

OECD COMPETITION ASSESSMENT REVIEWS: LOGISTICS SECTOR IN THAILAND

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 Thailand and offers recommendations to lower regulatory barriers to competition. It covers freight transport by land and by water, freight forwarding, warehousing, small parcel delivery and value-added logistics services.

This report and the accompanying "OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Thailand" are contributions to an ASEAN-wide competition assessment project funded by the UK Prosperity Fund. Designed to foster competition in ASEAN, the project involves conducting assessments of regulatory constraints on competition in the logistics services sector in all 10 ASEAN countries to identify regulations that hinder the efficient functioning of markets and create an unlevel playing field for business.

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OECD Competition Assessment Reviews

THAILAND

LOGISTICS SECTOR



OECD Competition Assessment Reviews: Logistics Sector in Thailand

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Foreword

Southeast Asia, one of the fastest growing regions in the world, has benefited from a broad embrace of economic growth models 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 Thailand*, undertaken within the framework of the ASEAN Competition Action Plan, assesses the impact of regulation on competition in the sector. This report covers the five main subsectors of the logistics market: freight transportation, including transport by road, inland waterway and maritime, and rail; freight forwarding; warehousing; small-package delivery services; and value-added services. In parallel, the OECD has assessed the impact of state-owned enterprises on competition in Thailand in the *OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Thailand*.

The OECD assessment was conducted in consultation with the Thai authorities and local stakeholders, and with the support of the ASEAN Secretariat and the UK Prosperity Fund (UK Government). The assessment prioritises 69 pieces of legislation and identifies 54 regulatory barriers where changes could be made to foster greater competition in the logistics sector. This is especially important for Thailand which is emerging as a key logistics hub in the region where logistics currently account for about 6% of the country's GDP. This report offers policy recommendations that can help the Thai government address structural and regulatory shortcomings in this sector.

These structural reforms have become even more pressing as the Thai economy is expected to shrink by about 6.5% in 2020 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 Thai 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 Thai government, as well as the ASEAN Secretariat and the UK Prosperity Fund (UK Government), on their efforts to lift regulatory barriers to competition and to improve the business environment. The OECD looks forward to continuing and broadening its co-operation with ASEAN to support further its reforms to the benefit of its citizens.

Greg Medcraft



Director, OECD Directorate for Financial and Enterprise Affairs

Acknowledgments

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

The report was prepared in collaboration with the following authorities and public companies who participated in the meetings and provided information, advice and feedback throughout the project:

- Office of Trade Competition Commission (OTCC).
- Thailand Post Co., Ltd.
- State Enterprise Policy Office (SEPO)
- Port Authority of Thailand
- Ministry of Digital Economy and Society
- Department of Land Transport
- Marine Department

The following trade associations and private companies were interviewed:

- Thai National Shippers' Council, TNSC
- Thai Retailers Association
- Thai Federation on Logistics
- European Association for Business and Commerce

Ms Deuden Nikomborirak and Ms Urairat Jantarasiri of the Thailand Development Research Institute and the ASEAN Secretariat provided valuable inputs.

The OECD project team consisted of Ruben Maximiano, ASEAN Project Co-ordinator, Michael Saller, Competition Assessment Project Leader, Gaetano Lapenta, Competition Analyst, Sophie Flaherty, Competition Analyst, Wouter Meester, Competition Expert and Competitive Neutrality Project Leader, and Matteo Giangaspero, Competition Expert, all from the OECD Competition Division. The report was drafted by Gaetano Lapenta under the supervision of Michael Saller, edited by Tom Ridgway and prepared for publication by Angelique Servin, Rebecca Lambert and Erica Agostinho.

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

The project was funded by the UK Prosperity Fund (UK Government).

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

Fostering competition in ASEAN

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

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

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

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

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

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

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Acronyms and abbreviations

3PL	Third-party logistics
ABN	Australian business number
AEC	ASEAN Economic Community
AEO	Authorised economic operator
AFAFGIT	ASEAN Framework Agreement on the Facilitation of Goods in Transit
AFAFIST	ASEAN Framework Agreement on the Facilitation of Inter-State Transport
AFAMT	ASEAN Framework on Multimodal Transport
AFAS	ASEAN Framework Agreement on Services
APSC	ASEAN Political-Security Community
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
ASIC	Australian Securities and Investments Commission
BMTA	Bangkok Mass Transit Authority
BOI	Board of Investment of Thailand
BSAA	Bangkok Shipowners and Agents Association
CAGR	Compound annual growth rate
CATC	Civil Aviation Training Centre
CCP	Central Committee on the Price of Goods and Services
CPC	Central product classification
DLT	Department of Land Transport
DOA	Department of Airports
DOH	Department of Highways
DRT	Department of Rail Transport
DRR	Department of Rural Roads
EEC	Eastern Economic Corridor
EXAT	Expressway Authority of Thailand
FBA	Foreign Business Act
FBL	Foreign business licence
FDI	Foreign direct investment
FTI	Federation of Thai Industries
GATS	General Agreement on Trade in Services

GDP	Gross domestic product
GMS CBTA	GMS Cross-Border Trade Agreement
ICA	Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato)
ISIC	International Standard Industrial Classification of All Economic Activities
LPI	Logistics performance index, 2019
LSBCI	Thailand's Liner Shipping Bilateral Connectivity Index
LTFT	Land Transport Federation of Thailand
MFP	Multifactor productivity
MRTA	Mass Rapid Transit Authority of Thailand
MTO	Multimodal transport operator
NESDC	National Economic and Social Development Council
NSW	National single window
OICA	International Organization of Motor Vehicle Manufacturers
OTCC	Office of Trade Competition Commission, Thailand
OTP	Office of Transport and Traffic Policy and Planning, Thailand
PAT	Port Authority of Thailand
PMR	Product market regulation
PPP	Public-private partnership
PSCMT	Purchasing and Supply Chain Management Association of Thailand
PUDLV	Post-Universaldienstleistungsverordnung (Universal Postal Service Ordinance), Germany
SEPO	State Enterprise Policy Office, Thailand
SMEs	Small- and medium-sized enterprises
SOE	State-owned enterprise
SEZ	Special Economic Zone
SRT	State Railway of Thailand
TEU	Twenty-foot equivalent
TIFFA	Thai International Freight Forwarders Association
TLAPS	Thai Logistics and Production Society
TNSC	Thai National Shippers' Council
TPL	Third-party logistics
TSIC	Thailand Standard Industrial Classification
UNCTAD	United Nations Conference on Trade and Development
WGI	Worldwide governance indicators

Units of measure

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

Executive summary

Main economic characteristics of the logistics sector in Thailand

In 2017, the logistics market in Thailand had a total value of USD 63.1 billion. According to estimates, it will continue growing and is expected to reach USD 74.4 billion by 2020 and USD 83.7 billion by 2022. The Thai logistics sector is largely dominated by freight transport by road, which accounted for 57.7% of the total logistics revenue in 2017. In terms of overall logistics performance, Thailand ranked 32 in the World Bank's Global Logistics Performance Index and, among ASEAN countries, is second only to Singapore. Such a significant result is due in part to significant public investments in national infrastructure, in particular in the development of the road network and port infrastructure. Thanks to the numerous projects included in the Thai state's Transport Infrastructure Action Plan of 2017 with an investment value of approximately USD 25 600 million, the quality of infrastructure and the overall logistics performance of Thailand will most likely continue to improve in the near future.

Key recommendations by sub-sector

The preliminary report makes 54 recommendations on specific legal provisions that should be removed or amended. The main recommendations are summarised below.

Road freight transport

- Clarify, in accordance with current practice, that the provisions in the law allowing the government to set a maximum number of transport operators and vehicles do not apply to freight transport.
- Remove the imposition of conditions on the required number of vehicles and personnel when issuing a licence for own-account transport.
- Remove the requirement for transport operators to hold a domestic transport licence in order to operate international freight transport.
- Clarify, in accordance with current practice, that the provisions setting transport service rates and routes do not apply to freight transport.

Maritime freight transport

- To avoid conflicts of interest, clarify that the Port Authority of Thailand (PAT) only has operational functions, while the power to adopt regulations regarding ports and port operations, which currently is also partly exercised by PAT, lies with an independent body, such as the Ministry of Transport. While PAT may submit proposals on technical matters, the power to adopt the final decision should always lie with the independent body.
- Remove minimum prices for services within PAT's ports. In cases where port competition is limited, maximum prices may continue to be regulated.

- Clarify that PAT's power to fix rates only applies to its own services and not to those offered by private operators within the port area. If minimum prices are not removed as suggested above, all active operators should at least be allowed to grant discounts without seeking approval.
- Review current cabotage policy. Either introduce, in co-operation with other ASEAN countries, an ASEAN-wide cabotage policy similar to the EU, in which ASEAN operators are treated as national operators and can provide services in other ASEAN countries; or regularly assess demand for shipping services on different routes and, pursuant to Article 47 bis of the Thai Vessel Act (1938), consider granting exemptions and temporary licences to allow foreign vessels to provide emergency cabotage services when supply is insufficient and a need arises for additional or specific services.
- Conduct annual surveys of supply and demand for ship crews and seafarers and, in the case of shortages, allow exemptions from nationality requirement pursuant to Article 70 of the Thai Vessel Act.
- Consider removing the provision concerning the preference given to Thai-registered vessels for the transport of certain goods, such as those purchased by the government or state-owned enterprises (SOEs). A transition period may be necessary to allow Thai operators currently benefiting from this cargo preference provision to adjust to the new legal framework; or consider granting subsidies rather than introducing long-term competition-distorting measures if a specific exceptional need arises.
- Ensure that the general rules on land leasing are also applied to PAT land in port areas.
- Remove the tax exemption granted to PAT and ensure that it is subject to the same tax provisions as private port operators when it operates as a competitor.
- If there is private interest in providing piloting services, create an appropriate legal framework so that such services can be tendered based on fair and non-discriminatory terms to guarantee competition for the market.

Rail freight transport

- Consider separating ownership and management of infrastructure from rail freight transport service operations; or, introduce separate accounting for infrastructure and freight transport services.
- Clarify the conditions for obtaining the permission to operate railway cargo transport.

Freight forwarding

- Remove the Central Land Transport Control Board's power to set the number of freight forwarders.
- Remove the requirement for freight forwarders to provide a security deposit to guarantee the performance of freight-forwarding contracts, and instead require them to take out insurance.
- Consider applying to freight forwarders the general minimum capital requirements for commercial companies, instead of imposing specific capital requirement for freight-forwarding activities, and allow this capital requirement to be fulfilled by bank guarantees or insurance contracts.
- Remove the provision requiring a multimodal transport operator (MTO) to hold an authorisation for each branch it operates.

Warehousing

- Allow storage in bonded warehouses for more than 30 days without having to seek permission. Such duration could be increased to, for instance, one year in order to allow the storage of slow-moving items; or, completely remove time limits for storage in bonded warehouses; or, introduce a specific licensing scheme, similar to Singapore's, in which a whole or part of a warehouse is licensed by the customs authority to store goods tax-free for an indefinite period of time.

- Consider allowing the sealing of specific containers and remove the provision whereby the bonded cargo load must be alone in a sealed truck. This would allow loading goods on the same truck without having formally to import first goods into Thailand and pay the custom fees for the removal of the seals.

Small-package delivery services

- Clarify the boundaries of ThaiPost's monopoly to exclude express mail and parcels/small-package delivery services. This could be done, for instance, by defining more precisely what falls within the description of "letter"; alternatively, lift ThaiPost's monopoly on letters and parcels and introduce a mechanism to compensate it for the additional costs stemming from the universal service obligation.
- Clearly define the scope of ThaiPost's exemptions from competition law, which should be based on an independent Office of Trade Competition Commission (OTCC) assessment.

Horizontal and others

- Create a single legal database including all laws and regulations. As a first step, authorities should publish on their website all relevant legislation within their purview including secondary legislation referred to in primary laws, as well as details on rules and procedures.
- Publish a consolidated, updated version of every law relevant to logistics, including subsequent amendments.
- Introduce digitalisation for all application procedures for logistics-related authorisations and allow online applications.
- Consider completely lifting minimum capital requirements for logistics providers or at least ensure that minimum capital requirements are the same for all businesses, irrespective of whether they are Thai or foreign entities. In order to comply with these capital requirements, bank guarantees or insurance contracts rather than bank deposits should be accepted.
- Progressively relax foreign-equity limits with the long-term goal of allowing up to 100% foreign ownership without any specific licence being required. A first step may be to implement the agreed changes towards the AFAS target of 70% ASEAN foreign-ownership in entities providing logistics services and then applying and extending this threshold to non-ASEAN nationals. In the long term, Thailand may consider full liberalisation by allowing 100% foreign-ownership in entities providing logistics services. In the alternative, either relax foreign equity limits on a reciprocal basis or allow 100% ownership and consider introducing a screening system of certain foreign direct investments, for example when the investment goes beyond a certain value threshold or when it affects certain sensitive sectors.
- Publish an annual report of statistics on average times needed by authorities to grant a foreign business licence (FBL), as well as how many times the official time limit of 60 days for official responses was extended by 60 days. Provide explanations to parties whose FBL applications were not processed within the initial deadline.

International agreements

- Remove the maximum number of licences for cross-border freight transport by road to Cambodia and Myanmar; or, regularly assess market demand and consider increasing the set number of licences. This may require negotiations between the co-signatories.

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 logistics sector; and 2) prepare a regional report assessing the impact on competition of state-owned enterprises (SOEs) and government-linked monopolies in selected markets in ASEAN.

An OECD team has been conducting competition assessments of laws and regulations in ten ASEAN member states (AMS), as well as a global study for the ASEAN region. It has worked in close co-ordination with the ASEAN Secretariat (ASEC), the ASEAN Experts Group on Competition (AEGC), as well as with the responsible authorities within each AMS, in particular, competition authorities. For Thailand, the analysis was carried out with the support of the OTCC and funded by the UK Prosperity Fund (UK Government).

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

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 onboard 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:

- Freight transportation (excluding air transport)
- Freight forwarding
- Warehousing
- Small-package service delivery
- 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 transport of freight are generally defined: 1) road; 2) water; 3) rail; 4) air; and 5) pipelines (Mangan and Lalwani, 2016, p. 103^[1]). This report only covers the first three modes of freight transport. Transport by air only makes up a small percentage of overall freight transport in the ASEAN region; in 2018 in Thailand, for example, it represented 11% of logistics revenues (Ken Research, 2018^[3]). Transport by air also raises a set of different questions which are often regulated in bi- 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.

1.2.1.1. 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 transport in Thailand. Fixed costs are low as the physical transport infrastructure, such as motorways, is usually in place and publicly funded; variable costs include fuel costs, and maintenance charges, road use and congestion. Road is also often the most suitable or efficient mode of transport since it allows door-to-door transport without any transfers of cargo between different vehicles, which results in lower costs for senders and recipients, as well as in reduced risks of possible loss or damage from cargo transfers.

1.2.1.2. Inland waterway and maritime freight transport

Waterborne freight transport refers to goods transported on waterways using various means, including boats, steamers, barges and ships, both within and outside the country. When the goods are transported by using inland waterways such as rivers or canals, transport is referred as inland waterway transport. Maritime transport refers to seaborne movement of goods on ships, linking a large number of origin and destination points, either within the country's territorial waters, for instance within an archipelago or in case of coastal trading (known as cabotage) or, more often, to other countries (OECD, 2016, p. 141^[4]).² Of global international trade, 90% is transported by sea. Transporting cargo by sea is ideal for high-volume cargo that is not necessarily time sensitive or which has long lead times for delivery (Rushton, Croucher and Baker, 2017, p. 447^[5]). 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 the global level, 60% of the goods by value moved by sea are carried by liner vessels.³ Shipping liners are carriers providing shipping services to shippers on fixed routes with regular schedules between ports

(International Transport Forum, 2018, p. 10^[6]). In the past, liners were often organised into conferences, formal groups of shipping lines operating on shipping routes that brought together all lines operating in a specific geographic zone to set common freight rates and regulate capacity. This practice has been under scrutiny in some regions of the world, such as in the EU,⁴ and its relevance has decreased in the last decades, mostly as a result of the United States' 1998 Ocean Shipping Reform Act and the repeal of the EU Block Exemption to liner shipping conferences in 2006 (International Transport Forum, 2018, p. 11^[6]).

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

The main ports in Thailand are Map Ta Phut Industrial Port (for liquid cargo), Laem Chabang Port (for containerised cargo), followed by Bangkok Port and Chiang Saen Port.

Typical port services include:

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

Some shipping services, as well as shipping-related activities taking place in ports, are provided by the port administration under monopoly conditions, while others are subject to competition. In some geographical regions, there is fierce competition between ports as well as within ports (OECD, 2018^[7]). In others, however, enhancing competition would be difficult, especially when ports are local natural monopolies with limited space and so subject to heavy national regulations. The state of port competition would need to be assessed in the context of ports facing global shipping alliances with strong bargaining power (International Transport Forum, 2018^[6]), especially since certain shipping sectors such as container shipping have recently become much more concentrated (OECD, 2018, p. 181^[7]).

1.2.1.3. Rail freight transport

Rail freight refers to freight, cargo or goods transported by railways and does not include parcels or baggage transport services associated with railway passenger services. Fixed costs for rail tend to be high due to expensive requirements such as locomotives, wagons, tracks and facilities such as freight terminals; variable costs are, however, mostly low (Mangan and Lalwani, 2016, p. 105^[1]). The OECD has stated regulatory authorities should ensure competition development in the provision of services and non-

discriminatory access to infrastructure, while providing for the right incentives for investment in the network, ensuring public-service needs and safeguarding consumers' rights (OECD, 2018, p. 158^[7]).

1.2.2. Freight forwarding

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

Foreign companies, such as NCL International, DB Schenker, DHL and Yusen have a strong position in Thailand's freight-forwarding market.

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

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

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

Small-package delivery services deliver small packages from pick-up location to drop-off location. They can include express or deferred delivery, both domestically and internationally, by any mode of transport. A separate OECD report, *OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Thailand* (2020) has been published analysing possible distortions to competition for postal services related to SOEs and so they 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:

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

Each restriction is likely to have an impact well beyond individual consumers in the sectors assessed. When consumers can choose and shop around for a variety of products and services, firms are forced to

compete, innovate more, and improve their productivity (Nickell, 1996^[8]) (Blundell, 1999^[9]) (Griffith, 2006^[10]). Industries in which there is greater competition experience faster productivity growth. These conclusions have been demonstrated by a wide variety of empirical studies and summarised in the OECD's "Factsheet on how company policy affects macro-economic outcomes" (OECD, 2014^[11]). Competition stimulates productivity primarily because it provides the opportunity for more efficient firms to enter and gain market share at the expense of less efficient firms.

In addition to the evidence that competition fosters productivity and economic growth, many studies have shown the positive effects of more flexible product market regulation (PMR), the area most relevant to this report.⁵ These studies analyse the impact of regulation on productivity, employment, research and development, and investment, among other variables. Differences in regulation also matter and can reduce significantly both trade and foreign direct investment (FDI) (Fournier et al., 2015^[12]) (Fournier, 2015^[13]).⁶ By fostering growth, more flexible PMR can help the sustainability of public debt.

There is a particularly large body of evidence on the productivity gains created by more flexible PMR. At the company and industry level, restrictive PMR is associated with lower multifactor productivity (MFP) levels (Nicoletti and Scarpetta, 2003^[14]) (Arnold, Nicoletti and Scarpetta, 2011^[15]).⁷ The result also holds at aggregate level (Égert, 2017^[16]).⁸ Anti-competitive regulations have an impact on productivity that goes beyond the sector in which they are applied and this effect is more important for the sectors closer to the productivity frontier (Bourlès et al., 2013^[17]).⁹ Specifically, a large part of the impact on productivity is due to investment in research and development (Cette, Lopez and Mairesse, 2013^[18]). Moreover, lowering regulatory barriers in network industries can have a significant impact on exports (Daude and de la Maisonneuve, 2018^[19]).

Innovation and investment in knowledge-based capital, such as computerised information and intellectual property rights (IPRs), are also negatively affected by stricter PMR. 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^[20]), (Andrews and Westmore, 2014^[21]) (Andrews, Nicoletti and Timiliotis, 2018^[22]). Pro-competition reforms to PMR are associated with an increase in the number of patent awards. (Westmore, 2013^[23]) More stringent PMR is shown to be associated with reduced investment and amplifies the negative effects of a more stringent labour market (Égert, 2017^[24]).¹⁰

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^[25]).¹¹ 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^[26]).¹² 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^[27]).

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.¹³

Finally, one 2018 study looked at the impact of PMR on the persistence of profits in the long term (Eklund and Lappi, 2018^[28]). 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^[16]).¹⁴

Increased market competition may also reduce gender discrimination and equality (Pike, 2018^[29]) (Cooke, 2018^[30]). 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 Thailand

Situated at the centre of the Southeast Asian Indochinese peninsula, Thailand is composed of 76 distinct provinces. Its geographic position gives it access to important economic areas outside ASEAN, such as China and India. For this and other reasons, Thailand is trying to build a reputation as the logistics hub of the region (Ken Research, 2018, p. 38^[3]).

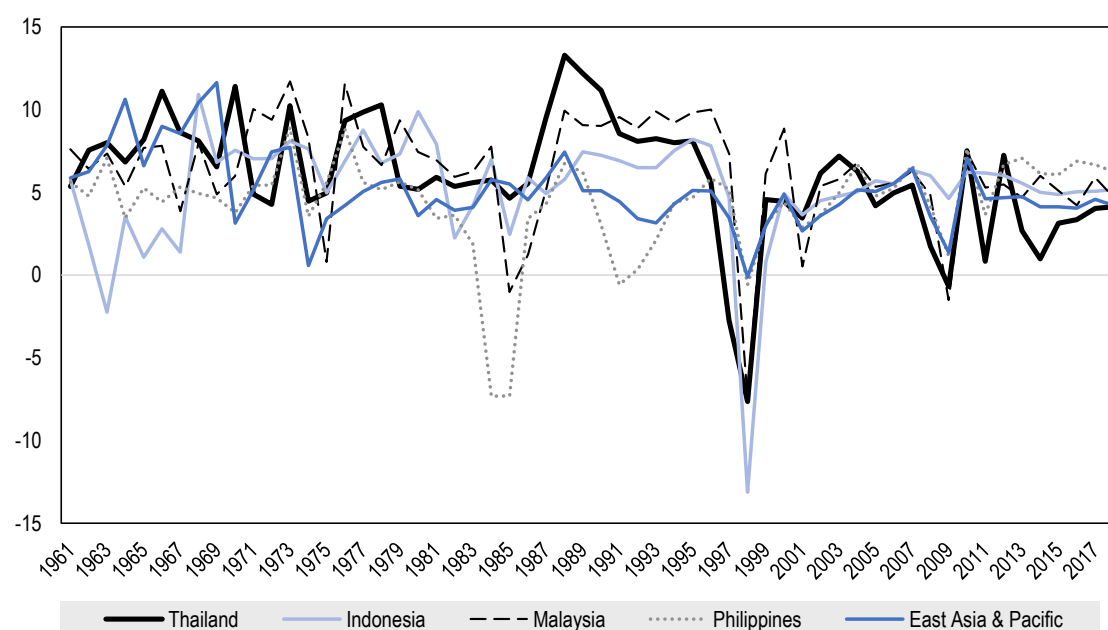
In 2018, Thailand’s population reached 69.43 million people and is growing at an average annual rate of 0.3%.

1.4.1. GDP and economic growth

Thailand is Southeast Asia’s second-largest economy after Indonesia and its GDP was USD 505 billion in 2018. Since the 1980s, Thailand has experienced rapid economic growth, passing from a low-income economy to an upper-middle income economy, according the World Bank’s classification.¹⁵ As highlighted by the OECD in previous reports: “structure reforms played an important role in this transformation, with trade and investment liberalisation and business-friendly regulatory reforms encouraging participation in global value chains” (OECD, 2018, p. 86^[31]).

The country’s overall GDP growth rate has changed significantly over time, however. Thailand grew at a fast pace of 9-13% in the latter part of 1980s, before experiencing two sudden shocks during the Asian financial crisis in the mid-1990s and during the global financial crisis in 2009, similarly to the effects on comparable economies in the region, as shown in the figure below. While the country saw slow growth until 2014 as a result of national political uncertainties and low global demand, its growth rate has regained momentum and been rising since 2015 to reach 4.1%, as shown below.

Figure 1.1. Annual percentage GDP growth rate in selected ASEAN economies



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

However, the economic growth is expected to contract in 2020 due to the impact of the Covid-19 outbreak, which has led to a decline in external demand, supply chains disruptions and lower domestic consumption and thus has affected crucial sectors for Thailand's economy such as trade and tourism. According to the forecasts, growth projections for 2020 will be about 6.5% (ADB, 2020). However, the economy should slowly recover during the second half of 2020, upon condition that there is no second wave of the pandemic.¹⁶

As a newly industrialised country, Thailand is heavily dependent on exports. Exports have been constantly increasing since the 1980s, both in absolute terms and as a percentage of GDP. They today account for more than two thirds of Thailand's GDP.

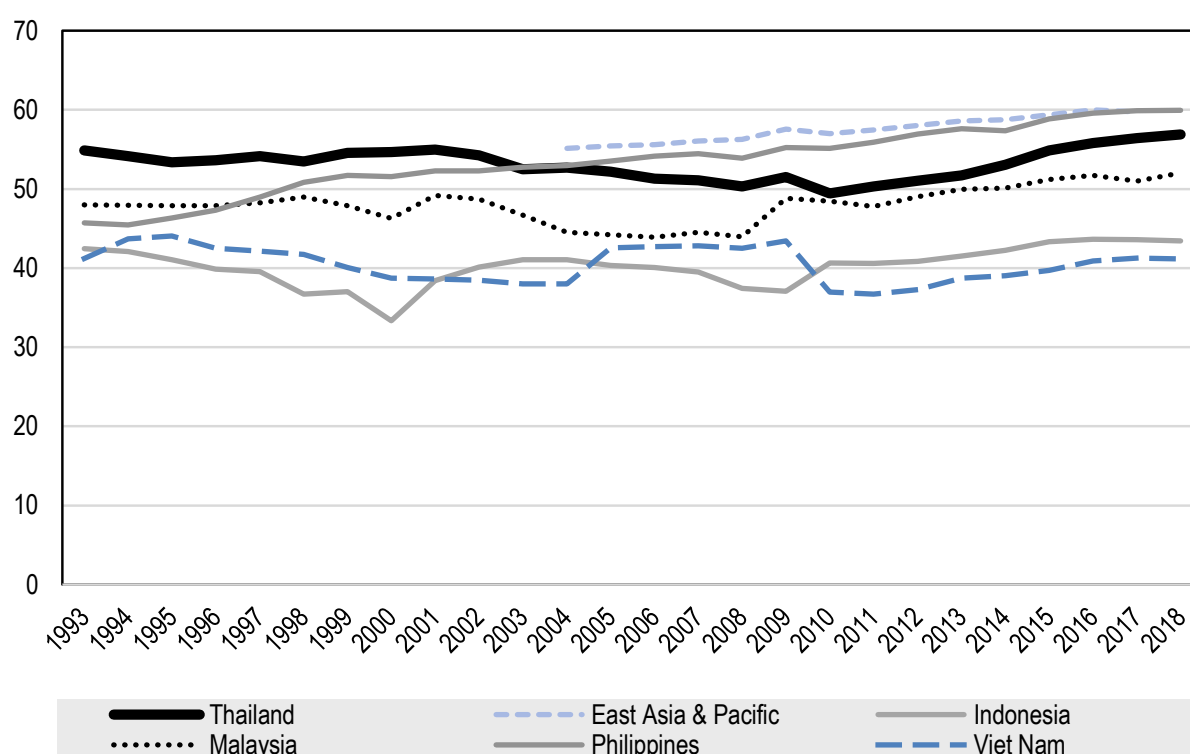
1.4.2. Contribution to GDP growth by sector and the importance of services

The contribution of services to GDP growth has become more important over the years with an annual percentage growth of 5.1% in 2018, while the annual percentage growth of manufacturing has been generally decreasing since 2010.

In absolute terms, services account for more than 56% of Thailand's GDP, showing a slow, though constant increase over the past 20 years; they are increasingly important to the Thai economy. In terms of the percentage of GDP produced by services, Thailand is now third in the region after Singapore and the Philippines (see Figure 1.2 below). 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^[32]). In 2016, services accounted for 73% of ASEAN inward FDI stock, similar to the OECD member country average (70% in 2015) and to global trends (OECD, 2019, p. 27^[33]). More generally, this is also the result of an ASEAN-wide strategy of strengthening co-operation among member countries under the ASEAN Framework Agreement on Services (AFAS).¹⁷ 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^[33]).

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



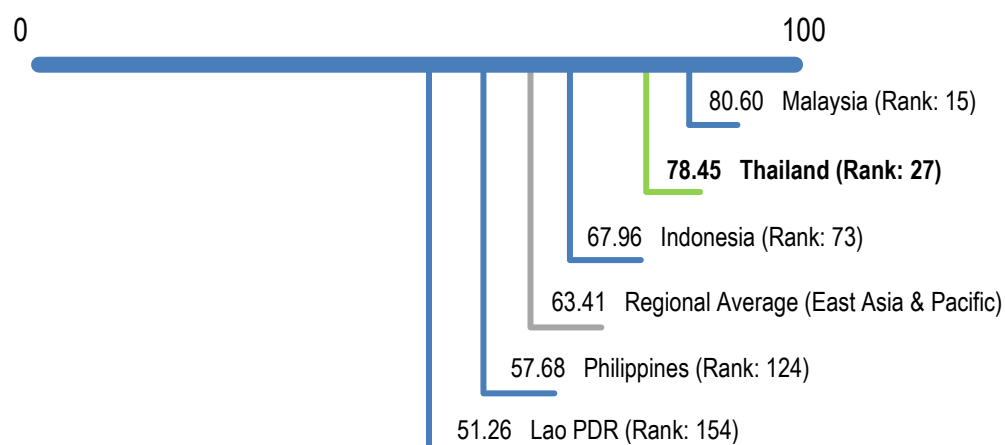
Source: World Bank, <https://data.worldbank.org/indicator/NV.SRV.TOTL.ZS?locations=BN-Z4-ID-MM-MY-PH-SG-TH-VN>

At a more granular level, within services, transportation, wholesale and retail trade, tourism and other travel-related activities, are all major GDP contributors (Banomyong, 2017, p. 186^[34]).

1.4.3. Business environment

The World Economic Forum's Global Competitiveness Report ranks Thailand 96 out of 140 survey economies in terms of the extent of market dominance, 84 for services trade openness, and more highly for competition in services (37) (World Economic Forum, 2018, p. 557^[35]).¹⁸

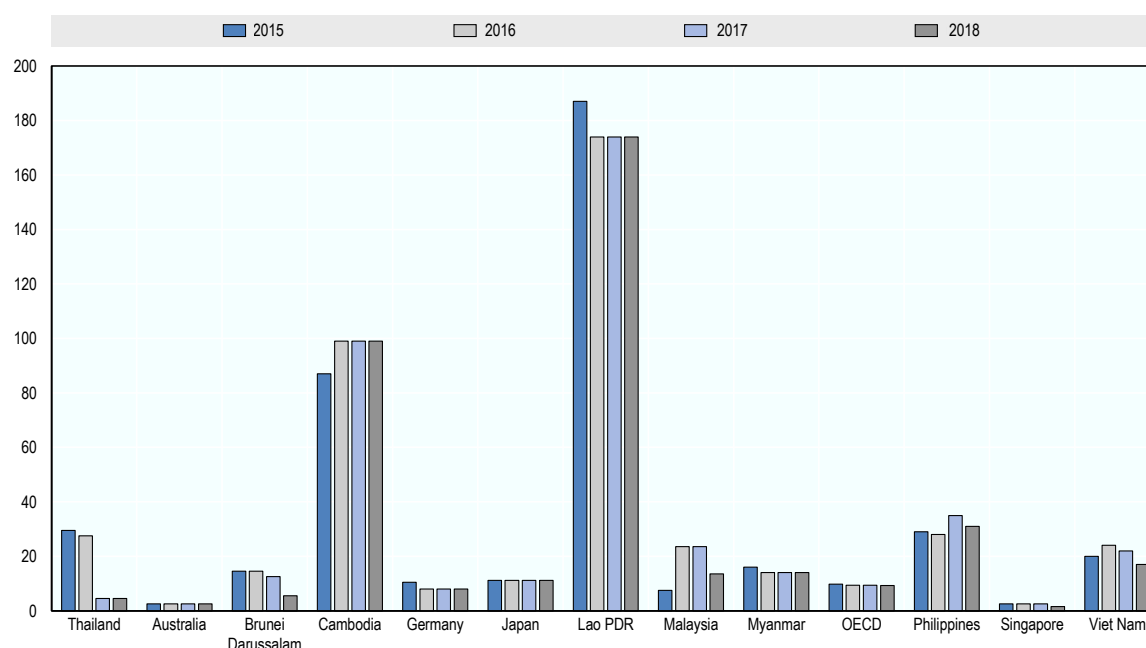
One purpose of recent reforms was to make Thailand an attractive country for domestic and foreign investment. These reforms have included the introduction of fixed business registration fees; improving the online platform for declaring corporate income tax; the launch of an e-matching system for electronic cargo control; the abolition of the requirement to obtain a company seal to start a business; and the creation of a single window for company registration payments and a one-stop shop for founding a business. The World Bank's *Doing Business 2019* report ranks Thailand 27 out of 190 surveyed economies for the ease of doing business (World Bank Group, 2019^[36]). On the global level, New Zealand, Singapore and Denmark make up the top three, while in the ASEAN region, the top performer after Singapore is Malaysia, followed by Thailand and Brunei Darussalam (55).¹⁹

Figure 1.3. *Doing Business* – Ease of Doing Business score

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

Among the factors the World Bank takes into account to calculate the ease of doing business in a country is the time required to open a new business.²⁰ 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 1.4 below, since 2015, almost all ASEAN Member States have significantly reduced the amount of time required to start a business and in most of these countries, it is now possible to conclude all the necessary procedures within one month (for example, 31 calendar days in the Philippines, 13.5 in Malaysia). These steps bring most ASEAN countries closer to the OECD members' average of 9.2 days; certain, such as Brunei Darussalam, Singapore and Thailand, are already performing better than the OECD average.

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



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

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

³ See www.worldshipping.org/about-the-industry/how-liner-shipping-works

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

⁵ The methodology followed in this project is consistent with the product market regulations (PMR) index developed by the OECD. To measure a country's regulatory stance and track progress of reforms over time, in 1998, the OECD developed an economy-wide indicator set of PMR (Nicoletti et al., 1999); this indicator was updated in 2003, 2008 and 2013.

⁶ Fournier, et al. (2015) find that national regulations, as measured by the economy-wide PMR index, have a negative impact on exports and reduce trade intensity (defined as trade divided by GDP). Differences in regulations between countries also reduce trade intensity. For example, convergence of PMR among EU member states would increase trade intensity within the European Union by more than 10%. Fournier (2015^[13]) studied the impact of heterogeneous PMR in OECD countries and concluded that lowering regulatory divergence by 20% would increase FDI by about 15% on average across OECD countries. He investigated specific components of the PMR index and found that command-and-control regulations and measures protecting incumbents (such as antitrust exemptions, entry barriers for networks and services) are especially harmful in reducing cross-border investments.

⁷ Arnold, Nicoletti and Scarpetta (2011^[15]) analysed firm-level data in 10 countries from 1998 to 2004 using the OECD's PMR index at industry-level, and found that more stringent PMR reduces firms' MFP.

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

⁹ The study of 15 countries and 20 sectors from 1985 to 2007 estimated the effect of regulation of upstream service sectors on downstream productivity growth. The productivity frontier refers to the most productive countries and sectors in the sample. The farther a sector is from the frontier, the less productive it is.

¹⁰ Égert investigated the link between product and labour-market regulations with investment (capital stock) using a panel of 32 OECD countries from 1985 to 2013.

¹¹ Employment growth in 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.

¹² The sample includes 18 countries over a 10-year period.

¹³ Using the OECD's summary index of PMR in seven non-manufacturing industries in the energy, telecom and transport sectors, Causa et al. (2015) 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".

¹⁴ Multi-factor productivity (MFP) is a measure of the “efficiency with which labour and capital inputs are used together in the production process” (See <https://data.oecd.org/lprdy/multifactor-productivity.htm>).

¹⁵ See World Bank’s press release, “Thailand Now an Upper Middle Income Economy”, April 2011, www.worldbank.org/en/news/press-release/2011/08/02/thailand-now-upper-middle-income-economy.

¹⁶ <https://www.adb.org/sites/default/files/publication/612261/ado-supplement-june-2020.pdf>

¹⁷ The ASEAN Framework Agreement on Services was signed in Bangkok on 15 December 1995; available at: https://asean.org/?static_post=asean-framework-agreement-on-services.

¹⁸ 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.

¹⁹ For the full list of countries with their respective rankings, see www.doingbusiness.org/en/rankings.

²⁰ Another factor is the time necessary to register property; see section 3.5.1.1. Restrictions on purchase of land for more details.

2 Economic overview of the logistics sector in Thailand

The logistics sector is a crucial sector for the development of any economy, connecting firms to both domestic and international opportunities (World Bank, 2018^[37]). Apart from its large contribution to GDP, the existence of a well-developed logistics network ultimately impacts upon most economic activities and is fundamental to productivity and growth.

Recognising the importance of connectivity and logistics for the economies of its member states, ASEAN adopted a *Master Plan on ASEAN Connectivity 2025*, with the aim of strengthening ASEAN competitiveness through enhanced trade routes and supply-chain efficiency.¹

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 Thai 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^[38]).

Similarly to other ASEAN member States, Thailand will suffer from the socio-economic impact of the Covid-19 outbreak. The pandemic has resulted in the disruption of supply chains 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. Furthermore, supply chain disruptions resulting from the closure of companies and transportation restrictions will be exacerbated by Thailand's high reliance on intermediate goods from markets heavily affected by the pandemic, such as China, Japan and South Korea.²

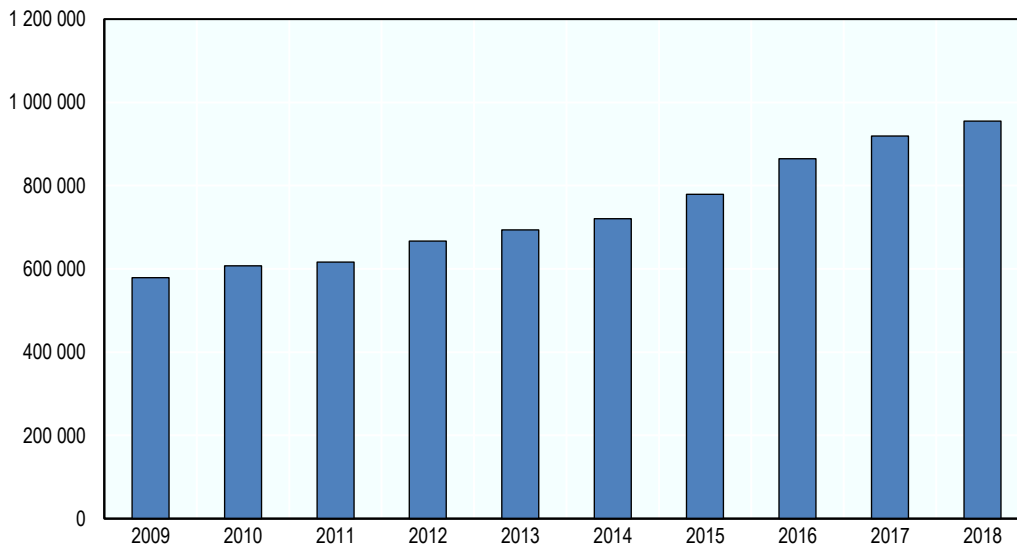
In the first quarter of 2020, transportation and storage dropped by -6% year-on-year, following lower land transportation (-4.2%) and air transportation (-20.8%), which slowed down due to the decline in domestic and foreign tourists and lower transportation of agricultural and industrial products.³ However, absent a second wave of Covid-19 pandemic, the economy should gradually improve during the second half of 2020, with support from government stimulus and post-lockdown measures.

