been able to identify any other policy objective. MEA agrees with the OECD recommendation.	If ministerial discretion is exercised, reasons should be provided (published) and decisions should be subject to appeal.

No.	Title of regulation	Article	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			57 are published. However, according to stakeholders, judicial appeal is available.			
20	Merchant Shipping Ordinance 1952	65G	The Minister has broad discretion to issue general directions not inconsistent with this Ordinance and the Board shall comply with such directions.	Broad discretion may lead to discrimination.	Government control. We have not been able to identify any other policy objective.	If ministerial discretion is exercised, reasons should be provided and decisions should be subject to appeal.
21	Merchant Shipping Ordinance 1952	Section 51	Permission must be sought in order to change the flag of a Malaysian flagged vessel. Firstly, the owner of a Malaysian ship may with the approval of the Registrar General transfer the ship to a foreign registry if there are no outstanding claims against the ship in Malaysia. Secondly, the owner of the ship shall submit to the registrar of the port of registry a written application specifying the name of the ship, the reasons for the proposed transfer, the name and nationality of the proposed new owner, and the name of the new country of registry.	Requiring permission (and therefore assessment) of the transfer application could significantly raise the cost of exit from the market, which in turn could discourage potential entrants.	Process likely aimed at checking there are no outstanding claims against the ship.	Replace the permission with a notification requirement. Applicant should not need to provide reasons but simply show that it has discharged its obligations in relation to the vessel.

Freight forwarding

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
1	Customs Act 1967	Section 90	Freight forwarding agents (or customs agents) must obtain a licence from the Royal Malaysian Customs Department (RMCD). Before the RMCD grants such a licence, companies must obtain an International Integrated Logistics Services (IILS) status from MIDA. The status requirement and the associated restrictions are discussed in lines below. The OECD understands that simple 'freight forwarders only require a business permit and to be incorporated as a company in order to operate in Malaysia. Stakeholders informed the OECD that many tasks a freight forwarder would like to carry out generally, require the customs agent's licence.	Customs brokerage generally requires a separate licence in other ASEAN countries. However, the OECD understands, from stakeholders that simple freight forwarders in Malaysia can carry out fewer tasks without obtaining this further qualification, when compared to other countries.	The requirement to obtain a licence to provide certain freight forwarding services is a barrier to entry. Such requirements restrict entry into the market, limiting the number of suppliers and increasing entry costs for potential entrants.	No recommendation but see recommendations below on the licensing criteria and accessibility.
2	MIDA booklet titled Malaysia: Investment in The Services Sector - Logistics Services	5.2(ii)	As mentioned above, companies wishing to be granted a freight forwarding agent licence from RMCD must first obtain an International Integrated Logistics Services (IILS) status from MIDA. There is a freeze on the grant of the licence through any other means. MIDA defines an IILS as 'a company that provides integrated and seamless logistics services (door-to-door) along the logistics supply chain as a single entity on a regional or global scale'. According to MIDA's guidebook, new entrants or existing logistic service providers may apply (See MIDA, Malaysia: Investment in the Services Sector, Booklet 4: Logistics Services, page 9). Some of the qualifying criteria, discussed in the rows below is also restrictive.	We have not been able to identify the policy objective for this requirement.	The requirement to obtain the IILS status from MIDA before being able to apply to the RMCD for a licence to provide custom agent services is a barrier to entry. Such requirements increase entry costs for potential entrants, restrict entry into the market, limiting the number of suppliers and may lead to higher prices for consumers.	Remove the requirement to first obtain IILS status.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
3	MIDA booklet titled Malaysia: Investment in The Services Sector - Logistics Services	5.2(ii)	To qualify as an IILS, the applicant must 'undertake the following three principal activities: warehousing, transportation and freight forwarding, including customs clearance and at least one of the following activities 'distribution, other related and value added-logistics services/activities or supply chain management' (MIDA Qualifying Criteria,5.2(ii)).	It is likely that the policy objective is to have large businesses, which are active in several logistic areas in the market.	The requirement to undertake 3 principal activities and another activity may deter market entry, especially for small or specialised businesses wishing to operate in one or limited logistics areas.	No recommendation. The government should be able to create concepts such as IILS with specific operation requirements.
4	MIDA booklet titled Malaysia: Investment in The Services Sector - Logistics Services	5.2(iii)	To qualify as an IILS, the applicant must 'manage at least 20 units of commercial vehicles; and 5,000m2 of warehouse space' (MIDA Qualifying Criteria, 5.2 (iii)). The OECD understands that applicants do not need to buy the vehicles and warehouse space but are able to lease it.	It is likely that the policy objective is to have large businesses, which are active in several logistic areas in the market.	Requiring a minimum number of commercial vehicles and warehouse space likely imposes requirements that are stricter than what is necessary (especially when linked with the fact that this status must be obtained by applicants for a freight forwarding agent licence). It is likely that these burdensome requirements reduce the number of providers seeking IILS status (and therefore also the number seeking to be licenced as freight forwarding agents), reducing consumer choice and creating an artificial scarcity in the sector that raises prices.	Remove minimum requirement.
5	MIDA booklet titled Malaysia: Investment in The Services Sector - Logistics Services	5.2(iv)	To qualify as an IILS, the applicant must 'employ majority Malaysians and preference must be given to local professionals'. It is not clear what is meant by local professionals.	The policy objective is likely to encourage the employment of Malaysians in the logistics sector and provide employment to local residents in the relevant area.	This requirement likely puts international based participants at a disadvantage. This may mean that the most qualified/suitable candidate is not appointed as companies must discriminate between candidates based on nationality. This would likely restrict foreign investment as investors often want to be represented in the company.	The OECD recommends that the authorities consider revising local employment restrictions.