2.1. Key figures of the logistics sector

2.1.1. Employment and GVA / GDP of logistics sector

In 2017, Thailand's transportation sector employed approximately 1.4 million people, representing around 3.71% of the employed population, constituting the seventh sector of the economy in terms of number of people employed.⁴ GDP from the transportation and storage sector amounted to THB 954 633 million (approximately USD 29 billion) in 2018 and has been constantly increasing, as shown in the figure below.

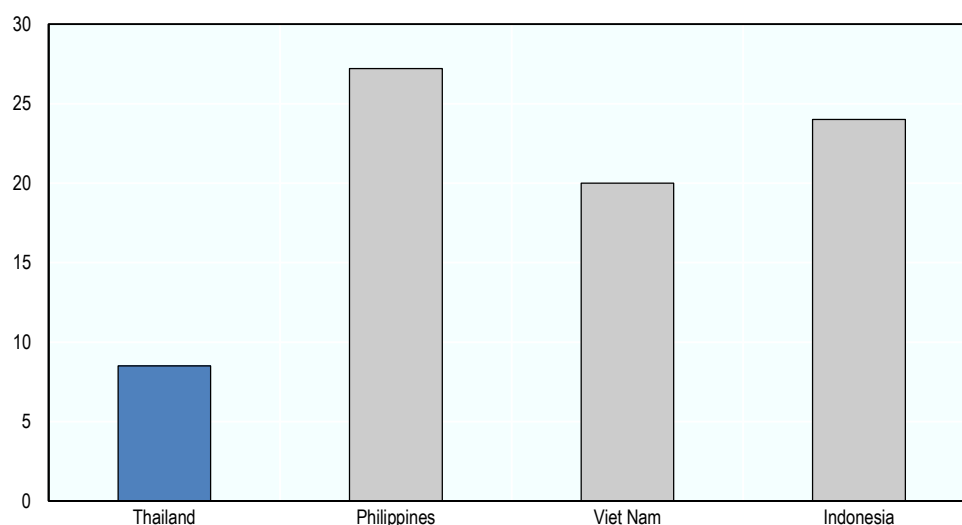
Figure 2.1. GDP from transportation and storage sector (million THB)



Source: Thailand National Statistical Office, National Accounts Branch,
<http://statbbi.nso.go.th/staticreport/page/sector/en/10.aspx>.

Logistics costs, according to the National Economic and Social Development Council (NESDC), as a percentage of GDP was 13.6% in 2017.⁵ Such costs were composed sub-costs including administrative costs (1.2%), inventory, warehouse costs (5%) and transport costs (7.4%). Although the Figure 2.2 below shows logistics costs in Thailand as a percentage of the country's GDP are lower than other comparable economies in the region, some authors highlight that logistics costs are still high compared to more developed countries such as the United States (Plummer, Morgan and Wignaraja, 2016^[39]).

Figure 2.2. Logistics costs as percentage of GDP (2016)

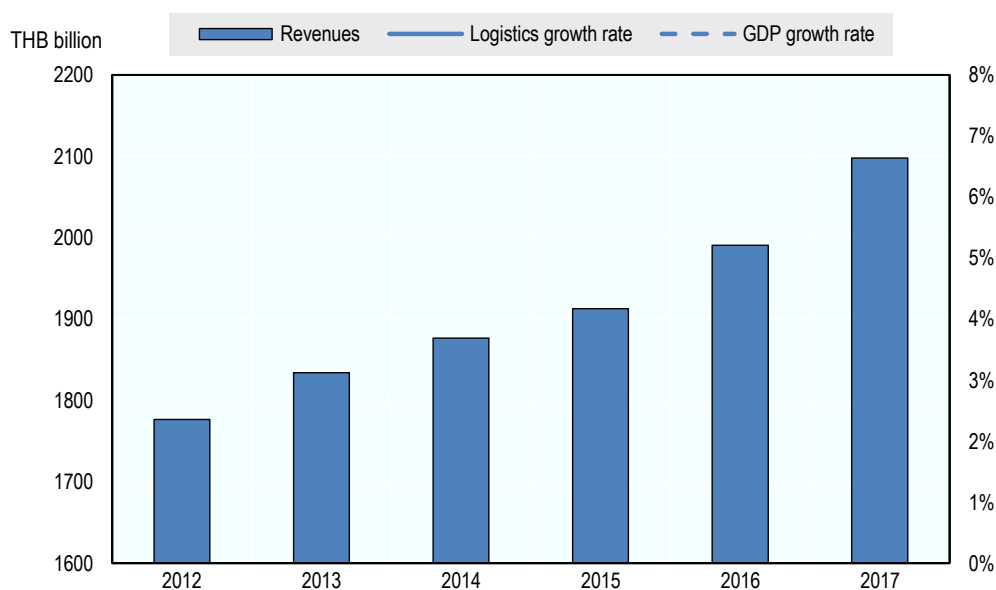


Source: (Ken Research, 2018^[3])

2.1.2. Market turnover and volume

The logistics market has shown consistent growth over the past five years (Figure 2.3 below) and since 2016 has actually shown a faster growth rate than the overall economy, which by contrast has experienced several, and significant downturns.⁶ In 2016, the logistics market in Thailand reached a total value of USD 63.1 billion, compared with USD 11.2 billion in the Philippines and more than USD 163 billion in Indonesia.

Figure 2.3. Thailand logistics and warehousing market size by revenue, with overall economy grow rate percentage and logistics growth rate percentage, 2012-2017

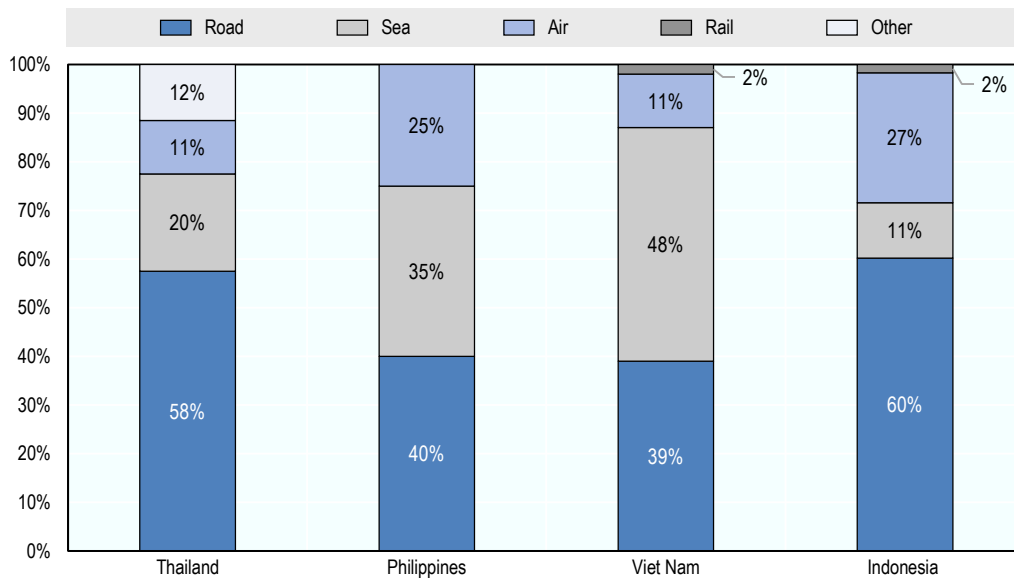


Source: (Ken Research, 2018^[3]), World Bank, <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=TH>

According to the estimates, the logistics market will continue growing and is expected to reach USD 74.4 billion and USD 83.7 billion by 2020 and 2022, respectively.

When considering the breakdown by mode of transport, the logistics market in Thailand is largely dominated by road transport. Revenue data shows that in 2017 freight transport by road accounted for 57.7% of the total logistics revenue. This is significantly higher when compared to other ASEAN countries, such as the Philippines (40%) or in Viet Nam (39%) (Figure 2.4 below).

Figure 2.4. Freight segments by revenue, percentage, 2017



Source: (Ken Research, 2018^[3])

2.1.2.1. Road transport

The growing importance of freight transport by road is further confirmed by the increase in the number of commercial vehicle registrations (including both light commercial vehicles and heavy trucks). According to data from the International Organization of Motor Vehicle Manufacturers (OICA), between 2014 and 2015, the number of commercial vehicles in use (including coaches and buses in addition to light commercial vehicles and heavy trucks) in Thailand increased by 3%, compared, for example, to Singapore where there was an increase of 0.6% in over the same period.⁷ The number of trucks in Thailand in 2017 is shown in table below.

Table 2.1. Number of trucks in Thailand, by region (2017)

Region	2017	Percentage share
Central	5 736	24.5
Eastern	3 063	13.1
North-eastern	6 996	29.9
Northern	3 649	15.6
Western	2 477	10.6
Southern	1 483	6.3
Total	23 404	100%

Source: (Ken Research, 2018^[3])

This prevalence of road transport is due to a number of factors. First, the quality of the Thai road network is constantly improving.⁸ Second, public policy has seen significant public investment in road infrastructure.⁹ Finally, road transport has the advantage of allowing door-to-door transport without the transfer of cargo between different vehicles; this results in lower costs for senders and recipients, as well as in reduced risks of possible loss or damage when moving cargo. Generally, even when other modes of transport such as rail transport are used, the “first and last mile” transport is still carried out by road in order to reach the sender and the recipient.

2.1.2.2. Water transport

Transport by sea represents a smaller proportion of the overall logistics revenues at approximately 20% (see Figure 2.4 above), although it constitutes the second largest mode of transport in Thailand. In terms of value, it was estimated at THB 232.3 billion in 2017 (Ken Research, 2018^[3]).

The importance of maritime transport is confirmed both by the constant increase of merchant vessel registrations in Thailand (Table 2.2 below) and by the significant amount of freight handled by the major ports in Thailand. For example, in Laem Chabang, over the period 2010-2019, the volume of cargo handled in the port increased by 69% and other ports such as Chiang Saen and Chiang Khong showed even larger percentage increases.¹⁰

Table 2.2. Total merchant fleet ships by flag of registration, 2011-2018

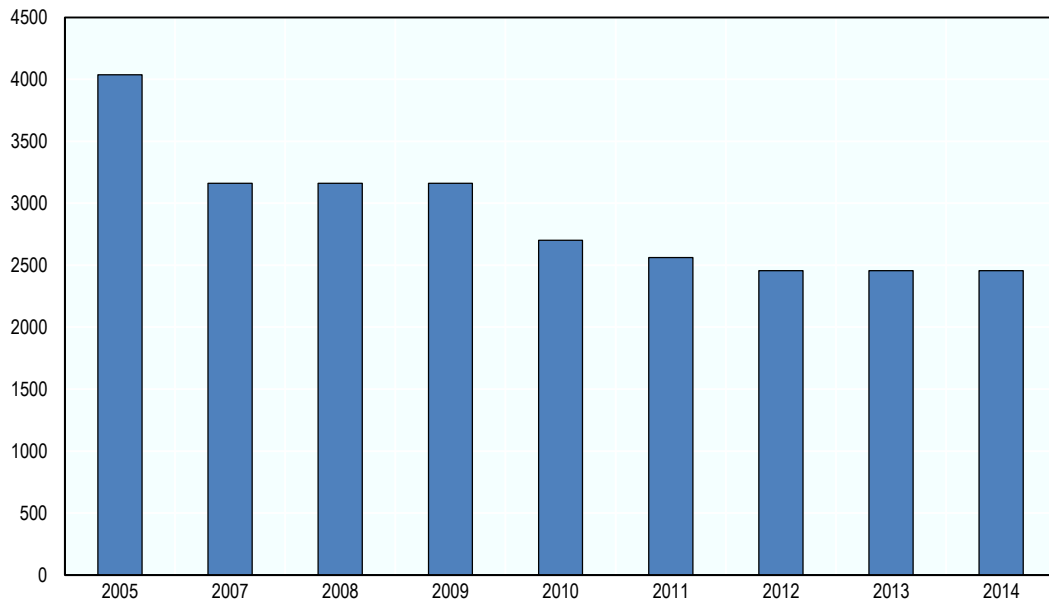
	2011	2012	2013	2014	2015	2016	2017	2018
Brunei Darussalam	82	82	81	81	97	102	104	100
Cambodia	836	754	740	699	606	580	351	364
Indonesia	5 960	6 341	6 768	7 542	8 132	8 472	8 974	9 053
Lao PDR	1	2	1	1	1	1	1	1
Malaysia	1 405	1 456	1 525	1 561	1 617	1 658	1 682	1 704
Myanmar	83	86	86	88	98	98	96	95
Philippines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

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

2.1.2.3. Railway transport

Transport by railway has an insignificant market share, as shown in Figure 2.5 below. It has been shrinking in the last years, although this situation may change in the future due to ongoing investment in railway infrastructure improvement.¹¹

Figure 2.5. Goods transported by railway in Thailand, in millions tonnes-kilometres, 2005-2014

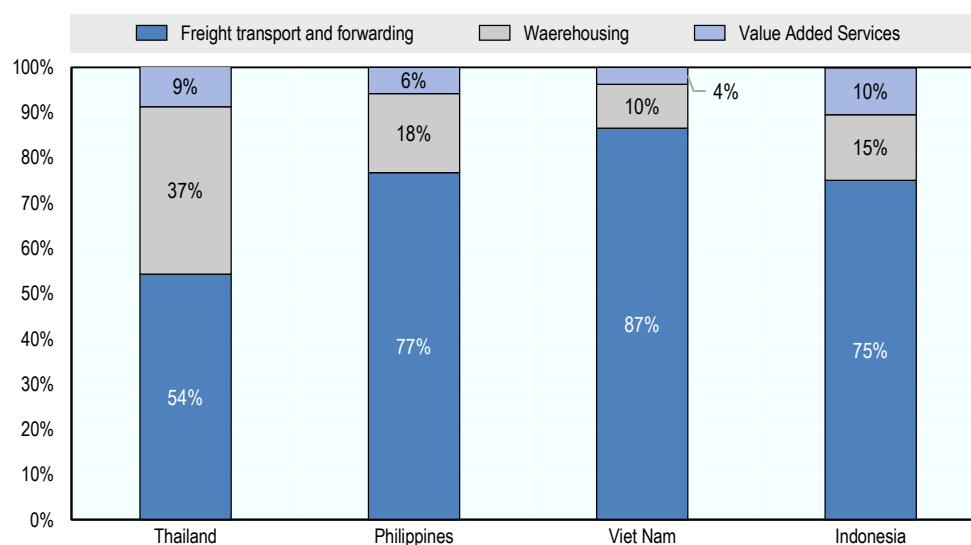


Source: Knoema database, <https://knoema.com/atlas/Thailand/topics/Transportation/Rail-transport/Goods-transported-by-railways>.

2.1.2.4. Other logistics services

In other segments of the logistics market, warehousing makes up a significant proportion of overall logistics revenues. Figure 2.6 shows that in 2016, warehousing accounted for 37% of total logistics revenues (including freight transport by road, sea and air, warehousing and other value added services). Between 2012 and 2017, the warehousing market grew at a compound annual growth rate (CAGR) of 2.5% and was worth THB 772.3 billion. The boom of e-commerce pushed growth and the market is expected to grow at a CAGR of 7.3%, reaching THB 881.4 billion by 2022. Approximately 200 000m² to 250 000m² of warehouse capacity is expected to become available from 2019 to 2021 (Ken Research, 2018^[3]).

Figure 2.6. Revenues by logistics segment (2017)



Note: Data for Indonesia are from 2016.

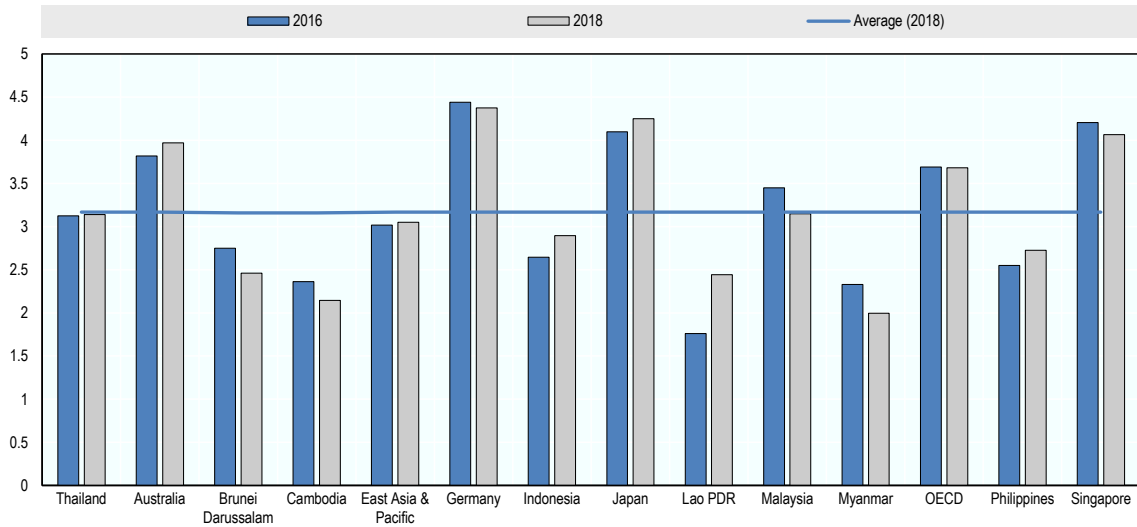
Source: (Ken Research, 2018^[3])

2.1.3. 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. The index ranges from one (very low quality) to five (very high quality).

As shown in Figure 2.7, the average quality of trade and transport-related infrastructure in East Asia and Pacific is 3.01 and only three ASEAN members (Malaysia, Singapore and Thailand) score above this average. Singapore is the best performer in the region and ranks even higher than the OECD average.

Figure 2.7. Quality of trade and transport-related infrastructure



Source: World Bank and Turku School of Economics, Logistic Performance Index Surveys

Thailand ranks high compared to other countries in the region in relation to the quality of its roads and port infrastructure, while data show that railway infrastructure remains a challenge.¹²

2.1.3.1. Roads

Thailand's robust road network has so far been a key factor in the development of the logistics sector and, as noted above, is one of the main reasons why just over half of freight movements (57.5%) are performed by road.¹³

Thailand has 390 000 kilometres of highways and a number of highways are part of regional networks, including 9 on the Asian Highway Network, 23 on the ASEAN Highway Network, 3 on the Greater Mekong Subregion Highway and two highways connecting Thailand and Malaysia. Within ASEAN, Thailand has 13 highways connecting it with neighbouring countries, the highest number among ASEAN member states (Ken Research, 2018^[3]).

Between 2016 and 2019 there has been an increase in the length of the road network, which grew by about 54% to reach 701 847 km. In particular, local roads in Bangkok doubled to about 4 074 km.¹⁴

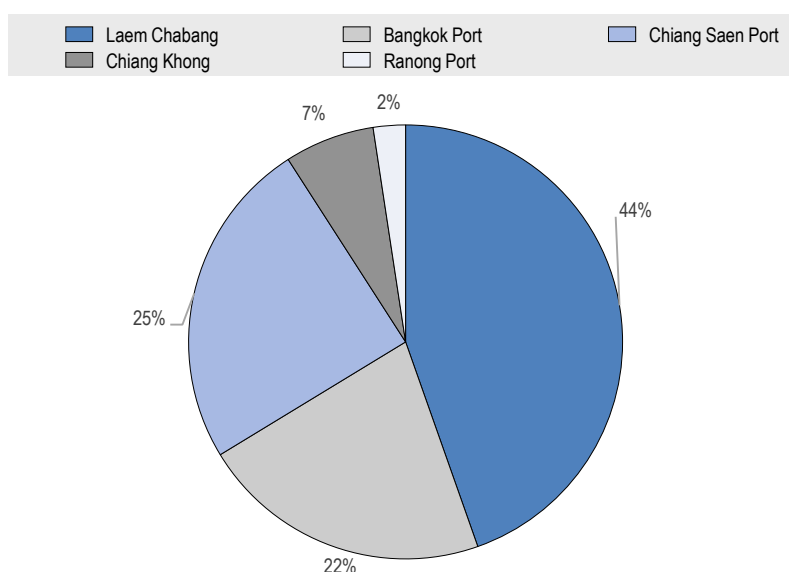
2.1.3.2. Ports

The majority of Thailand's major ports are managed by the Port Authority of Thailand (PAT) and are:

- Laem Chabang Port
- Bangkok Port
- Chiang Saen Port
- Chiang Kong
- Ranong Port.

Figure 2.8 below shows their relative importance in terms of the number of vessels handled in 2016, while Table 2.3 below shows their weight in terms of respective total cargo volume.

Figure 2.8. Share of total vessels handled by Thai ports (2016)



Source: Port Authority of Thailand, www.port.co.th/cs/internet/internet/%E0%B8%AA%E0%B8%96%E0%B8%B4%E0%B8%95%E0%B8%B4%E0%B8%A3%E0%B8%B2%E0%B8%A2%E0%B8%9B%E0%B8%B5.html.

Table 2.3. Share of total cargo volume handled by major ports in Thailand, based on volume, in tonnes (2010-2019)

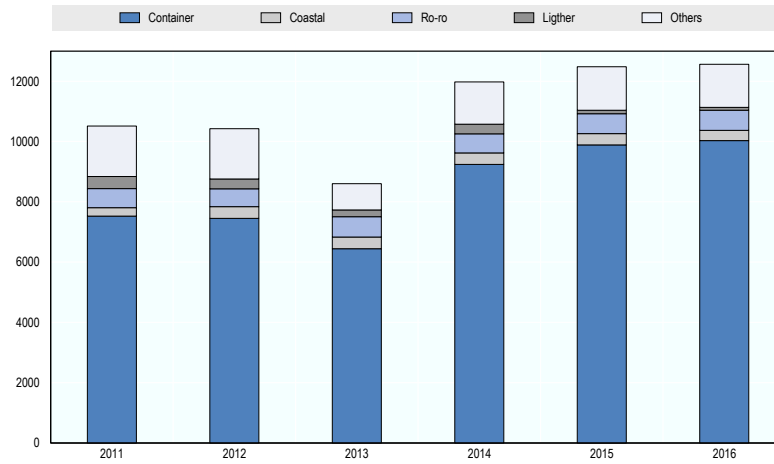
Port	Cargo volume			Percentage of total, 2019	Percentage increase, 2010-2019
	2010	2016	2019		
Laem Chabang Port	53 253 000	76 683 000	90 157 000	80.45%	+69%
Bangkok Port	17 997 000	18 914 000	21 477 000	19.16%	+19.3%
Chiang Saen Port	134 610	292 818	296 736	0.26%	+120.44%
Chiang Khong					
Ranong Port	48 973	167 864	135 061	0.12%	+175.78%
Total	71 433 583	96 057 682	112 063 797	100%	+56.88%

Source: Port Authority of Thailand, Annual Reports 2010 and 2016, www.port.co.th/cs/internet/internet/รายงานประจำปี.html

In addition to PAT-managed ports, the Industrial Estate Authority of Thailand is responsible for other major ports, including Map Ta Phut Industrial Port, currently the largest port in Thailand for liquid cargo.

Data show that Thai ports are mainly used by container vessels, while other uses, such as passenger vessels or other lighter vessels, only account for a limited number of port calls (Figure 2.9 below).

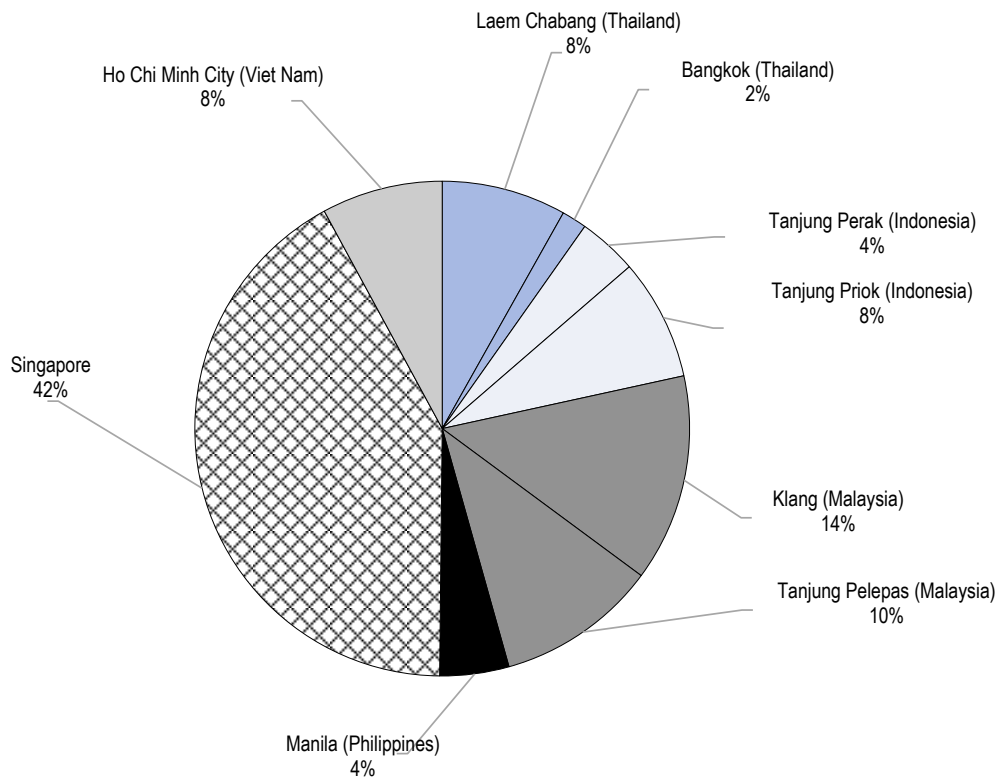
Figure 2.9. Number of vessel calls



Note: Data include the number of vessels that arrive at a particular port at any given time.
Source: Port Authority of Thailand.

In comparison with other ASEAN ports, Thai ports are gaining market share and some are strongly growing. Since 2009, Laem Chabang, for example, has been growing at an average of 7% a year and in 2015, reached 6.58% market share (in terms of container throughput) among ASEAN ports (Figure 2.10 below).

Figure 2.10. Market share in major ASEAN ports by container throughput (2014)



Source: Port Authority of Thailand.

At the international level, Laem Chabang is also one of the major ports worldwide in terms of volumes. When considering all international major ports it indeed ranked 22 in terms of volume in 2014 while in 2017 it was the 20th largest container port worldwide.

2.1.3.3. Railways

As of 2017, Thailand's railway infrastructure is made up of 4 431 kilometres of metre-gauge railway tracks. This is a small network when compared to more developed OECD countries with similar populations. For instance, in 2015, the total length of Italy's rail network was 16 724 kilometres and France's 28 866 kilometres.¹⁵ The Thai government is currently trying to increase the amount of freight transported by railway and a number of projects are being put in place by the State Railway of Thailand (SRT). For instance, from 2016-2018, Thailand was in discussions with Japan over a potential joint investment to build a high-speed railway connecting Bangkok to Chiang Mai. These talks are believed to be ongoing.¹⁶

2.1.4. International trade and connectivity

2.1.4.1. Transport-service exports

On the global level, between 2012 and 2017, exports of transport services decreased in almost every region.¹⁷ With specific regards to Thailand, Table 2.4 on the country's exports and imports of transport services shows that, contrary to a global trend, such exports increased alongside imports.

Table 2.4. Thailand's total trade in transport services (millions of USD)

	2005	2010	2015	2017
Transport-service exports	4 626	5 914	5 743	6 874
Transport-service imports	14 439	18 858	15 662	16 829
Transport-service trade balance	-9 813	-12 944	-9 919	-9 955

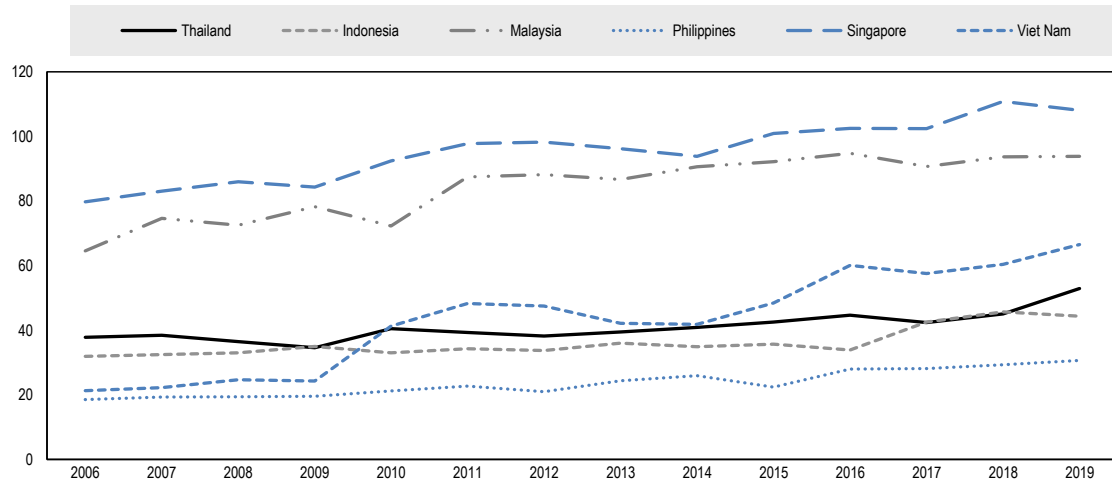
Note: Statistics presented correspond to the 2009 edition of the IMF's Balance of Payments and International Investment Position Manual, sixth edition (BPM6).

Source: UNCTADStat, <https://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/764/index.html>

2.1.4.2. Liner shipping

Thailand's liner shipping connections with other countries also improved. Figure 2.11 shows Thailand and other comparable ASEAN countries' connectivity indexes, which reveal countries' levels of integration into the global networks of liner shipping.¹⁸ Since 2006, Thailand's connectivity index has been increasing, passing from 37.8 out of 100 in 2006 to 52.9 in 2019, although it is still lower than other ASEAN countries such as Singapore, Malaysia and Viet Nam.

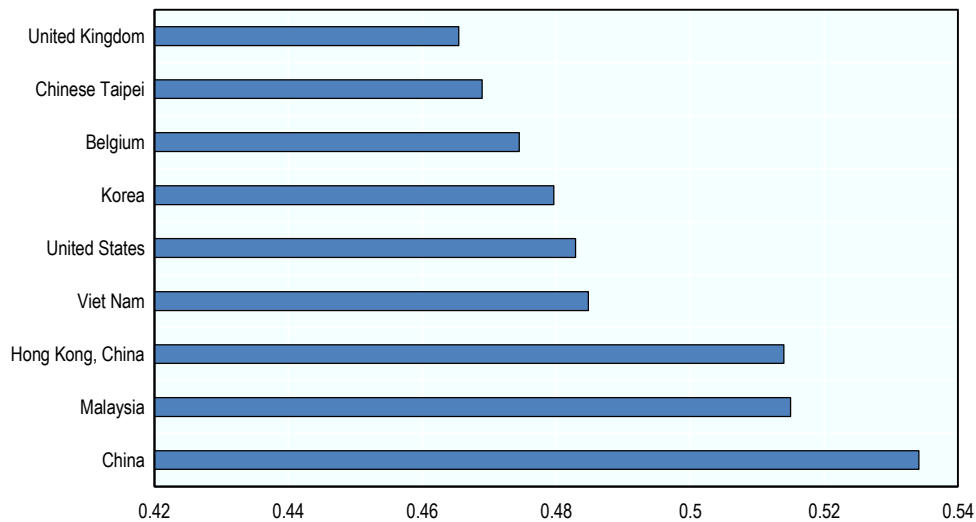
Figure 2.11. Annual Liner Shipping Connectivity Index, (maximum 2006=100)



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

Figure 2.12 shows the countries with which Thailand has the strongest bilateral connections in 2019,¹⁹ a crucial determinant of bilateral exports. Literature empirically 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_[40]).

Figure 2.12. Liner Shipping Bilateral Connectivity Index (LSBCI), 2019



Note: Leading partners: 0 minimum, 1 maximum

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

2.1.5. Logistics rankings

Box 2.1. Logistics Performance Index

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

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

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

Source: (World Bank, 2018^[37])

As seen in Table 2.5, in 2018, Thailand ranked 32 in the Logistics Performance Index (LPI), an improvement from 38 in 2012 and 45 in 2016. Today, Thailand is second only to Singapore in ASEAN and ranks 7 among all Asian countries.

Table 2.5. LPI overall ranking (2018)

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

Figure 2.13 shows Thailand'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. As noted in the box above, the score ranges between 1 (lowest) and 5 (highest). The figure shows that customs and infrastructure appear to be the two most challenging areas for Thailand within the LPI. Thailand scores extremely well and as high as the top performer of the same income group²⁰ in the timeliness sub-indicator, which shows the ability to deliver shipments to their destinations within the scheduled or expected delivery time. In the long term, the quality of Thailand's infrastructure is likely to catch up increasingly with ASEAN countries such as Singapore and Malaysia thanks to the Thai government's massive investment.²¹

Figure 2.13. Thailand's LPI score against top performer in income group (China) and worldwide top performer (Germany), 2018



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

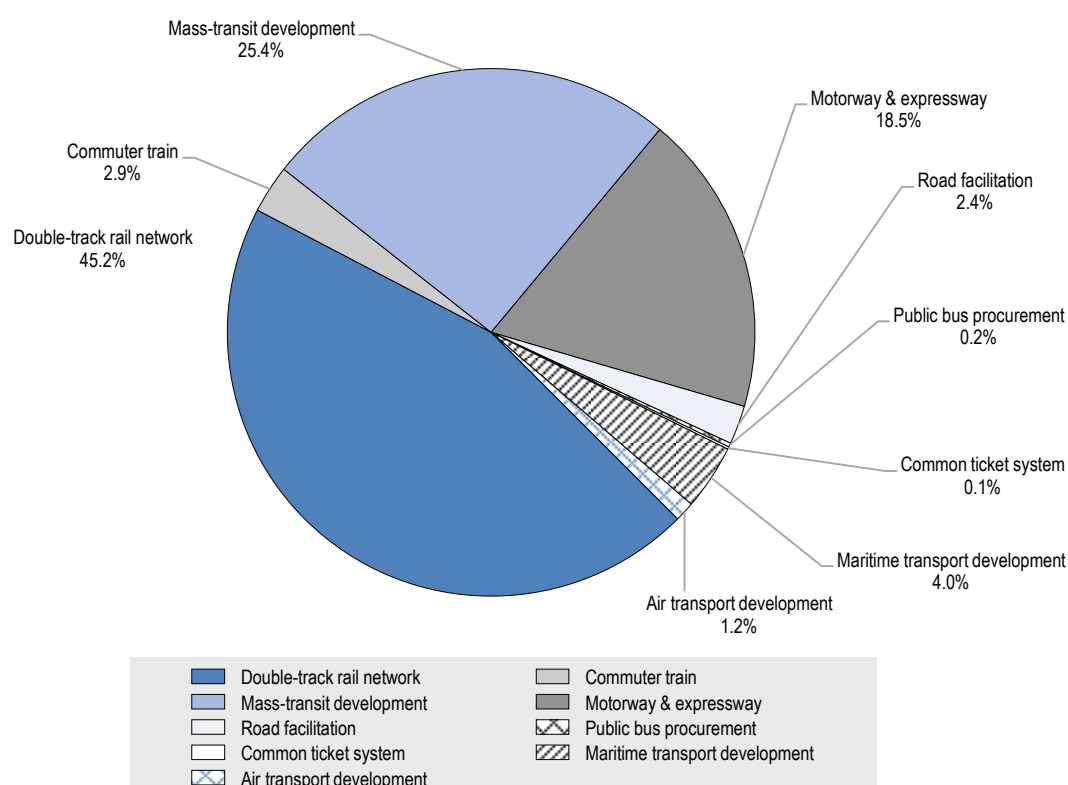
2.1.6. Market dynamics and developments

In 2015, a Hong Kong, China Trade Development Council research article found that Thailand was emerging as a key logistics hub for multinational companies establishing production in Indochina (HKTDC, 2015^[41]). This is, as noted above, due both to the country's central geographic location within the Greater Mekong Sub-region and its well-developed infrastructure.²²

In order to accommodate a constantly growing logistics market, especially following the boom of e-commerce, the Thai government is planning to make massive investments in its infrastructure.

Thailand's Transport Infrastructure Action Plan (2017) involves all modes of transport and includes 36 projects for infrastructure, for a total value of USD 25 593 million.²³ Figure 2.14 below shows the percentage allocation of these investments by project category.

Figure 2.14. Transport Infrastructure Investment Action Plan 2017, percentage share by project category



Source: Ministry of Transport of Thailand.

The objective of increasing freight transport by rail is being pursued both by means of massive investments in infrastructure and through legal reforms. Indeed, the government is currently in discussions over a new Rail Transport Act that would open the market to private operators. Pursuant to the draft act, private operators will be entitled to apply for a rail transport service licence based on clear, transparent and non-discriminatory conditions.²⁴

More generally, the government is trying to promote multimodal transport covering land-, water- and air-based systems. The Eastern Economic Corridor (EEC) Development Plan is targeting three eastern provinces (Chachoengsao, Chon Buri, and Rayong), as well as nearby provinces, with multimodal-transport strategies in order to enhance the EEC's capacity to accommodate economic activities. On 1 February 2018, the EEC Policy Committee approved the EEC Infrastructure Development Action Plan, which aims to make the EEC one of the "major livable economic centers of Asia". This will see 168 projects in the short, medium and long terms with a total budget of approximately THB 1 trillion funded 30% by annual government expenditure, 10% by SOE investments, and 60% by public-private partnerships (PPP).²⁵

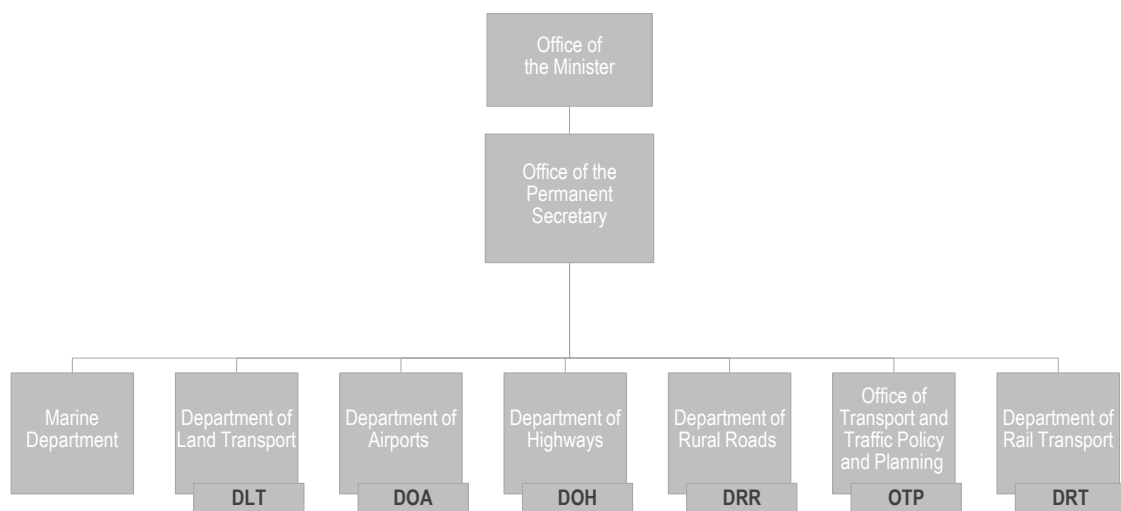
In order to address a number of logistics shortcomings, in 2017, the government also approved the third Thailand Logistics Development Plan (2017-2022). According to market participants, the government has realised that, in recent years, the country's ranking has been declining in

terms of trade facilitation efficiencies, for instance, due to delays in developing a national single window (NSW) regulatory system.²⁶ Furthermore, the different agencies responsible for transport and logistics in Thailand are still operating as separate entities, with, for example, limited integration of their databases. The new strategic plan aims to address these shortcomings by enhancing trade facilitation and improving human-resource management and supply chains.