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6	MIDA booklet titled Malaysia: Investment in The Services Sector - Logistics Services	5.2(v)	To qualify as an IILS, the applicant must 'use Malaysia as a hub for logistic supply chain services in the region'. If providers have their hub outside Malaysia would not be able to qualify for this status.	The policy objective is likely to build up Malaysia as a logistics hub and allow national players to build expertise and capacity. The OECD understands however that the provider can have locations outside Malaysia but that the status can only be awarded for projects located in Malaysia.	This may discriminate against foreign investors and make business more expensive as they are likely unable to use foreign hubs	The OECD recommends removing the place of business requirement. The OECD understands that if this requirement were removed, the requirement to be registered with SSM under the Companies Act 2016 [Act 777] should also be revised.
7	MIDA booklet titled Malaysia: Investment in The Services Sector - Logistics Services	5.2(vi)	To qualify as an IILS, the applicant must 'have good networks with logistic service providers abroad in order to provide seamless integrated logistics services for the regional market'	The policy objective is likely to create large well-functioning, internationally connected logistics companies in Malaysia.	This may discriminate against new entrants and favour incumbents or larger companies who already have such networks in place. This may be especially so for new entrants from Malaysia who may not have any connections abroad.	Remove network requirement
8	MIDA booklet titled Malaysia: Investment in The Services Sector - Logistics Services	5.2(vii)	To qualify as an IILS, the applicant must show 'substantial usage of the ICT infrastructure throughout the logistics chain and value-added activities'	To encourage modernisation and improvement of logistic services through the use of technology.	The ICT requirements impose costs that may not be necessary to perform the economic activity, for instance for small-scale operations. Moreover, the provision does not specify what is meant by "substantial" usage and therefore leaves significant discretion to the authorities.	Remove ICT requirement

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
9	Customs Act 1967	Section 90 (1) (control of agents) (specifies the requirement to attend the course)	To operate as a freight forwarder in Malaysia, registration with the SSM (Companies Commission of Malaysia) is required. 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) (which according to stakeholders is a common task carried out by freight forwarders, as it is necessary to undertake customs declarations in order to bring goods into the country) they must be Malaysian. Foreign freight forwarders registered in Malaysia must therefore engage with local forwarding agents in order to undertake customs declarations. This means that when working outside a free trade zone, foreign freight forwarders must have partnerships with local forwarding agents. To be a customs broker in Malaysia, a licence must be obtained from the customs 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).	Customs is a sensitive issue for the government and this may justify a prohibition on foreigners carrying out customs related tasks. International Comparison Indonesia, Myanmar and Thailand also do not allow foreigners to carry out customs brokerage services. Singapore allows foreign firms to provide brokerage services (Hollweg and Wong, ERIA Discussion Paper Series, Measuring Regulatory Restrictions in Logistics Services, 2009, page 21).	Foreign freight forwarders are not able to provide customs services and are required to have local forwarding agents while domestic (Malaysian) freight forwarders are able to provide this service themselves, as they are not prevented from carrying out customs declarations if they obtain the required licence. Being able to vertically integrate this service provides an advantage to domestic freight forwarders as it is likely more expensive (and decreases efficiency) for foreign freight forwarders who are required to outsource this task to local forwarding agents.	Consider revising the nationality requirement to allow foreigners to provide these services, as long as they are subject to the same controls as nationals.
10	Customs Standing Order No. 45 (For internal use only)	Para 7.3 of the Customs Standing Order No. 45 (For internal use only)	According to the Malaysian Productivity Corporation, freight forwarders are not able to obtain a Customs Brokerage Licence (CBL) unless the company has 51% Bumiputera equity. According to a report by the Malaysia Productivity Commission (MPC) titled 'Reducing unnecessary regulatory burdens on business (RURB): logistics sector', 'forwarders without this facility are not able to carry out transactions with Customers such as clearance of goods. Hence,	Policy of positive discrimination towards Bumiputera minority. These redistributive policies are widely acknowledged to have contributed to social peace but are increasingly coming under criticism, including within the government itself, for their unintended side effects. Various critics have pointed out (e.g.	Companies face extra costs in trying to fulfil the equity requirement and the requirement itself likely limits the ability of some suppliers to provide custom brokerage services. Participation in this business activity is limited by the government to companies that are able to fulfil this equity requirement. This may unduly restrict the number of suppliers,	No recommendation. Harm to competition could be minimised if direct subsidies are used instead of equity requirements.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
			logistics entrepreneurs create low capital brokerage enterprises (shell companies) with 51% Bumiputera equity to address this requirement. This is another example of how policy requirement when built into regulatory instrument results fragmentation the logistics chain'. The report explained that 'The Customs-Private Sector Consultative Panel Meeting No. 2/2014 was informed that a study on withdrawal of CBL and the 51 percent equity issue is being conducted by the Ministry of Finance (MOF), Customs and the Bumiputera Development Agenda Unit (TERAJU). Forwarders are concerned that convoluted regulation to achieve Bumiputera participation in the logistics economy results in rent-seeking, reduces logistics efficiency and slows productivity and growth in the economy. This policy is also in conflict with the new policy of allowing up to 70% equity participation'. At the time of the report, no further decision had been made.	OECD Investment Policy Review of Malaysia 2016) that positive discrimination towards Bumiputera could be addressed outside of equity requirements. International Comparison The OECD is not aware of comparable equity provisions in other ASEAN nations (only limitations on foreign equity).	reduce competition between suppliers and result in higher prices or less desirable contract terms for customers.	
11	Customs Act 1967 (No legislative provision for the freeze)	90	According to the Federation of Malaysian Freight Forwarders (FMFF), there is currently a freeze on customs brokerage licences. The only way to obtain a customs brokerage licence is to first obtain status as an IILS provider, as described above. The Customs Department has confirmed the freeze. According to MIDA and Customs, the freeze has been in place since 2007. However, subject to Customs' terms and conditions, companies who hold the IILS status may apply for new Custom Agents licences.	The freeze blocks entry into the market and may artificially raise the price of customs brokerage services.	According to stakeholders the freeze was implemented because of a large number of inactive permits.	Lift freeze and allow applications from those without the IILS status, as mentioned above.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
12	MIDA booklet titled Malaysia: Investment in The Services Sector - Logistics Services	4.1 Tax Incentives	Tax incentives are available for certain 'Integrated Logistics Services (ILS) providers'. According to MIDA (See, MIDA Malaysia: Investment in the Services Sector, Booklet 4: Logistics Services, page 8) 'the main activities in the Integrated Logistics Services (ILS) are freight forwarding, warehousing, transportation and other related value-added services such as distribution, procurement and supply chain management in an integrated basis'. According to this investment booklet, companies undertaking ILS are eligible for Pioneer Status (PS) or Investment Tax Allowance (ITA). New and existing companies providing ILS services are eligible to apply for incentives under the Promotion of Investments Act, 1986. The tax incentives are as follows: • Pioneer Status - Pioneer Status with a tax exemption of 70% of the statutory income for a period of five (5) years. • Investment Tax Allowance (ITA) - ITA of 60% on the qualifying capital expenditure incurred within a period of five (5) years. The allowance can be offset against 70% of the statutory income for each year of assessment. Unutilised allowances can be carried forward to subsequent years until fully utilised To be eligible to apply for the ILS incentives described above, at least 60% of the companies 'equity must be held by Malaysians.	Tax incentives for selected operators can decrease costs for some operators and not others.	Discrimination against companies with more than 60% foreign equity as they are not eligible to apply for the ILS incentives. As stated in the MIDA Investment booklet (See, MIDA Malaysia: Investment in the Services Sector, Booklet 4: Logistics Services, page 8) 'the objective of granting the incentive is to create an efficient and competitive logistics industry to encourage the integration and consolidation of the various transport intermediaries along the logistics supply chain in Malaysia. In this regard, Malaysian companies are encouraged to expand and venture into higher value-added services to enable them to compete globally'.	No Recommendation.

Warehouses

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
1	N/A	N/A	The regulation of warehouses in Malaysia is unclear. There seems to be no federal warehousing laws or policies, but a fragmented regime whereby laws are sometimes issued by local authorities. According to a report by the Malaysia Productivity Commission (MPC) titled 'Reducing unnecessary regulatory burdens on business (RURB): logistics sector', 'except for bonded or licensed warehouses, there is no specific regulation for warehousing'. According to the Malaysian Investment Development Authority (MIDA), a company that wishes to provide ordinary warehousing services must apply for a licence from the relevant local authority. Warehouses are therefore regulated by the state and by local authorities. There are 13 states in Malaysia and so each state could have different regulations or laws relating to warehousing. Within a state, there may be several local authorities, who may also have different regulations. Currently, the only relevant Federal law appears to be the Street, Drainage and Building Act 1974 but otherwise there are no coordinated/harmonised federal	International Comparison As stated in the MPC report on RURB in the logistics sector, some countries have special Acts for warehousing such as the Canadian Uniform Warehouse Receipts Act: Warehouse Receipts Act, Victoria, British Columbia, Canada; http://www.bclaws.ca/civix/document/id/complete/statreg/96481_01 Further, many countries have "storage and warehouse building checklists' such as Singapore (Occupational Safety and Health Guidelines for the Logistics Industry).	Difficulties in accessing warehousing legislation and inconsistent warehousing laws, creates legal uncertainty and increases costs for actual and potential market participants.	Recommendation: Draft a federal model law for the state to adopt, to encourage harmonisation on warehousing law and policy. We note that it is not likely possible to introduce a federal law on warehousing as the OECD understands that this would require an amendment to the constitution.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
			laws or policies concerning warehouses. The OECD understands that as warehousing is not mentioned in the Federal Constitution (under the 9th schedule, List I), control cannot be exercised over the sector at a national level.			
2	NA	Various	According to stakeholders, it can take a significant amount of time (6 months to 1 year) to obtain relevant permits in order to build a new warehouse or to extend an existing warehouse. The long duration is likely due to the many different agencies involved in the process, such as environment, planning and other associations that deal with safety requirements. For observations on this, see Chapter 7 RURB 2018 Warehousing Services in Malaysia, pages 185 - 187 (Table 2 :Acts, Regulations and Policies by Approval of Agency or Ministry for Warehousing Activities): http://www.eria.org/uploads/media/RURB_2018_Chapter_7_Warehousing_Malaysia.pdf See also page 205 of the same report that mentions improvements in approval processes and concurrent joint final inspections for utility providers and fire safety at final inspection stages, which would be are expected to shorten processing time for obtaining development approval.	The involvement of many different agencies in the permit process may result from the lack of harmonised/central warehousing policy.	The extended permit processes likely discourage potential entrants thus reducing the number of participants in the market over time.	Recommendation: Remove any specific approval processes for the construction of warehouses, as far as they exist. Introduce a single approval process. In terms of the general construction permit process, centralise the approval process and introduce checklists and guidelines so that applications can be assessed transparently and efficiently. Statutory limitations for decisions could also be introduced to provide certainty to applicants on the duration of the application process.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
3	Local regulations	Various	According to the Malaysia Productivity Corporation (MPC) when building warehouses, some local regulations require specified parking and building capacity depending on the size of the warehouse. An example given is under the Town and Country Planning Act 1976, one (car and motorcycle) parking slot is required per 2,000 square feet. This means that 50 parking spaces must be built with a warehouse with an area of 100,000 square feet. This is a requirement for Kuala Lumpur. The MPC has noted that local authorities have their own requirements and that these can differ even within the same state. In Selangor, for example, one space is required per 1,000 square feet (See, for example, table 3, page 197: http://www.eria.org/uploads/media/RURB_2018_Chapter_7_Warehousing_Malaysia.pdf) Research has flagged that there are no guidelines on 'good warehouse practices', i.e. 'warehouse building guidelines with clear technical and architectural conditions and specifications and security requirements for design, construction, and delivery'. See, for example http://www.eria.org/uploads/media/RURB_2018_Chapter_7_Warehousing_Malaysia.pdf	According to the MPC, there are some Uniform Building By-Laws (UBBL) (last revised in 2012). Many states have not gazetted the new general revisions and so there are inconsistencies in the application of the law. According to the MPC however gazetting the revised version of the UBBL would not address the problem as the parking requirements are covered by local regulations.	The presence of potentially burdensome requirements (which takes up space and resources that could be put towards warehousing services) and the inconsistent regulations between (and even within states) creates uncertainty and discourages market entry.	Recommendation: Introduce national guidelines on parking and building space requirements. Harmonise any requirements to ensure consistency and provide certainty to investors. When introducing guidelines, any parking and building space requirements should be limited to what is necessary in order to maximise warehouse operations.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
4	Local Government Act 1976 (act 171)	S107 Local Government Act 1976 (act 171), and Licensing of Trades, Business & Industries By -Laws (various councils)	In order to lease a warehouse (existing warehouses are called 'ready warehouses') in the Port Klang Free Trade Zone (PKFTZ), approval must be sought from the CEO of the PKFTZ. According to market participants and the PKFTZ, this process is straightforward. Leases of a warehouse (light industrial warehouses) to a company can be up to 3 years, the usual contract period is between 1 to 3 years. The cost of leasing a warehouse in the PKFTZ has not changed in 14 years according to the PKFTZ.	We have not identified a policy maker objective for this short duration.	The short lease period may be a barrier to entry for firms wishing to carry out warehousing activities, such as storage, in the free trade zone. The short duration creates uncertainty and may potentially undermine the business case of an investor wishing to enter the market.	The OECD recommends that the duration of the lease should not be limited by statute and maximum lease durations should be made longer.
5	Customs Act 1967	Part VIII (Warehousing) Section 65	Section 2 (Interpretation) defines a 'licenced warehouse' as 'a warehouse or other place licensed for the warehousing of dutiable goods under section 65. To provide warehousing services for goods liable to customs duties, a licence must be obtained. The licence is granted at the 'absolute discretion' of the Director General. According to the Malaysian Investment Development Authority (MIDA), the following approvals must be obtained before applying to the RMCD: - Approval from the Department of Environment (DOE) when operators store hazardous goods.	The section does not state a policy objective. The absolute discretion to grant such a licence (and the requirement for the licence itself) is likely linked to the sensitive nature of customs and the responsibilities and obligations associated with the storage of dutiable goods. Apart from licenced warehouses, dutiable goods can be stored in 'customs warehouses' which is a warehouse or other place established by the Minister under subsection 63(1) for the deposit of dutiable goods. When stored in either a licenced or customs warehouse, the goods are deemed to be under Customs control (Section 2(2)).	The requirement to obtain a licence to provide warehousing services for goods liable to customs duties is a barrier to entry. Such requirements increase entry costs for potential entrants, limiting the number of suppliers and potentially increase prices for final consumers. Further, the grant of the licence is subject to the 'absolute discretion' of the Director General. This means there is uncertainty around the grant of the licence and potentially discrimination between competitors.	Establish guidelines for the grant of a licence for a licenced warehouse under the Customs Act 1967. Everybody fulfilling certain conditions should have the right to open a warehouse.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
			- Approval from the Fire and Rescue Department and other Technical Agencies. - Certificate of Completion and Compliance (CCC) from the Local Authority (See: (See, MIDA, Malaysia: Investment in the Services Sector, Booklet 4: Logistics Services, page 4).	According to the report by the Malaysia Productivity Commission (MPC) titled 'Reducing unnecessary regulatory burdens on business (RURB): logistics sector' (page 116), the bonded warehouses, regulated under section 65 of the Customs Act are 'located in a designated area and approved by the Royal Malaysian Customs (RMC)'. International Comparison In the UK, to operate a customs warehouse, authorisation to be a warehouse keeper is required from Her Majesty's Revenue and Customs (HMRC.) Applicants wishing to become a warehouse keeper must apply to HMRC by filling in a form published on their website and as of September 2019, must fulfil the following requirements: be registered in the EU, use the warehouse to mainly store goods, prove there is a real economic need, and have enough clients or business to run the warehouse, be able to meet the conditions of authorisation and provide a financial guarantee. It appears to be normal practise that the operation of customs warehouses is tightly regulated although most countries tend to publicise criteria and discretion is not absolute like in Malaysia.		