2.2. Key stakeholders

2.2.1. Government stakeholders and institutional framework

Figure 2.15. Organisation of the Ministry of Transport



Source: Ministry of Transport.

Following a legal reorganisation in 2002 (B.E. 2545 on the reorganisation of ministries and government agencies and departments), the Ministry of Transport (formerly, Ministry of Communications) was tasked with the responsibility of transport policy and regulation, including traffic planning and transport infrastructure development.

Today, the Ministry of Transport comprises the office of the minister and eight distinct administrations:

- **Office of the Permanent Secretary;**
- **Marine Department**, tasked with regulating, administering and developing the water-based transport system to ensure safety, rapidity and efficiency. This includes promoting the expansion of the transport network with the view to increasing trade and service competition;
- **Department of Land Transport (DLT)**, responsible for the systematisation and regulation of land transport. In addition to promoting and developing land transport networks, it ensures compliance with land transport regulations, including land transport law, motor vehicle law and other relevant laws;²⁷

- **Department of Airports (DOA)**, charged with promoting, developing and regulating the country's civil aviation, in addition to developing, upgrading and improving airports and air transport services more generally;
- **Department of Highways (DOH)**, tasked with creating the infrastructure of an extensive highway network,²⁸ putting forward policy and development plans, and supervising the constructing and maintenance of highways;²⁹
- **Department of Rural Roads (DRR)**, which results from the merger of those agencies dealing with roads and bridges under the Public Works Department and those under the Office of Accelerated Rural Development (under the Ministry of Interior). The DRR has the responsibility of developing and maintaining rural road infrastructure;
- **Office of Transport and Traffic Policy and Planning (OTP)**, responsible for submitting policies, formulating transport and traffic plans, and developing transport-safety measures in line with government master plans ensure national transport and traffic policy unity.
- **Department of Rail Transport (DRT)**, established in April 2019 by creating a separate department from the Rail Project Development Office, which was previously part of OTP. DRT will function as a policymaker and regulator for the rail sector.³⁰

2.2.2. State-owned enterprises

For the purposes of this competition assessment report, the following state-owned enterprises (SOEs) are active in the logistics sector, as either market players or regulators with a corporate structure.

- **State Railway of Thailand (SRT)** has the function of providing rail transport services, improving the performance of the Thai railway system, and co-operating with other public agencies to develop train transport. Currently, all national rail services are managed by SRT. It also owns a subsidiary (Airport Rail Link) that provides a rail link from Suvarnabhumi Airport, via Makkasan Station, to Phaya Thai station in central Bangkok;
- **Port Authority of Thailand (PAT)** is tasked with developing and managing port resources. In particular, it is in charge of providing services and facilities to vessels and cargoes, conducting dredging and maintenance of the bar channels and basins, handling, moving, storing and delivering cargoes to the consignee, coordinating and co-operating with government agencies concerned and international ports, and developing its organisation to cope with specific economic situations.. As noted, PAT manages five of Thailand's major ports;
- **Expressway Authority of Thailand (EXAT)** was established in 1972 and is charged with developing and organising expressways nationally.
- Courier and small-package delivery services are carried out by **Thailand Post (ThaiPost)**, which until 2003 was part of the Communications Authority of Thailand. It is today an SOE under the aegis of the Ministry of Digital Economy and Society.

2.2.3. Main trade associations

The main trade associations active in the logistics sector in Thailand include:

- **Federation of Thai Industries (FTI)**, which represents Thai manufacturers at both national and international levels, promotes and develops Thai companies, and co-operates with the government on policy issues. FTI has a logistics-dedicated committee and sits on the Joint Standing Committee on Commerce, Industry and Banking;
- **Thai Chamber of Commerce**, which acts as a co-ordinator between the government and the private sector, as well as representing and promoting Thai merchants' interests. Like FTI, it sits on the Joint Standing Committee on Commerce, Industry and Banking;
- **Thai National Shippers' Council (TNSC)**, whose objectives include promoting and protecting the interests of shippers and working with the public and private sector, locally and internationally, to enhance the competitiveness of Thai exporters;
- **Thai Federation on Logistics;**
- **Thai International Freight Forwarders Association (TIFFA);**
- **Purchasing and Supply Chain Management Association of Thailand (PSCMT)**, which represents and works to develop the professional procurement industry and supply chain of Thailand;
- **Bangkok Shipowners and Agents Association (BSAA)**, which was established in 1968 and whose members include shipping lines and agents, logistics providers, port operators, trucking companies, law firms with interests in maritime law, transportation management companies and other maritime related agencies;
- **Thai Logistics and Production Society (TLAPS)**, whose mission is to strengthen logistics and supply chain personnel by developing professional standards, exchanging knowledge and technology, and conducting studies and research that can boost innovation;
- **Thai Small and Medium Enterprises Trade Association;**
- **Land Transport Federation of Thailand (LTFT).**

2.2.4. Logistics companies

The major private companies in the Thai logistics sector include: Celadon Group; CEVA Logistics; CTI Logistics; DB Schenker; Deutsche Post; DHL; Kuehne + Nagel; NCL International Logistics; SCG Logistics; Sino-Global Shipping America; Triple i Logistics; and Yusen Logistics.

In the freight-forwarding sub-segment, the major players in Thailand include: Agility Logistics; DB Schenker; GAC Logistics; Kuehne + Nagel; NCL International Logistics; Siam Shipping; Triple i Logistics; Wice Logistics; and Yusen Logistics.

When considering the warehousing market segment, the four main players in Thailand are: CEVA Logistics; Frasers Property Thailand; JWD Group; and Yusen Logistics.

Notes

¹ This master plan follows the adoption of an earlier version, *Master Plan on ASEAN Connectivity 2010*. See, <https://asean.org/storage/2016/09/Master-Plan-on-ASEAN-Connectivity-20251.pdf> for the full *Master Plan on ASEAN Connectivity 2025* report.

² <https://www2.deloitte.com/content/dam/Deloitte/th/Documents/about-deloitte/th-about-economic-outlook-2020-covid-19-impact.pdf>

³ https://www.scbeic.com/en/detail/file/product/6843/fnqybahfpf/EIC-Flash_GDP_Q1_2020_EN_20200525.pdf

⁴ National Statistical Office of Thailand, available at www.nso.go.th/sites/2014en/Survey/social/labour/LaborForce/2019/January2019.pdf. The number of employed people in January 2019 was 37.5 million.

⁵ Logistics costs are calculated by taking the number of Thai logistics costs and dividing it by the annual nominal GDP. Logistics costs as a percentage of GDP is generally regarded as a benchmark measurement of a country's logistics efficiency. In 2018, logistics costs as a percentage of GDP amounted to 8.4% in North America and 8.5% in Europe. Estimates for 2018 can be found here: <https://www.3plogistics.com/3pl-market-info-resources/3pl-market-information/global-3pl-market-size-estimates/>.

⁶ For an overview of the Thai economy, see 1.4 Introduction to Thailand above.

⁷ International Organization of Motor Vehicle Manufacturers, statistics on vehicles in use available at http://www.oica.net/wp-content/uploads/CV_Vehicles-in-use.xlsx

⁸ See Section 2.1.3 Infrastructure, p. 36.

⁹ See Section 2.1.6 Market dynamics and developments, p. 43.

¹⁰ Port Authority of Thailand, Annual Reports 2010 and 2020, www.port.co.th/cs/internet/internet/รายงานประจำปี.html.

¹¹ See Section on 2.1.3 Infrastructure, p. 36.

¹² Global Competitiveness Report, 2017-2018, <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf>.

¹³ See Section 2.1.2 Market turnover and volume, p. 33, and in particular Figure 2.4.

¹⁴ Source : Ministry of Transport of Thailand.

¹⁵ World Bank's database, <https://data.worldbank.org/indicator/IS.RRS.TOTL.KM?end=2017&locations=TH-IT-FR&start=2009&view=chart>.

¹⁶ www.bangkokpost.com/thailand/general/1411482/somkid-japan-still-on-board-rail-plans.

¹⁷ <https://stats.unctad.org/handbook/Services/ByCategory.html>.

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

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

²⁰ As noted above in section 1.4.1 GDP and economic growth, p. 24, since 2011, the World Bank has considered Thailand as an upper middle-income economy. Besides Thailand and China, this income group includes countries such as Brazil, Colombia, Malaysia, Mexico, Paraguay, Peru, Romania, South Africa and Turkey. For the full list of countries, see <https://data.worldbank.org/income-level/upper-middle-income>.

²¹ In the 2018 LPI, Singapore and Malaysia ranked first and second, respectively, concerning their infrastructure, while Thailand ranked third. For an overview of Thailand's investments in infrastructure, see above section 2.1.6 Market dynamics and developments, p. 43.

²² See section 1.4 Introduction to Thailand and section 2.1.3 Infrastructure.

²³ Transport Infrastructure Action Plan 2017 – Towards Sustainable Transport. For a presentation of the Plan by the Ministry of Transport, see https://www.mot.go.th/file_upload/2559/2016.12.12_MOT_Action_Plan_2560ENG.pdf.

²⁴ For more details of the new Rail Transport Act, see section 3.3 Rail freight transport.

²⁵ EEC Policy meeting No. 1/2018.

²⁶ <http://tnscdirectory.com/wp-content/uploads/2018/02/TNSC-Directory-2017-2018-Complete-Small-File.pdf>.

²⁷ For a list of laws and regulations relevant to land transport by road, see section 3.1 Road freight transport.

²⁸ The Highway Act (1992) defines five different types of highways: 1) special highways, which are high-capacity highways for high-speed traffic; 2) national highways, which are primary highway connecting regions, provinces and other main destinations; 3) rural highways, which are rural roads under the responsibility of the Department of Rural Roads; 4) local highways, which are local routes under the responsibility of local authorities; and 5) concession highways, which are the responsibility of the director general of the DOH and for which a government concession has been granted.

²⁹ B.E. 2545 Ministerial Regulation on the Organisation of the Department of Highways, Ministry of Transport.

³⁰ www.bangkokpost.com/thailand/general/1661960/rail-department-established-after-royal-endorsement.

3 Overview of the legislation in the logistics sector in Thailand

The OECD has identified 69 pieces of legislation related to the logistics sector, including international agreements, codes, acts, decrees, ministerial regulations and announcements, and notifications of the customs department.

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

Sector		Legislation analysed	Restrictions found	Recommendations
Freight transport	Road	4	14	12
	Railway	2	4	2
	Maritime	13	27	22
Freight forwarding		3	8	6
Warehouses		6	9	2
Small-package delivery		2	4	3
Horizontal/others		9	9	5
International agreements		6	2	2
Total		45	77	54

Source: OECD.

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

3.1. Road freight transport

The main piece of legislation affecting freight transport by road is the **Land Transport Act**, B.E. 2522 (1979). It regulates passenger and freight transport by road, including authorisation and licensing requirements.

The OECD has identified 14 restrictive regulations for transport of freight by road and makes 12 recommendations concerning the following topics.

1. The setting of a maximum number of transport operators and vehicles.
2. The imposition of a required number of vehicles and personnel on private transport operators.
3. The obligation to hold a domestic transport licence in order to operate international freight transport.
4. Nationality requirements for road transport service providers.
5. Setting transport service rates and routes for freight transport operators by road.
6. Limitations on foreign equity.

3.1.1. *Permits and authorisations*

3.1.1.1. *Limited number of permits to operate freight transport by road*

Description of the obstacle. Pursuant to Articles 19 and 20 of the Land Transport Act, B.E. 2522, the Central Land Transport Control Board (for the Bangkok area) or the Provincial Land Transport Control Boards (within their respective *changwat*)¹ have the power to issue decisions of general application setting the maximum number of transport operators and vehicles. The Department of Land Transport (DLT) highlighted that the Secretary General of the Office of Consumer Protection and the Director General of the Office of Transport and Traffic Policy and Planning have been added to the board that takes this decision, in order to ensure that socio-economic as well as public interest aspects are duly taken into account. According to the DLT, when setting these limits, the board takes into account the logistics and socio-economic situation as well as the suitability of these measures to address the relevant issue at stake. When issuing the licence upon the applicant's request, the registrar under the Department of Land Transport is then required to comply with such decisions on the set number of licences and vehicles.

The Central Land Transport Control Board confirmed that in practice no limitations have been imposed on freight transport, as opposed to passenger transport. Based on the wording of the law and the definitions provided under Article 4 of the Land Transport Act, this power does theoretically apply to both freight and passenger transport services.

Harm to competition. The power to adopt decisions on the maximum number of transport operators and vehicles allows the establishment of quotas and so limits market access for new entrants.

Such limitations may theoretically be imposed on both passenger and freight transport. As a consequence, potential providers of freight transport services may assume that (non-existing) barriers to entry are in place and so be deterred from entering the market or be forced to incur additional legal costs, such as fees for legal advice, to establish whether they are allowed to enter the market.

Policymaker's objective. The OECD understands that this provision aims to avoid the presence of too many suppliers in certain areas (in Bangkok metropolitan area or in other areas). It would also appear to simplify monitoring by public authorities by limiting the number of operators subject to their supervision. The Department of Land Transport mentioned that they would like to retain the power to limit the number of operators and vehicles in order to address "more challenging logistics issues in the future." For instance, this provision may be used to address environmental protection concerns by limiting the number of operators and vehicles active on the roads. The OECD considers, however, that such environmental objectives could also be achieved in other less competition-restrictive ways (e.g., truck bans at peak hours), without imposing limits upon the number of operators and/or fleet size that may reduce firms' flexibility and prevent gradual scaling up.

Recommendation. The OECD recommends clarifying that these provisions do not apply to freight transport.

3.1.1.2. *Limiting number of vehicles and personnel for own-account transport*

Description of the obstacle. Thai law provides that companies that transport their own goods (so-called private transport or own-account transport) need to obtain a licence from the central or provincial land transport registrar. When issuing this licence, the registrar may impose conditions upon the number of vehicles and personnel to be used by the transport operator or

any other conditions set out in ministerial regulations. These conditions are imposed taking into account the needs of transport operators. If such needs change over time, for example, if an operator requires fewer vehicles, it can request a reduction in the number of vehicles attached to the licence.

Harm to competition. Imposing conditions on the number of vehicles and personnel to be used for transporting a company's own goods may, in the most extreme cases, prevent vertical integration and oblige manufacturers to use external providers, if the imposed number does not meet the operator's needs. Such conditions can also result in additional costs if the imposed number is higher than the actual needs, as the company will have to own more vehicles than it actually needs. The same considerations apply to the power to impose conditions on the number of personnel.

Although the number of vehicles in the licence can be adjusted by submitting a specific application to the registrar, this additional administrative burden can lead to increased costs and delays for operators. Having the number of vehicles and personnel fixed by the licence may also make it more difficult for a company to adjust in a timely way to its actual needs.

Policymaker's objective. The power to impose conditions on the number of personnel was introduced in 1992 by the Land Transport Act (No. 5), B.E. 2535 (1992). The likely objective of this provision was to guarantee that a company is always able to carry out the required tasks and meet customer demand. The Department of Land Transport mentioned that they would like to retain the power to limit the number of vehicles in order to address "more challenging logistics issues in the future." For instance, this provision may be used to address environmental protection concerns, by limiting the number of vehicles operating on roads. The Department of Land Transport highlighted that this power may also be used to avoid damage to goods and/or third parties, for instance by avoiding that dangerous goods are transported with fewer vehicles than those actually needed. The OECD considers, however, that such environmental and safety objectives could also be achieved in other less competition-restrictive ways (e.g., truck bans at peak hours, clear rules on safety and liability).

This power to fix the number of operators and vehicles appears to have been conceived mainly for passenger transport rather than freight transport.

Recommendation. The OECD recommends removing the imposition of vehicle and personnel numbers and allowing operators to decide their own needs, as long as these decisions comply with labour laws, for instance, working hours, and transport safety standards.

3.1.1.3. International freight transport

Description of the obstacle. Pursuant to Article 25 of the Land Transport Act and Article 5 of the Ministerial Regulations B.E. 2549 (2009), those wishing to apply for a permit for international non-fixed route transport, such as international transport for reward on unlimited routes, must hold a licence to operate domestic transportation of the same category of goods. The Central Land Transport Control Board has the power to exempt operators from any criteria when it deems it necessary.

Harm to competition. The requirement to hold a licence for domestic transportation in order to provide international transport services by land may constitute a barrier to entry as it increases costs for operators and difficulties in launching a business. The Central Land Transport Control Board's power to grant exemptions is not subject to any limitation and so could result in discrimination among service providers.

Policymaker's objective. The purpose of this provision is to ensure that those providing international transport services have already proved their capacity to offer (or meet the

requirements to provide) similar services in the domestic market. This provision also seems to aim to favour vertical integration by imposing on the same supplier the supply of national and international services.

Recommendation. The OECD recommends removing the requirement to hold a domestic freight transport licence in order to operate international freight transport. However, autonomous conditions similar to those on national transport may be required for international transport operators in order to ensure safety of service providers and customers.

3.1.1.4. Nationality requirements for road transport service providers

Description of the obstacle. A licence to operate services of fixed-route transport, non-fixed-route transport and transport of goods using a small vehicle can be held only by a Thai national natural person. If it is a legal person (such as partnership, limited company or public limited company), at least 51% of the capital must be held by Thai nationals.

This provision appears to be currently enforced as no foreign nationals or companies have obtained such licences independently. To obtain one, they have been obliged to set up joint ventures with Thai transport firms.

Harm to competition. The provision may prevent or make it more difficult for foreign companies to enter the market, and so reduce competition.

Policymaker's objective. The likely purpose of this provision is to protect national operators against international competition, giving them the time to catch up with international players. The OTP has observed that Thai entrepreneurs might currently lack the knowledge and technology to compete with international players.

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.² In a previous assessment regarding a competition assessment of transport regulations in Romania (OECD, 2016^[4]), the OECD recommended removing a number of provisions that required Romanian nationality in order to conduct certain businesses, such as the testing and certifying of railway products, operating as a railway transporter or providing pilotage services.

Recommendation. The OECD recommends one of two options:

1. Progressively relax foreign-equity limits with the long-term goal of permitting up to 100% foreign ownership. A first step might be to implement changes to move towards the ASEAN Framework Agreement on Services (AFAS) target of 70% ASEAN foreign-ownership in entities providing road transport services, before extending it to non-ASEAN nationals. In the long term, Thailand may consider full liberalisation by allowing 100% foreign ownership of operators of road transport services.
2. Relax foreign equity limits on a reciprocal basis, allowing foreign ownership by nationals of countries that allow Thai nationals to hold 100% shares in a company.

3.1.1.5. Logistics activities prohibited to foreigners

Description of the obstacle. Non-Thai nationals are not permitted to conduct certain activities and professions for commercial purposes in Thailand. These are listed in a schedule attached to the Royal Decree prescribing works relating to occupation and profession in which an alien is prohibited to engage, B.E. 2522 (1979).

For the purposes of this assessment, prohibited occupations for foreigners include “driving mechanically propelled carrier or driving non-mechanically propelled carrier, excluding piloting an international aircraft” and “brokerage or agency excluding brokerage or agency work in international trade”.

Harm to competition. This provision restricts access to the market for foreign workers, and may increase costs for companies that are unable to employ non-Thai-national drivers at lower costs than Thai staff.

Policymaker’s objective. This provision aims to support the national labour market by protecting nationals from competition and prohibiting foreigners from conducting certain activities.

Recommendation. Remove and allow foreigners to engage in those activities currently listed in the Schedule that are relevant to logistics. This refers to the professions mentioned above.

3.1.2. Restrictions on operations

3.1.2.1. Setting transport service rates and routes

Description of the obstacle. The Central Land Transport Control Board (for the Bangkok area) and Provincial Land Transport Control Board (for the rest of the country) have the power to issue decisions of general application that set the routes vehicles can take, and set transport rates and other transport-service charges. Pursuant to Article 38 of the Land Transport Act, road companies cannot increase or reduce these charges or other service charges set in the licence unless they obtain prior approval of the Transport Control Board relevant to their geographical area.

Article 4(1) of the Land Transport Act defines “transport” as encompassing both carriage of passengers and goods by land. Therefore, this power to set rates and routes theoretically applies to both passenger and freight transport. According to market participants and the Central Land Transport Control Board, however, in practice transport charges and routes are only set for passenger transport, not freight transport.

Harm to competition. The Central and Provincial Land Transport Control Boards’ power to set transport charges prevents operators from deciding their own tariffs and adjusting them to market dynamics. Centralised setting of transport operators’ routes may also create geographical barriers, and so limit the number of service providers in certain areas. In the light of the wording of the provisions, such limitations may theoretically be imposed on both passenger and freight transport. As a consequence, potential providers of freight transport services may assume that (non-existing) barriers to entry are in place and so be deterred from entering the market or be forced to incur additional legal costs (such as fees for legal advice) to establish whether they are allowed to enter the market.

Policymaker’s objective. This provision aims to protect consumers against excessive prices and the concentration of suppliers on certain more profitable routes, while leaving other routes without transport service providers. The provision may also aim to guarantee minimum income for the operators and avoid excessive cost-cutting that could reduce quality and safety.

These powers were, it appears, mainly conceived for passenger rather than freight transport.

International comparison. In 2012, the Italian Competition Authority (ICA) issued an opinion regarding the Road Transport Observatory’s decisions establishing minimum operating costs of road freight transport.³ The ICA considered that such provisions amounted to artificial fixing of minimum prices for road transport activities and so breached competition law. In the same

case, the European Court of Justice issued a preliminary ruling and considered that, “although it cannot be ruled out that the protection of road safety may constitute a legitimate objective, the fixing of minimum operating costs does not appear appropriate, either directly or indirectly, for ensuring that that objective is attained”.⁴

Recommendation. The OECD recommends clarifying the law to ensure that these restrictions are not imposed for freight transport.

3.1.2.2. *Non-compete clause*

Description of the obstacle. Pursuant to Article 40 of the Land Transport Act, an operator allowed to operate freely but holding a licence for non-fixed-route road transport (transport for reward on unlimited routes) cannot work a route that has been established as the basis of a fixed-route operating licence (transport for reward on routes fixed by the Land Transport Control Board), if doing so will result in it gaining the benefits of a fixed-route operator. According to market participants, this is only applicable to passenger transport, not freight transport.

Harm to competition. This provision amounts to a non-compete clause imposed upon non-fixed-route transport operation licensees. As a consequence, fixed-route transport operation licensees may be able to exercise market power and increase prices (if they are not set by the public authority) on licensed routes. Also, they may reduce investment and service quality, without losing customers.

According to market participants, this provision is applied only to passenger transport, but theoretically could also be imposed on freight transport. As a consequence, potential providers of freight transport services may assume that (non-existing) barriers to entry are in place and so be deterred from entering the market or be forced to incur additional legal costs (such as fees for legal advice) to establish whether they are allowed to enter the market.

Policymaker’s objective. The objective of this provision is to ensure that an operator’s fixed-route licence actually serves its purpose of excluding competition on that specific route.

Recommendation. The OECD has recommended that the provisions concerning the power to fix routes for freight transport service providers should be clarified to make it clear that they do not apply to freight transport. If licensing a route to an operator does not apply to freight transport, the OECD recommends this be also clarified in this provision.

3.2. Maritime freight transport

The main pieces of legislation affecting the freight transport by sea sector are:

- **Thai Vessel Act**, B.E. 2481 (1938) as amended by the Thai Vessel Act (No. 7), B.E. 2550 (2007) providing for registration and certification requirements of Thai vessels.
- **Port Authority of Thailand Act**, B.E. 2494 (1951) as amended in Port Authority of Thailand Act (No. 5), B.E.2543 (2000), which regulates PAT’s activities, including management, monitoring and control of the five major ports in Thailand.
- **Merchant Marine Promotion Act**, B.E. 2521 (1978) as amended in Merchant Marine Promotion Act, (No. 2) B.E. 2548 (2005), giving the government the power to introduce promotional measures for Thai vessels, including cargo reservations or freight rate setting. This law is currently under review and, according to market participants, the new act will not include some of the current promotional powers.

- **Carriage of Goods by Sea Act**, B.E. 2534 (1991), introducing derogations to the general liability regime of the Civil and Commercial Code in respect of freight carriers by sea.

The OECD team identified 27 restrictive regulations for transport of freight by sea or inland waterway and made 22 recommendations concerning the following topics.

1. Barriers arising from the institutional framework for ports.
2. Permits and authorisations to carry out certain businesses in the maritime freight transport sector.
3. Price regulations.
4. Foreign equity restrictions when conducting certain activities.
5. Requirements concerning certain maritime personnel, such as ships' crews.
6. Competition distorting promotional measures.
7. Restrictions on operations.

3.2.1. Overlap of regulatory and operational functions

Description of the obstacle. The Port Authority of Thailand (PAT) is a state-owned enterprise (SOE) that runs Thailand's five major ports under the supervision of the State Enterprise Policy Office (SEPO).⁵ Pursuant to Act, B.E. 2494, PAT has regulatory and supervisory powers, *and* operational functions. In practice, this means PAT operates as the regulatory authority for publicly owned ports and also offers services within them, often in competition with private operators (Rattanakhamfu et al., 2015, p. 27^[42]).

Following its regulatory function, PAT determines the charges for using its ports, services and facilities, and issues regulations for safety and the use of the same ports. There is no independent port regulator. For its operational functions, Article 6 of the act provides that PAT can carry out business in each of its ports "relating or incidental to port undertakings" and conduct "port undertakings in the interest of the state and the public", while Article 9 provides that it can operate port services directly.

Harm to competition. The potential overlap between PAT's regulatory and operational functions may create conflicts of interest. For example, PAT's power to set prices of services offered within the port area may prevent private operators from offering competitive lower prices in order to gain market share. Also, PAT may theoretically use its power to fix rates for all dues and charges within the port area so that it passes costs caused by its own inefficiency onto private companies active in the port; this is an option private companies lack. PAT confirmed that it is in the process of reviewing the PAT Act and, to this purpose, it has provided the private sector with an opportunity to express their views on the amendments.

Policymaker's objective. This potential conflict of interest may be a legacy provision. Market participants confirmed that several governments in the past have tried unsuccessfully to separate PAT's regulatory and operational functions.

Recommendation. Ensure that PAT has only operational functions, and give the power to adopt regulations regarding ports and port operations to an independent body, such as the Ministry of Transport. While PAT may be involved in the decision-making process and may submit proposals on technical matters, the power to adopt final decisions should remain with the independent body.

3.2.2. *Permits and authorisations*

3.2.2.1. *Public monopoly for piloting services*

Description of the obstacle. There are six compulsory pilotage areas in Thailand where vessels must use piloting services.⁶ All pilots in Thailand are employed by the Marine Department. At the port in Phuket, Article 2 of Ministerial Regulation No. 51 B.E. 2531 provides that all ships moving in or entering the deep-sea port area must use these government-employed pilots, except for: 1) ships of the Thai government; 2) ships of foreign governments; and 3) ships whose total length is less than 50.28 meters.

Harm to competition. This provision gives the Marine Department a monopoly over piloting services, which restricts other economic operators' market access.

Policymaker's objective. This provision aims to ensure safety through a public monopoly. The Marine Department claims this provision is justified in these six ports as they are often congested due to increased maritime traffic, most of which is ocean-going vessels serving international trade, and that any accidents arising from collision of ships or ship grounding would have adverse impact on Thailand's economy. In order to prevent such accidents, large vessels are required to use government pilots, who are well trained and familiar with the specific geographical features of those major ports.

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. This is explained by the existence of licensing regimes, concessions to public or private operators, and the existence of separate public entities providing such services.

Recommendation. Authorities should consider whether there is a private interest in providing these services. If so, create appropriate legal framework so that piloting services can be tendered based 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.

3.2.2.2. *Requirements to provide piloting services*

Description of the obstacle. In order to apply to become a pilot, applicants must formally qualify as a captain in the Royal Navy or at the Merchant Marine Training Centre and, according to Ministerial Regulations on pilotage issued under Article 4 of Navigation in the Thai Waters Act, B.E. 2456 (1913) Amendment (No.2) B.E. 2477, they must have worked for one year for the Marine Department. All pilots must be government officials.

Harm to competition. The requirement to be a captain in the Royal Navy and a government official, as well as the requirement to have worked for a year for the Marine Department may significantly reduce the number of pilots. This may reduce competition, which may in turn increase costs for companies that have to pay for compulsory pilotage. This provision also creates a barrier to entry for those wishing to offer piloting services.

Policymaker's objective. This provision aims to ensure pilot safety and reliability by restricting access to the profession to government officials who are qualified captains and have previously worked for the Marine Department. The Marine Department confirmed that the requirement to be government officials "creates a genuine link between the government pilots and the competent authority for the purpose of monitoring and control of standards".

International comparison. In Portugal, candidates to become pilots need to be naval officers with at least a "first-class pilot" rank and so a naval officer's degree from a Portuguese naval

school, a minimum of three years of naval experience and mariner's officer certification. They must also complete a piloting traineeship, subject to a process of continuous evaluation, and speak and write Portuguese. In its 2018 *OECD Competition Assessment Review of Portugal*, the OECD noted that there is no clear reason to require pilots to have a first-class pilot rank and so block entry to seafarers of inferior rank, even though the latter could have the same or more years of experience. The OECD therefore recommended removing the legal requirement to have a first-class pilot rank and replace it with a requirement of three years of experience serving on board ships as a mariner (OECD, 2018^[7]).

Recommendation. An examination should be introduced to assess real-world skills of pilot candidates as an alternative to the current requirements. Having passed the exam, successful candidates should be allowed to operate as a pilot, irrespective of whether they were previously a government official.

3.2.3. Regulation of tariffs

3.2.3.1. Minimum and maximum of rates within PAT ports

Description of the obstacle. A service provider within PAT ports can only charge rates between the maximum and minimum fixed by the Council of Ministers.

Harm to competition. The minimum and maximum rates set by the Council of Ministers limits service providers' ability to set their rates freely for their services within the port area. Newcomers are prevented from gaining market share by offering prices below the minimum fixed rates.

Policymaker's objective. The existence of minimum rates likely aims to ensure a minimum income to operators, while avoiding a reduction in quality due to overly fierce competition. The existence of maximum prices aims to protect port users, by avoiding excessive prices.

Recommendation. The OECD recommends removing minimum prices as part of the framework set by the Council of Ministers. Keep maximum prices for cases where port competition is limited. Such maximum prices should enable operators to recover their costs, including a reasonable rate of return. For this purpose, such maximum prices should also be regularly revised to ensure they are in line with market dynamics and provide the necessary innovation incentives.

Box 3.1. OECD's and World Bank's past recommendations

In Portugal, port tariffs are subject to multiple forms of price control, depending on the regime under which the port service is provided, whether by port authorities or private operators. The 2018 OECD Competition Assessment Review of Portugal recommended removing the provisions on fee-setting criteria, discounts and exemptions (OECD, 2018^[7]).

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." (World Bank, 2016^[43]).

3.2.3.2. Fixed port tariffs

Description of the obstacle. In addition to setting fees for the use of its port facilities, PAT and its Board of Commissioners can also regulate “dues and charges within the Authority Area”, the area of land and water maintained and controlled by PAT.

In practice, tariffs need to be approved by the Council of Ministers and must always be between the minimum and maximum rates it fixes, according to Art. 29(1), No. 5 of the Port Authority of Thailand Act, B.E. 2494. Currently, it appears that there is only one approved rate rather than a range with minimum and maximum. Those fixed port tariffs are currently set out in *Regulations of the Port Authority of Thailand: Use of Ports, Services and Facilities* and a number of PAT announcements.⁷

This results in two potential issues.

1. With the approval of the cabinet, PAT is theoretically able to regulate prices within its port area, including the prices of services offered by private operators. The Marine Department has clarified that notwithstanding the wording of the law (“dues and charges within the Authority Area”), in practice, PAT only sets the rates of its own services and not those for services offered by private operators within the port area.
2. Due to the approval requirement and procedure, PAT claims that it cannot grant any discounts and so cannot adapt to changes in demand or its competitors’ price initiatives.

Harm to competition. The broad formulation of the provision theoretically grants PAT the power to fix rates for the services offered by private providers, such as cargo-handling, within the port area. This may confuse market participants and discourage potential competitors from entering the market. The requirement for any price change by PAT to be approved by the cabinet prior to implementation results in a lack of flexibility to adjust tariffs to market dynamics. This may in turn result in lack of competitiveness and a competitive disadvantage for PAT ports, since the authority cannot grant discounts, unlike private port operators.

Policymaker’s objective. The seeming objective of the approval procedure is to protect port users and avoiding excessive pricing.

Recommendation. Clarify that PAT’s power to fix rates only refers to its own services and not to those offered by private operators within the port area. If minimum prices are not removed, all active operators should be allowed to grant discounts without having to seek approval first.

3.2.3.3. Pricing plan for new ports

Description of the obstacle. An operator wishing to run a private port needs to submit a port-pricing plan to the Marine Department. The plan with prices is first submitted to the Merchant Marine Supervising Division, a specific unit within the Marine Department at the Ministry of Transport, that forwards them to the Director-General of the Marine Department before they are finally approved by the Ministry of Transport. Once approved, the port operator cannot charge more than the rates declared in its submission. Pursuant to Article 6(7) of the Ministry of Transport announcement concerning the conditions for the permission to operate a port business, a port operator intending to change its rates when it applies for a licence renewal must send the new port tariffs and clarify the reasons for the change.⁸

Harm to competition. The provision could limit the ability of private ports to compete on price and prevent them from adjusting their prices to market dynamics.

Policymaker’s objective. The objective of the approval procedure is likely to protect port users against excessive prices. The Marine Department confirmed that this is because “ports are

regarded as the economic gateways of the country. If the port tariff is too high, it will increase the logistic costs and make exports uncompetitive in global markets [...] the port business requires highly prized and limited land adjacent to waterways and high investment. Price-cutting competition in the port business may result in insolvency and create significant economic losses.”

International comparison. In Portugal, where port services are provided by private operators, tariffs are determined by each concession and licensing contract. When services are provided by the port authority, port tariffs are directly regulated by the law. In (OECD, 2018^[7]), the OECD recommended removing the decree (or at least the specific provisions) on fee-setting criteria, discounts and exemptions without a clear policy goal.

Recommendation. Clarify that the Marine Department does not have the power to fix minimum rates so that private operators can set their rates below PAT’s Bangkok baseline rates. Maximum prices can be regulated when port competition is limited.

3.2.4. Foreign equity restrictions

Alongside its objective of creating a single regional market, ASEAN has set the goal of establishing a single shipping market in order to boost the cross-border provision of shipping services within the region.⁹ Nevertheless, the measures currently being mapped out for achieving that single shipping market have not included liberalising cabotage. In *Economic Outlook for Southeast Asia, China and India 2016*, the OECD observed that, “most countries in the region practise cabotage which prohibits foreign registered ships from operating domestically”; these restrictions are among the main obstacles to the creation of an ASEAN single shipping market (OECD, 2016, p. 166^[44]). Cabotage may reduce competition and could make farmers and firms less competitive internationally due to higher transport costs.

3.2.4.1. Cabotage restrictions under the Thai Vessel Act

Description of the obstacle. A company owning Thai-flagged vessels operating in marine commerce in Thai territorial waters must be at least 70% owned by Thai nationals.

Harm to competition. This provision limits access by foreigners to marine-commerce companies operating in Thailand’s territorial waters by limiting their ownership to 30%.

Policymaker’s objective. This provision aims to protect Thai operators until they are strong enough to compete with international cabotage providers. The Marine Department confirmed that this provision “creates a strong, genuine link between shipowners and ship operators and the Marine Department for the purpose of monitoring and controlling the maritime safety standards of vessels in domestic waters”.

Recommendation. The OECD recommends one of the two options:

1. In co-operation with other ASEAN countries, introduce an ASEAN-wide cabotage policy similar to the EU, in which ASEAN operators are treated as national operators and can provide services in other ASEAN countries.
2. Regularly assess demand for shipping services on different routes and, pursuant to Article 47 bis of the Thai Vessel Act, consider granting exemptions and temporary licences to allow foreign vessels to provide emergency cabotage services when supply is insufficient, demand is particularly high, and a need arises for additional or specific services.

Box 3.2. Cabotage policy in the EU, New Zealand, ASEAN and Mexico

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

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

Similarly to Thailand, most ASEAN countries appear to have restrictions on cabotage in place but allow exceptions if there is strong demand. Malaysia removed cabotage restrictions for Sabah and Sarawak in 2017 due to an insufficient number of vessels to carry goods from Eastern Malaysia. The Philippines allows foreigners to apply for authorisation to provide domestic services if no Filipino vessels are available. The OECD noted in its Economic Outlook for Southeast Asia, China and India that: “generally, cabotage is practised by ASEAN countries that are either archipelagic or have an extensive coastline. Brunei Darussalam, Cambodia, Lao PDR and Singapore do not practise cabotage restrictions, while other ASEAN countries continue to do so” (OECD, 2018, p. 100^[45]).

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

3.2.4.2. Foreign equity restrictions for Thai vessels operating in international marine transport

Description of the obstacle. A company owning Thai vessels operating in international marine transport must be at least 51% owned by Thai nationals. Only legal persons (so excluding natural persons) can operate such a business.¹⁰

Harm to competition. This provision may restrict access by limiting foreigners to only 49% ownership of companies owning Thai vessels operating in international marine transport.

Policymaker’s objective. The regulation aims to protect Thai operators until they can compete with international providers. It also aims to facilitate the monitoring of vessels though it remains unclear how imposing a national equity requirement on companies operating international maritime transport should achieve this goal.

Recommendation. The OECD recommends one of the following:

1. Progressively relax foreign-equity limits with the goal of allowing up to 100% foreign ownership in the long term. A first step may be to implement the agreed changes towards the ASEAN Framework Agreement on Services (AFAS) target of 70% ASEAN foreign-ownership in entities providing logistics services (including international marine transport) and then extending it to included non-ASEAN nationals. In the long term, Thailand may consider full liberalisation by allowing 100% foreign-ownership in entities providing international marine transport.

2. Relax foreign-equity limits on a reciprocal basis for countries that allow Thai nationals to own 100% of companies.
3. Regularly assess demand for shipping services on different routes and consider allowing 100% foreign ownership when there is a particularly high demand and a need for additional services.

3.2.5. Barriers concerning ship personnel

Most countries in the world, including ASEAN countries, have some nationality requirements for ship crew. If the national shipping sector does not have access to a sufficient supply of seafarers, the introduction of nationality requirements may however put national shipping companies at a competitive disadvantage or impose additional costs on them.

The Thai government estimates that in the near future there will be a shortage of marine officers and seafarers. According to the *2017 Strategic Plan for the Development of Maritime Business*, by 2021 there will be a shortfall of 4 905 officers and 10 746 seafarers.¹¹

3.2.5.1. Nationality requirements for Thai vessels' crews

Description of the obstacle. Thai vessels used for marine commerce in territorial waters can only employ Thai-national crew. Thai vessels used for international transport must employ Thai-national crew in the proportion prescribed in the Ministerial Regulation (No. 8), B.E. 2540. Since 1997, this has been 50% of the total crew. The Seafarers Standard Division within the Marine Department is responsible for ensuring compliance with this provision. Article 70 of the Thai Vessel Act provides for some flexibility on this requirement by provisionally allowing a reduction in the proportion of Thai crew when labour is short or for any other appropriate reason. This flexibility provision was limited to 5 years after the entry into force of the law and does not seem to have been applied in practice.

Harm to competition. This provision may unnecessarily raise costs for operators and make more difficult the entry of potential market participants as a consequence of the difficulty and cost of finding suitable crew.

Policymaker's objective. The Marine Department confirmed that this provision aims to support the national labour market and ensure that Thai nationals acquire the necessary skills.

International comparison. In Denmark, only the captain of the ship must be a Danish or EU citizen; there is no nationality requirement for other crew members. In Germany, only the captain of merchant ships under German flag has to be an EU/EEA citizen. For ships over 8 000 gross tonnes, there is a requirement to have one officer who is an EU/EEA citizen.¹² In Malaysia, there are no restrictions on a crew's nationality if the ship manager or ship-management company operating the ship is incorporated in Malaysia.

Recommendation. Conduct annual surveys of demand and supply for crews and, in the case of shortages, allow exemptions from nationality requirement pursuant to Article 70 of the Thai Vessel Act.

3.2.6. Promotional measures for Thai-registered vessels

3.2.6.1. Minimum amount of freight for Thai-registered vessels

Description of the obstacle. According to Article 16 of the Merchant Marine Promotion Act, B.E. 2521, the government can require that a minimum amount of freight must be carried by

marine transporters between Thailand and specific foreign countries on Thai-registered vessels. The government determines this amount in a royal decree in which it defines the “proportion between the quantity of goods and freight” that must be transported by Thai-registered vessels. The obligation to use Thai-registered vessels currently applies to government, government agencies and private companies when implementing government projects, such as concessions granted by the government.

Harm to competition. Article 16 of the Merchant Marine Promotion Act, B.E. 2521 may distort competition by favouring Thai-registered vessels and reducing Thai-registered vessels’ incentives to compete and innovate. In addition, it can increase the cost for the government or private companies working on government projects to transport goods by sea as they will be obliged to use Thai-registered vessels for set amounts, even if cheaper alternatives are available. Market participants state that it is often difficult to find Thai vessels operating certain routes, which can also increase costs for companies fulfilling government contracts.

In its 2014 report *Cargo Preference and Restrictions Applying to Specific Trades*, APEC stated that the regulation was still in force, but did not achieve its objective of expanding the national shipping fleet (APEC Transportation Working Group, 2014^[46]). According to the Marine Department, no regulations under this article have been enacted and there are currently no cargo-preference regulations in place.

Policymaker’s objective. This provision aims to support national industry with a view to strengthening Thai operators, preparing them for international competition while expanding the national fleet.

The Marine Department confirmed that this Act is currently under review and the new draft does not include similar provisions, which would be against both GATS and WTO principles.

Recommendation. The OECD recommends that the Thai authorities consider removing this provision following a transition period that allows Thai operators currently benefiting from this provision to adjust to the new legal framework. If specific exceptional needs arise following the repeal of this provision, the authorities could consider granting direct subsidies rather than competition-distorting measures.

Box 3.3. Mexico’s exception to cargo preference

Many countries have (or have had in the past) cargo-preference regulations in place in order to promote their national fleet, including South Korea, Japan, Philippines and the United States. Generally, however, those regulations usually concern only government cargo, rather than cargo shipped by private companies with business relationships with the government, and include other measures (such as direct subsidies).

In 1966, Mexico provided subsidies on imported cargo that used Mexico-registered vessels. In 1981, it also introduced a direct measure that obliged government cargo to be shipped by Mexico-registered vessels. To limit the scope of such cargo reservation, Mexico signed agreements with different countries, including Brazil, Russia and Bulgaria, so that some cargo could be shipped by vessels registered with one of the co-signatory countries.

Source: APEC (2014), *Cargo Preference and Restrictions Applying to Specific Trades*, pp.15-16.

3.2.6.2. *Preference for Thai-registered vessels to transport government goods*

Description of the obstacle. Pursuant to certain provisions of the Merchant Marine Promotion Act,¹³ the Ministry of Transport has the power to specify whether certain goods ordered by the government or other government-related bodies and state-owned enterprises (SOEs) are to be imported or exported by Thai-registered vessels (when one is available on the route) instead of being transported by a foreign-registered vessel. In case of non-compliance, a fine can be imposed.¹⁴

Harm to competition. These provisions may distort competition by favouring Thai-registered vessels and limiting state agencies and enterprises' freedom to choose a carrier. If there is not sufficient competition between Thai carriers, these regulations may result in inefficient companies being kept in the market as vessels are granted transport contracts for specified goods on certain routes solely because they are Thai-registered; it may also reduce incentives to compete. These provisions may also result in restricting access for foreign operators.

Policymaker's objective. These provisions aim to support the national industry with a view to strengthening Thai operators and preparing them for international competition.

Recommendation. The OECD recommends one of two options.

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

3.2.6.3. *Derogation to the obligation to transport certain goods on Thai-registered vessels*

Description of the obstacle. The Thai government can require goods be shipped by Thai-registered vessels on certain routes. Thai law, however, provides for an exception to this exclusivity rule: a Thai company needing support on certain routes can add non-Thai-registered vessels. In practice, non-Thai-registered vessels will only obtain such a permission if the Thai vessel operator proves that services on the specific route cannot be provided without non-Thai-registered vessels.

Harm to competition. This provision may result in granting special rights on certain routes to Thai operators without any statutory time limitation, and so make entry by foreign operators more difficult or even impossible.

Policymaker's objective. This provision aims to support the national fleet with a view to strengthening Thai operators and prepare them for international competition. By introducing an exception to the benefits granted on a route, this provision aims to avoid shortage of supply of transport services on certain routes.

International comparison. In the Philippines, Marina (i.e. the Maritime Industry Authority) can grant "pioneer" status to a shipper on a route to ensure protection of the operator's investment. A shipper granted pioneer status has the exclusive right to provide shipping services on that route and no additional vessels can be deployed on it for up to six years (except if Marina determines that there is a need of additional vessels). Also, this status can be granted only if the shipper introduces new ships that meet International Association of Classification Societies (IACS) standards on the routes.

Recommendation. The OECD recommends one of two options.

1. Consider removing exclusive benefits on certain routes, as well as the provision concerning the exception to the benefit rule. A transition period may be granted, allowing those who currently benefit from the measure to adjust to the new legal framework.
2. Grant the benefits based only on specific conditions, such as making substantial investments in the fleet. The conditions should be set by the law and the benefit should be time limited.

3.2.6.4. *Compensation of unfair advantages arising from promotional measures*

Description of the obstacle. If the granting of special rights and benefits by the Marine Department to certain Thai vessels constitutes an unfair advantage over other marine transport shipowners with Thai-registered vessels, the Ministry of Transport can either collect money from the operator receiving an unfair advantage or prohibit for a specified period such an operator from using all or some of its vessels for loading or discharging goods. “Unfair advantage” is not precisely defined in the law.

Harm to competition. This provision allows compensation for the advantages and benefits granted to certain Thai vessels when such rights and benefits constitute unfair advantages over other Thai-registered vessels. Such rebalancing measures cannot be applied when any unfair advantage puts foreign vessels at a competitive disadvantage. Also, the Minister of Transport has wide discretion when introducing rebalancing measures and this may also lead to discrimination if some companies are compensated and others are not.

Policymaker’s objective. This provision aims to restore a level playing field and rebalance certain distortions. It has never been applied in practice, however, and the Marine Department confirmed that it is unlikely to be implemented in the future.

Recommendation. Remove, following implementation of recommendation in section 3.2.6.1. Minimum amount of freight for Thai-registered vessels.

3.2.7. *PAT’s exemption from taxes and duties*

Description of the obstacle. PAT is a state-owned enterprise (SOE) under the aegis of the Ministry of Transport. Article 17 provides that PAT is exempt from taxes and duties under the Thailand tax code, including its unleased buildings and land. Market participants, however, claim that PAT operates independently of the Ministry, and does not enjoy any advantage from its SOE status.

Harm to competition. As the tax exemption refers to all revenue, land and buildings (other than those that are leased), including revenues generated by activities in competition with private operators, this provision may give PAT a competitive advantage over private companies offering the same services.

Policymaker’s objective. This provision may be a legacy of the time before 2000 when PAT was a government agency.

Recommendation. Remove and ensure that PAT is subject to the same provisions as private port operators when it is operating in competition with them, such as the activity linked to running a port.

3.3. Rail freight transport

The two main pieces of legislation affecting freight transport by rail are:

- **State Railway Act** B.E. 2497 (1951) which regulates the national railway transport monopoly, State Railways of Thailand (SRT);
- **Rail and Highway Management Act**, B.E. 2464 as amended in Rail and Highway Management Act B.E. 2464 (No. 5), B.E. 2477, which regulates the infrastructure management as well as the conditions to operate freight transport by rail. SRT confirmed that a new draft bill of the Rail Transport Act is currently under discussions and according to market participants, it will lay down clear, transparent and non-discriminatory conditions for private persons to operate as rail freight transport service providers.

The OECD team identified four restrictive regulations for transport of freight by rail and made two recommendations. These concern the following topics: 1) SRT's current vertical integration as both the operator of the railway infrastructure and the only train service operator; and 2) the unclear conditions for obtaining an authorisation to operate rail transport services.

3.3.1. Vertical integration of SRT and risk of competitive foreclosure

Description of the obstacle. State Railway of Thailand (SRT) is a state-owned enterprise (SOE) that is part of the Ministry of Transport. Pursuant to the Railways and Highways Act of 1944 and the State Railway Act of 1951, it is currently the operator of the railway infrastructure, running all of Thailand's national rail lines. At the same time, SRT has been the only train service operator, both for freight and passengers, since the company was established in 1890. This means Thailand has a vertical integration model in which the same company runs both the infrastructure and the transport service.

Harm to competition. As a vertically integrated company, being both the operator of the rail network and the only freight transport service provider, SRT may have an incentive to foreclose competitors and to favour its own transport operator, which may result in a harm to competition. It may do so, for instance, by preventing potential rail transport service providers from using its railway infrastructure. In a less evidently restrictive manner, SRT may charge unfair prices for essential services such as allocation of tracks or access to energy supply.

Policymaker's objective. This overlap may be a legacy of a time when management of the rail network and rail transport services were both carried out by the public authority.

Recommendation. The OECD recommends that the Thai government consider introducing separation of ownership or management of infrastructure and rail freight transport service operations. Alternatively, in order to ensure the independence of the infrastructure management and to avoid the risk of foreclosing competitors, Thailand may consider introducing accounting separation between the infrastructure manager and the rail freight transport service operator.

Box 3.4. Vertical separation of the infrastructure manager and railway undertakings in OECD countries

Several models exist in OECD countries concerning separation of infrastructure and cargo transport, spanning from full ownership separation to accounting separation. Some countries such as Sweden, have implemented full structural separation, while other countries such as Italy have organised infrastructure and operations into separate subsidiaries with a holding company structure.

In the EU, the law does not require separation of ownership. However, it requires the manager of the rail infrastructure to be independent from any undertaking providing transport services when it performs essential functions, such as granting access to the infrastructure or the allocation of tracks. EU legislation also requires keeping separate financial accounts and granting access to the infrastructure in a non-discriminatory manner.

3.3.2. Unclear conditions for obtaining the authorisation to operate rail transport services

Description of the obstacle. Pursuant to the Declaration of the Revolutionary Council, No. 58, the railways is considered as a “public amenities business”, which is a business that “may affect the safety and peace of the public”. Consequently, permission from the Minister of Transport is necessary in order to lawfully conduct a railway business. However, the Declaration does not provide any details on the conditions for obtaining such a permission.

Harm to competition. The absence of any clear conditions to obtain a permission to operate a railway business, including transport of freight cargo, leaves significant discretion to the Minister of Transport. This may create a risk of favouring certain operators over their competitors, for example, by simply not issuing a permission to the latter. In addition, such a risk of discrimination may discourage potential competitors from entering the railway market.

Policymaker’s objective. The objective of the Declaration is to control and supervise key public sectors such as the railways. SRT confirmed that a new Rail Transport Act is currently under discussion and it will most likely include an application procedure for private operators to obtain a licence based on clear, transparent and non-discriminatory conditions.¹⁵ The draft new Rail Transport Act will give the director general of the recently established Department of Rail Transport (DRT) the power to grant any private person a licence for operating the business of rail transport, although, based on the current wording, this “shall not affect the rights of the former rail transport operator”. The director general will also have the power to withdraw the licence, but this will be subject to two specific circumstances, namely: 1) non-compliance with the standards of good business practices, and so causing public harm; and 2) conducting rail transport business in such a manner as to cause serious damage to the public. The draft law provides, however, that licence withdrawal will only be possible following consultation with the Minister of Transport.

International comparison. A country-by-country analysis across EU member states shows that the first EU countries to reform their railways by introducing competition in the rail freight transport sector recorded the biggest increases in volume (tonnes-kilometres) between 1995 and 2004: the UK (70%), the Netherlands (67%) and Austria (36%) (European Commission, 2006^[47]).

Recommendation. The OECD recommends clarifying the conditions for obtaining permission to operate a railway business. Such conditions should be clearly laid down in the law. The

OECD supports the Ministry of Transport's initiative for a new law providing for clear, transparent and non-discriminatory conditions for private operators to obtain a rail transport service licence.

3.4. Freight forwarding

The main pieces of legislation affecting the freight forwarding sector are:

- The **Land Transport Act**, B.E. 2522 (1979), which regulates passenger and freight transport by road, including authorisation, licensing requirements, conditions and obligations to operate as a freight forwarder.
- The **Multimodal Transport Act**, B.E. 2548 (2005), which includes provisions regarding the conditions to operate as a multimodal transport operator (MTO), the contracts concluded by it, a specific liability regime, and the applicable reporting obligations.

The OECD team identified eight restrictive regulations for freight forwarding and made six recommendations. These concern: 1) Permits and authorisations and 2) Restrictions (such as tariff regulations and minimum capital requirements) when conducting certain activities.

3.4.1. Permits and authorisations

3.4.1.1. Limited number of permits to operate freight forwarding

Description of the obstacle. Pursuant to Article 19 of the Land Transport Act, B.E. 2522 (1979), the number of “transport managers” (freight forwarders)¹⁶ for the Bangkok area is fixed by a decision issued by the Central Land Transport Control Board and published in the government gazette (DOF). In practice, according to market participants, no licence has been issued since this act was passed, meaning that freight forwarders are currently operating without a licence.

Harm to competition. The power to establish quotas of freight forwarders might limit new entrants' access to the market.

Policymaker's objective. This provision aims to ensure the quality of freight-forwarding services by avoiding an oversupply of operators, which could, in the legislator's view, result in a reduction in quality. Limiting the number of service providers may also facilitate supervision by public authorities in order to improve quality.

International comparison. In many EU countries, there are no specific licensing requirements to operate as a freight forwarder. For instance, the Netherlands, an operator must register as a company with the competent authority, but no specific freight forwarder registration is required.

Recommendation. The OECD recommends removing the Central Land Transport Control Board's power to set the number of freight forwarders.

3.4.1.2. Obligation to make security deposit

Description of the obstacle. A freight-forwarding licence holder for goods by road must make a security deposit with the Central Registrar or the Provincial Registrar as a guarantee of its performance of freight-forwarding contracts. To the best of the OECD's knowledge, in practice, however, no ministerial regulations with rules and procedures for authorisation of freight forwarders have been issued and the amount of this deposit has not been set.

Harm to competition. Depending on the amount, a security deposit may constitute a barrier to entry, especially for SMEs.

Policymaker's objective. This provision aims to guarantee the performance of the contracts concluded by a freight forwarder. As highlighted by the Department of Land Transport, this provision may also help ensuring that any injured third party receives immediate compensation for any damage caused by the licensee.

International comparison. In Germany, freight forwarders do not have to make a security deposit, but do have an obligation to hold valid liability insurance.

Recommendation. The OECD recommends one of two options.

1. Remove the requirement for a security deposit.
2. Accept insurance contracts to comply with this provision, as an alternative to a deposit.

3.4.1.3. *Licensing and minimum capital requirements for MTOs*

Description of the obstacle. Pursuant to Article 39 of the Multimodal Transport Act, any person wishing to operate as a multimodal transport operator (MTO) needs to register with the director general of the Marine Department¹⁷ and must:

1. be a limited company or public limited company incorporated under Thai laws and having the principal office in Thailand
2. have capital of not less than SDR 80 000, an amount set in the ASEAN Framework Agreement on Multimodal Transport that deviates from the general requirement laid down in the Civil and Commercial Code for limited companies or public limited companies
3. have available security for liability for the multimodal-transport contract or for any other risk derived from the contract.

Harm to competition. The provision may restrict market entry for SMEs since the capital requirement of SDR 80 000 may be too high.

Policymaker's objective. This provision aims to ensure that a company has enough capital to operate as a multimodal transporter, and to protect consumers and creditors from risky and potentially insolvent businesses.

International comparison. General minimum capital requirements that depend on a company's legal form, rather than its sector, are common. In Germany, for instance, a limited liability company must make a bank deposit of at least EUR 12 500 when registering a new company. In its 2018 *OECD Competition Assessment Review of Portugal*, the OECD recommended that Portuguese authorities remove the minimum capital requirements imposed on freight forwarders and shipping agents in order to promote market entry and operational efficiency. For freight transport by road, the OECD also recommended that any amount of required initial capital should be considered under the general rules for constituting a company (in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code) rather than under specific minimum capital requirements according to the activity (OECD, 2018, p. 79^[71]).

In its report *Doing Business 2014 – Why are minimum capital requirements a concern for entrepreneurs?*, the World Bank observed that, in general, minimum share capital is not an effective measure of a firm's ability to fulfil its debt and client-service obligations (World Bank, 2014^[48]).

Recommendation. The OECD recommends one of two options.

1. Consider applying the general minimum capital requirements for commercial companies rather than a specific capital requirement for freight-forwarding activities. Since this requirement stems from Article 30(1)(d) of the ASEAN Framework Agreement on Multimodal Transport (AFAMT), this may require amendments to the agreement.
2. Allow this capital requirement to be fulfilled by bank guarantees or insurance contracts.

3.4.1.4. Authorisation requirement for an MTO's branches

Description of the obstacle. Pursuant to Article 44 of the Multimodal Transport Act, in order to set up a new branch of an MTO, a person from the registered business must file an application to the director-general of the Marine Department who acts as registrar, or the competent officials authorised to perform as registrar, and must obtain a specific permit for each new branch, in addition to its general authorisation to operate as an MTO. The registrar may grant permission for the new branch “upon condition that it protects the interests of service users” and, as confirmed by the Marine Department, on condition that the new permit's expiry date is consistent with the general company permit's expiry date. The fee to obtain a new permit is THB 500. The Marine Department confirmed that no subsequent regulations have been issued concerning the definition of “protects the interests of consumers”.

Harm to competition. Requiring a permit for each branch may unnecessarily raise costs and time of entry into new geographic markets. Also, the criterion concerning the protection of the interests of service users is overly broad and difficult to assess in advance, and so may give the appointed registrar wide discretionary powers which might lead to discrimination.

Policymaker's objective. This provision aims to protect consumers by ensuring that each branch meet certain quality requirements. As confirmed by the Marine Department, the permit requirement for every branch also facilitates monitoring.

International comparison. To the best of the OECD's knowledge, a certain number of ASEAN countries, including Malaysia and Brunei, do not require a permit for each branch.

Recommendation. The OECD recommends removing this authorisation requirement. The monitoring purpose can be achieved by, for instance, using reporting obligations already laid down in Article 52 of the Multimodal Transport Act, B.E. 2548 (2005).¹⁸

3.4.2. Restrictions on operations

3.4.2.1. Tariff regulation and office location requirements laid down in the freight-forwarder licence

Description of the obstacle. Pursuant to Article 66 of the Land Transport Act, the licence needed to operate as a road freight forwarder contains restrictions on the “locality where freight forwarding takes place” and the rates of freight-forwarding charges. The provision suggests that the Central Registrar, with the approval of the Central Land Transport Control Board, has the power to prescribe conditions in the licence including tariffs or fees, location or area of operation, and office location. The wording of this provision suggests that fixed, minimum or maximum tariffs could be introduced.

Harm to competition. This provision on suitable localities for operating as a road freight forwarder may raise geographical barriers for the provision of services, and so reduce the number of competing suppliers. The power to set the rates of freight forwarders' charges may restrict their ability to set prices, and so prevent them from offering discounts to gain market share or setting higher prices for premium products. Though market participants confirmed that

this provision is not applied in practice its presence may discourage potential competitors from entering the market or oblige them to bear the costs of verifying the applicable legal framework.

Policymaker's objective. This provision aims to protect consumers against excessive prices and prevent suppliers being driven out from the market by excessively low prices. Also, it aims to avoid a concentration of freight forwarders in certain, more profitable areas to the detriment of others.

International comparison. In its 2019 *Competition Assessment of Laws and Regulations in Tunisia*, the OECD observed that, faced with capped prices, freight forwarders may lower the quality of their services, or refrain from proposing innovative, high-quality services that could justify higher prices. It also considered that maximum prices can provide a focal point for providers to co-ordinate prices in the market. In many EU countries, such as the Netherlands, there are no specific licensing requirements to operate as a freight forwarder (OECD, 2019^[49]).

Recommendation. The OECD recommends removing the power to dictate a freight forwarder's business locality and rates as this should be left to market participants. An excessive rise in market prices or the emergence of an overly concentrated market could act as a red flag for the competition authority to investigate.

3.4.2.2. Minimum asset requirement throughout the period of operation

Description of the obstacle. Each MTO shall maintain minimum assets of not less than SDR 80,000 throughout the period of its operation, regardless of the size of the business. This requirement stems from the 2005 ASEAN Framework Agreement on Multimodal Transport.¹⁹

Harm to competition. The provision may restrict entry to the market for SMEs since the asset SDR 80 000 asset requirement might be too high especially for smaller competitors.

Policymaker's objective. This provision aims to ensure that an operator can fulfil its obligations (for example, in case of liability for damages) throughout the whole period of activity.

Recommendation. The OECD recommends one of two options.

1. Remove the freight-forwarder-specific requirement and apply the general provisions depending on the type of company chosen (limited liability company or public limited liability company). Since this requirement stems from Article 30(1)(d) of the ASEAN Framework Agreement on Multimodal Transport (AFAMT), this may require amendments to the agreement.
2. Allow the fulfilment of this requirement through bank guarantees or insurance contracts.

3.5. Warehouses

The main pieces of legislation affecting the warehousing sector are:

- **Customs Act**, B.E. 2560 (2017), which replaced the old customs law of 1926 to modernise and simplify Thai customs procedures, and so facilitate international trade. The new law includes several provisions on bonded warehouses, free economic zones and transport of dutiable goods that are within the purview of this assessment.
- **Investment Promotion Act**, B.E. 2520, as amended by Investment Promotion Act (No.2) 2534 as amended by Investment Promotion Act (No. 3), B.E. 2544, empowering the Board of Investment (BOI) of Thailand to grant different incentives to foreign and Thai investors that engage in specifically listed promoted business activities. For this

assessment, such incentives can also include majority foreign ownership and foreign ownership of land.

- **Rental of immovable property for commerce and industry Act** B.E. 2542, which contains specific provisions on land lease for business purposes.

The OECD identified nine restrictive regulations for warehouses and made two recommendations. These mainly concern:

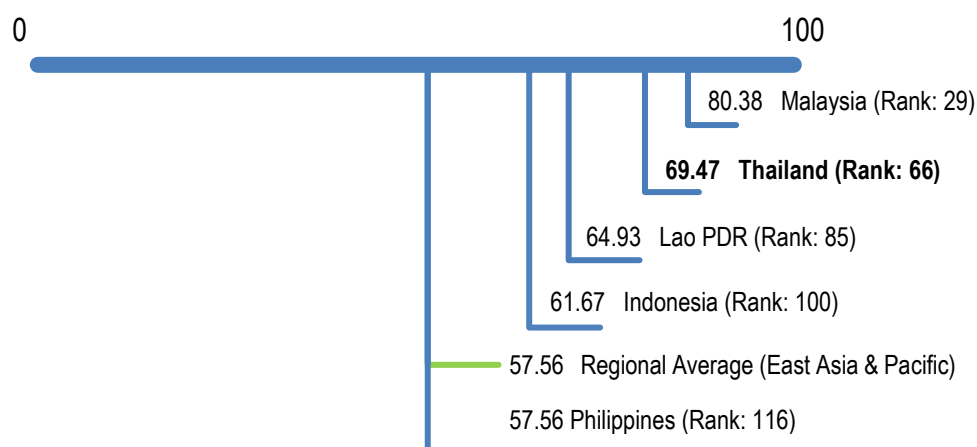
1. limitation on the time to hold cargo in bonded warehouses;
2. restrictions on transit of goods through Thailand.

3.5.1. Restrictions on access to land

3.5.1.1. Restrictions on purchase of land

As shown in Figure 3.1, the World Bank in its annual *Doing Business* report ranks Thailand's quality of land administration relatively high, especially when compared to other ASEAN member states such as Indonesia and the Philippines. This ranking takes into account the number of steps, time and cost involved in registering property. It also reflects the efficiency of the land administration, taking into account factors including the reliability of available information regarding land, the existence of equal access to property rights, and the efficiency of land dispute resolution.

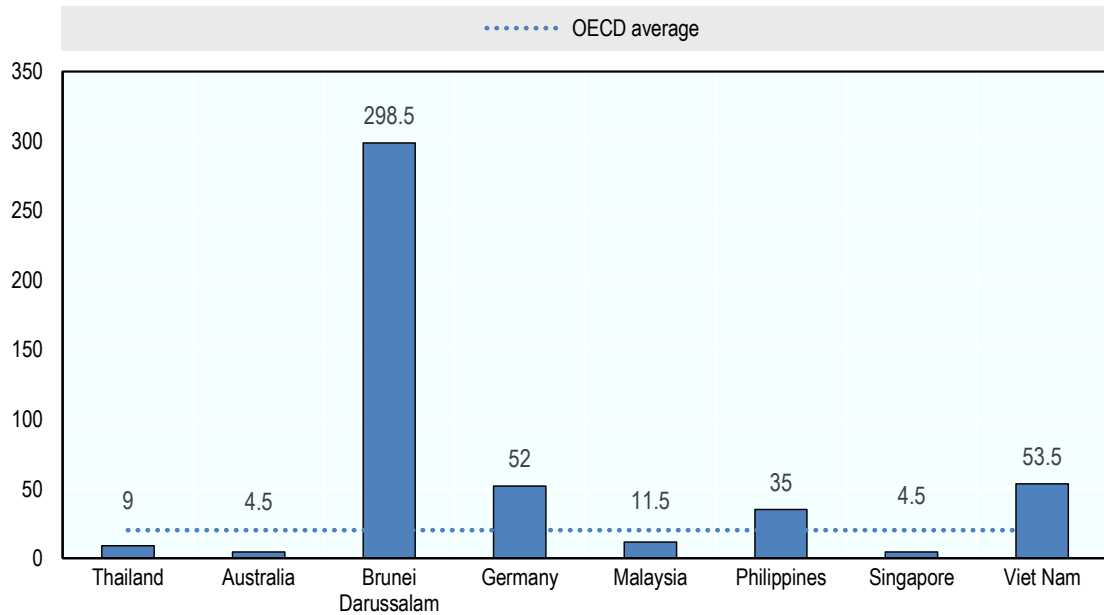
Figure 3.1. Registering property in Thailand and comparable economies (ranking and score)



Source: World Bank (2019), *Doing Business 2019 – Training for Reform*, <http://hdl.handle.net/10986/30438>

As shown in Figure 3.2, registering a property in Thailand requires on average nine days. Although this is longer than the time required in Singapore and Australia (4.5 days), it is significantly lower than in some EU countries such as Germany (52 days), or in other ASEAN member states such as the Philippines (35 days) or Viet Nam (53.5 days) or Brunei (298.5 days).

Figure 3.2. Time required to register property in ASEAN and OECD, in days



Source: World Bank Development Indicators (2019),
<https://databank.worldbank.org/reports.aspx?source=2&series=IC.REG.PROC&country=>

Notwithstanding the efficiency of land administration and the limited amount of time required to register property, access to land still raises concerns in Thailand, especially for foreigners.

Description of the obstacle. Foreign persons are not allowed to purchase and own land in Thailand, with the exception of two cases relevant to the logistics sector.

The first is when a treaty exists between Thailand and the foreigner's country allowing a person to acquire land in Thailand. If a treaty is in place, foreigners must obtain permission from the Ministry of Interior to acquire land. However, to the best of the OECD's knowledge, all agreements with foreign countries were terminated in 1970 and no treaties are currently in place allowing foreigners to acquire land in Thailand.²⁰

The second case in which foreigners are allowed to own land is regulated under Article 27 of the Investment Promotion Act, which states that foreigners can own land if 1) the business is included among those promoted by the Board of Investment (BOI) of Thailand; and 2) the investment project is approved by the BOI.²¹

Harm to competition. The provisions forbidding foreigners to buy land may prevent them from opening a business in Thailand. Even if the provisions allow them to purchase land in specific circumstances, it will nevertheless be more difficult and costly for foreigners to provide certain logistics services.

Policymaker's objective. The policy objective appears to be the exercise of stricter state control upon foreign entities than Thai entities. These provisions also aim to avoid land acquisition by foreigners solely for speculation or real-estate investment purposes.

International comparison. In many ASEAN states such as Brunei and the Philippines restrictions on foreigners buying land are commonplace. However, leases are often allowed for longer periods, such as 60 years in Brunei.

Recommendation. No recommendation as it is possible to lease land for long periods.

3.5.1.2. *Limited duration of leases*

Description of the obstacle. Pursuant to the Civil and Commercial Code, leases of immovable property (including leases for commercial and industrial purposes) cannot exceed 30 years. This limit applies to both Thai and non-Thai nationals (outside the Eastern Economic Corridor, which is a special economic zone).²² The Rental of Immovable Property of Commerce and Industry Act, B.E. 2542 (1999), introduced an exception (for commercial and industrial purposes) up to a general limit of 30 years and increased leasing contracts to up to 50 years.

Harm to competition. According to market players, the general limitation of up to 30 years or the specific limitation of 50 years for commercial and industrial leases, and the uncertainty about renewal may prevent investments in specific activities, such as warehouses. In their views, these activities may indeed require longer periods to recoup investments. However, although this provision may impose legal constraints on the negotiations of commercial terms between lessors and lessees, the OECD considers that this is generally a sufficient period to allow recouping investments, unless there are specific circumstances. In the latter case, parties can renew the leasing contract pursuant to the current formulation of Article 540 of the Civil and Commercial Code B.E. 2535.

Policymaker's objective. The likely policy objective of this provision is to avoid land occupation by the same tenant for overly extended periods, and so ensure that land becomes available again for other uses after a set period of time. Furthermore, this provision aims to avoid circumvention of the specific provisions prohibition land purchase.²³

International comparison. In Germany, contractual lease provisions including duration are freely negotiated. If a lease exceeds 30 years, each party can terminate the contract by giving notice to the other party after the 30-year period has elapsed.

Recommendation. No recommendation as the OECD considers such duration as generally sufficient to allow recouping investments and Thai law already provides for the possibility to renew leasing contracts.

3.5.2. *Limited time for holding cargo in bonded warehouses without permission*

Description of the obstacle. In order to hold cargo in bonded warehouses for longer than 30 days, permission is required.²⁴ According to market participants, however, obtaining the documents needed to file a permission request usually takes longer than 30 days.²⁵

Harm to competition. The 30-day time limit for storing goods in bonded warehouses without permission may make it difficult or economically burdensome to import slow-moving items, such as dangerous or heavy items. Obtaining all required documents in this time frame may be difficult, which raises a barrier to entry for those businesses dealing with slow-moving items.

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

International comparison. In Singapore, goods can be kept in warehouses licensed by Singapore Customs for an indefinite period of time, without the need to pay duty and goods and services tax (GST). Other countries, including Turkey and Belgium, also have no time limit for storing goods in bonded warehouses.

Recommendation. The OECD recommends one of the three options.

1. Increase the maximum duration of storage in a bonded warehouse without permission to allow transport of slow-moving items, for example, up to one year.
2. Completely remove time limit for storage in bonded warehouses.

3. Introduce a specific licensing scheme similar to Singapore's, in which a whole or part of a warehouse is licensed by the customs authority to store goods tax-free for an indefinite time. Specific requirements for such licensed warehouses can be imposed, such as the obligation for a computerised system, approval procedures, and annual fees.

3.5.3. Restrictions on goods in transit through Thailand

Thai law provides for several special economic zones where foreigners can register their companies, while enjoying certain derogations from the law, such as full foreign ownership, tax incentives and simpler registration procedures. For customs purposes, a company registered in such a zone can import raw materials, and manufacture and export the finished goods out of Thailand without paying any national duties and taxes. The purpose of such zones is to attract foreign direct investment and increase Thailand's international competitiveness

Box 3.5. Thailand's Special Economic Zones

Special economic zones (SEZ) are areas in which the business and trade laws are different from the rest of the country. As noted in the OECD's Multi-dimensional Review of Thailand: Volume 1. Initial Assessment, they are based on the concept of clusters designed to improve industrial value chains by strengthening links among firms and research, and public organisations within a geographical area. (OECD, 2018, p. 98) The government designates the SEZ and provides financial incentives, such as tax reductions and subsidies to support firms' innovation and human-resource development, as well as non-financial stimuli, which include simplifying visa procedures for skilled foreign labour and easing the regulation of foreign equity and land ownership (see BOI's website for more details).

Although industrial cluster policies have been in place in Thailand since the early 2000s, according to the Multi-dimensional Review their success in creating a base of high value-added industries has been limited. (OECD, 2018, p. 98) Moreover, policy measures have concentrated on providing financial incentives to investment such as tax breaks, but have not adequately promoted agglomeration within the cluster. In particular, weak collaboration and co-ordination at various levels, including the government, firms and research and academic institutions, hampered the horizontal and vertical integration of stakeholders within the clusters.

The table below provides an overview of the types of special economic zones in Thailand.

Table 3.2. Types of Special Economic Zones

Border-area SEZs	Ten SEZ in provinces close to borders with neighbouring ASEAN countries aiming to improve quality of life, promote trade and investment and prepare for ASEAN Economic Community. Ten special economic development zones have been established so far.
Super-clusters and other targeted clusters	Super-cluster zones located in 32 provinces (including overlaps), mainly in the Central and Eastern regions. The Board of Special Economic Development Zone Policy formulates the targeted industrial groups in the special economic development zones. There are currently 13 industrial groups: agriculture, fishery and related business; ceramic product manufacture; fabric garment and leatherwork; furniture manufacture; jewellery and accessories; medical tool manufacture; vehicle, machine and spare parts; electric and electronic appliances; plastic manufacture; medicine manufacture; logistics; industrial estate; and tourist support.
Eastern Economic Corridor (EEC)	Three coastal provinces (Chachengsao, Chonburi and Rayong) in the Eastern region aiming to promote 10 S-curve (logistics curve) industries. The act to develop the EEC passed in February 2018. FDI in the EEC will be encouraged through tax incentives, infrastructure development and zone-specific regulatory reform, such as easing visa restrictions for foreign workers.

Source: OECD (2018), *Multi-dimensional Review of Thailand: Volume 1. Initial Assessment*, <https://doi.org/10.1787/9789264293311-en>, p.98.

3.5.3.1. *Obligation to transport goods in transit in a sealed truck*

Description of the obstacle. When goods are in transit through Thailand – because, for example, they are being transported from a free-trade zone in Thailand to a foreign country – or are transported between different customs areas, they must be transported on their own in a sealed truck. This provision effectively bans the loading of other goods destined for export from other customs areas into the same vehicle, or the loading of goods for the national market together with goods destined to export, unless all goods are formally imported into Thailand and custom fees paid to allow the removal of the seals and then re-loaded onto the truck. Neither does this provision allow goods destined for different types of customs-free zones to be moved in the same vehicle unless all are formally imported into Thailand. In practice, according to market participants, this makes impossible the consolidation of several shipments into one economical load.

Harm to competition. This provision makes the costs of distribution to ASEAN through Thailand or from a hub in Thailand expensive and burdensome, which has the effect of making such hubs in Thailand uncompetitive in international comparison. The impossibility of loading onto the same truck different types of goods in transit (goods in transit and goods for import, or goods in transit loaded in different customs areas) unless all are formally imported into Thailand also increases costs for national and international transport.

Policymaker's objective. This provision aims to prevent goods destined for the national market avoiding applicable taxes and duties.

International comparison. In the EU, companies involved in customs-related operations that meet certain criteria and work in close co-operation with customs authorities can obtain authorised economic operator (AEO) status. Benefits of this status include simplified customs procedures, recognition as a safe and secure business partner, and lower inspection costs. Operators with an AEO become trusted partners for customs authorities and are subject to fewer inspections, increasing the speed at which goods circulate and so reducing transport costs. This system benefits customs authorities as it allows them to save resources and target inspections on unknown and potentially unsafe operators.

From January 2020, six ASEAN countries (Cambodia, Lao PDR, Malaysia, Singapore, Thailand and Viet Nam) will start testing the ASEAN Customs Transit System (ACTS). Under this system, ASEAN goods vehicles will be able to move across ASEAN countries with bonded goods as long as they comply with certain requirements. In particular, the transport vehicle must have a compartment constructed and equipped with a special sealed section so that no goods can be removed through it in transit.

Recommendation. Consider allowing the sealing of specific containers and remove the provision that states bonded cargo must travel alone in a sealed truck. While the OECD understands that loading bonded and non-bonded cargo into the same truck may create difficulties in identifying the bonded cargo, there are ways to address this issue. For instance, Thailand could adopt an AEO system comparable to the one adopted in the EU to reduce the problem of identifying bonded cargo. The AEO licence should be granted to those operators whose vehicles have a specific, separate and sealable compartment. Such AEO holders should be recognised as secure trusted operators and be allowed to remove, trans-ship and load bonded cargo on condition that it arrives at specified customs areas complete and in good order.

Consolidation and de-consolidation on trucks within bonded customs areas by AEOs may be allowed. In case of non-compliance, the AEO accreditation would be withdrawn.

The OECD supports Thailand's efforts in adopting ACTS from January 2020.

3.6. Small-package delivery services

The main legislation affecting the small-package delivery service (SPDS) sector is the Postal Service Act B.E. 2477, which regulates the scope of the legal monopoly of Thailand Post (Thai Post), its licensing requirements and the exemptions from which it benefits.

The OECD team identified six restrictive regulations in the SPDS sector and made three recommendations concerning: 1) ThaiPost's legal monopoly; and 2) the exemptions from general legal provisions granted to ThaiPost, for instance, the liability regime or the licensing requirements to which it is subject.

3.6.1. Thailand Post's monopoly over letters

Description of the obstacle. ThaiPost currently has a monopoly over postal services including collection, delivery or handling of letters and postcards. Article 6 of Postal Service Act B.E. 2477 defines the monopoly broadly so that it encompasses market segments that usually lie outside the scope of universal-service obligations, which refers to delivery of letters for five days a week at affordable, geographically uniform prices throughout the country, and are open to competition in other countries. For instance, letters fall within this legal monopoly in many countries but, unlike other countries, such as Australia, "letter" includes items of up to two kilogrammes with no further specifications, such as size, so could encompass small parcels.²⁶

In practice, private delivery operators such as DHL are providing certain services that theoretically fall within this broadly defined legal monopoly, and pay monthly fines for breaching the monopoly, which they price into their services.²⁷

Harm to competition. The broadly defined monopoly granted to ThaiPost constitutes a barrier to entry for potential competitors, and limits the number of service providers.