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
6	Guideline available on customs website http://www.customs.gov.my/en/ip/Pages/ip_gl.aspx Customs Standing Order No. 53 (For internal use only)		According to customs, this requirement is stated in an internal standing order. According to the Malaysian Investment Development Authority (MIDA), there are minimum space requirements for public bonded warehouses (licenced under section 65 of the Customs Act 1967). Public Bonded Warehouses are defined by MIDA as 'a central storage for the distribution of bonded goods (i.e. goods on which Customs duties and taxes have not been paid) in the country for international trade, catering for the general public' (See, MIDA, Malaysia: Investment in the Services Sector, Booklet 4: Logistics Services, page 3). For critical goods, the minimum space requirement is 50,000 square feet and for non-critical goods, the minimum space requirement is 20,000 square feet. In order to operate a public bonded warehouse, operators must therefore comply with these measurements when building their warehouse.	We have not identified a policy maker objective for the minimum space requirement.	Such space requirements may be higher than the actual space required and so pose an unnecessary burden.	Remove minimum space requirements for Public Bonded Warehouses. In any case, all requirements should be published and easily accessible.
7	Customs Standing Order No. 53 (For internal use only) Guideline available on the Customs Department website. http://www.customs.gov.my/en/ip/Pages/ip_gl.aspx		According to customs, this requirement is noted in an internal standing order. According to the Malaysian Investment Development Authority (MIDA), in order to obtain a licence to operate a Public Bonded Warehouse, a company must have at least 30% Bumiputera equity. This also means that there is a maximum of 70% foreign equity allowed in public bonded warehouses.	Policy of positive discrimination towards Bumiputera. These redistributive policies are widely acknowledged to have contributed to social peace but are increasingly coming under criticism, including within the government itself, for their unintended side effects. Various studies have pointed out (e.g. OECD Investment Policy Review of Malaysia	The 30% equity requirement limits the ability of some suppliers to provide warehouse services. Participation in this business activity is limited by the government to companies that are able to fulfil this equity requirement. This may unduly restrict the number of suppliers, reduce	No recommendation on the equity requirement. However, all requirements should be published and easily accessible.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
				2016) that positive discrimination towards Bumiputera could be addressed outside of equity requirements.	competition between suppliers and result in higher prices or less desirable contract terms for customers. Further, the equity requirement means that there is also a maximum of 70% foreign equity. This foreign equity restriction is a barrier to entry for foreign firms, who may find it more difficult than local firms to fulfil the 30% Bumiputera equity requirement. This favours national operators and reduces market participants.	
8	Customs Standing Order No. 53 (For internal use only)		According to the Malaysian Investment Development Authority (MIDA), there are minimum value of goods warehoused is for private bonded warehouses (licenced under section 65 of the Customs Act 1967, as explained above). Private Bonded Warehouses are defined by MIDA as 'a central storage for the distribution of bonded goods (i.e. goods on which Customs duties and taxes have not been paid) of the companies and its related companies' (See, MIDA, Malaysia: Investment in the Services Sector, Booklet 4: Logistics Services, page 3). For critical goods, the minimum value is MYR 5 million and for non-critical goods, the minimum value is MYR 2 million. This means that there must	We have not identified a policy objective for the minimum value of goods warehoused.	Requirements on the use of a warehouse may deter market entry, especially for businesses wishing to build warehouses and store low value goods.	Remove the minimum value requirements. In any case, all requirements should be published and easily accessible.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
			always be goods stored that are worth this amount, unless (as provided in the guidelines) there is good justification for the reduced amount stored). According to customs, this is regulated in an internal standing order (number 53).			
9	RMCD Website		The paid-up capital required for companies involved in warehousing are as follows: Public Bonded Warehouse (Gudang Berlesen Awam): (i) Critical goods – RM 1,000,000 (ii) Non-critical goods – RM 250,000 Private Bonded Warehouse (Gudang Berlesen Persendirian): (i) Critical goods – RM 5,000,000 (ii) Non-critical goods – RM 2,000,000	This provision aims at ensuring that the company has enough capital to act as a warehouse operator. It also aims at protecting consumers and creditors from risky and potentially insolvent businesses. See OECD international comparison on capital requirements.	This provision may increase the entry costs of new companies and may discourage investment and market entry, reducing the number of operators in the market. It may notably restrict entry of Small and Medium Enterprises (SMEs). Minimum capital requirements may have a discriminatory effect in favour of larger operators. Such requirements may also have a direct impact on choice and product quality for consumers.	Remove specific capital requirements for Public Bonded Warehouses and Private Bonded Warehouses, there does not appear to be sufficient reasons why this sector should be singled out. Companies should only be required to comply with the general requirements under the Companies Act 2016. Alternatively, an insurance requirement could be introduced.