Recommendation. The OECD recommends one of two options.

1. Clarify the boundaries of ThaiPost's monopoly to exclude express mail and parcels/small-package delivery services. This could be done, for instance, by defining more precisely what falls within the description of "letter"; alternatively,
2. Lift ThaiPost's monopoly on letters and parcels and introduce a mechanism to compensate it for the additional costs stemming from the universal service obligation.

Box 3.6. The incumbent's monopoly in EU and Australia

In France, the government put an end to the La Poste's last existing monopoly (letters under 50 grammes), and the market is now fully open to competition for any item. La Poste is still obliged to provide universal service, and the state provides compensation for the costs associated with universal-service obligations, mainly funded by a tax on other service providers. Similarly, in Germany, although the monopoly has been lifted following EU directives, the 2014 Postal Universal Service Ordinance law provides that the following falls within the universal postal obligation: "the conveyance of letter items [...], provided their weight does not exceed 2,000 grammes and their dimensions do not exceed those laid down in the Universal Postal Convention and its Detailed Regulations."

In Sweden, Posten AB's postal monopoly was removed and the postal market liberalised in 1993. In 2007, the regulator conducted a study on the liberalised market and concluded that the company's service quality improved as a result of growing competition. It also found that new products had been developed and delays had been reduced.

In Australia, the market is open to any business for most postal services, except letters for which state-owned Australia Post has a monopoly. By contrast, the parcel market is competitive and there is no monopoly of parcel services.

3.6.2. Exemption from competition law

Description of the obstacle. The 2017 Thai Competition Act excludes SOEs and other public organisations or government agencies from its scope of application when it is considered necessary for the interest of society or the provision of public utilities.²⁸ Due to the broad wording of Article 4(2) of the Trade Competition Act, B.E. 2560, ThaiPost's letter business could be exempted from competition law as the postal business may be considered a public-interest activity. This could theoretically lead to ThaiPost implementing anticompetitive practices, such as abusive bundling of mail delivery (where ThaiPost has a legal monopoly) with small-package delivery (a market that is open to competition).

Harm to competition. The formulation of the exemption is very broad. If this provision is interpreted as exempting ThaiPost's business from competition with private operators, this may allow ThaiPost to implement anticompetitive practices.

Recommendation. Exclusions from the scope of competition law should be clearly defined. This may be done, for instance, by providing a list of any exceptional exclusions in an implementation act, such as ministerial regulations or OTCC guidelines. Also, exemptions should be based on an independent OTCC assessment.

To create more clarification regarding the exemption criteria, OTCC confirmed that it might consider issuing guidelines for the assessment of the benefit of maintaining national security, public interest, the interests of society or the provision of public utilities. The OECD supports this OTCC plan.

3.7. Horizontal and others

Two main pieces of legislation affecting the trade sector horizontally.

- **Foreign Business Act**, B.E. 2542 (1999) regulating direct foreign investments in Thailand. It provides a definition of “foreigner” and lays down a number of conditions distinguished by business activity with which foreign persons must comply in order to lawfully carry out business in Thailand.
- **Price of Goods and Services Act**, B.E. 2542 (1999) empowering the government (more specifically, the Committee on Prices of Goods and Services) to control the price of specific listed products in case they become “unfair”.

The OECD team identified nine restrictive regulations and made five recommendations, concerning the following topics: 1) access to legislation, including the availability of online databases; 2) the existence of minimum capital requirements; and 3) the obligation to obtain a Foreign Business Licence to operate in Thailand.

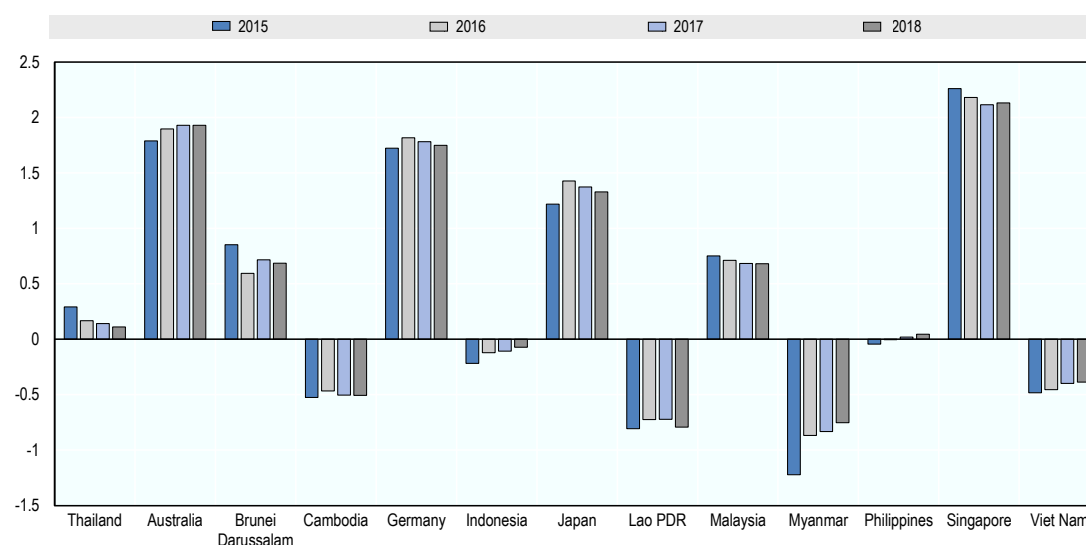
3.7.1. Access to legislation and regulatory quality

A clear regulatory framework is essential for competition as it reduces compliance costs and facilitates the entry of new players. Indeed, the codification, regular update and publication of legislation in the logistics sector is beneficial especially for new entrants unfamiliar with national provisions, and small competitors, for whom compliance costs and administrative burdens are relatively more important than for larger companies.²⁹

Description of the obstacle. While reviewing legislation in this project, the OECD team found that many rules and regulations are redundant, since they have been rendered obsolete either by everyday practice or by more recent legislation, but have not been explicitly repealed. Some rules have been altered by subsequent pieces of legislation, but the overall legislation has not been amended to reflect those changes. For example, the Land Transport Act has been amended several times, but the OECD team has been unable to find an updated consolidated version of the law. As a result, regulations are fragmented across several pieces of legislation. In addition, laws and regulations are not always published in an easily accessible online database or, as is the case of the Office of the Council of State’s legislative database, are only available in unofficial, unreliable translations. Consequently, businesses and consumers need to bear the costs of identifying the relevant provisions in separate legal texts and understanding the legal framework that applies to them at a specific time.

Such shortcomings are reflected into the World Bank’s Governance Indicators shown in Figure 3.3. The regulatory quality estimate indicator captures the perception of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development. Compared to some ASEAN countries, Thailand scores relatively high. However, there is still room for improvement, as shown by the gap with both ASEAN (Brunei Darussalam, Singapore, Malaysia) and OECD (Australia, Germany, Japan) countries.

Figure 3.3. Regulatory quality estimate



Note: Lowest = -2.5; highest = 2.5.

Source: World Bank's Worldwide Governance Indicators.

Box 3.7. What is regulatory quality?

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

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

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

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

Box 3.8. World Bank's Worldwide Governance Indicators: the Regulatory Quality Estimate

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

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

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

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

Source: Kaufmann, D., Kraay, A. & Mastruzzi, M. (2011), *Hague Journal of the Rule of Law*, 3:220, <https://doi.org/10.1017/S1876404511200046>.

Harm to competition. The lack of consolidated versions of laws, as well as the lack of a complete database with all secondary legislation and amendments, may create legal uncertainty, such as whether certain provisions remain in force. This may in turn increase costs for market players, such as fees for legal advice, and raise a barrier to entry or discourage potential competitors from entering the market. The Thai government has stepped up regulatory efforts to create a more business-friendly environment and the Office of the Council of State has conducted a review of existing laws with three main goals.

1. To ensure transparency and reduce discretion, the government has enacted the Licensing Facilitation Act (2015), requiring government agencies involved in licences, registrations and permissions to produce publicly available manuals that cover the procedures, timetable and requirements to obtain a licence.³⁰
2. In 2015, the government enacted the Royal Decree on Review of Laws and Regulations, generally known as the “Sunset Law”, which mandates a review of all acts and regulations every five years to ensure they accommodate changes in business practices.
3. Third, Thailand is strengthening its regulatory impact analysis (RIA) laws (OECD, 2018, p. 172^[31]).
4. Furthermore, in 2017, the government launched a “regulatory guillotine” project to streamline unnecessary regulations that hinder socio-economic development, for instance, by cutting down on red tape, licences and permits.³¹ Once complete, the plan will be submitted to the National Legislative Assembly.³²

International comparison. In 2016, the Portuguese government launched the Simplex+ and the Revoga+ programmes, which aim to reduce administrative burdens and improve the quality

of regulations. The Unilex project foresees that “all new draft regulations are subject to a legislative consolidation test, and when possible new proposals for consolidation and unification of related legislation are adopted” (OECD, 2018, p. 35^[7]). The Simplex+ I aims to reduce the legislative stock by identifying and the repealing outdate and non-relevant legislation. In Singapore, the Attorney General’s Chambers provide a free service called Singapore Statutes Online (SSO), which consists of a complete list of current and historical versions of legislation, including revised editions of pieces of legislation. In Australia, all 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 choose “View series” to show all versions of the legislation in question and can also easily find any amending acts. Users can easily identify legislation currently in force, refer to previous versions (to know which law applied at a particular time), and can see which and when amendments were made. There is also a link to related bills.

Recommendation. The OECD has two recommendations.

1. Begin the long-term project of creating a single law database including all laws and regulations. As a first step, authorities should publish all relevant legislation within their purview on their website including secondary legislation referred to in primary laws, as well as details on rules and procedures.
2. Every piece of legislation should include subsequent amendments so that all legislation has a consolidated updated version.

The OECD supports the government’s current efforts to improve regulatory quality and create a more business-friendly environment.

3.7.2. Online digital applications for transport licences

In 2017, the Global Innovation Index ranked Thailand 77th in the provision of online government services and 65th in the e-participation index, behind most comparators and the OECD average (OECD, 2018, p. 165^[31]).³³ However, the Department of Land Transport highlighted that it is currently developing an online system for digital applications to obtain a road freight transport licence.

Description of the obstacle. Logistics providers cannot currently apply online for all licences and accreditations. Certain authorisations, such as road freight transport licences, require applicants to submit hard-copy applications with the relevant agency.

Harm to competition. The lack of digitalisation increases costs for logistics providers as they are required to compile a hard-copy application for each authorisation. Handing in hard copies in person also increases the danger of irregularities.

International comparison. The majority of OECD countries allow online application processes for transport and logistics related licences and authorisations. In the UK, for instance, a user-friendly online procedure for transport-operator licences is available (with fees payable online by credit card), although it is also possible to file an application by post if the online service cannot be used. Decisions are usually issued more quickly for online applications (seven weeks) than applications by post (nine weeks).

Recommendation. Introduce digitalisation of all application procedures for logistics-related authorisations and allow online applications.

3.7.3. *Minimum capital requirements for foreign businesses*

Companies engaged in transport activities and transport services often need to fulfil capital requirements in order to be licensed and so authorised to operate in Thailand.³⁴ These capital requirements are of two types. Operators can be requested to demonstrate that they have minimum capital before starting business operations. They may also be requested, during the financial year, to hold a minimum amount of capital to operate.

Description of the obstacle. All foreign businesses, regardless of their size, must have a minimum capital of THB 2 million to begin operating a business in Thailand, unless otherwise prescribed by Ministerial Regulation. Moreover, three lists of business activities are listed as annexes to the Foreign Business Act and are subject to specific requirements that apply only to foreigners. If an activity is included in one of these lists, the minimum capital requirement is set at THB 3 million. This is the case, for instance, for domestic land and water transportation services (included under List Two).

By contrast, Thai businesses that conduct the exact same activities are not subject to any minimum capital requirements.

Harm to competition. This provision may constitute a barrier to entry especially for smaller companies, discourage potential new entrants, and reduce the number of participants over time. As the higher minimum capital requirements do not apply to local businesses, they may also result in discrimination between local and foreign businesses.

Policymaker's objective. Generally, minimum capital requirements are implemented to protect consumers and creditors from risky and potentially insolvent businesses. By requiring investors to lock in a minimum amount of capital, investors are expected to be more cautious about undertaking commercial opportunities. The Ministry of Labour of Thailand appears to take into account the investment made by foreigners when granting work permits, which reflects this provision. According to the World Bank, however, minimum capital is not an effective measure of a firm's ability to fulfil its debt and client obligations (World Bank, 2014^[48]).³⁵

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

1. Consider completely lifting minimum capital requirements.
2. Ensure that minimum capital requirements are the same for all businesses, irrespective of whether they are Thai or foreign entities. Bank guarantees or insurance contracts rather than cash deposits should be accepted to comply with these capital requirements.

Before implementing either of these recommendations, the government may consider conducting further studies on their impact on the Thai economy, businesses and competitiveness, as well as on consumers.

3.7.4. *Foreign business licences and conditions applying to foreigners*

Southeast Asia is a diverse region and the different legislative approaches framing investment policy reflect that diversity. This consideration on diversity also applies to the countries' respective openness to foreign investments.

Neither Singapore nor Brunei Darussalam have a general investment law, while Malaysia, the Philippines and Thailand all have a version of an investment promotion law that stipulates incentives for foreign and domestic investors and sometimes offers certain protection guarantees for investors. Table 3.3 provides an overview of the investment-related laws in ASEAN.

Cambodia and Singapore are extremely open to foreign investors, even compared to many OECD countries. Brunei Darussalam and Viet Nam have average levels of openness, while the remaining six ASEAN member states, including Thailand, are considered as highly restrictive under the OECD FDI Regulatory Restrictiveness Index (OECD, 2019, p. 36^[33]).

Table 3.3. Investment-related laws in ASEAN

	Investment promotion act, omnibus investment code*	Foreign investment law	Unified (foreign & domestic) investment law†
Brunei Darussalam	No general law on investment or investment promotion		
Cambodia			1994, 2003, 2018
Indonesia		1967	2007
Lao PDR		1986	2009, 2016
Malaysia	1986		
Myanmar		1988, 2012	2016
Philippines	1987	1991 (1996)	
Singapore	No general law on investment or investment promotion		
Thailand	1977, 1991	1972, 1999	
Viet Nam		1987 (1990, 1992), 1996 (2000)	2005, 2014

Note: Under an omnibus investment law, all investors, regardless of their origin and nationality, benefit from the same core protection provisions. A unified investment law covers both foreign and domestic investors in the same act.

Source: (OECD, 2019, p. 111^[33]).

As noted by the OECD in *Investment Policy Reviews: Southeast Asia*, “excessively stringent regulations on FDI, particularly in service sectors, hinders market contestability and competition in these markets, consequently raising service input costs, such as in financing and logistics” (OECD, 2019, p. 39^[33]).

Box 3.9. Calculating the OECD FDI Regulatory Restrictiveness Index

The OECD FDI Regulatory Restrictiveness Index seeks to gauge the restrictiveness of a country's foreign direct investment (FDI) rules. The FDI Index is currently available for all OECD countries and over 30 non-OECD countries, including all G20 members and non-OECD countries adhering to the OECD Declaration on International Investment and Multinational Enterprises. It is used on a stand-alone basis to assess the restrictiveness of FDI policies in reviews of candidates for OECD accession and in OECD Investment Policy Reviews, including reviews of new adherent countries to the OECD Declaration.

The FDI Index does not provide a full measure of a country's investment climate since it neither scores the actual implementation of formal restrictions nor does it take into account any other aspects of the investment regulatory framework that may also impinge on the FDI climate. Nonetheless, FDI rules are a critical determinant of a country's attractiveness to foreign investors and the FDI Index, used in combination with other indicators measuring various aspects of the FDI climate, contributes to assessing countries' international investment policies and to explaining varied performance across countries in attracting FDI.

The FDI Index covers 22 sectors, including agriculture, mining, electricity, manufacturing and main service industries, including transport, construction, distribution, communications, real-estate, financial and professional services. Restrictions are evaluated on an open to closed scale with 0 as most open and 1 as most closed. The overall restrictiveness index is a simple average of individual sectoral scores based upon the following elements:

- the level of foreign equity ownership permitted
- the screening and approval procedures applied to inward foreign direct investment
- restrictions on key foreign personnel
- other restrictions, such as land ownership and corporate organisation (branching).

The measures taken into account by the FDI Index are limited to statutory regulatory restrictions on FDI, typically listed in countries' lists of reservations under FTAs or, for OECD countries, under the list of exceptions to national treatment. The FDI Index does not assess actual enforcement and implementation procedures. The discriminatory nature of measures, such as when they apply only to foreign investors, is the central criterion for scoring a measure. State ownership and state monopolies, to the extent they are not discriminatory towards foreigners, are not scored. Preferential treatment for special-economic zones and export-oriented investors is also not factored into the FDI Index score, nor is the more favourable treatment of one group of investors as a result of an international investment agreement.

Note: For a detailed description of the scoring methodology, please refer to the technical working paper by Blanka Kalinova, Angel Palerm, and Stephen Thomsen (2010), "OECD's FDI Restrictiveness Index: 2010 Update", OECD, Directorate for Financial and Enterprise Affairs, OECD Working Papers on International Investment.

Source: (OECD, 2019, p. 38^[33]). For the latest scores, see www.oecd.org/investment/fdiindex.htm.

3.7.4.1. Requirement to obtain a foreign business licence

Description of the obstacle. In order to operate in Thailand, foreigners (as defined by the law) need a foreign business licence (FBL).³⁶ Depending on the business activity, an FBL is granted by the Minister of Commerce, the director general of the Department of Business Development or any person appointed by the minister.

To grant an FBL, the competent authorities take into account different elements, including Thailand's economic and social development, local employment, consumer protection, and the size of the undertakings. These criteria are, in principle, transparent. However, in practice, it seems that the decision is qualitative in nature and often based on an ad hoc assessment (Banomyong, 2017, p. 181^[34]).

Table 3.4 below shows the most recent official statistics published by the Department of Business Development of Thailand on the number of FBLs issued between 2000 and 2017. Japan is the first country of origin of foreign service-providers requesting and obtaining an FBL in Thailand, followed by Singapore and the Netherlands.

Table 3.4. Number of licences issued under the Foreign Business Act, B.E. 2542 (1999), by nationality and business sector (March 2000–December 2017)

	Service business	Representative office, regional office	Construction, engineering service and project management service with government or SOE	Broker or agent business, retail and wholesale business	Accounting service business and legal services business	Other businesses	Total
Japan	999	432	257	222	75	16	2001
Singapore	317	294	31	72	24	8	746
Hong Kong, China, China	112	121	11	13	6	2	265
Germany	74	84	41	39	12	1	251
Netherlands	157	17	5	18	13	2	212
France	62	55	33	8	3	0	161
Korea	37	61	47	11	0	3	159
UK	57	52	25	10	3	1	148
China	66	43	37	11	1	3	161
USA	54	46	10	4	4	3	121
Others	363	274	98	83	35	5	858
Total	2298	1479	595	491	176	44	5083

Note: Some US companies operate under the privilege provisions of the Treaty of Amity and Economic Relations and are granted a distinct foreign business certificate (FBC). In 2017, 104 FBC were granted to US applicants. See www.dbd.go.th/download/article/article_20180226093245.pdf.

Source: Department of Business Development of Thailand, www.dbd.go.th/download/foreign_file/pdf/24_201712.pdf.

Thai law also provides for a “reserved track” for applications by ASEAN nationals seeking to carry out in Thailand one of the activities included under the ASEAN Framework Agreement on Services (AFAS).³⁷ In such a case, companies established in an ASEAN member states and majority-owned (up to 70% of the total shares) by ASEAN nationals can operate in Thailand. The “reserved track” list of activities includes certain relevant to the logistics sector, such as leasing space for the purpose of transport services. In 2018, 846 foreigners applied for an FBA licence, of whom 106 applied for a FBC “under the privilege provisions of the treaties or international agreements”,³⁸ including AFAS.

Harm to competition. Imposing specific requirements for foreigners wishing to operate in Thailand constitutes a barrier to entry and may discourage foreign investment. The legal criteria for granting a FBL may lead to a “public interest assessment” of entry by foreigners, meaning that a FBL will be granted only when the competent authorities consider that there are not sufficient national suppliers of the same service in Thailand. In practice, this may result in protecting national service providers from international competition. The legal criteria are too broad and give significant discretion to the competent authorities responsible for issuing the FBL.

Data from the Department of Business Development in Table 3.4 that only a small quantity of FBLs were issued under the Foreign Business Act between March 2000 and December 2017. Generally, FBLs are granted for in-house services and services provided to state-owned enterprises (SOEs) under a specific contract or concession.

Policymaker’s objective. The overall purpose of the Foreign Business Act is to screen foreign investments that may affect the safety or security of the country, for example, involving armaments and firearms for military use. Other activities not directly affecting safety and security appear to be included in the Act with the result that national suppliers are being protected from international competition.

International comparison. In Singapore, there are no restrictions on foreign ownership and the regulatory framework offers a level playing field for foreign investors. Foreign investors are not required to either enter into joint ventures or cede management or control to local entities. In Australia, a foreign company wishing to conduct business in Australia must register with the national Securities and Investments Commission (ASIC) in order to obtain a business name and number (Australian Business Number, ABN). Approval of foreign investment is necessary when foreigners acquire at least a 20% interest in an Australian entity whose value is above AUD 261 million. This threshold applies to the transport sector without exceptions – even when there is an FTA – since transport is considered a sensitive business. Finally, the Department of the Treasury has the power to prohibit an investment if satisfied it would be contrary to the national interest. Government policy, however, is that the “general presumption is that foreign investment is beneficial, given the important role it plays in Australia’s economy”.

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

1. Progressively relax foreign equity limits with the long-term goal of allowing up to 100% foreign ownership without any specific licence being required. A first step may be to implement the agreed changes towards the AFAS target of 70% ASEAN foreign-ownership in entities providing logistics services and then applying and extending this threshold to non-ASEAN nationals. In the long term, Thailand may consider full liberalisation by allowing 100% foreign-ownership in entities providing logistics services.
2. Relax foreign equity limits on a reciprocal basis, for nationals of those countries that allow Thai nationals to hold 100% shares in a company.
3. Allow 100% ownership and consider introducing a screening system of certain FDI, for example, when an investment goes beyond a certain value threshold (as in Australia) or when it affects certain sensitive sectors.

Before implementing any of these recommendations, the government may consider conducting additional studies to assess the impact on Thai businesses and consumers.

3.7.4.2. *Specific conditions only applicable to foreigners conducting some listed activities*

Description of the obstacle. When granting a FBL to foreigners for activities on the List Two annex of the Foreign Business Act, the Ministry of Commerce (or the director general of the Department of Business Development for those activities included on List Three) may impose specific conditions on the foreign applicant.³⁹ These include: 1) the ratio of the capital to loans; 2) the number of foreign directors who must be domiciled or resident in Thailand; 3) the amount of minimum capital in the country; and 4) any other necessary conditions.

The law does not foresee that such additional conditions are imposed upon Thai nationals and in practice, no specific conditions are applied to Thai companies.

Harm to competition. The possibility of imposing additional conditions only upon foreigners for listed activities may lead to discrimination. Imposing additional conditions may also discourage non-Thais from operating such listed businesses and eventually result in additional costs compared to national operators. For instance, taking into account the ratio of capital to loans may reduce foreigners' opportunities to invest in Thailand by limiting their access to loans.

Policymaker's objective. This provision appears to aim to allow stricter state control upon foreign entities compared to Thai entities.

International comparison. The Australian authorities can impose conditions on foreign investments when granting approval. This is only possible, however, when the investment proposal is subject to public screening and the Department of the Treasury considers that the investment proposal runs counter to the national interest. In such a case, it can impose conditions to safeguard the national interest.

Recommendation. The OECD recommends adopting one of the two options.

1. Treat foreigners and nationals similarly, unless there are specific, exceptional circumstances that justify different treatment. Conditions should be based on the type of activity rather than the nationality of the operator in order to achieve legitimate policy objectives, such as safety measures for the transport of certain dangerous goods.
2. Make the possible imposition of conditions subject to strict requirements and consider publishing guidelines describing which conditions can be imposed in what cases.

Before implementing either of these two recommendations, the government may consider conducting further studies of their impact on Thai economy, businesses and competitiveness, as well as on consumers.

3.7.4.3. *Additional requirements for foreigners conducting List Two activities (domestic land and water transportation)*

Description of the obstacle. Foreign companies that are more than 49% held by non-Thai natural or legal persons need a foreign business licence (FBL) in order to operate in Thailand. This general limit for foreign-equity participation is further tightened by additional provisions for specific businesses. These are laid out in List Two, an annex to the Foreign Business Act.⁴⁰

As domestic land and water transportation are both included in List Two, companies operating in these markets must comply with the following criteria.

1. Be at least 40% owned by Thai nationals, unless reasonable cause, approved by the relevant ministry, exists to reduce the limit; in no case can Thai ownership cannot drop below 25%.

2. Ensure that at least 40% of directors are Thai nationals.

The FBL for domestic land and water transportation are issued by the Ministry of Commerce with the approval of the Council of Ministers. In practice, FBLs are rarely granted for the provision of services already provided by national suppliers. Sources say that obtaining the certificate of business operation in such cases is almost impossible, as it requires the signature of the Minister of Commerce (Banomyong, 2017^[34]).

Harm to competition. The provision limits access by foreigners or makes it more difficult for foreigners to provide domestic land and water transportation services. Data confirm that it is almost impossible to obtain a FBL when this requires the signature of the Minister of Commerce, as is the case for domestic land transportation.

Policymaker's objective. The policy of specific access requirements for foreigners aims to protect national safety and security, and improve state control over businesses that have an impact on natural resources and the environment.

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

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

1. Progressively relax foreign equity limits with the long-term goal of permitting up to 100% foreign ownership. A first step may be to implement changes to move towards the ASEAN Framework Agreement on Services (AFAS) target of 70% ASEAN foreign-ownership in entities providing road and maritime transport services, before extending it to non-ASEAN nationals. In the long term, Thailand may consider full liberalisation by allowing 100% foreign ownership of operators of domestic road and maritime transport services.
2. Relax foreign-equity limits on a reciprocal basis, allowing foreign ownership by nationals of countries that allow Thai nationals to hold 100% shares in a company;
3. Allow 100% foreign ownership, while introducing a screening system of foreign direct investments in cases where the proposed investment passes a certain value threshold (such as is the case in Australia) or when it affects specific sensitive sectors.

3.7.4.4. *Additional requirements for foreigners conducting List Three activities*

Description of the obstacle. In addition to the limit of 49% foreign ownership of companies described above,⁴¹ Article 8, No. 3 of the Foreign Business Act, B.E. 2542 (1999) includes additional conditions for obtaining a FBL for businesses included on so-called List Three. Provided as an annex to the Foreign Business Act, this list includes “businesses in respect of which Thai nationals are not ready to compete with foreigners”. If foreigners want to carry out one of the activities included under List Three, they need an FBL from the director general of the Department of Business Development, as well as the approval of the Foreign Business Commission. The central criterion for granting a FBL for List Three activities is whether Thai nationals are ready to compete with foreigners.

While List Three does not expressly include logistics-specific businesses, it does refer to broad categories of businesses that may encompass logistics services and have an impact on them. In particular, the list includes “other service businesses, with the exception of service businesses as prescribed in the Ministerial Regulation”. The OECD's ASEAN FDI Regulatory

Restrictions Database suggests that investments by foreigners in all services (including all surface transport services other than domestic land and water transport services included under List Two or services not explicitly subject to sector-specific legislation) are subject to approval under List Three.

Ministerial regulations do exempt certain services from the obligation to obtain an FBL, but they do not refer to logistics services.⁴²

Harm to competition. List Three is a “catch-all” list of businesses as it includes other service businesses, excepting service businesses as prescribed in the Ministerial Regulation, and so possibly covers any service business provided by foreigners. As a consequence, foreigners providing any type of logistics service would possibly need a FBL, which would restrict their access to the market compared to Thai nationals. Also, the fact that a FBL is granted to foreigners only if the director general of the Department of Business Development or the Foreign Business Commission considers Thai businesses ready to compete with foreigners may result in a “public-interest assessment” that may lead to discrimination and foreigners being prevented from entering the market.

Policymaker’s objective. This provision likely aims to protect national businesses not ready to compete with foreigners and to allow them to reach a certain level of competitiveness before the market is opened to foreigners.

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

1. Progressively remove logistics-specific items from List Three and open them up to majority foreign ownership. This might be done by using the procedure set out in Article 9 of the FBA, which provides for an annual review of List Three by means of a royal decree.
2. Relax foreign equity limits on a reciprocal basis.
3. Allow 100% ownership and consider introducing a screening system of certain FDI, for example, when the investment goes beyond a certain value threshold (like in Australia) or when it affects certain sensitive sectors.

Any of these recommendations may be subject to national-security exceptions. Also, before implementing any of these recommendations, the government may consider conducting additional studies to assess the impact on Thai businesses and consumers.

3.7.4.5. *Time required to grant a FBL*

Description of the obstacle. Article 17 of the Foreign Business Act provides that the above-mentioned competent authorities shall process the FBL application within 60 days. However, this statutory limit can be extended by 60 additional days after expiry of the initial time period if a reasonable cause has prevented completion of the process.⁴³ The initial time period only begins when the application is deemed complete and the presiding official issues a receipt of confirmation. Once approval is granted, the FBL shall be issued within 15 days of the approval date. According to market participants, in practice, the application process for a FBL can take months and a large number of documents have to be compiled and collated.⁴⁴

Harm to competition. The complex and long application process may delay market entry for foreigners compared to nationals.

Policymaker’s objective. The overall purpose of the FBA is to screen foreign investment that may affect the safety or security of the country, such as armaments and firearms for military use. Other activities are included in the FBA simply to protect national suppliers from

international competition when they are deemed not ready to compete or when the competent authorities consider there are enough national suppliers.

International comparison. In Australia, when a foreign investment is subject to an approval requirement, the Department of the Treasury has 30 days to consider the application and make a decision. This period can be extended by up to further 90 days, but an interim order must be published in the official gazette to this purpose.

Recommendation. Conditions for obtaining a FBL, as well as the average processing time, should be clarified in the Department of Business Development's Application Preparation Handbook. The OECD recommends that the Ministry of Commerce and Department of Business Development publish an annual report with statistics on average times for a FBL issuance (including FBL for Lists Two and Three), as well as how often the time limit is extended by 60 days. Moreover, explanations should be provided for those cases in which the initial deadline for issuing a FBL is not met. The OECD encourages the Ministry of Commerce and the Department of Business Development to pursue their efforts in reducing the time frame for issuing an FBL. The adoption of this recommendation would increase transparency and legal certainty, thus contributing to encourage investments.

3.8. International agreements

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

In addition to such international agreements, Thailand has signed several ASEAN-wide regional agreements.

In 2004, the heads of state and governments of all ASEAN countries signed the ASEAN Framework Agreement for the Integration of Priority Sectors.⁴⁵ The purpose of the agreement was to identify measures, with precise timelines, that would enable the progressive and systematic integration of such priority sectors within ASEAN. From the outset, logistics was not, however, included within the 11 priority sectors.⁴⁶ In 2006, the ASEAN Economic Ministers decided to add logistics as the 12th priority sector and developed a *Roadmap for the Integration of Logistics Services*, adopted in 2007 and which included specific measures to create an ASEAN single market "by strengthening ASEAN economic integration through liberalisation and facilitation measures in the area of logistics services".⁴⁷

Thailand is also a party to the ASEAN Framework Agreement on Transport Facilitation, which constitutes the frame of more specific agreements:

1. ASEAN Framework Agreement on the Facilitation of Goods in Transit (AFAFGIT)
2. ASEAN Framework Agreement on the Facilitation of Inter-State Transport (AFAFIST)
3. ASEAN Framework on Multimodal Transport (AFAMT).⁴⁸

Finally, there are a number of sub-regional agreements, including the GMS Cross Border Trade Agreement (GMS CBTA) and bilateral agreements signed between Thailand and its neighbours, such as Cambodia and Myanmar.

The OECD team identified two restrictive regulations in international logistic agreements and made two recommendations, concerning the limited number of licences for cross-border road transport. The OECD recommends either repealing these limitations or alternatively regularly assessing market demand and considering increasing the number of licences.

3.8.1. Limited number of licences for cross-border road transport

Description of the obstacle. In order to transport cargo by road from Thailand to a neighbouring country – for example, Cambodia and Myanmar – it is necessary to obtain a specific licence for each vehicle. This licence is nominative, non-transferable and valid for one year. This is established in the following bilateral agreements:

1. Memorandum of Understanding between the Royal Government of Cambodia and the Government of the Kingdom of Thailand on the Exchange of Traffic Rights for Cross Border Transport through the Poipet-Aranyaprathet Border Crossing Points (MoU Thailand-Cambodia)
2. Memorandum of Understanding between Thailand and Myanmar (MoU Thailand-Myanmar).⁴⁹

Both agreements include a maximum number of licences that can be issued. The original version of the MoU Thailand-Cambodia (2008) set the number of licences for non-scheduled passenger and cargo transportation at a maximum of 40. Article 9(6) then provides for the possibility to discuss “from time to time” this maximum limit and consequently amend it. As of 2018, the maximum number of licences under this MoU was 150.

Similarly, the MoU Thailand-Myanmar sets the maximum number of licences that each country can issue at 100. Such licences will be valid for one year and extendable.

Harm to competition. Limiting the number of licences for transporting goods across the border constrains access to the market and constitutes a barrier to entry. As a consequence of this limitation, in case of unavailability of licensed trucks, cargo will need to be unloaded at the border from one truck and then re-loaded onto another truck with a domestic licence, which may result in additional costs for companies.

Policymaker’s objective. The likely objective of these provisions seems to be the protection of each country’s national road transport service providers against competition from foreign companies.

The Department of Land Transport of Thailand highlighted that these agreements were introduced to encourage transportation services across the ASEAN region and facilitate a smooth transition from a restrictive model to a more open market during the initial implementation period. In the absence of such international agreements, many domestic laws in ASEAN countries would not allow foreign transport service providers to operate. In a similar vein, the World Bank and International Road Transport Union (IRU) observe that: “despite quota limitations, bilateral agreements have played a crucial role in developing international road freight transport during decades. They supported the spectacular growth of export-import and transit operations, as well as to a certain extent third-country road freight traffic” (IRU and World Bank, 2017^[50]).

The OECD, similarly to the World Bank and the IRU, notes that governments should remove quantitative restrictions from bilateral agreements.

Recommendation. The OECD recommends repealing the provision limiting the number of licences in order to grant a licence to all who request it. As an alternative, Thailand should regularly assess the market need and demand, and consider increasing the number of licences that can be issued. The phrase “from time to time” in the MoU Thailand-Cambodia should be more clearly defined in order to ensure regular and timely assessments. Both these recommendations would require negotiations between the co-signatories.

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

Notes

¹ A *changwat* is a province; there are 75 in Thailand. In addition to these provinces, there are two special administrative areas, one for the capital Bangkok and another for the city of Pattaya.

² See OECD Services Trade Restrictiveness Index Regulatory Database.

³ See ICA's Opinion AS913 of 5 March 2012.

⁴ Judgement of the European Court of Justice in Case C-208/13, paragraph 51.

⁵ SEPO regulates and monitors the efficiency and value of SOE operations and the use of state resources, and promotes fair competition between the private and public sectors.

⁶ Pilot areas are in the ports of Bangkok, Sriracha, Maptaphut (industrial), Sattahip (commercial), Songkla, and Phuket.

⁷ The announcements are the following: 1) Port Authority of Thailand Announcement Subject: Requesting Fuel Oil Fees of Cargo Service at Bangkok Port and Laem Chabang Port; 2) Port Authority of Thailand Announcement Subject: Determining the Duration of Hiring, Hiring Rate of Using of Such Land and Cargoes of Port Authority of Thailand; and 3) Port Authority of Thailand Announcement Subject: Determining Fees and Service Charges on Hazardous Substance Cargo at Laem Chabang Port.

⁸ Market participants have provided contradictory statements about the function and consequences of submitting such a pricing plan. The Marine Department states that, although the provision does not expressly provide for the power to compare prices with other ports before granting approval, it does in practice compare submitted prices with other ports, with tariffs fixed by PAT in Bangkok as the baseline. In practice, market participants confirmed that the Marine Department will not seek to influence prices as long as they are below PAT's rates in Bangkok.

⁹ See, in particular, speakers' interventions at the 37th meeting of the ASEAN Maritime Transport Working Group. For a summary, see <https://safety4sea.com/asean-called-to-cooperate-for-the-establishment-of-a-single-shipping-market>.

¹⁰ According to market participants, international marine transport operators, while not allowed to operate domestically if more than 30% foreign owned, can still move in territorial waters for the sole purpose of loading goods for export.

¹¹ http://www.mot.go.th/file_upload/2559/announcement_plan_by_Withaya2559.pdf

¹² See German Safe Manning Ordinance (Schiffsbesetzungsverordnung).

¹³ Articles 17, 19, 20 and 22(1) of the Merchant Marine Promotion Act, B.E. 2521 (1978) as amended until Merchant Marine Promotion Act, (No. 2) B.E. 2548 (2005).

¹⁴ If transport by a Thai-registered vessel is not possible and a foreign carrier is available to ship the goods, the foreign company must apply to the Office of the Maritime Promotion Commission (or since 2002, the Marine Department, following the Act on the Improvement of Ministries and Departments, B.E.2545) for a permit to carry such goods. The permits can only be granted after proving that no Thai-registered vessel is available. The Marine Department confirmed to the OECD that "waiving requests for such cases are often made, especially for routes other than the sub-regional or regional routes in Asia where most Thai-registered vessels are used, as most imported government cargo is transported by long-distance routes where no Thai-registered vessels are available."

¹⁵ See www.lawamendment.go.th/index.php/laws-department/item/1051-2017-06-08-06-54-38.

¹⁶ Transport managers are defined by law as operators who arrange, under their responsibility, freight transport for another person with a transport provider.

¹⁷ The full list of registered MTOs in Thailand is available at www.md.go.th/md/index.php/2014-01-19-05-02-28/2014-01-19-05-20-44/-5/81--mto-/file.

¹⁸ Article 52 provides that MTOs submit a report of their operations to the registrar, containing their general information, as well as information on quantity, weight, freight of imported and exported goods. The “form, rules and period” for submission are prescribed and announced by the registrar pursuant to the Marine Department Announcement No. 284/2558 regarding formulation of criteria and period for registered multimodal transport operators to submit reports on operations referred to under Section 52 of the Multimodal Transport Act. A registered MTO must submit an annual operations report by 31 March of the year following the relevant activities. The rules laid down in this announcement are of general application and apply to all MTOs equally.

¹⁹ While the capital requirement discussed in the section 3.4.1.3. Licensing and minimum capital requirements for MTOs on page 72 deals with initial capital requirements, this asset requirement deals with the duration of operations.

²⁰ Before 1970, Thailand had treaties with 16 countries: United States, United Kingdom, Switzerland, Denmark, West Germany, Norway, the Netherlands, France, Pakistan, India, Belgium, Sweden, Italy, Japan, Myanmar, and Portugal.

²¹ The BOI is an agency under the prime minister's office whose mission is to promote foreign investment in Thailand by providing information, services, and incentives to interested foreign investors. The list of activities promoted by the BOI is available at www.boi.go.th/upload/section7_en_wt_link.pdf. Relevant to this assessment are the following logistics-related activities: logistics distribution centres; loading-unloading facilities for cargo ships; transportation of bulk goods by rail, sea and air; logistics parks; and transportation services for medical equipment by sea, and air.

²² See Box 3.1 for more information concerning special economic zones in Thailand.

²³ See section 3.5.1.1. Restrictions on purchase of land on page 75.

²⁴ A bonded warehouse is an area where dutiable goods may be stored without being liable to duties.

²⁵ Pursuant to the Customs Act, even if a permission is obtained to store goods in bonded warehouses for more than 30 days, goods cannot be hold therein for more than 2 years from the date of import. Only in the event of necessity can an importer request an extension of the storage period in the bonded warehouse of no more than one year. To do this, it must submit a time extension request to the customs authorities supervising the warehouse.

²⁶ See Section 1(10) of the Postal Service Act in which “parcels containing goods” seem to fall within the legal monopoly.

²⁷ The fine amounts to THB 20 for each letter and postcard delivered from abroad to an addressee in Thailand.

²⁸ This exclusion from the scope of competition law is provided by law or Cabinet's resolutions (adopted by the group of government ministers).

²⁹ (OECD, 2015^[27]) defines administrative burdens as “The costs involved in obtaining, reading and understanding regulations, developing compliance strategies and meeting mandated reporting requirements, including data collection, processing, reporting and storage, but NOT including the capital costs of measures taken to comply with the regulations, nor the costs to the public sector of administering the regulations.”

³⁰ For an example of these manuals, see 3.7.4.5. Time required to grant a FBL on page 93 regarding the Application Preparation Handbook on the procedure, timeline and documents required to obtain a FBL.

³¹ See, www.iflr.com/Article/3829873/Thailand-Thailands-regulatory-guillotine-project.html?ArticleId=3829873. A Thai Law Reform Commission has been created but the results have not been published, yet.

³² www.bangkokpost.com/business/1612522/firms-urge-haste-on-regulatory-guillotine.

³³ The Global Innovation Index is produced by Cornell University, INSEAD, and the World Intellectual Property Organization (WIPO). It looks at 129 economies using 80 detailed metrics including ecological sustainability, online creativity, and knowledge diffusion.

³⁴ The World Bank's Doing Business website defines the minimum paid-up capital requirements as "the amount that the entrepreneur needs to deposit in a bank or with a third party (for example, a notary) before registration or up to three months after incorporation". (See www.doingbusiness.org/en/methodology/starting-a-business.)

³⁵ World Bank (2014), *Why are minimum capital requirements a concern for entrepreneurs?*, www.doingbusiness.org/en/reports/case-studies/2013/why-are-minimum-capital-requirements-a-concern-for-entrepreneurs.

³⁶ Thai law provides a definition of foreigners who need to obtain a FBL in order to operate in Thailand. It defines a "foreigner" as 1) a natural person of non-Thai nationality, or 2) a legal person whose capital shares are more than 49% held by natural persons of non-Thai nationality or legal persons not registered in Thailand.

³⁷ Thanks to this "reserved track", ASEAN nationals wishing to operate a business in Thailand can obtain a certification of their rights rather than an authorization as per the 1999 Foreign Business Act. No specific data is available regarding the number of ASEAN nationals that have obtained this "Certificate of Rights" in practice.

³⁸ https://www.dbd.go.th/download/foreign_file/pdf/AnnualReport_FBA_2018.pdf, p. 6.

³⁹ Relevant to this assessment on List Two are domestic land and water transport services.

⁴⁰ For a full list of the activities included in List Two, see https://www.dbd.go.th/dbdweb_en/more_news.php?cid=329.

⁴¹ See paragraph on 3.7.4.1. Requirement to obtain a foreign business licence, p. 89.

⁴² The exempted services are mainly financial businesses, securities, trustees, and services provided under a contract with an SOE. Generally, exempted services are those for which there are sector regulators or which have their own specific laws prescribing specific foreign-equity limits.

⁴³ The OECD received mixed messages from market participants as to the actual duration of the process. Certain market participants stressed that the time limit can and is often extended, while others stated that the Department of Business Development has never extended the time limit.

⁴⁴ The Department of Business Development has published an *Application Preparation Handbook Under the Foreign Business Act B.E. 2542* (http://thailaws.com/law/t_laws/tlaw10812.pdf), which lists the required documents and other details for submitting an application. The handbook also contains an example of an application.

⁴⁵ For the full text of the agreement, see www.parliament.go.th/aseanrelated_law/files/file_20170808165335_txtattactEN_.pdf.

⁴⁶ The priority sectors included in the ASEAN Framework Agreement for the Integration of Priority Sectors were: agro-based products, air travel, automotive, e-ASEAN, electronics, fisheries, healthcare, rubber-based products, textiles and apparels, tourism, and wood-based products.

⁴⁷ <https://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/services/logistics-services/>

⁴⁸ See section on 3.4 Freight forwarding on page 70.

⁴⁹ www.mekongeye.com/2018/07/13/cross-border-transport-agreement-makes-progress.

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Annex A. Methodology

Stage 1: Mapping the sectors

The objective of Stage 1 of the project, which started in the second half of 2018, was to identify and collect sector-relevant laws and regulations. The main tools used to identify the applicable legislation were online databases, in particular the database provided by the Office of the Council of State.¹ This was complemented by the websites of the relevant Thai authorities and of industry and consumer associations. Over the course of the project, the lists of legislation were refined, as additional pieces were discovered by the team or issued by the authorities, while other pieces initially identified were found not to be relevant to the sectors or no longer in force. In total, 69 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 December 2018, the OECD team conducted a fact-finding mission to Bangkok 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. Every piece of legislation was scanned by a team member and an outside national consultant, based upon the “four-eyes principle”.

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

Annex Box 1. OECD Competition Assessment checklist

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

A) Limits the number or range of suppliers

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

1. grants a supplier exclusive rights to provide goods or services
2. establishes a licence, permit or authorisation process as a requirement of operation
3. limits the ability of some types of suppliers to provide a good or service
4. significantly raises the cost of entry or exit by a supplier
5. creates a geographical barrier to the ability of companies to supply goods, services or labour, or invest capital.

B) Limits the ability of suppliers to compete

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

1. limits sellers’ ability to set the prices of goods or services
2. limits the freedom of suppliers to advertise or market their goods or services
3. sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that certain well-informed customers would choose
4. significantly raises the costs of production for some suppliers relative to others, especially by treating incumbents differently from new entrants.

C) Reduces the incentive of suppliers to compete

This may be the case if the piece of legislation:

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

D) Limits the choices and information available to customers

This may be the case if the piece of legislation:

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

Source: (OECD, 2019^[51])

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 77 provisions across the logistics sector.

The OECD also prepared an extensive economic overview of the logistics sector (and refined it during later stages), covering industry trends and main indicators, such as output, employment

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

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 researched in the recitals of the legislation, when applicable, or through discussions with the relevant public authorities.

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

Stage 4: Formulation of recommendations

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

During a stakeholder consultation in summer 2019, the OECD presented preliminary recommendations to the relevant Thai authorities and asked for their views on recommendations. All those comments were taken into account when deciding on final recommendations and writing the final report.

In total, 54 recommendations were submitted to the Thai government in October 2019.

Capacity building

Another important work stream in the project was to provide assistance in building up the competition-assessment capabilities of the Thai administration. To this end, officials from the relevant Thai authorities participated in a full-day workshop in October 2019 in order to gain more hands-on experience of the application of the OECD *Competition Assessment Toolkit*. More specifically, the OECD organised a workshop that provided an overview of the *Toolkit* along with numerous concrete examples, the ASEAN Competition Assessment Project, and presented its recommendations in detail.

Another important task throughout the project was establishing contact with market players through the main sectoral associations. Interviews with these market participants contributed to a better understanding of how the analysed sectors work in practice and helped in the discussion of potential barriers deriving from the legislation or misinterpretation of specific provisions.

Note

¹ See www.krisdika.go.th/web/office-of-the-council-of-state. Other databases used by the OECD team include Thai Laws (www.thailaws.com) and Thailand Law Library (<http://library.siam-legal.com/laws-of-thailand>).

Annex B. Legislation screening

Road freight transport

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Land Transport Act, B.E. 2522 (1979) as amended until Land Transport Act, (No.13) B.E. 2557 (2014)	Art. 19	Permits and authorisations	For the Bangkok area, the Central Land Transport Control Board has the power to set the number of transport operators and vehicles. These decisions of general application are published in the Government Gazette. The Department of Land Transport confirmed that, when adopting these decisions, the Control Board takes into account the "logistics and socio-economic situation, as well as the effectiveness of the decision for current problematic issues and future challenges". The Central Registrar at the Department of Land Transport that is charged with issuing the licences to operators has to comply with the rules of general application set by the board. For freight transport, Thai law provides that each operator must obtain a licence for one or more of the following types of transport, according to the activity it intends to carry out. These include: 1) fixed-route transport (i.e. transport for reward on the route	The power to adopt decisions on the number of transport operators and vehicles allows the establishment of quotas and so limits the access of new entrants to the market.	This provision aims to avoid the presence of too many operators in the Bangkok area. It may also aim to make control easier for public authorities (by limiting the number of those subject to supervision), and promote the development of large companies in the sector. Finally, the policy objective may also be linked to environmental protection concerns. Such environmental objectives could, however, also be achieved in other less competition-restrictive ways. This power to fix the number of operators and vehicles appears to have been conceived mainly for passenger transport rather than freight transport, and the Central Land Transport Control Board has confirmed that the power to fix the number of operators has never been used in practice. <u>International comparison</u> In similar competition assessments of the logistics sector, the OECD has recommended removing existing minimum requirements for	Clarify in the law or in new separate guidelines that these restrictions do not apply to freight transport.

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			<p>fixed by the Central Land Transport Control Board)</p> <p>2) non-fixed-route transport (i.e. transport for reward on unlimited routes)</p> <p>3) transport by small vehicles (i.e. transport for reward on the route fixed by the Central Land Transport Control Board with a vehicle having a total weight, including the load, below 4 tonnes)</p> <p>4) private transport (i.e. the transport of own goods by a vehicle of more than 1.6 tonnes).</p> <p>The Central Land Transport Control Board confirmed that it “has never imposed any limitation on the number of transport operators and cars” in the Bangkok Metropolitan area and has only set the maximum number of vehicles each operator can use “based on necessity”.</p>		<p>fleet size (such as minimum number of vehicles and minimum total fleet tonnage) in order to allow greater flexibility and the gradual scaling up of existing firms.</p> <p><u>EU</u>: In EU member states, including Germany or Italy, there is no limitation on the number of freight transport operators or the vehicles to be used.</p>	
Land Transport Act, B.E. 2522 (1979) as amended until Land Transport Act, (No.13) B.E. 2557 (2014)	Art. 20, No. 2	Permits and authorisations	The Provincial Land Transport Control Board has the power to fix the number of transport operators and the number of vehicles for fixed- and non-fixed-route transport in every province of Thailand.	The regulation of the number of transport operators and vehicles may result in the establishment of quotas and so limit access of new entrants into the market for fixed and non-fixed route transport.	This provision aims to avoid the presence of too many operators and vehicles in certain areas. It may also aim to make control easier for public authorities (by limiting the number of those subject to supervision). Finally, the policy	Clarify that these restrictions do not apply to freight transport.

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			<p>According to market participants, however, in practice this power is only applied to passenger transport. For freight transport, there appears to be no limitation in place on the number of operators and vehicles.</p> <p>The Central Land Transport Control Board confirmed that the provincial board has "never in practice imposed a set number of transport operators and vehicles".</p>	<p>Market participants state that in practice this is only applied to passenger transport and not to freight transport, despite the law including both.</p> <p>Such limitations may theoretically be imposed on both passenger and freight transport. As a consequence, potential providers of freight transport services may assume that (non-existing) barriers to entry are in place and so be deterred from entering the market or be forced to incur additional legal costs (such as fees for legal advice) to establish whether they are allowed to enter the market.</p>	<p>objective may also be linked to environmental protection concerns. Such environmental objectives could, however, also be achieved in other less competition-restrictive ways. This power to fix the number of operators and vehicles appears to have been conceived mainly for passenger transport rather than freight transport. Indeed the Central Land Transport Control Board confirmed that the power to fix the number of operators has never been used in practice.</p> <p><u>International comparison</u> As above.</p>	
Land Transport Act, B.E. 2522 (1979)	Art. 20, No. 3	Permits and authorisations	<p>The Provincial Land Transport Control Board has the power to fix the number of transport operators and the number of vehicles for transport by small vehicles in every province of Thailand.</p> <p>There may be overlaps in terms of activities between this provision and Article 20, number 2 (above) in that a small vehicle may also be used to operate fixed-route or non-fixed-route transport depending on the licence that the operator actually holds or the rules issued by the Provincial Land Transport Control Board.</p>	<p>The regulation of the number of transport operators and vehicles may result in the establishment of quotas and so limit access of new entrants into the market of transport by small vehicles.</p> <p>Also, transport by small vehicles is only possible on the specified routes, which raises geographical barriers for operators wishing to supply services outside these set routes.</p>	<p>This provision aims to avoid the presence of too many suppliers and vehicles in certain areas. It may also aim to make control easier for public authorities (by limiting the number of those subject to supervision). Finally, the policy objective may also be linked to environmental protection concerns. Such environmental objectives could, however, also be achieved in other less competition-restrictive ways. This power to fix the number of operators and vehicles appears to have been conceived mainly for passenger transport rather than</p>	Clarify that these restrictions do not apply to freight transport.

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			Based on the definition provided in Article 4.4, transport by small vehicles encompasses both passenger and freight transport. According to market participants, however, this provision is only applied to passenger transport, and the OECD has seen no evidence of any limitations in practice on routes, and number of operators and vehicles.	Market participants state that in practice the regulation fixing routes and operator and vehicle numbers is only applied to passenger transport and not to freight transport, despite the law and the definition of small vehicles including both. In the light of the wording of the law, however, such limitations may theoretically be imposed on both passenger and freight transport. As a consequence, potential providers of freight transport services may assume that (non-existing) barriers to entry are in place and so be deterred from entering the market or be forced to incur additional legal costs (such as fees for legal advice) to establish whether they are allowed to enter the market.	freight transport, and the Central Land Transport Control Board has confirmed that the power to fix the number of operators has never been used in practice. <u>International comparison</u> As above.	

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Land Transport Act, B.E. 2522 (1979) as amended until Land Transport Act, (No.13) B.E. 2557 (2014)	Art. 25	Permits and authorisations	Operating international transport services by land requires a licence issued by the Central Registrar with the approval of the Central Land Transport Control Board. The precise rules and procedures for granting the licence are laid down in ministerial regulations. In particular, Article 5 of the Ministerial Regulations B.E. 2549 (2009) on international transport operators provides that those applying for a permit for international non-fixed-route transport must hold a valid licence to operate domestic transportation of the same category of goods. The Central Land Transport Control Board has the power to exempt operators from any criteria when it deems it necessary.	The requirement to hold a licence for domestic transportation in order to provide international transport services by land may increase costs for operators and difficulties in launching a business and so constitute a barrier to entry. The Central Land Transport Control Board's power to grant exemptions is not subject to any limitation and so could result in discrimination among service providers.	The purpose of this provision is to ensure that those providing international transport services have already proved their capacity to offer (or meet the requirements to provide) similar services in the national market. This provision also seems to aim to favour vertical integration by imposing the supply of national and international services by the same supplier.	Remove the requirement to hold a domestic freight transport licence in order to operate international freight transport. Compliance with conditions similar to those on national transport may, however, be required for international transport operators.
Land Transport Act, B.E. 2522 (1979) as amended until Land Transport Act, (No.13) B.E. 2557 (2014)	Art. 34	Permits and authorisations	When issuing a licence for private transport – the transport of a company's own goods, commonly referred to as transport for own account – the central or provincial registrar may impose conditions upon the number of vehicles and personnel to be used by a transport operator and any other conditions set out in ministerial regulations.	Imposing conditions on the number of vehicles and personnel to be used for transporting a company's own goods may, in the most extreme cases, prevent vertical integration and oblige manufacturers to use external providers, if the imposed number does not meet the operator's needs.	The power to impose conditions on the number of personnel was introduced in 1992 by the Land Transport Act (No. 5), B.E. 2535 (1992). The likely objective of this provision is to guarantee that a company is always able to carry out the required tasks and meet customer demand. The policy objective may also be linked to environmental protection concerns.	Remove the imposition of vehicle and personnel numbers and allow operators to decide their own needs, as long as these decisions comply with labour laws concerning, for instance, working hours.

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			The Central Land Transport Control Board confirmed that the registrar will take into account the needs of transport operators. Also, if an operator's need for vehicles decreases, it can request a reduction in the number of vehicles attached to a licence.	Such conditions can also result in additional costs if the imposed number is higher than the required number, as the company will need to own more vehicles than it actually needs. The same considerations apply to the power to impose conditions on the number of personnel. Although the number of vehicles in the licence can be adjusted by submitting a specific application to the registrar, this is an additional administrative burden that can lead to increased costs and delays for operators. Having the number of vehicles and personnel fixed by the licence may also make it more difficult for a company to adjust in a timely way to its actual needs.	Such environmental objectives could, however, also be achieved in other less competition-restrictive ways. This power to fix the number of operators and vehicles appears to have been conceived mainly for passenger transport rather than freight transport. The fact that the number fixed in the licence can be adjusted does not itself justify the existence of this administrative burden.	
Land Transport Act, B.E. 2522 (1979) as amended until Land Transport Act, (No.13) B.E. 2557 (2014)	Art. 52	Permits and authorisations	A company registering to operate fixed-route transport, non-fixed-route transport, transport by small vehicles, and private transport must leave with the central registrar responsible for transport licensing a deposit of either cash, Thai government bonds or both, or an insurance policy underwritten by a company approved by the central registrar. The deposit can be used as compensation for damages resulting from	The requirement for a deposit or a registrar-approved insurance contract applies in a non-discriminatory way to all licensed operators, yet still may raise costs, and so theoretically create a barrier to entry, especially for SMEs.	This provision ensures protection of third parties by guaranteeing that specific amounts of money are always available for providing compensation in case of damages. The Road Accident Victims Protection. Act, B.E. 2535 provides for further coverage, and the order of National Council for Peace and Order also obliges every fixed-route and non-fixed-route transport operator to take out an insurance policy.	No recommendation. The OECD has not, however, been able to determine how insurance companies are approved and whether a publicly available list of insurance companies approved by the central registrar is available.

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			<p>transportation. The amount and value of the securities shall be determined in accordance with the size and category of the transport operation, but shall not be lower than those set out in ministerial regulations.</p> <p>The exact amount was fixed in Ministerial Regulations on the Amount or Value of the Securities and the Preliminary Cost for Compensation for Transportation Losses, B.E. 2557 (2014), No. 5. For example, a person holding a licence for non-fixed route transport must deposit THB 35 000 for the first vehicle and THB 500 for each following vehicle; the total cannot be higher than THB 300 000. For the person holding a licence for operating transport by a small vehicle, the deposit is set at THB 35 000 for the first vehicle and THB 200 for each following vehicle; the total cannot exceed THB 200 000.</p> <p>Certain market participants have told the OECD that these amounts are low.</p>	Operators cannot take advantage of better prices offered by non-approved insurance companies; are obliged to purchase additional insurance with an approved company in Thailand even if they have suitable insurance with a foreign company; or must pay a deposit.	<p><u>International comparison</u></p> <p><u>Germany</u>: In Germany, a company must prove that it holds EUR 9,000 of capital for the first truck above 3.5 tonnes and EUR 5,000 for each additional vehicle. The amount must be confirmed by an accountant or financial institution.</p>	
Land Transport Act, B.E. 2522 (1979) as amended until Land Transport Act, (No.13) B.E. 2557 (2014)	Art. 24	Truck and driver requirements	A licence to operate services of fixed-route transport, non-fixed-route transport and transport of goods using a small vehicle can only be held by a Thai national natural person. If it is a legal person (such as partnership, limited company, or public limited company), at least 51% of the	The provision may prevent or make it more difficult for foreign companies to enter the market, and so reduce competition.	The likely purpose of this provision is to protect national operators against international competition, giving them time to catch up with international operators. The Office of Transport and Traffic Policy and Planning confirmed that Thai entrepreneurs currently lack the knowledge and technology to	<p>Option 1: Progressively relax foreign-equity limits with the long-term goal of permitting up to 100% foreign ownership.</p> <p>A first step may be to implement the agreed changes towards meeting the ASEAN Framework Agreement on Services (AFAS) target of 70% ASEAN foreign-</p>

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			<p>capital must be held by Thai nationals.</p> <p>This provision appears to be currently enforced and so no foreign nationals or companies have obtained such licences independently. To obtain one, they have needed to set up joint ventures with Thai transport firms.</p>		<p>compete.</p> <p><u>International comparison</u></p> <p><u>Australia</u>: While 100% foreign equity is allowed in road freight transport, transport is defined as a "sensitive business", which permits the government to review foreign investment proposals against the "national interest" on a case-by-case basis. Foreign persons must receive approval before acquiring a substantial interest (20% and above) in an Australian entity valued above AUD 261 million. Pursuant to FTA commitments, a AUD 1 134 million threshold applies to agreement-country investors from Chile, China, Japan, Korea, New Zealand, Singapore and the United States, with a threshold of AUD 261 million for sensitive businesses.</p> <p><u>In Competition Assessment Reviews</u>: Romania (2016), the OECD recommended removing a number of provisions that required Romanian nationality in order to conduct certain businesses (such as the testing and certifying of railway products, operating as a railway transporter or providing pilotage services).</p>	<p>ownership in entities providing road transport services, and then extending it to non-ASEAN nationals. In the long term, Thailand may consider full liberalisation by allowing 100% foreign ownership of operators of road transport services.</p> <p>Option 2: Relax foreign-equity limits on a reciprocal basis, allowing foreign ownership by nationals of countries that allow Thai nationals to hold 100% shares in a company.</p>

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Royal Decree prescribing works relating to occupations and professions prohibited for foreign workers, B.E. 2522 (1979) as amended in Prescribing works relating to occupation and profession in which a foreign worker is prohibited to engage (No.4), B.E. 2548 (2005)	Art. 4	Restrictions on investment, foreign company ownership	Non-Thai nationals are not permitted to conduct certain activities and professions for commercial purposes in Thailand. These are listed in a schedule attached to the Royal Decree. For logistics, prohibited occupations for foreigners included in the schedule include driving "motor vehicles, driving a non-mechanically propelled carrier or a mechanically propelled carrier, excluding piloting an international aircraft" and "brokerage or agency work, except broker or agency work in international trade".	This provision restricts access to the market for foreigner workers. It may increase costs for companies that are unable to employ non-Thai-national drivers at lower costs than Thai staff.	This provision aims to support national labour market by protecting nationals from competition and prohibiting foreigners from certain activities.	Allow foreigners to engage in those activities listed in the schedule that may affect the logistics sector. This includes driving "motor vehicles, driving a non-mechanically propelled carrier or a mechanically propelled carrier, excluding piloting an international aircraft" and "brokerage or agency work, except broker or agency work in international trade".
Land Transport Act, B.E. 2522 (1979) as amended until Land Transport Act, (No.13) B.E. 2557 (2014)	Art. 19	Restrictions on operations	The Central Land Transport Control Board has the power to issue decisions of general application for the Bangkok area, which are published in the Government Gazette, and which set the routes vehicles can take, and set transport rates and other transport service charges. This theoretically applies to both passenger and freight transport as Article 4(1) of the Land Transport Act defines "transport" as encompassing both carriage of passengers and goods by land. According to market participants, however, in practice transport charges and routes are only set for passenger transport, not freight transport. The Central Land Transport Control Board	The Central Land Transport Control Board's power to set transport charges limits operators' ability to set their own tariffs. Also, centralised setting of transport operators' routes may create geographical barriers, and so limit the number of service providers in certain areas. Market participants state that in practice the regulation fixing transport charges and routes is only applied to passenger transport and not to freight transport, despite the law including both. The wording of the provisions means that their limitations may theoretically be imposed on both passenger and freight transport.	This provision aims to protect consumers against excessive prices and the concentration of suppliers on certain more profitable routes, while leaving other routes without transport service providers. It appears, however, to have been mainly conceived for passenger rather than freight transport. Also, generally these concerns may be addressed by the market itself and free competition, while, if necessary, the state may intervene through less restrictive measures such as subsidies on less profitable routes. <u>International comparison</u> To the best of the OECD's knowledge, price regulation for freight transport operators by road	Clarify the law to ensure that these restrictions are not imposed for freight transport.

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
			confirmed that so far it has only set rates of fixed-route transport and transport by small vehicles. Pursuant to Article 16, the Central Land Transport Control Board comprises the Permanent Secretary for Transport, Permanent Secretary for the Interior, Secretary-General of the Council of State, Director-General of the Department of Rural Roads, Commissioner-General of the Royal Thai Police, Director-General of the Highways Department, Governor of the Bangkok Metropolitan Administration, and no more than three other qualified members.	As a consequence, potential providers of freight transport services may assume that (non-existing) barriers to entry are in place and so be deterred from entering the market or be forced to incur additional legal costs (such as fees for legal advice) to establish whether they are allowed to enter the market.	does not exist in other ASEAN countries such as the Philippines or Malaysia.	
Land Transport Act, B.E. 2522 (1979) as amended until Land Transport Act, (No.13) B.E. 2557 (2014)	Art. 20, No. 4, Art. 31, No. 7, Art. 32, No. 7, Art. 33, No. 6	Restrictions on operations	The Provincial Land Transport Control Board has the power to set the rates of transport charges and other service charges for freight transport in every province of Thailand. The conditions are set in the licence issued by the provincial registrar. The Department of Land Transport confirmed that in practice no such restrictions or limitations are imposed on freight transport.	The Provincial Land Transport Control Board's power to set transport charges could limit providers' ability to set their own prices. Although the Department of Land Transport clarified that the regulation is only applied to passenger transport, it may theoretically also be imposed on freight transport. As a consequence, potential providers of freight transport services may assume that (non-existing) barriers to entry are in place and so be deterred from entering the market or be forced to incur additional legal costs (such as fees for legal advice)	The policy objective of this provision is likely to avoid excessive prices and to guarantee minimum income for the operators. Also, by fixing rates and providing for minimum income for operators, it may aim to avoid excessive costs cutting that could reduce quality and safety. This power to set rates was mainly created for passenger transport, rather than freight transport. <u>International comparison</u> In 2012, the Italian Competition Authority (ICA) issued an opinion regarding the Road Transport Observatory's decisions establishing minimum operating	Clarify that these restrictions do not apply to freight transport.

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
				to establish whether they are allowed to enter the market.	costs of road freight transport (Opinion AS913 of 5 March 2012). The ICA considered that such provisions amounted to artificial fixing of minimum prices for road transport activities and so breached competition law. In the same case, the European Court of Justice issued a preliminary ruling and considered that "although it cannot be ruled out that the protection of road safety may constitute a legitimate objective, the fixing of minimum operating costs does not appear appropriate, either directly or indirectly, for ensuring that that objective is attained" (paragraph 51 of C-208/13 of 4 September 2014).	
Land Transport Act, B.E. 2522 (1979) as amended until Land Transport Act, (No.13) B.E. 2557 (2014)	Art. 38	Restrictions on operations	Road transport companies cannot increase or reduce transport charges or exempt a customer from these charges or other service charges set out in the licence, unless they obtain prior approval of the Central or Provincial Land Transport Control Board.	This provision may restrict the ability of road transport companies to adjust their prices to market dynamics.	The likely objective of this provision is to avoid excessive prices while guaranteeing operators a minimum income.	Clarify that these restrictions do not apply to freight transport.

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Land Transport Act, B.E. 2522 (1979) as amended until Land Transport Act, (No.13) B.E. 2557 (2014)	Art. 40	Restrictions on operations	Despite in theory being allowed to operate freely, an operator holding a licence for non-fixed-route road transport cannot then work a route that has been established as the basis of a fixed-route operating licence, if in doing it will gain the benefits of a fixed-route operator. According to market participants, this is only applicable to passenger transport, not freight transport.	<p>This provision amounts to a non-compete clause imposed upon non-fixed-route transport operation licensees. As a consequence, fixed-route transport operation licensees may be able to exercise market power and increase prices (if they are not fixed) on licensed routes. Also, they may reduce investments and quality of services, without losing customers.</p> <p>According to market participants, this applies only to passenger transport, but it could theoretically be imposed on both passenger and freight transport. As a consequence, potential providers of freight transport services may assume that (non-existing) barriers to entry are in place and so be deterred from entering the market or be forced to incur additional legal costs (such as fees for legal advice) to establish whether they are allowed to enter the market.</p>	The objective of this provision is to ensure that an operator's route licence actually serves its purpose of excluding competition on that specific route.	If licensing a route to an operator does not apply to freight transport, this should be clarified in the provision.

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Regulations for traffic officers throughout the Kingdom on prohibition of four-wheeled trucks in Bangkok B.E. 2552 / Regulations for traffic officers throughout the Kingdom on bus stops and the prohibition of parking of trucks and trailers with 10 or more wheels in Bangkok in 2000	Art. 3 of traffic regulations in the Kingdom of Thailand, B.E. 2561	Restrictions on operations	Certain types of trucks can only enter Bangkok at specific hours. More specifically, trucks with 10 or more wheels are banned from inner Bangkok from 6-10am and from 3-9pm. Six-wheel trucks are banned from inner Bangkok from 6-9am and from 4-8pm. This time ban is enforced by the Bangkok metro police.	This provision restrict road transport companies' service offer for a significant part of the day. This also reduces the utilisation rate of their personnel and trucks, increasing the average transport cost of each freight unit.	<p>Due to limited road capacity, this provision aims to keep traffic flowing during peak hours and address environmental concerns in the city.</p> <p>These decisions should be adopted after consultation with the potentially affected private stakeholders. In this regard, Thailand is implementing reforms in order to enhance public participation in policy-making, by involving the private sector before decisions are adopted. According to the OECD's Multi-dimensional Country Review of Thailand: Volume 1, Initial Assessment (2018), the country has adopted OECD guidelines on promoting public consultation in policy-making and strengthening regulatory impact assessment (RIA).</p> <p><u>International comparison</u></p> <p>Certain EU countries ban large heavy-goods vehicles (HGVs) at certain hours. For instance, in France, most HGVs over 7.5 tonnes are banned from the road every weekend from 10pm on Saturday to 10pm on Sunday. This ban however has some exceptions, such as for trucks carrying perishable goods or serving sporting events.</p>	No recommendation. Express on-time delivery can still be carried out with smaller vehicles. The OECD supports Thailand's efforts in enhancing public participation in policy-making.

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Foreign Business Act, B.E. 2542 (1999)	Art. 8, No. (2), Art. 15	Limitation on equity	<p>Foreign companies that are more than 49% held by non-Thai natural or legal persons need a foreign business licence (FBL) in order to operate in Thailand. This general limit for foreign-equity participation is further tightened by additional provisions for specific businesses. These are laid out in List Two, an annex to the Foreign Business Act. For domestic land transportation, List Two criteria require companies to:</p> <p>1) be at least 40% owned by Thai nationals unless there is a reasonable cause to reduce the limit and it is approved by the relevant ministry, although it cannot drop below 25%</p> <p>2) ensure that at least 40% of the total number of directors are Thai nationals.</p> <p>For domestic land transportation under List Two, a FBL is issued by the "Minister having charge and control of the execution of this Act" (i.e. the Ministry of Commerce) with the approval of the Council of Ministers. In practice, FBLs are rarely granted for the provision of services already provided by national suppliers. Sources say that obtaining the certificate of business operation in such cases is almost impossible as it requires the signature of the Minister of Commerce.</p>	The provision limits market access by foreigners or makes it more difficult for foreigners to provide domestic land transportation services. Data confirm that it is almost impossible to obtain a FBL when this requires the signature of the Minister of Commerce, as is the case for domestic land transportation.	<p>The policy of specific access requirements for foreigners aims to protect national safety and security, and improve control of businesses that have an impact on natural resources and the environment.</p> <p><u>International comparison</u></p> <p>In Australia, transport is defined as a "sensitive business", which permits the government to review foreign investment proposals against the "national interest" on a case-by-case basis. Approval from the Foreign Investment Review Board Foreign is needed when a foreign national or company attempts to acquire a substantial interest (20% and above) in an Australian entity valued above AUD 261 million.</p>	<p>Option 1: Progressively relax foreign-equity limits with the long-term goal of permitting up to 100% foreign ownership.</p> <p>A first step may be to implement the agreed changes towards the ASEAN Framework Agreement on Services (AFAS) target of 70% ASEAN foreign-ownership in entities providing road transport services, and then extending it to non-ASEAN nationals. In the long term, Thailand may consider full liberalisation by allowing 100% foreign ownership of operators of road transport services.</p> <p>Option 2: Relax foreign-equity limits on a reciprocal basis, allowing foreign ownership by nationals of countries that allow Thai nationals to hold 100% shares in a company.</p> <p>Option 3: Allow 100% foreign ownership, while introducing a screening system of foreign direct investments in cases where the proposed investment passes a certain value threshold (such as is the case in Australia) or when it affects specific sensitive sectors.</p>

Maritime transport

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Ministerial Regulations, B.E. 2500 (1957) issued in accordance with the Port Authority of Thailand Act, B.E. 2494	Art. 1-2 and 4-5	Permits and authorisations	<p>Any person wishing to conduct, within ports operated by the Port Authority of Thailand (PAT), the business of loading or unloading cargo into or from foreign-going vessels must register with PAT by submitting an application to its director. Certain documents, as set out in Article 2, such as the company's registration as a legal person or the company's regulations, must be submitted with the application.</p> <p>The applicant must not be a fraudulent or "morally defective" person, which is usually proved by submitting a police clearance certificate. Other criteria include good behaviour, being of sound mind, not being physically incapable of carrying out his or her duty, and not suffering from specific illnesses. These criteria are not further defined in detail in the law and the enforcement procedure to verify compliance is not published.</p>	This provision may result in restricting entry to the market. Some of the criteria are indeed extremely broad, such as "good behaviour" or the requirement not to be "morally defective", and so give PAT's director broad discretion, which may result in discrimination.	<p>The likely objective of this provision is to ensure the reliability of the persons providing cargo loading and unloading services.</p> <p><u>International comparison</u> <u>Australia</u>: A licence is required to operate as a provider of port services, such as towage, bulk handling, transport and stevedoring, in a port operated by a port authority. Generally, applicants must show that they are sufficiently competent and qualified, and are required to submit forms available on the relevant port authority's website. Handbooks on worker requirements are also available on port authorities' websites.</p>	Clarify in published guidelines how these criteria can be met in practice, so as to avoid discretionary decisions by PAT's director.

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Ministerial Regulations, B.E. 2500 (1957) issued in accordance with the Port Authority of Thailand Act	Art. 4	Permits and authorisations	If the application to register as a business loading or unloading cargo is rejected based on behaviour or any other grounds, the applicant is entitled to appeal in writing to the PAT's Board of Commissioners within 15 days of being notified. Board members are appointed by the Council of Ministers, and are often members of PAT; this includes the authority's director – the same person to whom the application for registration was first submitted by the applicant. In practice, this means that the board contains PAT employees who issued the decision being appealed; this despite the board's decision being final, which leaves appellants with no further recourse to appeal to another independent body.	An appeal before PAT's Board of Commissioners does not seem to guarantee the right to due process and to an independent review. In practice, an appeal is made before a body that partly consists of the same people who issued the original registration denial and so will be affected by any decision taken by the board to annul.	The objective of this provision is to ensure that all decisions concerning the registration of cargo loading and unloading businesses are taken by an authority with specific technical knowledge, including of the specific case at hand. <u>International comparison</u> <u>Singapore:</u> Pursuant to Article 81 of the Maritime and Port Authority of Singapore Act, in case of refusal by the port authority to grant a licence for providing port services, the applicant may, within 14 days of the refusal, appeal to the Minister whose decision shall be final. The same law provides that, in other cases, such as damages, liability and other expenses, the appeal shall be lodged with the district court.	Ensure that the appeal body is independent from the body that took the decision under appeal.
Act of navigation in Thai waters, B.E. 2456 (1913)	Art. 138	Permits and authorisations	The application for a licence to use a Western-style ship with a mast, powered by a motor or sail or small vessel can be denied if the licensing officer – the director general of the Marine Department or the person at the Marine Department entrusted by him or her to issue a licence – has reasonable grounds to suspect that the licensee or crew will not behave with good manners. The “good manners” of seafarers or ship crews is guaranteed by the Marine Department's regulation on seafarers; their examination is	How to prove “good manners” is not further defined in the laws or regulations and the enforcement procedure has not been published, so an applicant cannot monitor how the licensing officers exercise their powers. The applicant may face uncertainty as to how proof of good manners should be given. Finally, the director general of the Marine Department has wide discretion, which might lead to discrimination.	This provision aims to ensure reliability and good behaviour of licensees and crew.	No recommendation. However, the government may consider clarifying how “good manners” can be proved; this could mean, for example, submitting a police certificate.