Small package delivery services

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
1	Postal Services (Licensing) Regulations 2015	Section 3	The Malaysian Communication and Multimedia Commission (MCMC) is responsible for overseeing and regulating the postal and courier services in Malaysia. The Minister has the power to issue two types of licences in the sector. Postal services mean "the collection, transmission and delivery of any postal article" (definition under the Postal Services Act 2012). Courier services are defined as "postal services provided in an expedited manner with track and trace services" (Section 2, Postal Services (Licensing) Regulations 2015). According to stakeholders, only courier services have been liberalised. A non-universal service licence therefore allows for the provision of postal services at rates other than prescribed rates. According to stakeholders, there cannot be an overlap with the Universal Service Provider Pos Malaysia as section 9(2)(l)(m) limits the licensee's services so that it does not contravene the exclusive rights given to a universal service provided. According to Section 10 of Postal Services Act 2012 (PSA 2012), the Minister shall have power to grant: (i) A universal service licence; or (ii) A non-Universal service licence For the provision of postal services on such terms and conditions as he thinks fit and in accordance with this Act. Service providers wishing to provide courier services (outside of those associated only with the universal service licence) are required to apply for a 'non-Universal Service Licence'. There are three types of non-universal service licences: Licence A – to provide international inbound and outbound courier service and domestic courier service in Malaysia; Licence B - to provide international inbound courier service and domestic courier service in Malaysia; or Licence C - to provide intra-state domestic courier service in Malaysia	The government wants to monitor the courier services sector and oversee market entry and expansion. According to stakeholders, there has been an increase in courier services in Malaysia. In 2018the number of courier licences was 119, a drop from 128 in 2017 but Malaysia has recorded an overall increase since 2015, where 88 licences were recorded However, overall courier traffic increased in 2018. (See https://www.skmm.gov.my/skmmgovmy/media/General/pdf/Postal-Courier-Pocket-Book-of-Statistics-2018.pdf) **International comparison** In Australia, there is no licence/authorisation required to enter the courier market. Australia's courier market is open to any business for most postal services, except letters which are dominated by the state-owned monopoly Australia Post. The parcel market is competitive. There is no monopoly on parcel services. (OECD Trade Restrictiveness Index).	The requirement to obtain a licence to provide courier services is a barrier to entry. Such requirements may restrict entry into the market, limiting the number of suppliers and increasing entry costs for potential entrants. MCMC has explained, however, that licensing requirements are available on the regulator's website and that they are clear and non-discriminatory. Further, there is no equity restriction	No recommendation

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
2	Postal Services (Licensing) Regulations 2015	Section 3	The application process for both the Universal Service Licence and the Non-Universal Service Licence are outlined in the Postal Services (Licensing) Regulations 2015. Section 3 provides that applications for these licences are made to the Malaysian Communication and Multimedia Commission. The Commission then submits the application to the Minister for approval. Applicants are required to submit the documents set out in section 4 of the Postal Services (Licensing) Regulations 2015, this includes among others, a proposed business plan, financial report, proof of minimum paid up capital as specified in the second schedule unless otherwise waived by the commission and any other documents the commission requests. This provides the Commission with a large amount of discretion.	International comparison Broad discretion regarding documents required in licensing processes and in government decision making generally is present in other ASEAN countries (for example, the Philippines and Brunei).	The Commission has broad discretion to waive the documentary requirements for both Universal and Non-Universal licences and to require any other documents to be submitted during the application process. Further, the lack of transparency and access to guidelines explaining how this discretion can be exercised creates legal uncertainty and increases costs for actual and potential market participants. This may lead to discrimination.	Guidelines should be introduced which outline when and how the Commission can exercise such discretion. Discretion may also be limited in the law itself.
3	Postal Services Act 2012	Section 7(1)	The Minister has broad discretion to direct the Malaysia Communications and Multimedia Commission in the performance of its functions and in the exercise of its powers. The Commission has, for example, licensing and regulatory functions. The OECD understands that these ministerial directions can be challenged in court through a judicial review to quash the direction.	Ministerial discretion as opposed to discretion in the hands of department representatives means that decisions may be subject to a greater level of political influence. We understand however that such directives can be reviewed by the judicial system through judicial review. International comparison Many countries have ministerial discretionary powers in their legislation although it seems that these provisions are most common in sensitive areas of national interest and security.	The broad discretion may lead to discrimination between competitors.	The Minister's ability to issue directions should be outlined in guidelines which explain when and under what circumstances such intervention can occur. Ensure access to review and ability to challenge Minister's exercise of discretion.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
4	Postal Services Act 2012 Postal Services (Licensing) Regulations 2015	Section 31 9(1)(l)	Pos Malaysia is exempted from liability for loss or damage of "postal articles", which include "letters, packages and parcels". It is unclear whether this exemption is in line with the UPU rules, and if it only applies to "basic services", such as non-express services. The OECD understands that, in practice and in line with the business practice of other competitors, Pos Malaysia provides compensation for lost trackable items derogating from Section 31 through contractual provisions (such possibility is contemplated under Section 33(3) of the Postal Services Act 2012). It appears that according to s 9(1)(l) of the Postal Services (Licensing) Regulations 2015, the licensee of a Universal Service Licence (Pos Malaysia) has the obligation to "refund the consumer the delivery charges received at the rate as may be determined by the Commission if there is a delay in delivery of postal article through courier services". Liability therefore is limited to delivery charges in the case of delay.	International comparison In the UK, Royal Mail pays compensation for damage or loss of an item in a postal package if the degree of harm reasonably impairs the material function or content of the item, solely as a result the transmission by post (thus excluding liability for pre-existing damage). The compensation policy is available on Royal Mail's website at https://www.royalmail.com/retail-compensation-policy-damage. In Australia, the Australian Postal Corporation Act provides that Australian Post is not liable for loss or damage to a letter or article, unless it has given the claimant a receipt for the article. However, there are some cases where the terms and conditions provide for compensation to be paid (e.g., item sent by registered post or cash on delivery) within some specific thresholds.	This provision may constitute a competitive advantage for Pos Malaysia compared to its competitors that hold non-universal service licences. This could distort competition. It seems that non-universal service licensees do not enjoy the same limitations on liability (at least in terms of lost or damaged items).	Amend the Postal Service Act 2012 to fully reflect the UPU standards and international conventions on liability. For instance, exemptions should be strictly limited to universal service, as it already appears to be the case in practice.
5	Postal Services Act 2012 (Act 741) Postal Services (Licensing) Regulations 2015	Section 37 Section 9(1)(q)	Under section 37(a) of the Postal Services Act 2012 (Act 741), the Minister may, on the recommendation of the Commission, prescribe postage rates to be charged by universal service or non-universal service licensees (minimum, maximum or actual rates to be charged). According to section 9(1)(q) of the Postal Services (Licensing) Regulations 2015, the licensee of a Universal Service Licence (currently granted to Pos Malaysia), has the obligation to comply with the minimum price for courier services as may be determined by the Commission. Courier services are defined as "postal services provided in an expedited manner with track and trace services" (Section 2, Postal Services (Licensing) Regulations 2015). The courier service market is liberalised. Operators may apply for and obtain a Non-Universal Service Licence to provide	It is likely that the discretion to impose minimum prices is a means of protecting the Universal Service Licensee. International comparison In other ASEAN countries (e.g. Philippines, Thailand and Brunei) there is no price regulation of courier services. In the EU, Article 12 of the Postal Directive provides guidelines for regulating prices of universal postal services only. Such prices should be	The provisions that give the Minister and the Commission discretion to regulate prices may prevent the Universal Service Provider from setting its own prices. Best practice suggests that price regulation should be limited to market failures, such as natural monopolies. If regulated prices apply to services that are open	No recommendation in relation to price regulation of services only provided by the Universal Service Licensee. The relevant legal texts should be amended to clarify that regulated prices only apply to. services which are not liberalised.

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
			certain courier services in Malaysia. As mentioned in the row below, the Commission has discretion to impose minimum prices for such courier services. The OECD understands that in practice, only certain services provided by the Universal Service Provider are regulated, pursuant to the power set out in section 37 of the Postal Services Act 2012. According to the Postal Services (Postage rates) Regulation 2020 and the Postal Services (universal service) (amendment) Regulation 2020, there are fixed prices for items up to two kilogrammes.	regulated only "for each of the services forming part of the provision of the universal service." "Universal Service" is defined in the Postal Services Act 2012 (section 2) as 'postal services, which may include basic postal services to be determined by the Commission to be provided to consumers throughout Malaysia, at the prescribed rates'.	to competition, minimum or fixed prices may prevent the universal service provider from decreasing the cost of their services and from winning market share.	
6	Postal Services Act 2012 (Act 741) Postal Services (Licensing) Regulations 2015	Section 37 Section 9(2)(q)	Under section 37(a) of the Postal Services Act 2012 (Act 741), the Minister may, on the recommendation of the Commission, prescribe postage rates to be charged by universal service or non-universal service licensees (minimum, maximum or actual rates to be charged). The licensee of a Non-Universal Service Licence has several obligations as explained in section 9(2) of the Postal Services (Licensing) Regulations 2015. According to Section 9(2)(q) the licensee of a Non-Universal Service Licence has the obligation to comply with the minimum price for courier services as may be determined by the Commission. The Commission therefore has discretion as to whether to impose minimum prices for courier services. Courier services are defined as "postal services provided in an expedited manner with track and trace services" (Section 2, Postal Services (Licensing) Regulations 2015). "Non-Universal Service" means postal services that may be provided to consumers at rates other than the prescribed rates of the universal service. The OECD understands the Commission does not regulate prices of such courier services. As set out in the row above, the OECD understands that only services of the universal service provider are regulated.	It is likely that the discretion to impose minimum prices or price regulation generally on non-universal service providers is a means of protecting the Universal Service Licensee from "unfair" competition. International comparison In other ASEAN countries, including the Philippines, Thailand and Brunei Darussalam, there is no price regulation of courier services. In the EU, Article 12 of the Postal Directive provides guidelines for regulating prices of universal postal services only. Such prices should be regulated only "for each of the services forming part of the provision of the universal service".[10]	The provisions that give the Minister and the Commission discretion to impose minimum prices may prevent service providers from decreasing the cost of their services and prevent low-cost suppliers who provide better value to consumers from winning market share. Further, the existence of the discretion to regulate rates may create legal uncertainty, thus discouraging potential entrants.	t The legal provisions should be amended to limit price regulation solely to universal services.

[10] Chapter 5, Article 12, Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31997L0067&from=EN.