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Polymakers' objective	Recommendations
			undertaken and their certification issued in accordance with the International Convention on Standards of Training, Certification and Watchkeeping of Seafarers (STCW). In addition, the Merchant Marine Alumni Association (MMAA) was established with a view to ensuring that Thai seafarers (almost all of whom are members of MMAA) comply with both STCW and generally accepted professional ethics for seafarers.			
Ministerial Regulations, B.E. 2500 (1957) issued in accordance with the Port Authority of Thailand Act	Art. 7	Requirements for ships and crew	Any natural or legal person (irrespective of size) conducting the business of loading and unloading cargo into and from foreign-going vessels must employ an experienced foreperson to supervise the work. Experience is not further defined. This requirement was especially necessary before the use of TEU containers became widespread and operations required closer supervision.	The requirement to employ a foreperson to supervise cargo loading and unloading, irrespective of the size of the operator, may significantly raise costs for smaller operators. The requirement for every enterprise carrying out cargo loading and unloading to employ its own foreperson, and the fact that the foreperson cannot work for several companies at the same time may give rise to a duplication of supervisory roles.	This provision aims to ensure close control of operations, and so guarantee safety. With the rise of TEU container use by shipping companies, this provision is now outdated.	Option 1: Ensure that supervisory functions are carried out by a single responsible body (ideally, the public authority). This can be done by listing the foreperson's respective functions and clarifying that the foreperson has the function of a contact person rather than a supervisory role. Option 2: Allow the foreperson to work for several companies.
Thai Vessel Act, B.E. 2481 (1938) as amended by the Thai Vessel Act (No. 7), B.E. 2550 (2007)	Art. 7 bis	Requirements for ships and crew	A company owning Thai-flagged vessels operating in marine commerce in Thai territorial waters must be at least 70% owned by Thai nationals.	This provision limits access by foreigners to marine-commerce companies operating in Thailand's territorial waters by limiting their ownership to only 30%.	This provision aims to protect Thai operators until they are strong enough to compete with international cabotage providers. The Marine Department confirmed that this provision "creates a strong, genuine link between shipowners and ship operators and the Marine Department for the purpose of monitoring and controlling the	Option 1: In co-operation with other ASEAN countries, introduce an ASEAN-wide cabotage policy similar to the EU's, in which ASEAN operators are treated as national operators and can provide services in other ASEAN countries. Option 2: Regularly assess demand for shipping services on different routes and, pursuant to Article 47 bis of the

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Polymakers' objective	Recommendations
					<p>maritime safety standards of vessels in domestic waters".</p> <p><u>International comparison</u></p> <p><u>EU</u>: The EU has a principle of freedom to provide maritime transport services across member states. A 2014 European Commission report assessing developments between 2001 and 2010, before and after all restrictions were lifted, concludes that removing maritime cabotage market-access barriers has not led to a significant increase in the number of operators providing cabotage services.</p> <p><u>New Zealand</u>: The country liberalised cabotage in 1994 to increase competition and ensure high-quality shipping services. 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 keep the vast majority of the market, although they also had to reduce their rates. Upon review of this reform, the government decided not to re-introduce cabotage restrictions.</p> <p><u>ASEAN</u>: "Generally, cabotage is practised by ASEAN countries that are either archipelagic or have an extensive coastline," noted the OECD's Economic Outlook for</p>	<p>Act, consider granting exemptions and temporary licences to allow foreign vessels to provide emergency cabotage services when supply is insufficient, demand is particularly high, and a need arises for additional or specific services.</p>

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					<p>Southeast Asia, China and India 2018. "Brunei Darussalam, Cambodia, Lao PDR and Singapore do not practise cabotage restrictions, while other ASEAN countries continue to do so." In June 2017, Malaysia changed its policy, exempting Sabah, Sarawak and Labuan from cabotage restrictions due to insufficient vessels to carry goods from Eastern Malaysia. Cabotage remained applicable to cargo-shipping operations within these three states, however. The Philippines allows foreigners to apply for authorisation to provide domestic services if no Filipino vessels are available.</p> <p><u>Mexico</u>: Only Mexican shipping companies are allowed to provide cabotage services, but the Communications and Transport Secretary can issue temporary licences allowing foreign vessels to be used by Mexican companies if suitable Mexican vessels are unavailable or if public interest so requires.</p>	
Thai Vessel Act, B.E. 2481 (1938) as amended by the Thai Vessel Act (No. 7), B.E. 2550 (2007)	Art. 7 bis	Requirements for ships and crew	<p>A company owning Thai vessels operating in international marine transport must be at least 51% owned by Thai nationals. Only legal persons – not natural persons – can operate such a business.</p> <p>According to market participants, international marine transport operators, while not allowed to operate domestically if more than</p>	This provision may restrict access by limiting foreigners to only 49% ownership of companies owning Thai vessels operating in international marine transport.	<p>This provision aims to protect Thai operators until they are strong enough to compete with international providers. This provision also aims to facilitate the monitoring of vessels. It is unclear, however, how imposing a national equity requirement on companies operating international maritime transport does this.</p>	Option 1: progressively relax foreign-equity limits with the goal of allowing up to 100% foreign ownership in the long term. A first step may be to implement the agreed changes towards the ASEAN Framework Agreement on Services (AFAS) target of 70% ASEAN foreign-ownership in entities providing logistics services (including international marine transport) and then

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			30% foreign owned, can still move in territorial waters for the sole purpose of loading goods for export.		<p><u>International comparison</u></p> <p><u>Panama:</u> Any company from anywhere in the world can own a Panama-registered maritime vessel.</p> <p><u>Philippines:</u> In the Philippines, a ship must be registered under a Filipino flag by a Filipino national.</p>	<p>extending it to included non-ASEAN nationals. In the long term, Thailand may consider full liberalisation by allowing 100% foreign-ownership in entities providing international marine transport.</p> <p>Option 2: Relax foreign-equity limits on a reciprocal basis for countries that allow Thai nationals to own 100% of companies.</p> <p>Option 3: Regularly assess demand for shipping services on different routes and consider allowing 100% foreign ownership when there is a particularly high demand and a need for additional services.</p>
Thai Vessel Act, B.E. 2481 (1938) as amended by the Thai Vessel Act (No. 7), B.E. 2550 (2007)	Art. 50	Requirements for ships and crew	<p>Thai vessels used for marine commerce in territorial waters can only employ Thai-national crew. Thai vessels used for international transport must employ Thai-national crew in the proportion prescribed in the Ministerial Regulation (No. 8), B.E. 2540. Since 1997, this has been 50% of the total crew.</p> <p>The Seafarers Standard Division within the Marine Department is responsible for ensuring compliance with this provision.</p> <p>Article 70 of the Thai Vessel Act provides for some flexibility on this requirement by provisionally allowing a reduction in the proportion of Thai crew when labour is short or for any other appropriate reason. This flexibility provision was limited to 5 years after the entry into force of the law and does not seem to have been applied in practice.</p>	This provision may unnecessarily raise costs for operators and make more difficult the entry of potential market participants as a consequence of the difficulty and cost of finding suitable crew.	<p>The provision aims to support the national labour market and ensure that Thai nationals acquire the necessary skills. This objective was confirmed by the Marine Department.</p> <p><u>International comparison</u></p> <p><u>Denmark:</u> Only the captain of the ship must be a Danish or EU citizen; there is no nationality requirement for other crew members.</p> <p><u>Germany:</u> Only the captain of merchant ships under the German flag has to be an EU/EEA citizen. For ships over 8 000 gross tonnes, there is a requirement to have one officer who is an EU/EEA citizen.</p> <p><u>Malaysia:</u> There are no restrictions on a crew's nationality if the ship manager or ship-management</p>	Conduct annual surveys of demand and supply for crews and, in the case of shortages, allow exemptions from nationality requirement pursuant to Article 70 of the Thai Vessel Act.

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			<p>According to market participants, there is a shortage of suitably qualified people and it may be difficult in practice to find sufficient Thai nationals for such activities. On the contrary, the Marine Department observed that the "supply of Thai seafarers has exceeded the shipping industry's demand for years. That is why Thailand had never utilised the Article-70 exemption".</p> <p>The OECD has been unable to identify any official public statistics on the demand or shortage of Thai nationals for freight-ship crewing.</p>		company operating the ship is incorporated in Malaysia.	
Port Authority of Thailand Act, B.E. 2494 (1951) as amended by the Port Authority of Thailand Act (No. 5), B.E.2543 (2000)	Art. 9(10)	Restrictions on operations	<p>The Port Authority of Thailand (PAT) has the power to "form a limited company or a limited-public company for the conduct of port undertakings and other businesses" within the scope of its objectives. Any such company must not be held more than 49% by foreigners, however.</p>	Limiting participation of foreigners in port operations and business, such as running a terminal in a port, may prevent foreign companies from entering the market, and so reduce competition. The provision means foreign companies are forced to come up with specific legal structures, such as joint ventures, in order to comply.	This provision aims to support the national economy by giving Thai operators the time to grow and strengthen before the market is opened to international competition. In many countries, ports are considered as strategic assets and restrictions to 49% of foreign participation in port terminals are not uncommon.	No recommendation. Foreigners are not completely excluded from the market and can still conduct activities in Thai ports by, for instance, creating joint ventures with Thai nationals.
Ministerial Regulations, B.E. 2500 (1957) issued in accordance with the Port Authority of Thailand Act	Registration form	Restrictions on operations	<p>The registration form for loading or unloading cargo into or from foreign-going vessels includes a clause that the applicant will only undertake cargo loading and unloading activities for the specific companies it declares. The operator is then allowed to provide services only to those companies (up to 4). It appears that this provision is only valid for the port of Bangkok.</p>	The requirement to declare the companies for whom cargo loading and unloading will be carried out limits registered operators' ability to provide their services to other companies. Also, a new market entrant may often not know to whom it will provide its services.	This provision is most likely a legacy regulation. If the list of customers does not prevent the service provider from providing its services to other companies, the objective of this provision may be to ensure that there is an economic need for an additional operator by proving the existence of its future customers.	Remove.

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Merchant Marine Promotion Act, B.E. 2521 (1978) as amended by Merchant Marine Promotion Act, (No. 2) B.E. 2548 (2005)	Art. 16	Restrictions on operations	<p>The government can require and has required that a minimum amount of freight must be carried between Thailand and specific foreign countries by marine transporters using Thai-registered vessels. The government determines such amounts by means of a royal decree in which it defines the "proportion of the quantity of goods and freight" that must be transported by Thai-registered vessels.</p> <p>The obligation to use Thai-registered vessels currently applies to government, government agencies and private companies when implementing government projects, such as concessions granted by the government.</p>	<p>This provision may distort competition by favouring Thai-registered vessels. In extreme cases, if there is not sufficient competition between Thai-registered vessels, this provision may result in inefficient companies being kept in the market. This provision may also reduce Thai-registered vessels' incentives to compete and innovate. Finally, it can make it more expensive for the government or private companies implementing government projects to transport goods by sea as they are obliged to use Thai-registered vessels for set amounts, even if cheaper alternatives are available.</p> <p>Moreover, it may increase costs for companies when implementing government projects since, according to market participants, it is often difficult to find Thai vessels operating certain routes. The APEC Transportation Working Group's 2014 report, Cargo Preference and Restrictions Applying to Specific Trades, stated that the regulations were still in force, but had proved of little help for the expansion of the national shipping fleet. The Marine Department, however, told the OECD that no regulations under this article have been enacted and that currently no cargo-preference regulations are in place.</p>	<p>This provision aims to support national industry with a view to strengthening Thai operators and preparing them for international competition. The Marine Department confirmed that this Act is currently under review and the new draft does not include any similar provision as it would be against both GATS and WTO principles. This new law will most likely be submitted to the government by the end of 2019. After its approval, it will go before the Council of State for further refinements before final approval by the parliament.</p> <p><u>International comparison</u></p> <p>Many countries have (or have had in the past) cargo-preference regulations in place in order to promote their national fleet, including Korea, Japan, Philippines and the United States. Generally, however, these usually concern only government cargo, rather than cargo shipped by private companies with business relationships with the government, of specific goods, such as steel products, fuel and petrochemicals, and include other measures, for example, direct subsidies.</p> <p><u>Mexico:</u> In 1966, Mexico introduced subsidies for cargo imported using Mexican-registered vessels. In 1981, it also introduced a direct measure that obliged government cargo to be shipped by Mexican-</p>	<p>The OECD recommends that the Thai authorities consider removing this provision following a transition period that allows Thai operators currently benefiting from this provision to adjust to the new legal framework. If specific, exceptional needs arise following the repeal of this provision, the authorities could consider granting subsidies rather than stable long-term competition-distorting measures.</p>

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					registered vessels. To limit the scope of such a cargo reservation, Mexico signed agreements with different countries, including Brazil, Russia and Bulgaria, so that some cargo could be shipped by vessels registered with a co-signatory countries.	
Merchant Marine Promotion Act, B.E. 2521 (1978) as amended by Merchant Marine Promotion Act, (No. 2) B.E. 2548 (2005)	Art. 17, 19, 20 and Art. 22, para. 1	Restrictions on operations	<p>The Ministry of Transport has the power to specify whether certain goods ordered by the government or other government-related bodies and state-owned enterprises (SOEs) are to be imported or exported by Thai-registered vessels (when one is available on the route) rather than on a foreign-registered vessel. In case of non-compliance, a fine can be imposed.</p> <p>If transport by a Thai-registered vessel is not possible and a foreign carrier is available to ship the goods, the foreign company must apply to the Marine Department for a written permit to carry such goods. Permits are only granted after a company proves that no Thai-registered vessel is available.</p> <p>The Marine Department confirmed to the OECD that "waiving requests for such cases are often made, especially for routes other than the sub-regional or regional routes in Asia where most Thai-registered vessels are used, as most imported government cargo is transported by long-distance</p>	<p>These provisions may distort competition by favouring Thai-registered vessels and limiting state agencies and enterprises' freedom to choose a carrier. If there is insufficient competition between Thai carriers, these regulations may keep inefficient companies in the market as inefficient Thai-registered vessels are granted transport contracts for specified goods on certain routes, and also reduce incentives to compete.</p> <p>These provisions may also result in restricting access for foreign operators that will only be granted a permit to transport goods to and from foreign countries when no Thai-registered vessel is available.</p>	<p>These provisions aim to support national industry with a view to strengthening Thai operators and preparing them for international competition.</p>	<p>Option 1: Consider removing this provision following a transition period to allow Thai operators currently benefiting from this provision to adjust to the new legal framework.</p> <p>Option 2: If a specific, exceptional need arises, consider granting subsidies rather than introducing stable long-term competition-distorting measures.</p>

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			routes where no Thai-registered vessels are available".			
Merchant Marine Promotion Act, B.E. 2521 (1978) as amended by Merchant Marine Promotion Act, (No. 2) B.E. 2548 (2005)	Art. 21	Restrictions on operations	<p>For the purpose of promoting and protecting Thai transport companies, the government can impose the shipping of goods by Thai-registered vessels on certain routes.</p> <p>Thai law, however, provides for an exception to this exclusivity rule, when Thai companies needing support on some routes wish to add non-Thai-registered vessels. In such a case, Thai companies can charter non-Thai-registered vessels and add them on the routes where they operate. For this purpose, the Thai company is required to submit a copy of the rental contract to the office of the Marine Department on behalf of the non-Thai company, acting as a sponsor for the foreign operator, which must also obtain permission from the Ministry of Transport that will decide on the permission based on Marine Department recommendations. The specific rules when granting such permission are determined by the Ministry. In practice, non-Thai-registered vessels will only obtain such a permission if the Thai vessel operator proves that services on the specific route cannot be provided without non-Thai-registered vessels. The Marine Department claims that such permissions to operate on routes reserved for Thai-registered vessels have never been granted.</p>	<p>This provision may result in granting special rights on certain routes to Thai operators without any statutory time limitation, and so make entry by foreign operators more difficult. A foreign-registered vessel wishing to operate such routes has to obtain a permit.</p>	<p>This provision aims to support the national fleet with a view to strengthening Thai operators and prepare them for international competition. By introducing an exception to the benefits granted on a route, this provision aims to avoid a shortage of supply of transport services on certain routes.</p> <p><u>International comparison</u> <u>Philippines:</u> The Maritime Industry Authority (MARINA), an agency under the Department of Transport can grant "pioneer status" to a shipper on a specific route to protect its investment. As a result, a shipper that has been granted pioneer status has the exclusive right to provide shipping services on that route. No additional vessels can be deployed on that route for up to 6 years (except if MARINA determines that there is a need of additional vessels). Also, this status can be granted only if the shipper introduces on the routes new ships that meet the standards imposed by the International Association of Classification Societies (IACS).</p>	<p>Option 1: Consider removing exclusive benefits on certain routes, as well as the provision concerning the exception to the benefit rule. This may be done after a transition period, allowing those currently benefiting from the measure to adjust to the new legal framework.</p> <p>Option 2: Benefits should be granted based only on specific conditions, such as making substantial investments in the fleet. The conditions should be set by the law and the benefit should be time limited.</p>

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Polymakers' objective	Recommendations
			<p>However, it appears that certain non-Thai-registered vessels have been granted permission to ship goods that were set to be shipped by Thai-registered vessels.</p> <p>It appears that this provision is only applied to regulator scheduled services that no Thai company is operating, so both stakeholders and the ministry can be correct in their assertions.</p>			
Merchant Marine Promotion Act, B.E. 2521 (1978) as amended by the Merchant Marine Promotion Act, (No. 2) B.E. 2548 (2005)	Art. 24	Restrictions on operations	<p>If the granting of special rights and benefits by the Marine Department to certain Thai vessels constitutes an unfair advantage over other marine transport entrepreneurs that own Thai-registered vessels, the Ministry of Transport can either collect money from the operator receiving an unfair advantage or can prohibit for a specified period such an operator to use all or some of its vessels for loading or discharging goods. Unfair advantage is not precisely defined in the law.</p> <p>According to market participants, however, such a provision has never been applied in practice and no order has ever been issued by the Ministry of Transport to recover any unfair advantage. The Marine Department confirmed that it is also unlikely that it will be implemented in the future.</p>	<p>This provision allows compensation for the advantages and benefits granted to certain Thai vessels when such rights and benefits constitute unfair advantages over other Thai-registered vessels. Such rebalancing measures cannot be applied when any unfair advantage puts foreign vessels at a competitive disadvantage.</p> <p>Also, the Minister of Transport has wide discretion when introducing rebalancing measures and this may also lead to discrimination if some companies are compensated and others are not.</p>	<p>This provision aims to restore a level playing field and rebalance certain market distortions.</p> <p>It has never been applied in practice, however, and the Marine Department confirmed that it is unlikely to be implemented in the future.</p>	Remove, following implementation of recommendation above.

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Port Authority of Thailand Act, B.E. 2494 (1951) as amended by Port Authority of Thailand Act (No. 5), B.E.2551 (2008)	Art. 6 and 9	Ports	<p>The Port Authority of Thailand (PAT) is a state-owned enterprise (SOE) that runs Thailand's five major ports. It has both regulatory and supervisory powers and operational functions; it operates as the regulatory authority for publicly owned ports and offers services within them, sometimes in competition with private operators. PAT confirmed to the OECD that it operates under the Public-Private Partnership Act B.E. 2562, which is supervised by the State Enterprise Policy Office (SEPO), the body that regulates and monitors the efficiency and value of SOE operations and the use of state resources, and promotes fair competition between the private and public sectors. This enables the government to determine effectively the direction of national development under the strategic plan for joint investment from the private sector.</p> <p>Following its regulatory functions, PAT determines the charges to use its ports, services and facilities, and issues regulations for safety and the use of its ports, while fixing "the rates of various dues and charges within the Authority Area".</p> <p>For its operational functions, Article 6 provides that it carries out businesses in the port "relating or incidental to port undertakings" and conducts "port undertakings in the interest of the state and the public",</p>	<p>The allocation of the regulatory and operational functions concerning publicly owned ports is unclear, which may lead to an overlap between these two functions within PAT. Such actual or potential overlapping of PAT's regulatory and operational functions may create conflicts of interest; for example, PAT's power to regulate prices of services offered within the port area may prevent private operators from offering competitive lower prices in order to gain market share. Also, the power to fix rates for all dues and charges within the port area may be used by PAT to pass the costs of its inefficiency onto private companies active in the port and cover its losses, an option private companies lack.</p> <p>Also, although there are authorities dealing with auditing (State Audit Office of the Kingdom of Thailand) or corruption (Office of the National Anti-Corruption Commission (ONACC), and the Office of Public Sector Anti-Corruption Commission (PACC)), no independent regulator of ports' business activities exists, as PAT carries out certain regulatory functions, while conducting business for the interest of the state and the public, and being responsible for the development and management of Thailand's major ports.</p>	<p>This may be a legacy provision and the result of incomplete reforms. Market participants confirmed that several governments have tried to separate PAT's regulatory and operational functions, without success. As a consequence of this unclear role and functions, PAT is currently trying to operate also dry ports.</p> <p><u>International comparison</u> The World Bank's Port Reform Toolkit PPIAF provides a guide to policymakers on undertaking sustainable and well-considered reforms of ports. It states that: "to avoid conflicts of interest, the law should explicitly regulate the powers and duties of the port authority in relation to private operators with respect to investments and share participation." It also says that: "it is undesirable for a public port authority to be directly involved in terminal operations. A port law may explicitly prohibit a port authority from providing cargo handling services. A further step to avoid conflict of interest issues would be to prohibit a port authority from being a shareholder in a terminal operating company located in its port area."</p>	<p>Clarify that PAT has only operational functions, and that the power to adopt regulations regarding ports and port operations lies with an independent body such as the Ministry of Transport. While PAT may be involved in the decision-making process and may submit its proposals on technical matters, the power to adopt the final decision should always lie with the independent body.</p>

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			while Article 9 provides that it can operate port services directly. Market participants confirmed that, due to PAT's broadly defined functions, at the moment in Bangkok port such overlap of regulatory and operational functions does exist.			
Port Authority of Thailand Act, B.E. 2494 (1951) as amended by Port Authority of Thailand Act (No. 5), B.E.2551 (2008)	Art. 29(5)	Ports	The rates of all dues and charges within PAT ports must be between the maximum and minimum rates fixed by the Council of Ministers.	The minimum and maximum rates set by the Council of Ministers limits service providers' ability to set their rates freely for their services within the port area.	<p>The existence of minimum rates likely aims to ensure a minimum income to operators, while avoiding a reduction in quality due to overly fierce competition. The existence of maximum prices aims to protect port users, by avoiding excessive prices.</p> <p><u>International comparison</u></p> <p>Portugal: Port tariffs are subject to multiple forms of price control, depending on the regime under which the port service is provided (whether by port authorities or private operators). The OECD's 2018 Competition Assessment Reviews: Portugal recommended removing the decree (or at least the specific provisions) on fee-setting criteria, discounts and exemptions without a clear policy goal.</p> <p>The World Bank's Port Reform Toolkit PPIAF, 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</p>	Remove minimum prices as part of the framework set by the Council of Ministers. Keep maximum prices for cases where port competition is limited. Such maximum prices should enable operators to recover their costs, including a reasonable rate of return. For this purpose, such maximum prices should also be regularly revised to ensure they are in line with market dynamics and provide the necessary innovation incentives.

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					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."	
Port Authority of Thailand Act, B.E. 2494 (1951) as amended by Port Authority of Thailand Act (No. 5), B.E.2551 (2008)	Art. 9(8) and 29(5)	Ports	Fixed port tariffs are currently set out in Regulations of the Port Authority of Thailand: Use of Ports, Services and Facilities and a number of PAT announcements: 1) Port Authority of Thailand Announcement Subject: Requesting Fuel Oil Fees of Cargo Service at Bangkok Port and Laem Chabang Port; 2) Port Authority of Thailand Announcement Subject: Determining the Duration of Hiring, Hiring Rate of Using of Such Land and Cargoes of Port Authority of Thailand; and 3) Port Authority of Thailand Announcement Subject: Determining Fees and Service Charges on Hazardous Substance Cargo at Laem Chabang Port. This results in two potential issues. 1) With the approval of the cabinet, PAT is able to regulate prices within its port area, including prices of services offered by private operators. The Marine Department has clarified, however, that notwithstanding the wording of the law ("dues and charges within the Authority Area"), in practice PAT only sets the rates of its	The broad formulation of the provision grants PAT the power to fix the rates of services offered by private service providers (for example, cargo-handlers) within the port area, and so limits their ability to set their own prices for their services. Such a broad formulation may also confuse market participants and discourage them from entering the market. The requirement whereby any price change by PAT must be approved by the cabinet prior to being implemented may result in a lack of flexibility to adjust the tariffs to market dynamics. This may in turn result in lack of competitiveness and a competitive disadvantage for PAT ports since the authority cannot grant discounts, unlike private port operators.	The seeming objective of the approval procedure is to protect port users and avoiding excessive pricing.	Clarify that PAT's power to fix rates only refers to its own services and not to those offered by private operators within the port area. If minimum prices are not removed as recommended above, all active operators should be allowed to grant discounts without seeking approval.

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			own services and not those of services offered by private operators within the port area. 2) As a consequence of the approval requirement and procedure, PAT claims that it cannot grant any discounts and so cannot adapt to changes in demand or its competitors' price initiatives.			
Ministry of Transport Announcement pertaining to the conditions for the permission to operate a port as a trading business that is a public utility that affects the safety or welfare of the people in accordance with Article 3(6) of the Announcement of the Revolutionary Council No. 58 B.E. 2515 (No. 2) dated 26 January 1972	No. 4(9)	Ports	An operator submitting to the Marine Department a request to run a private port needs to submit a port-pricing plan. Such prices are first submitted to the Merchant Marine Supervising Division, a specific unit within the Marine Department at the Ministry of Transport, which forwards them to the director general of the Marine Department, before they are finally approved by the Ministry of Transport. Once approved, the port operator cannot charge more than the rates declared in its submission. Pursuant to Article 6(7) of this Ministry of Transport announcement, a port operator intending to change its rates when it applies for a licence renewal must send the new port tariffs and clarify the reasons for the change. Market participants have provided contradictory statements about the function and consequences of submitting such a pricing plan. The Marine Department states that, although the provision does not expressly provide for the power to compare prices with other ports before granting approval, it does in	The provision could limit the ability of private ports to compete on price, by limiting their freedom to fix their own. It may also prevent them from adjusting their prices to market dynamics. In practice, since all port operators must submit their tariffs to the Marine Department and then the Ministry of Transport for approval, this procedure may limit price competition among all port operators.	The objective of the approval procedure is likely to protect port users and avoid excessive prices. This was confirmed by the Marine Department: "Ports are regarded as the economic gateways of the country. If the port tariff is too high, it will increase the logistic costs and make exports uncompetitive in global markets [...] the port business requires highly prized and limited land adjacent to waterways and high investment. Price-cutting competition in the port business may result in insolvency and create significant economic losses." <u>International comparison</u> <u>Portugal</u> Port services are provided by private operators, tariffs are determined by each concession and licensing contract, which are regulated by Decree-Law 273/2000 and other specific legislation. When services are provided by the port authority, port tariffs are directly regulated by the law. The OECD's 2018 Competition Assessment Reviews:	Clarify that the Marine Department does not have the power to fix minimum rates and private operators are permitted to set their rates below PAT's Bangkok baseline rates. Maximum prices can be regulated when port competition is limited.

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			practice compare submitted prices with other ports, with tariffs fixed by PAT in Bangkok as the baseline. In practice, market participants confirmed that the Marine Department will not seek to influence prices as long as they are below PAT's rates in Bangkok.		Portugal recommended removing the decree (or at least the specific provisions) on fee-setting criteria, discounts and exemptions without a clear policy goal.	
Harbour Department Regulations for the requirements, rules, controls and requests for government pilot services, B.E. 2541 (1998)	Art. 13 (application for pilotage)	Ports	There are six compulsory pilotage areas in Thailand: the ports of Bangkok, Sriracha, Maptaphut (industrial), Sattahip (commercial), Songkla, and Phuket. In these ports, vessels must use piloting services. All pilots in Thailand are employed by the Marine Department. At the port in Phuket, Article 2 of Ministerial Regulation No. 51 B.E. 2531 provides that all ships moving in or entering the deep-sea port area must use these government-employed pilots, except for: 1) ships of the Thai government; 2) ships of foreign governments; and 3) ships whose total length is less than 50.28 meters.	This provision give the Marine Department a monopoly over piloting services, which restricts other economic operators' market access.	This provision aims to ensure safety through a public monopoly. The Marine Department says this is justified by these 6 ports often being congested due to increasing maritime traffic, most of which arises from ocean-going vessels serving international trade, and that any accidents arising from collision of ships or ship grounding would certainly have adverse impact on Thailand's economy. In order to prevent such accidents, large vessels are required to use government pilots, who are well trained and familiar with the specific geographical features of those major ports. <u>International comparison</u> Data collected in 2011 by the European Sea Ports Organisation (ESPO) from 116 ports in 26 European countries show that only in around 25% of the ports, piloting services are directly provided by port authorities. This is explained by the existence of licensing regimes, concessions to public or private operators, and the existence of separate public entities providing such services.	Create appropriate legal framework so that piloting services can be tendered on the basis of fair and non-discriminatory terms to guarantee competition for the market.

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Harbour Department Regulations for the requirements, rules, controls and requests for government pilot services, B.E. 2541 (1998) and Ministerial Regulations on pilotage issued under Section 4 of the Navigation in Thai Territorial Waters Act, amended in 1934 (2nd edition)	Art. 2 of Ministerial Regulations on pilotage	Ports	In order to apply to become a pilot, applicants must formally qualify as a captain in the Royal Navy or with the Merchant Training Centre and must have worked for a certain number of years for the Marine Department. More specifically, according to Ministerial Regulations on pilotage issued under Article 4 of Navigation in the Thai Territorial Waters Act, B.E. 2456 (1913) Amendment (No.2) B.E. 2477, they must have worked for 1 year for the Marine Department. All pilots must be government officials.	The requirement to be formally a captain in the Royal Navy and a government official, as well as the requirement to have worked for 1 year for the Marine Department may significantly reduce the number of pilots. This may lessen competition, which may in turn increase costs for companies that have to pay high fees for compulsory pilotage. This provision also creates a barrier to entry for those wishing to offer piloting services	<p>This provision aims to ensure pilot safety and reliability by restricting access to the profession to government officials who are qualified captains and have previously worked for the Marine Department. The Marine Department confirmed that the requirement to be government officials "creates a genuine link between the government pilots and the competent authority for the purpose of monitoring and control of standards".</p> <p><u>International comparison</u></p> <p><u>Portugal</u></p> <p>To access the piloting profession, candidates need to be naval officers with at least a "first-class pilot" rank and so must have earned a naval officer's degree from a Portuguese naval school, a minimum of three years of naval experience and a mariner officer certification. They must also complete a piloting traineeship, subject to a process of continuous evaluation, and speak and write Portuguese.</p> <p>The OECD's 2018 Competition Assessment Reviews: Portugal noted that there is no clear reason to require pilots to have a first-class pilot rank and so block entry to seafarers of inferior rank, even though the latter could have similar or more experience at sea. The OECD therefore recommended removing the legal requirement to</p>	As an alternative to the current formal requirements, an examination should be introduced to assess real-world skills. Once these skills have been assessed, the successful candidate should be allowed to operate as a pilot, irrespective of whether they are a government official.

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					have a first-class pilot rank and replace it with a requirement of three years' experience serving on board ships as mariners.	
Port Authority of Thailand Act, B.E. 2494 (1951) as amended by Port Authority of Thailand Act (No. 5), B.E. 2543 (2000)	Art. 11	Other, restriction on port-land transfers	Land acquired by PAT is not transferable, except by a special act. No special act has been issued in practice.	Land is necessary to provide services, so this provision may prevent or make it more difficult for potential service providers, such as warehouse operators or repair and service providers, to enter the market and offer their services within the port area or close to it. This is likely the case in ports operated by PAT. At the moment, PAT operates 5 commercial ports (Bangkok, Laem Chabang, Chienksaen, Chienk Khong and Ranong). As a consequence of this provision, if private operators want to operate in the port, they can only lease the land according to the general rules analysed above (see provisions on maximum duration of leasing contracts).	The objective of this provision is to ensure PAT has control over the land within its port areas. It also aims to ensure that the land can become available again to new entrants after a certain time. Generally, ports (and therefore land around and in them) are considered as strategic assets and granted some level of protection or a special legal status.	Ensure that the general rules on leasing, revised according to the recommendations above for the extended duration of leasing are also applied to PAT land.
Port Authority of Thailand Act, B.E. 2494 (1951) as amended by Port Authority of Thailand Act (No. 5), B.E. 2543 (2000)	Art. 14	Other, restriction on port-land transfer	PAT is a state-owned enterprise (SOE) under the aegis of the Ministry of Transport. Market participants have said that it operates independently of the ministry, and does not enjoy any advantage from its SOE status. Nevertheless, Article 14 does provide that any property owned by PAT is not subject to enforcement of judicial decisions.	Providing that any PAT-owned property is not subject to the enforcement of judicial decisions may result in an advantage for PAT compared to competing private companies offering the same services. Hypothetically, for a similar law infringement, such as breach of contract, PAT would not be deprived of the land necessary to run its business, while private companies in the exact same situation could be and would	This provision aims to avoid circumventing the ban on the transfer of PAT land (which would otherwise be possible by means of the enforcement of a judicial decision). It may also stem from the assumption that PAT, as an SOE, will always fulfil its obligations and so no enforcement on its property would ever necessary.	No recommendation.

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				therefore be prevented from continuing their operations. This provision may also disadvantage PAT, as suppliers may be reluctant to enter into contracts with PAT that they may not later be able to enforce if PAT does not fulfil its obligations.		
Port Authority of Thailand Act, B.E. 2494 (1951) as amended by Port Authority of Thailand Act (No. 5), B.E. 2543 (2000)	Art. 17	Other, tax exemption	PAT is a state-owned enterprise (SOE) under the aegis of the Ministry of Transport. Market participants have said that it operates independently of the ministry, and does not enjoy any advantage from its status of SOE. Nevertheless, Article 17 does provide that PAT is exempted from taxes and duties under the Thailand tax code. This exemption also covers its unleased buildings and land.	As the tax exemption refers to all revenue, land and buildings (other than those that are leased), including those generated by carrying out activities in competition with private operators, this provision may result in a competitive advantage compared to private companies offering the same services.	This provision may be a legacy of the time before 2000 when PAT was a government agency and before its conversion into an SOE by an amendment of the Port Authority of Thailand Act.	Remove and ensure that PAT is subject to the same provisions as private port operators when it is operating in competition with them (such as when running a port).
Ministerial Regulations, B.E. 2500 (1957) issued in accordance with the Port Authority of Thailand Act	Art. 8	Other, broad discretion	The director of PAT can order the modification or removal from service of equipment employed for loading and unloading cargo if he or she considers that this is unreasonably inefficient. Efficiency is not further defined in the laws or regulations.	PAT's power to suspend the use of certain equipment or to order its modification if the authority considers it unreasonably inefficient – rather than leaving the choice to market dynamics – may lead to discrimination and raise costs for certain suppliers of cargo loading and unloading services. While such powers are justified in case of unsafe equipment, they are less justified on efficiency grounds.	This provision aims to enhance efficiency of the equipment employed by service providers.	Remove and leave the decision to service providers as long as no safety considerations are at stake.

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Carriage of Goods by Sea Act, B.E. 2534 (1991)	Art. 17, para. 1	Other, insurance	Any term of a contract making a carrier of goods by sea, which has entered into a contract for the carriage of goods by sea against remuneration, the beneficiary of an insurance contract for those same transported goods shall be considered void. The Marine Department confirmed that this does not prevent the carrier and its customer from concluding an insurance contract, as long as the carrier is not the party that will be compensated in case of damages.	The provision may be interpreted in such a way as to practically prevent the parties from concluding an insurance contract for freight transport by sea. This may raise costs for the carrier in case of damage of the transported goods.	The likely purpose of this provision is to ensure that the carrier takes responsibility for the carriage of goods and provide an incentive to perform. The Marine Department confirmed that it also aims to avoid the carrier unfairly receiving both freight revenues and compensation for cargo damage.	No recommendation since insurance contracts with the customer as beneficiary are still possible.
Carriage of Goods by Sea Act, B.E. 2534 (1991)	Art. 58, para. 1	Other, liability	The liability of a carrier by sea for damages of transported goods is limited to THB 100 000 for each "unit of carriage" or THB 30 for each kilogramme of net weight of goods, whichever amount is the larger.	This limitation of liability is significant and different compared to other modes of transport (see, for instance, Section 28 of the Multimodal Transport Act or Section 616 of the Civil and Commercial Code concerning liability of carriers of goods by road). This may significantly reduce costs for carriers by sea compared to carriers by other means, and so distort competition.	This provision aims to protect carriers of goods by sea and avoid obligations to pay for damages driving them from the market. <u>International comparison</u> Some EU countries also provide for liability limitations for transport operators. <u>Germany:</u> The German Commercial Code (HGB) provides that for carriage and forwarding contracts, an operator's liability is limited to SDR 8.33 per kilogramme unless the parties agree on a different limitation within the range of SDR 2 and SDR 40.	No recommendation. However, in order to avoid such limitations being subject to currency fluctuations, the government may wish to consider setting liability thresholds in Special Drawing Rights (SDR, an international reserve asset created by IMF whose value is based on five currencies: Japanese yen, Chinese renminbi, euro, pound sterling and US dollar), as already happens under Section 28 of the Multimodal Transport Act. This would ensure that the limit amount is consistent with international standards.

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Act of Navigation in Thai Waters, B.E. 2456 (2013)	Art. 286	Other, labour	The Thai government shall "from time to time" impose a fee for every seafarer being employed on a ship or upon the termination of a seafarer's employment. Neither the temporal or practical criteria for imposing "from time to time" such fees nor the reasons for introducing such fees are given. If such fee is not paid, employment or termination of employment can be refused.	Depending on the amount and criteria, this fee may raise costs for companies, and so constitute a barrier to entry and exit. Also, there are no clear criteria about when and why such fees shall be imposed, which may result in raising costs for some operators compared to others.	The Marine Department confirmed that this provision aims to "monitor the movement of seafarers working on ocean-going vessels entering Thai territorial waters. For Thai vessels, it will ensure that the proportion of Thai seafarers working on Thai vessels complies with the seafarers provision in the Thai Vessels Act and its relevant regulation. For non-Thai vessels, it will prevent the smuggling of a seafarer who is laid-off during the voyage in Thai territorial waters into the country". However, it is unclear how the requirement to pay a fee for termination of an employment contract will serve this monitoring purpose in practice; there may also be alternatives for achieving the same purpose in a less restrictive manner.	Remove.
Foreign Business Act, B.E. 2542 (1999)	Art. 8, No. (2), Art. 15	Limitation on equity	Foreign companies more than 49% held by non-Thai natural or legal persons need a foreign business licence (FBL) in order to operate in Thailand. However, this general limit for foreign-equity participation is further tightened by additional provisions regarding specific businesses. More specific criteria are laid down for activities included under List Two, an annex of the Foreign Business Act and include domestic water transportation, for which companies must: 1) be at least 40% owned by Thai nationals unless	The provision may limit access by foreigners or make it more difficult for foreigners to provide domestic water transportation services. This is confirmed by data showing that extremely few FBLs are granted when it requires Ministry of Commerce permission, as is the case for domestic water transportation, which is included in List Two. Data from the Department of Business Development show that the number of FBLs issued under the Foreign Business Act between March 2000 and December 2017	These specific requirements for access by foreigners to certain activities included in List Two aim to protect national safety and security, and control more closely businesses that have an impact upon natural resources and the environment. <u>International comparison</u> <u>Australia</u> : Transport is considered as a sensitive sector and as such investments are subject to approval by the Treasurer of Australia (the minister of finance) with recommendations from the Foreign	Option 1: Progressively relax foreign-equity limits with the goal of allowing up to 100% foreign ownership in the long term. A first step may be to implement the agreed changes towards the ASEAN Framework Agreement on Services (AFAS) target of 70% ASEAN foreign ownership in entities providing logistics services (including international marine transport) and then extending it to included non-ASEAN nationals. In the long term, Thailand may consider full liberalisation by allowing 100% foreign-ownership in entities providing international marine transport.

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			<p>there is a reasonable cause to reduce this limit and the Ministry approves, although it cannot fall below 25%; and, 2) ensure that at least 40% of directors are Thai nationals.</p> <p>Any FBL for domestic water transportation is issued by the "Ministry having charge and control of the execution of this Act" – in this case, the Ministry of Commerce – with the approval of the Council of Ministers.</p> <p>In practice, FBLs are rarely granted for the provision of services that are already provided by national suppliers.</p>	for the "service business" sector, which includes domestic water transport services, was 2 298 or an average of only 127 a year.	Investment Review Board when foreigners acquire an interest of at least 20% of an Australian entity valued above AUD 261 million.	<p>Option 2: Relax foreign-equity limits on a reciprocal basis for countries that allow Thai nationals to own 100% of companies.</p> <p>Option 3: Allow 100% ownership and consider introducing a screening system for certain foreign direct investments, for example, when the investment goes beyond a certain value threshold (as is done in Australia) or when it affects certain sensitive sectors.</p>

Note: As a consequence of the approval requirement and procedure, PAT claims that it cannot grant any discounts and so cannot adapt to changes in demand or its competitors' price initiatives.