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7	Postal Services (Licensing) Regulations 2015	Section 8(1)	A Universal Service Licence is valid for 20 years. In granting a single Universal Service Licence, the MCMC grants a legal monopoly and restricts entry. The licensee is granted exclusive rights to carry out certain services for a period of 20 years.	The licence is likely granted for a long duration (20 years) in order to attract applicants to provide the service. The monopoly can be justified by the universal service obligation. MCMC's current policy is to designate a single player as the universal service provider.	The grant of exclusive rights represents the establishment of a monopoly and is the ultimate entry barrier. The duration may be considered long and because of this, a lack of innovation, production inefficiency and limited adoption of newer technologies could arise.	Consider shortening duration of licence, to keep flexibility in case the government would like to open the market to competition.
8	Postal Services (Licensing) Regulations 2015	Section 11	According to section 11 (Rebates) of the Postal Services (Licensing) Regulations 2015, the Commission may grant a maximum rebate of 50% of the annual licence fee as an incentive for several stated purposes: (11(1)(a) to promote high postal service performance achievement (b) to promote capital investment to modernize the postal network (c) to promote investment in rural areas (d) any other purposes as the Commission sees fit. Section 11(1)(d) gives the Commission discretion to grant rebates. Annual licence fees for Non-Universal Licensees range from EUR 100 - EUR 6500 (See Third Schedule of Postal Services (Licensing) Regulations 2015). The annual licence fee for the Universal Licence is 0.5% of the audited gross annual turnover or RM 1.5 million (EUR 325 000 whichever is higher).	Rebates are used as an incentive to promote high postal service performance achievement. According to the authorities, the rebates are part of incentive-based regulation. It is up to any licensee to apply for the rebate which will be assessed by the Commission. The base for rebates is stipulated in s 11(1). According to stakeholders, every licensee has the same opportunity to apply for the rebate and to enjoy its benefits if qualified.	The discretion to grant rebates means that some firms may be granted a cost advantage over others. Although rebates may be granted in order to promote high postal service performance, hence encouraging innovation and increased efficiency, the discretionary nature of the rebates could arbitrarily favour certain competitors over others. According to MCMC the introduction of guidelines on these rebates are currently being discussed with the relevant stakeholders.	Guidelines should outline when and how rebates can be granted, to ensure that they are granted in a non-discriminatory way.
9	Postal Services (Licensing) Regulations 2015	Section 4(e), Second Schedule	In order to apply for a Universal or Non-Universal licence, applicants must provide the information as described in Section 4 of the Postal Services (Licensing) Regulations 2015, including 'proof of the minimum paid up capital requirement as specified in the Second Schedule' unless	The objective may be ensuring that the company has sufficient resources to offer reliable and efficient courier services. MCMC has explained that courier	This provision may increase the entry costs of new companies and may discourage investment and market	The OECD recommends that the required minimum capital requirements for universal services

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			this is waived by the Commission. The Second Schedule provides the following capital requirements: Universal Licence - RM 100,000,000, equivalent to EUR 21 645 103,80 Non-Universal Licence – -- Licence A: RM 1,000,000 - EUR 216, 370 -- Licence B: RM 500,000 - EUR 108,175 -- Licence C: RM 100,000 - EUR 1,637	services require a large amount of investment, for example in branches and vehicles. It explained that Licence A and Licence B operators "require sound financial capabilities and working capitals". It noted that small scale companies can choose Licence C, where the capital requirements are minimal. Capital requirements are also in place to ensure the company is sustainable. The requirements may also aim at protecting consumers and creditors from risky and potentially insolvent businesses. See box 3.1 in the body of the report for International Comparison on Minimum Capital requirements.	entry, reducing the number of operators in the market and leading to higher consumer prices, to less choice and lower service quality for consumers. It may notably restrict entry of Small and Medium Enterprises (SMEs). This may be of particular importance for Malaysia where 'SMEs represent the vast majority of firms in the Malaysian economy, outnumbering large enterprises, both in terms of number and employment According to the 2016 Economic Census, SMEs accounted for 98.5% of total business establishments in Malaysia in 2015. (See, OECD Financing SMEs and Entrepreneurs 2019, page 155). Further, the ability for the Commission to waive capital requirements may be discriminatory and result in a cost advantage to some firms over others	be reviewed and specific capital requirements for non-universal services be removed, as there does not appear to be sufficient reasons to single out this sector. Companies should only be required to comply with the general requirements under the Companies Act 2016. Alternatively, an insurance requirement or bank guarantee could be introduced.

Horizontal restrictions

No.	Title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendations
1.	Companies Act 2016 (Laws of Malaysia Act 777)	Section 235	Companies registered in Malaysia must appoint at least one Company Secretary who is a citizen or permanent resident of Malaysia, ordinarily resides in Malaysia by having a principal place of residence there, and has been duly licensed by the Companies Commission of Malaysia. The role of Company Secretaries is to advise on compliance with local regulation, particularly the Companies Act'. (Source: OECD Trade Restrictiveness Index)	The role of the company secretary is to advise on compliance with local regulation, particularly the Companies Act'. International Comparison According to the OECD Services Trade Restrictiveness Index Regulatory Database, this requirement is prevalent in most countries. For example, in Australia, there is no rule that managing directors must reside in or be nationals of Australia (Part 2D.3 Section 201J of the Corporations Act 2001). However, if a company only has one director, they must ordinarily reside in Australia. If a company has more than one director, at least one or two of the directors (in the case of public companies) must ordinarily reside in Australia, but there is no majority requirement (Part 2D.3, Section 201A).	This provision may mean that the most qualified/suitable candidate is not appointed, as companies must discriminate between candidates based on nationality. This would likely restrict foreign investment, as investors often want to be represented in the highest leadership positions in the company.	No recommendation. The restriction is limited in scope as it only requires at least one company secretary to fulfil these requirements. Further, unlike some ASEAN countries, permanent residents (and not citizens) are allowed to take on this role.

International agreements

No.	No. and title of regulation	Article	Brief description of the potential obstacle	Policymakers' objective	Harm to competition	Recommendation
1	ASEAN Framework Agreement on Multimodal Transport (AFAMT)	Various	Malaysia has not enacted the ASEAN Framework Agreement on Multimodal Transport (AFAMT), first agreed among ASEAN countries in 2005.[11] The framework regulates liability, documents and operations of multimodal transport operators across ASEAN countries and so facilitates their activities. AFAMT only concerns multimodal transport, which is defined as carriage of goods by at least two different modes of transport combined in a single multimodal transport contract. Outside the covered scope, it does not replace existing national regulations on liability and authorisations for maritime and road transport. The BLPD office has explained that "Malaysia is in the process of reassessing the draft Multimodal Transport Bill as the outcomes of the Gap Analysis […] to align with current policies. Malaysia has targeted to ratify the AFAMT in 2020/2021. Nevertheless, Malaysia has finalized and endorsed the Implementation Framework of the ASEAN Framework Agreement on Multimodal Transport.".	The objective of AFAMT is to facilitate "the expansion of international trade among the members of ASEAN" and "to stimulate the development of smooth, economic and efficient multimodal transport services adequate to the requirements of international trade".[12] Stakeholders confirmed that this has not happened yet. The OECD understands that ASEAN members adopted a Declaration on The Adoption of The Implementation Framework of The ASEAN Framework Agreement on Multimodal Transport on 14 November 2019. Through this Declaration, AMS undertook to adopt the Implementation Framework of AFAMT, including its Regional Action Plan, which specifies the key activities, implementation mechanism and timeline for the realisation of AFAMT. Stakeholders have observed that one of the elements in the Regional Action Plan is that Malaysia has agreed to undertake domestic formalities to ratify AFAMT and to deposit its Instrument of Ratification to the Secretary General of ASEAN by 2021. **International comparison** While some ASEAN countries (e.g., Singapore) have implemented this agreement, others (for example, Thailand and the Philippines) have not, yet.	Failure to implement the AFAMT increases costs for operators and limits their ability to provide services across ASEAN Member States, thus restricting the geographic flow of goods and services. Implementation of the AFAMT would potentially increase the flow of goods and services across jurisdictional boundaries and would increase the geographic area of competition for provision of goods and services. It would potentially increase the number of suppliers. According to market participants, failure to implement the AFAMT makes it necessary to issue different documents for each leg of the transport by different means (e.g., bill of lading for the maritime leg), thus making it more burdensome to transfer cargo from one mode of transport to the other. Furthermore, the liability regime is unclear and the lack of implementation also limits the operators' ability to provide their services in other ASEAN countries.	The OECD recommends that Malaysia ratifies the AFAMT, introduces specific provisions or a new law to implement it into the national legal system.

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

[12] See https://afamt.asean.org/afamt/.

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2	MOU on trucks between Malaysia and Indonesia, for example SOSEK-MALINDO and BIMP-EAGA frameworks		According to the Asia Development Bank (ADB) and as confirmed by stakeholders, Indonesian trucks must load and unload cargo at Tebedu Inland Port (located on the border between Malaysia and Indonesia on Borneo Island) and are not permitted to go beyond the port. (Source: https://www.adb.org/sites/default/files/page/34232/review-bimp-eaga-land-transport-mou.pdf [page 18]) If trucks were to move beyond the port, they would be carrying out transport within Malaysia.	According to the report by the ADB, this regulation by Sarawak of "truck movements from West Kalimantan" is to "promote cargo consolidation and distribution at Tebedu Inland Port as well as to curb smuggling activities".[13] It prevents Indonesian trucks operating in Malaysia. The OECD understands that there is no bilateral MOU between Malaysia and Indonesia. Both countries are however party to a plurilateral agreement between Brunei, Indonesia, Malaysia and the Philippines, "Memorandum of Understanding between the Governments of Brunei Darussalam, Indonesia, Malaysia and the Philippines on Transit and Inter-State Transport of Goods" (BIMP-EAGA) signed in June 2009.	Both requiring trucks to unload and load cargo at the port and banning Indonesian trucks moving beyond the port restricts the cross-border flow of goods and services and raises costs for Indonesian and Malaysian suppliers and ultimately the costs of goods for consumers. The requirement by the Sarawak Commercial Vehicle Licensing Board (CVLB) limits the flow of goods and services, reducing the number of suppliers and potentially allowing some suppliers to exercise market power and increase prices.	The OECD recommends Malaysia reviews the requirement for trucks to unload and load cargo at the port and the ban on cross-border movement, while ensuring safety considerations are upheld, with Indonesia.
3	MOU on trucks between Malaysia and Brunei		According to a report by the Asia Development Bank (ADB), 'Bruneian transport operators serving the Brunei Darussalam-Sabah, Brunei Darussalam-Sarawak and Brunei Darussalam-Labuan routes have to approach three CVLB offices in three different locations for permit renewal and for new permit applications, i.e., the CVLB in Sabah, CVLB in Sarawak and CVLB in Labuan, respectively". Bruneian transport operators are therefore required to physically go to 3 different offices for each permit application and/or renewal. Further, according to stakeholders interviewed in Brunei, approval is not granted immediately and drivers need to physically go to the offices of the other country at least twice. They claim that the whole process may take weeks or months	The OECD has not identified an official policy objective for this practice, but it is likely that it is to ensure tight control over foreign transport operators entering Malaysia. Among the functions of the CVLB Sabah and Sarawak is issuing all commercial and public transport licenses for Sabah and temporary licenses on commercial vehicles from Sarawak, Brunei and Kalimantan (Indonesia) entering Sabah and CVLB Sarawak to licenses commercial vehicles from Sabah, Brunei and West Kalimantan Indonesia or other countries authorised to operate in Sarawak. According to stakeholders, MOUs are non-binding (legal status). **International comparison** Most OECD countries allow online application processes for transport and logistics-related licences and authorisations. In the UK, for instance, there is a user-friendly	The requirement to go to three separate branches of the same regulator for each application increases the cost of doing business and restricts the geographic flow of goods and services. The practice does not encourage Bruneian transport operators to carry out cross border transport, likely reducing the number of potential suppliers.	The OECD recommends consolidating the permit application and renewal processes for Bruneian transport operators; introducing an online application process; and increasing co-operation with Brunei.

[13] Asian Development Bank (2015), *Review of the BIMP-EAGA Land Transport MoUs, Asian Development Bank*, p. 18.

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			(See OECD, Brunei Prioritised Competition Assessment - Logistics Sector (forthcoming)).	online procedure for transport operator licences (with possibility to pay fees online with a credit card), although it is also possible to file an application by post if one cannot use the online service for whatever reason. Decisions are usually issued within shorter time in case of online application (7 weeks) compared to applications by post (9 weeks).		

OECD COMPETITION ASSESSMENT REVIEWS: LOGISTICS SECTOR IN MALAYSIA

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 Malaysia 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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