Railway transport

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Railways and Highways Act 1944; State Railway Act B.E. 2497 (1951)		Monopoly of rail transport services	Freight transport by rail is a monopoly run by the State Railway of Thailand (SRT), a state-owned enterprise (SOE) created in 1890. It is the only provider of intercity services and the manager of the railway network.	As both manager of the rail network and provider of intercity railway transport services, SRT may have an incentive to foreclose downstream competitors, by preventing potential rail transport service providers from using rail infrastructure.	<p>This operational overlap is due to legacy regulations whereby the management of the rail network and rail transport services were both carried out by the public authority. SRT has confirmed that a new Rail Transport Act is currently under discussion and will most likely include an application procedure for private operators to obtain a rail transport-service licence.</p> <p><u>International comparison</u></p> <p>In the EU, Directive No. 91/440/EEC on the development of railways is the main measure that taken to increase competitiveness in rail transport. It distinguishes between the provision of transport services and the operation of infrastructure, identifying the necessity for these two areas to be managed separately in order to facilitate further railway development and efficiency within the EU. The Directive covers particularly four areas of policy: 1) the independence of railway undertakings in their management, administration and internal control over administrative, economic and accounting matters, so that assets, budgets and accounts are separate from those belonging to the state; 2) the separation of infrastructure management and transport operations; 3) the reduction of debt and improvement of finances; and 4) access rights to railway infrastructure. These acts have been implemented through different models across EU countries.</p>	<p>Option 1: Consider splitting the ownership and management of infrastructure and rail freight transport service operation.</p> <p>Option 2: Introduce accounting separation between infrastructure management and rail freight transport-service operation.</p>

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					<p>Privatisation or ownership separation would likely solve the access and discrimination problems, and might accelerate investment into infrastructure.</p> <p>Several models exist in OECD countries, going from full ownership separation to vertical separation. Some countries such as Sweden, have implemented full structural separation, while other countries, such as Germany and Italy, have organised infrastructure and operations into separate subsidiaries with a holding company structure.</p> <p>In Italy, in June 2000, state-owned monopoly Ferrovie dello Stato (FS) was transformed into a holding company, comprising an infrastructure manager (Rete Ferroviaria Italiana) and an operator responsible for freight and passenger services (Trenitalia).</p> <p>In the UK, the rail sector comprises an infrastructure manager (Network Rail, a publicly owned "arm's length central government body" since 1 September 2014); an independent economic and safety regulator (the Office of Rail and Road); and private railway companies providing passenger and freight services, the majority of which are subsidiaries of foreign public companies such as Deutsche Bahn, SNCF, and NS.</p>	

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Declaration of the Revolutionary Council No. 58	Clause 3(1) and Clause 4	Permits and authorisation	The conditions under which private companies can enter the market of rail transport services remain unclear. Pursuant to Clause 3(1) and Clause 4 of the Declaration of the Revolutionary Council No. 58, the railways are considered a "public amenities business", defined as a business that "may affect the safety and peace of the public". If a person wishes to conduct a business of this type, it must obtain permission from the Ministry of Transport, but the current declaration does not provide any details on the conditions for obtaining such permission. Private operators are currently involved in freight transport by rail through public-private partnership (PPP) projects.	The lack of clear conditions may result in discrimination or may discourage potential competitors from entering the market for the provision of freight transport services by rail.	<p>The declaration's objective is to control and supervise key public sectors, such as rail transport.</p> <p>SRT has confirmed that a new Rail Transport Act is currently under discussion and will most likely include an application procedure for private operators to obtain a rail transport service licence.</p> <p>Ongoing development projects for passenger rail transport will be implemented through a PPP model; for example, a high-speed train project that is part of the Eastern Economic Corridor (EEC) policy, which will connect three airports: Don Muang, Suvarnabhumi and U-Tapao. There are also ongoing projects for freight services. For instance, since 2018, Thailand has been discussing with Japan a potential joint investment to build a high-speed railway connecting Bangkok to Chiang Mai, although it seems that such talks are still ongoing</p> <p><u>International comparison</u></p> <p>A country-by-country analysis in EU member states shows that the first EU countries to reform their railways by introducing competition in the rail freight transport sector recorded the largest increases in volume between 1995 and 2004: UK (70%), Netherlands (67%), and Austria (36%).</p>	Clarify the conditions for obtaining permission to operate freight transport services by rail. Such conditions should be clearly laid down in law. The OECD supports the initiative of a new law providing for clear, transparent and non-discriminatory conditions for private operators to obtain a rail transport service licence.

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Rail and Highway Management Act, B.E. 2464, as amended in the Rail and Highway Management Act B.E. 2464 (No. 5), B.E. 2477	Art. 51, 55	Liability	Thai law sets limits for the liability of a carrier in case of loss or damage to transported items (e.g. THB 100 maximum liability for a parcel). Contracting parties can, however, agree on different liability limitations.	This provision significantly limits a carrier's legal liability in the case of loss or damage to transported items, discouraging freight transport by rail. Generally, it may also put rail transport at a competitive disadvantage and distort competition with other modes of transport with different liability limitations (see, for example, Multimodal Transport Act, B.E. 2548).	This provision aims to avoid overly burdensome liabilities imposed on SRT. SRT also confirmed that liability limits on carriers are common, and are seen in road transportation (1956 Convention on the Contract for the International Carriage of Goods by Road), air transportation (1923 Warsaw Convention and 1999 Montreal Convention), or maritime transportation (1978 United Nations Convention on the Carriage of Goods by Sea).	No recommendation.
State Railway Act of Thailand B.E. 2497	Art. 13	Protection of assets	The assets of the State Railway of Thailand are not subject to legal execution. This refers both to the vehicles and the infrastructure for providing freight transport services by rail.	This may give an advantage to the State Railway compared to companies providing other transport services, whose assets may be subject to execution in case of breach of contract.	This provisions likely aims to avoid essential facilities (such as rails and stations) being seized in case of non-fulfilment of an obligation, which would deprive the State Railway of Thailand of certain necessary assets for providing transport services. The State Railway of Thailand also confirmed that this provision aims at avoiding that a public service such as railway transport being disrupted.	No recommendation.

Freight forwarding

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policy makers' objective	Recommendations
Land Transport Act, B.E. 2522 (1979) as amended until Land Transport Act, (No.13) B.E. 2557 (2014)	Art. 19	Land freight-forwarding	The number of transport managers for the Bangkok area is fixed by decisions of general application issued by the Central Land Transport Control Board and published in the Government Gazette. Transport managers are defined by law as operators who arrange, under their responsibility, freight transport for another person with a transport provider. According to market participants, no licence has been issued since this act was passed, meaning that freight forwarders are currently operating unlicensed.	The power to establish quotas of freight forwarders might limit new entrants' access to the market.	<p>This provision aims to ensure the quality of freight-forwarding services by avoiding an oversupply of operators, which could, in the legislator's view, result in a reduction in quality. Limiting the number of service providers may also facilitate supervision by public authorities in order to improve quality.</p> <p><u>International comparison</u></p> <p>In many EU countries, there are no specific licensing requirements to operate as a freight forwarder.</p> <p>In Germany, no specific registration is needed to be a freight forwarder and newly established companies only need to announce their creation to the local authority.</p> <p>In the Netherlands, an operator must register as a company or independent with a chamber of commerce, but no specific freight-forwarder registration is required.</p> <p>In the UK, no specific registration as a freight forwarder is needed; operators must simply register as a company with Companies House.</p>	The OECD recommends removing the Central Land Transport Control Board's power to set the number of freight forwarders.
Land Transport Act, B.E. 2522 (1979) as amended until Land Transport Act, (No.13) B.E. 2557 (2014)	Art. 66	Land freight forwarding	<p>The licence needed to operate as a road freight forwarder contains restrictions on the "locality where freight forwarding takes place" and the rates of freight-forwarding charges.</p> <p>The provision suggests that the Central Registrar, with the approval of the Central Land Transport Control Board, has the power to set conditions in the licence</p>	<p>This provision on suitable localities for operating as a road freight forwarder may raise geographical barriers for the provision of services, and so reduce the number of competing suppliers.</p> <p>The power to set the rates of freight forwarders' charges may</p>	<p>This provision aims to protect consumers against excessive prices and prevent suppliers being driven out from the market by excessively low prices. Also, it aims to avoid a concentration of freight forwarders in certain, more profitable areas to the detriment of others.</p> <p><u>International comparison</u></p> <p>The OECD has already observed in</p>	The OECD recommends removing the power to dictate a freight forwarder's business locality and rates; this should be left to market participants. Any excessive rise in market prices or emergence of an overly concentrated market could act as a red flag for the competition authority to

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policy makers' objective	Recommendations
			<p>including tariffs or fees, location or area of operation, and office location. The wording of this provision suggests that fixed, minimum or maximum tariffs could be introduced.</p> <p>According to market participants, however, no application and no licence has been issued since this act was passed, so in practice, no conditions are imposed because regulations pursuant to Article 65 on rules and procedures for authorisation of transport managers have never been issued.</p>	<p>restrict their ability to set prices, and so prevent them from offering discounts to gain market share or setting higher prices for premium products.</p> <p>Although this provision is not applied in practice, its presence may discourage potential competitors from entering the market or oblige them to bear the costs of verifying the applicable legal framework.</p>	<p>previous reports (see 2019 OECD's <i>Competition Assessment of Laws and Regulations in Tunisia</i>) that, faced with capped prices, freight forwarders may lower the quality of their services, or refrain from proposing innovative, high-quality services that could justify higher prices. It also considered that maximum prices can provide a focal point for providers to co-ordinate prices in the market.</p> <p>In many EU countries, there are no specific licensing requirements to operate as a freight forwarder.</p> <p>In Germany, no specific registration is needed to be a freight forwarder and newly established companies only need to announce their creation to the local authority.</p> <p>In the Netherlands, an operator must register as a company or independent with a chamber of commerce, but no specific freight-forwarder registration is required.</p> <p>In the UK, no specific registration as a freight forwarder is needed; operators must simply register as a company with Companies House.</p>	investigate.
Land Transport Act, B.E. 2522 (1979) as amended until Land Transport Act, (No.13) B.E. 2557 (2014)	Art. 67	Land freight-forwarding	A freight-forwarding licence holder for goods by road must make a security deposit with the Central Registrar or the Provincial Registrar as a performance guarantee for freight-forwarding contracts. To the best of the OECD's knowledge, in practice, no ministerial regulations with rules and procedures for authorisation of freight forwarders have been issued and the amount of this deposit has not been defined.	<p>Depending on its amount, the security deposit may constitute a barrier to entry, especially for SMEs.</p> <p>In practice, such amount has not been defined as the regulations have yet to be issued.</p>	<p>This provision aims to guarantee the performance of contracts signed by a freight forwarder.</p> <p><u>International comparison</u></p> <p>In Germany, freight forwarders do not have to make a security deposit, but do have an obligation to hold valid liability insurance.</p>	<p>The OECD recommends one of two options.</p> <p>1) Remove the requirement for a security deposit and instead require transport companies to buy insurance.</p> <p>2) Accept valid insurance as an alternative to a deposit to comply with this provision.</p>

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policy makers' objective	Recommendations
Multimodal Transport Act, B.E. 2548 (2005)	Art. 39	Licensing requirements	<p>Any person wishing to operate as a multimodal transporter needs to register with the director general of the Marine Department and must:</p> <ol style="list-style-type: none"> 1) be a limited company or public limited company incorporated under Thai laws and having its principal office in Thailand 2) have capital of not less than SDR 80 000, an amount set in the ASEAN Framework Agreement on Multimodal Transport (AFAMT) that derogates from the general requirement laid down in the Civil and Commercial Code for limited companies or public limited companies 3) availability of security for its liability under the contract of multimodal transport or for any other risk derived from the contract. 	The capital requirement of SDR 80 000 might be too high especially for smaller competitors.	<p>This provision aims to ensure that a company has enough capital to operate as a multimodal transporter, and protect consumers and creditors from risky and potentially insolvent businesses.</p> <p><u>International comparison</u></p> <p>General minimum capital requirements that depend on a company's legal form, rather than its sector, are common. In Germany, for instance, a limited liability company must make a bank deposit of at least EUR 12 000 when registering a new company.</p> <p>In its report <i>Doing Business 2014 – Why are minimum capital requirements a concern for entrepreneurs?</i>, the World Bank observed that, in general, minimum share capital is not an effective measure of a firm's ability to fulfil its debt and client service obligations. In particular, share capital is a measure of the investment of a firm's owners, and not the assets available to cover debts and operating costs. In the report, the World Bank concluded that minimum capital requirements protect neither consumers nor investors and that they are associated with reduced access to financing for small- and medium-sized enterprises and a lower number of new companies in the formal sector.</p> <p>Commercial bank guarantees and insurance contracts are a better instrument for managing counterparty risks, and should be the focus of any regulation seeking to promote a minimum level of business certainty for users.</p> <p>The World Bank also observed that minimum capital requirements, as often</p>	<p>The OECD recommends one of two options.</p> <ol style="list-style-type: none"> 1) Consider applying the general minimum capital requirements for commercial companies rather than a specific capital requirement for freight-forwarding activities. Since this requirement stems from Article 30(1)(d) of AFAMT, this may require amendments to the agreement. 2) Allow this capital requirement to be fulfilled by bank guarantees or insurance contracts.

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					<p>stipulated by the commercial code or company law, do not take into account variations in firms' economic activities, size or risks, and are thus of limited use for addressing default risks. Creditors prefer to rely on objective assessments of companies' commercial risks based on the analysis of financial statements, business plans and references, as many other factors can affect a firms' possibility of facing insolvency. Moreover, such requirements are particularly inefficient if firms are allowed to withdraw deposited funds soon after incorporation.</p> <p>The report states that, contrary to expectations, evidence has shown that minimum capital requirements do not help the recovery of investments, as they are negatively associated with creditor recovery rates. Credit recovery rates tend to be higher in economies without minimum capital requirements, which suggest that other alternative measures, such as efficient credit and collateral registries and enhanced corporate governance standards, are potentially more efficient in addressing such concerns. Moreover, minimum capital requirements have been found to be associated with higher levels of informality, and with firms operating without formal registrations for a longer period. They also tend to diminish firms' growth potential.</p> <p><u>Portugal:</u> In 2018, the OECD recommended that Portuguese authorities remove the minimum capital requirements imposed on freight forwarders and shipping agents in order to promote</p>	

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policy makers' objective	Recommendations
					market entry and operational efficiency. For freight transport by road, the OECD also recommended that any amount of required initial capital should be considered under the general rules for constituting a company (in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code) rather than under specific minimum capital requirements depending on the activity.	
Multimodal Transport Act, B.E. 2548 (2005)	Art. 44	Licensing requirements	In order to set up a new branch of a multimodal transporter (MTO), the registered business must file an application to the director general of the Marine Department who acts as registrar, or the competent officials authorised to perform as registrar, and must obtain specific permit for each new branch, in addition to its general authorisation to operate as an MTO. The registrar may grant permission for the branch "upon condition that it protects the interests of service users" and, as confirmed by the Marine Department, on condition that the new permit's expiry date is consistent with the company permit's expiry date. The fee to obtain a new permit is THB 500, ten times lower than the fee paid for the general permit. The Marine Department confirmed that no subsequent regulations have been issued concerning the definition of "protects the interests of consumers". No other conditions are laid down in the Multimodal Transport Act or in the ministerial regulations prescribing rules and procedures for applying for a branch-establishment licence and issuing a	Requiring a permit for each branch may unnecessarily raise costs and time of entry into new geographic markets. Also, the criterion concerning the protection of service users' interests is overly broad and difficult to assess in advance, and so may give the appointed registrar excessively wide discretionary powers which might lead to discrimination.	This provision aims to protect consumers by ensuring that each branch meet certain quality requirements. As confirmed by the Marine Department, the permit requirement for every branch also facilitates monitoring. Considering that there is no requirement to have a physical office wherever the company operates, however, the permit requirement for opening a branch may seem contradictory. <u>International comparison</u> A certain number of ASEAN countries, including Malaysia and Brunei, do not require a permit for each branch.	Remove. The monitoring purpose can be achieved by, for instance, using reporting obligations already laid down in Article 52 of the Multimodal Transport Act, B.E. 2548 (2005).

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policy makers' objective	Recommendations
			branch licence for the operation of registered MTOs under Section 39(1) B.E. 2550. According to market participants, there is no legal requirement for MTOs to have a physical office in each place where they do business.			
Multimodal Transport Act, B.E. 2548 (2005)	Art. 8, para. 1	Other/liability	<p>Parties engaged in a multimodal transport contract cannot exonerate the multimodal transport operator (MTO) from liability. Any provision with this aim will be void.</p> <p>An MTO is defined by the law as a legal person who concludes a contract (multimodal transport contract) for the transport of goods by different means of transport and assumes responsibility for end-to-end transport in accordance with the contract's specific clauses.</p>	This provision may result in distorting competition between different means of freight transport since other means of transport or other freight-forwarders, such as land-based freight-forwarders, are permitted to agree on limitation of liability (see, for instance, Article 18, No. 11 on limitation of liability of carriers of goods by sea).	<p>This provision aims to ensure that a multimodal transport operator bears the risk of liability to create an incentive to carry out the transport of goods as carefully as possible. It also aims to avoid liability risk being passed on to customers by transferring the insurance costs to them. Finally, it aims to protect customers since, if none of the other transport operators used by an MTO is found liable for the damage occurred at a specific point along the transport chain, the MTO will be left liable. According to the Marine Department, this liability of last resort reduces the burden of service users to a great extent.</p> <p><u>International comparison</u></p> <p>Certain EU countries also provide for liability limitations for transport operators.</p> <p>In Germany, the German Commercial Code (HGB) provides that under carriage and forwarding contracts, an operator's liability is limited to SDR 8.33 a kilogramme unless the parties agree on a different limitation within the range of SDR 2 and SDR 40. Italian law also provides for liability limitations, depending on the mode of transport.</p>	No recommendation since derogations to the allocation of the liability burden are still possible between MTOs and transport service providers, although not in the contract between service users and MTOs.
Multimodal Transport Act, B.E. 2548 (2005)	Art. 43, para. 1	Other/capital requirement	Each multimodal transport operator (MTO) shall maintain minimum assets of not less than SDR 80 000 throughout the period of its operation, regardless of the size of the business. This requirement	The asset requirement of SDR 80 000 might be too high especially for smaller competitors.	This provision aims to ensure that an operator can fulfil its obligations (for example, in case of liability for damages) throughout the whole period of activity.	<p>The OECD recommends one of two options.</p> <p>1) Remove the freight-forwarder-specific requirement and apply general provisions depending on</p>

No. and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policy makers' objective	Recommendations
			stems from the 2005 ASEAN Framework Agreement on Multimodal Transport (AFAMT).		<u>International comparison</u> See above.	the type of company chosen (limited liability company or public limited liability company). Since this requirement stems from Article 30(1)(d) of AFAMT, this may require amendments to the agreement. 2) Allow the fulfilment of this requirement through bank guarantees or insurance contracts.
Multimodal Transport Act, B.E. 2548 (2005)	Art. 52	Other	A multimodal transport operator (MTO) must submit "a report of its operations to the registrar within the form, rules and time period prescribed and announced by the registrar". This report must contain general information on the MTO and its branches, as well as on quantity, weight, freight of imported and exported goods. The "form, rules and period" for submission are prescribed and announced by the registrar pursuant to the Marine Department Announcement No. 284/2558 regarding formulation of criteria and period for registered multimodal transport operators to submit reports on operations referred to under Section 52 of the Multimodal Transport Act. A registered MTO must submit an annual operations report by 31 March of the year following the relevant activities. The rules laid down in this announcement are of general application and apply to all MTOs equally. As confirmed by the Marine Department, there is a "simple report form" used for this purpose, which includes name and address of the MTO, total quantity of goods transported classified into import and export, and freight revenues.	Making such reports publicly available on a company-by-company basis could facilitate anticompetitive collusion or provide active cartel members with a mechanism to monitor compliance with the agreed anticompetitive conduct. Such reports appear to be sent only the registrar and not published.	This provision aims to ensure transparency and facilitate supervision of MTOs by public authorities. As confirmed by the Marine Department, it also allows for the compilation of relevant data and statistics that can be used for research purposes in improving and promoting multimodal transport in Thailand.	No recommendation. Reports are only addressed to the registrar and are not published. However, the administrative burden stemming from the reporting obligations should be kept to a minimum.

Warehouses

No. and title of Regulation	Article	Category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Customs Act, B.E. 2560 (2017)	Art. 107	Special permit required	<p>A bonded warehouse is an area where dutiable goods may be stored without being liable to duties.</p> <p>In order to hold cargo in bonded warehouses for longer than 30 days, permission is required. Yet, according to market participants, obtaining the documents needed to file the permission request usually takes longer than 30 days.</p>	The 30-day time limit for storing goods in bonded warehouses without permission may make it difficult or economically burdensome to import slow-moving items. Obtaining all required documents in this time frame may be difficult, which raises a barrier to entry for those businesses dealing with slow-moving items.	<p>This provision's likely policy objective is to ensure availability of space in bonded warehouses by limiting the time during which items can be stored.</p> <p><u>International comparison</u> In Singapore, goods can be kept in warehouses licensed by Singapore Customs for an indefinite period of time, without the need to pay duty and goods and services tax (GST). In other countries such as Turkey and Belgium, there is no time limit for storing goods in bonded warehouses. Certain countries, including Cambodia and Chinese Taipei, have a 2-year time limit.</p>	<p>Option 1: Increase the maximum duration of storage in a bonded warehouse without permission, e.g., up to one year in order to allow transport of slow-moving items.</p> <p>Option 2: Completely remove time limit for storage in bonded warehouses.</p> <p>Option 3: Introduce a specific licensing scheme similar to Singapore's, in which a whole or part of a warehouse is licensed by the customs authority to store goods tax-free for an indefinite period of time. Specific requirements for such licensed warehouses can be imposed, such as the obligation for a computerised system, approval procedures, and annual fees.</p>
Customs Act, B.E. 2560 (2017) and Notification of the Customs Department No. 44/2561 on rules and procedures and conditions concerning bonded warehouses	Art. 123 of the Customs Act. The OECD has been unable to find the specific provision of Notification No. 44/2561 (concerning maximum duration of 2 years for storing items in bonded warehouses)	Special permit required	Permission for storing goods in a bonded warehouse for more than 30 days can be obtained as noted above; however, goods cannot be stored in bonded warehouses for more than 2 years from the date of import. Only in the event of necessity can an importer request an extension of the storage period in the bonded warehouse of no more than 1 year. To do this, it must submit a time-extension request to the customs authorities supervising the warehouse.	The 2-year limit for storing goods in bonded warehouses may constitute a barrier to entry for businesses dealing with slow-moving items that may require storage for more than 2 years.	<p>This provision's likely policy objective is to ensure availability of space in bonded warehouses by limiting the time during which items can be stored.</p> <p><u>International comparison</u> As above.</p>	No recommendation. However, the government may consider lifting the time restriction in the future if sufficient warehouse space becomes available, following current investment in warehouse space.

No. and title of Regulation	Article	Category	Brief description of the potential obstacle	Harm to competition	Polymakers' objective	Recommendations
Land Code Promulgating Act, B.E. 2497, Chapter 8	Art. 86	Restrictions on acquiring land	<p>Foreign persons are not allowed to own land, with one exception relevant to the logistics sector: when a treaty exists between Thailand and the foreigner's country allowing a person to acquire land in Thailand, foreigners can then obtain permission from the Ministry of Interior "under the conditions and procedures prescribed in Ministerial Regulations" to acquire land.</p> <p>Pursuant to this provision, Article 1 of Ministerial Regulations (No. 8) B.E. 2497 provides that a foreigner who has purchased land must:</p> <ol style="list-style-type: none"> 1) use it for his or her own use 2) begin using the land for the specific declared business within 1 year of receiving official permission 3) receive approval from the Minister in order to sell or transfer such land. <p>To the best of the OECD's knowledge, until 1970, when all agreements were terminated, Thailand had treaties with 16 countries (United States, United Kingdom, Switzerland, Denmark, Germany, Norway, the Netherlands, France, Pakistan, India, Belgium, Sweden, Italy, Japan, Myanmar, and Portugal) to allow foreigners to own land in</p>	<p>This provision currently prevents foreigners buying land in order to open a business in Thailand.</p> <p>Even if there were a treaty with a country allowing foreigners to own land, there would remain specific obligations that would raise costs for foreigners compared to Thai operators. For instance, the obligation to start using the land for the specific purpose identified in the permission within one year of receiving official permission would constitute a barrier to entry as it would require making significant investments within this short time period. Also, the requirement to get ministry approval in order to transfer the land may raise a barrier to exit for foreigners.</p> <p>According to certain market participants, the prohibition on foreigners owning land is not a significant problem as most foreign companies are asset-light and usually have no intention of buying land as long as they can lease it for long periods.</p>	<p>The policy objective of this provision appears to be the exercise of stricter state control upon foreign entities than Thai entities. This provision aims to avoid speculation by foreigners by ensuring that, once land is acquired, any investment is made immediately and in accordance with the declared aims.</p> <p><u>International comparison</u></p> <p>In Malaysia, foreigners are generally allowed to acquire land, although certain specific restrictions apply, such as a prohibition purchasing certain Malay reserved land.</p> <p>In Australia, all foreign persons must receive approval for a proposed acquisition of vacant commercial land, regardless of the value of the land. Such acquisitions are normally approved subject to development conditions, such as the foreign investor must commence construction of the proposed development on the land within 5 years of the date of approval, and cannot sell the land until construction is complete.</p> <p>In France, there are no restrictions on foreign entities making real-estate investments. The compulsory filing of a foreign entity's real-estate investment with the French Ministry of Economy was removed in 2017.</p> <p>In Germany, foreigners are subject to the same requirements as local investors when purchasing land. Although the government has the power to impose restrictions on the acquisition of property by foreign corporate investors, where German companies are</p>	No recommendation as long leasing contracts are currently possible.

No. and title of Regulation	Article	Category	Brief description of the potential obstacle	Harm to competition	Polymakers' objective	Recommendations
			Thailand. There are currently no treaties in place allowing foreigners to acquire land in Thailand.		subject to similar restrictions in the investor's country, no such restrictions are currently in place.	
Land Code Promulgating Act, B.E. 2497, Chapter 8	Art. 89	Restrictions on acquiring land	In the currently non-existent case of reciprocal agreements that allow foreigners to own land, additional requirements still apply. After obtaining permission from the Ministry of Interior, a foreign buyer must use the purchased land for the specific purpose for which it applied for permission. If it wants to use the land for a different purpose, it must reapply for permission from the Ministry of Interior. Pursuant to Ministerial Regulations (No. 8) B.E. 2497, the conditions for granting such permission for a different use are the same as those for the initial permit. No weight is given to the fact that the foreign operator already holds a permission for the land, simply for a different use.	This provision may raise costs for foreign operators compared to national operators, especially costs of exit from the market. For instance, if the foreign operator wants to exit a specific transportation activity (i.e. trucking services) and change to a warehousing activity, it would need to acquire an additional permission in order to use the land for a different purpose.	It seems that the policy objective of this provision is to allow stricter state control upon foreign entities compared to Thai entities. <u>International comparison</u> In Germany, foreigners are subject to the same requirements as local investors when purchasing land. Although the government has the power to impose restrictions on the acquisition of property by foreign corporate investors, where German companies are subject to similar restrictions in the investor's country, no such restrictions are currently in place.	No recommendation.
Land Code Promulgating Act, B.E. 2497, Chapter 8	Art. 87	Restrictions on acquiring land	In the currently non-existent case of reciprocal agreements that allow foreigners to own land, Thai law imposes restrictions on the amount of land they may acquire. For business, acquisition is limited to 1 rai (1,600m ² or 0.16 hectares) and for industry to no more than 10 rais.	These limits may restrict foreigners' ability to provide certain services, such as warehousing, or to open a transportation business in Thailand of an appropriate (or desired) size and reach economies of scale.	The likely objective of this provision is to reserve land to Thai nationals and avoid acquisition of land by foreigners solely for speculation or real-estate investment purposes. <u>International comparison</u> In Australia, the acquisition of vacant commercial land is subject to a notification requirement, but there are no lists or restrictions on foreigners purchasing land,	No recommendation.

No. and title of Regulation	Article	Category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
					<p>as long as they comply with certain conditions (the foreign investor must commence construction of any proposed development within 5 years of the approval and cannot sell the land until construction is complete).</p> <p>In Germany, foreigners are subject to the same requirements as local investors when purchasing land. Although the government has the power to impose restrictions on the acquisition of property by foreign corporate investors, where German companies are subject to similar restrictions in the investor's country, no such restrictions are currently in place.</p>	
Investment Promotion Act, B.E. 2520, as amended by Investment Promotion Act (No.2) 2534 as amended by Investment Promotion Act (No. 3), B.E. 2544	Art. 27	Restrictions on acquiring land	<p>Besides the case above where there is an international agreement in place, there is a second case where foreigners are allowed to own land.</p> <p>Pursuant to the Investment Promotion Act, B.E. 2520, foreigners can own land if the following conditions are fulfilled:</p> <p>1) the business is included among those promoted by the Board of Investment (BOI) of Thailand, an agency under the Prime Minister's office whose mission is to promote foreign investment in Thailand by providing information, services, and incentives to interested foreign investors</p> <p>2) their investment project is approved by the BOI.</p> <p>The following logistics-specific activities are included among the</p>	<p>This provision allows foreigners to buy land only in specific circumstances. For other logistics activities (e.g. loading-unloading activities other than for cargo ships, containerized transportation), foreigners are not allowed to own land.</p> <p>This prevents them from providing certain logistics services and may make it more difficult and expensive, as they will need to find alternative solutions (e.g. leasing the necessary land).</p>	<p>The likely objective of this provision is to reserve land to Thai nationals and avoid land acquisition by foreigners solely for speculation or real-estate investment purposes.</p> <p><u>International comparison</u></p> <p>In Australia, the acquisition of vacant commercial land is subject to a notification requirement, but there are no lists or restrictions on foreigners purchasing land, as long as they comply with certain conditions, such as the foreign investor must commence construction of the proposed development on the land within 5 years of the date of approval, and cannot sell the land until construction is complete</p> <p>In France, there are no restrictions on foreign entities making real-estate investments. The compulsory filing of a foreign entity's real-estate investment with the French Ministry of Economy was removed in 2017.</p>	No recommendation as long leasing contracts are currently possible..

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			<p>promoted businesses (as per https://www.boj.go.th/upload/section7_en_wt_link.pdf):</p> <ol style="list-style-type: none"> 1) logistics distribution centres 2) loading-unloading facilities for cargo ships 3) transportation of bulk goods by rail, sea and air. 4) logistics parks 5) transportation services for medical equipment by sea, and air. <p>Foreigners wishing to acquire land to operate the above-mentioned logistics-specific activities may apply for land ownership by submitting the appropriate forms to the BOI. Once the land acquisition is approved, the BOI will send a letter of approval to the applicant and notify the Department of Land or the provincial governor.</p> <p>Foreigners are not allowed to own land under this provision for logistics activities other than those specified.</p>		In Germany, foreigners are subject to the same requirements as local investors when purchasing land. Although the government has the power to impose restrictions on the acquisition of property by foreign corporate investors, where German companies are subject to similar restrictions in the investor's country, no such restrictions are currently in place.	
Civil and Commercial Code B.E. 2535 (1992)	Art. 540	Restrictions of number of years for leasing land	<p>Logistics service providers can only acquire land in the above mentioned limited circumstances, but are allowed to lease land.</p> <p>Pursuant to the Civil and Commercial Code, however, leases of immovable property (including leases for commercial and industrial purposes) cannot exceed 30 years. This limit applies both to Thai and non-Thai</p>	<p>The general limitation of up to 30 years or the specific limitation of 50 years for commercial and industrial leases, and the uncertainty about renewal may prevent investments in specific activities, such as warehouses. These activities may indeed require longer periods to recoup investments. However, although this provision may impose legal constraints on the negotiations of commercial terms</p>	<p>The likely policy objective of this provision is to avoid land occupation by the same tenant for overly extended periods, and so ensure that land becomes available again for other uses after a set period.</p> <p>Furthermore, this provision aims to avoid circumvention of the specific provisions prohibition land purchase.</p> <p>In the special economic zone of the Eastern Economic Corridor, a bill is under discussion to extend this time limit to 50</p>	<p>No recommendation as the OECD considers such duration as generally sufficient to allow recouping investments and Thai law already provides for the possibility to renew leasing contracts. options.</p>

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			<p>nationals (outside the Eastern Economic Corridor, which is a special economic zone).</p> <p>The Rental of Immovable Property of Commerce and Industry Act, B.E. 2542 introduces an exception to the general duration limit of 30 years and increases leasing contracts for commercial and industrial purposes to up to 50 years. Section 5 of the Act provides that the categories of commerce or industry that qualify for the extended lease will be set out in ministerial regulations. To the best of the OECD's knowledge, no such regulations have been put in place.</p> <p>According to market participants, leasers have no certainty as to whether a lease will be renewed after 30 years.</p>	<p>between lessors and lessees, the OECD considers that this is generally a sufficient period to allow recouping investments, unless there are specific circumstances. In the latter case, parties can renew the leasing contract pursuant to the current formulation of Article 540 of the Civil and Commercial Code B.E. 2535.</p>	<p>years, renewable for 49 years, for 99-year total leases (Eastern Economic Corridor Act, B.E. 2561, 2018).</p> <p><u>International comparison</u></p> <p>In Germany, contractual lease provisions, including duration, are freely negotiated and contracting parties can freely negotiate the length of leases. If a lease exceeds 30 years, each party can terminate the contract by giving notice to the other party after the 30-year period has elapsed.</p>	
Rental of immovable property for commerce and industry Act B.E. 2542	Art.3-4	Restrictions of number of years for leasing land	<p>Articles 3 and 4 of the Rental of Immovable Property for Commerce and Industry Act, B.E. 2542, introduce an exception to the 30-year maximum duration of leases. They state that a lease for real estate for commercial and industrial purposes can last more than 30 years, although no longer than 50 years. Once the lease term expires, the tenant and the leaser may agree to renew it, but such renewal period cannot exceed 50 years from the date of the renewed agreement.</p>	<p>This limited time for leases and the uncertainty about renewal may prevent investments in warehouses that may require longer periods to recoup investments. This may amount to raising a barrier to entry for such activities.</p>	<p>This provision aims to ensure more stability of leases by introducing an exception to the general limitation of 30 years for commercial and industrial property. In the legislator's view, such longer periods should allow the use of leasehold rights as collateral for the payment of mortgages.</p> <p><u>International comparison</u></p> <p>As above.</p>	As above.

No. and title of Regulation	Article	Category	Brief description of the potential obstacle	Harm to competition	Policy-makers' objective	Recommendations
Customs Act, B.E. 2560 (2017)	Art. 152	Free-trade zones	<p>Thai law provides for several free-trade zones where foreigners can register their companies, while enjoying certain derogations from the law (e.g. full foreign ownership, tax incentives, simpler registration procedures). For customs purposes, a company registered in such a zone can import raw materials, and manufacture and export the finished goods out of Thailand without paying any national duties and taxes. The purpose of such zones is to attract foreign direct investment and increase Thailand's international competitiveness.</p> <p>When goods are only in transit through Thailand (e.g. because they are being transported from a free-trade zone in Thailand to a foreign country) or are transported between different customs areas, they must travel in a sealed truck without the presence of other goods. This makes it impossible to load into the same vehicle other goods destined for export from other customs areas, or to load goods for the national market together with goods destined to export, unless all goods are formally imported into Thailand (with custom fees paid to allow the removal of the seals) and then re-loaded on the truck. Also, goods destined for different types of customs-free zones cannot be moved in the same vehicle unless</p>	<p>This provision makes the costs of distribution to other ASEAN member states through Thailand or from a hub in Thailand expensive and burdensome, making such hubs in Thailand uncompetitive in international comparison. Also, unless goods are formally imported into Thailand, it is impossible to load onto the same truck different types of goods (e.g., goods in transit and goods for import, or goods in transit loaded in different customs areas), which again increases costs for national and international transport.</p>	<p>This provision aims to stop goods destined for the national market avoiding taxes and duties.</p> <p><u>International comparison</u></p> <p>In the EU, companies involved in customs-related operations that meet certain criteria and work in close co-operation with customs authorities are entitled to certain benefits, after formally obtaining authorised economic operator (AEO) status. Such benefits include, for instance, simplified customs procedures, recognition as a safe and secure business partner, and lower inspection costs. Operators with an authorisation become trusted partners for customs authorities and are subject to fewer inspections, increasing the speed at which goods circulate and so reducing transport costs. This system benefits customs authorities as it allows them to save resources and target inspections on unknown and potentially unsafe operators. The Canada Border Services Agency (CBSA) requires the seal on bonded goods to be applied either to the trailer or to the container, rather than only to the whole vehicle.</p> <p>Another possible solution for cross-border transport is the ASEAN Customs Transit System (ACTS). Under this system, ASEAN goods vehicles can move across ASEAN countries with bonded goods as long as they comply with certain requirements. In particular, the transport vehicle must have a compartment constructed and equipped in such a manner as to be sealed so that no goods can be removed from or introduced into</p>	<p>Consider allowing the sealing of specific containers and remove the provision whereby the bonded cargo load must be alone in a sealed truck.</p> <p>The OECD understands that loading bonded and non-bonded cargo into the same truck may create difficulties in identifying the bonded cargo. There are, however, ways to address this issue. For instance, to reduce the issue of identifying bonded cargo, Thailand could adopt an AEO system comparable to the one adopted in the EU. The AEO licence would be granted to those operators whose vehicles had a specific, separate and sealable compartment. Such AEOs would be recognised as secure trusted operators and be allowed to remove, trans-ship and load bonded cargo on condition that it arrives at specified customs areas complete and in good order. Consolidation and de-consolidation on trucks within bonded customs areas by AEOs would be allowed. In case of non-compliance, the AEO accreditation would be withdrawn. The OECD supports Thailand's efforts on ACTS.</p>

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			<p>they are formally imported into Thailand.</p> <p>In practice, according to market participants, this makes the consolidation of several shipments into one economical load impossible.</p>		<p>the sealed part.</p> <p>ACTS, according to ASEAN, is a "computerized customs transit management system available to operators who move goods across borders without paying the required duties and taxes otherwise due when the goods enter (or leave) the country thus requiring only one (final) Customs formality. It offers an administratively simple and cost advantageous procedure to carry goods across Customs territories outside the normal import and export Customs regimes".</p> <p>Thai customs authorities confirm that participating ASEAN members states – Cambodia, Laos, Malaysia, Singapore, Thailand and Vietnam – with the support of the European Union's ARISE Plus programme, are currently preparing to take ACTS live in April 2020. Testing of ACTS with all 6 participating countries is scheduled to begin in early January 2020.</p>	

Small-package delivery services

No. and title of Regulation	Article	Category	Brief description of the potential obstacle	Harm to competition	Policymaker's objective	Recommendations
Postal Act B.E. 2477	Art. 6	Broad definition of monopoly	<p>Thailand Post or ThaiPost has a monopoly over postal services (collection, delivery or handling of letters and postcards).</p> <p>This provision defines the monopoly broadly as also encompassing market segments that usually lie outside the scope of the universal-service obligation – which requires delivery of letters for five days a week at affordable, geographically uniform prices throughout the country – and are open to competition in other countries.</p> <p>For instance, letters fall within this legal monopoly but, unlike other countries, such as Australia, “letter” includes items of up to 2 kilogrammes with no further specification, such as size, and so could encompass small parcels. See Section 1(10) of the Postal Service Act in which “parcels containing goods” seem to fall within the legal monopoly.</p> <p>Currently, private delivery operators such as DHL are providing certain services that fall within this broadly defined legal monopoly, but must pay monthly fines for breaching the monopoly (THB 20 for each letter and postcard delivered from abroad to an addressee in Thailand). Such fines are generally factored in as a cost of doing business.</p>	The broadly defined monopoly granted to ThaiPost may constitute a barrier to entry for potential competitors, and limit the number of service providers to those that comply with universal-service obligations.	<p><u>International comparison</u></p> <p>The European Commission's policy on postal services encourages governments to reduce the scope of monopolies granted to postal operators. It therefore pushes member states to review their regulations and introduce more competition.</p> <p>In France, the government put an end to the La Poste's last existing monopoly (letters under 50 grammes), and the market is now fully open to competition for any item. La Poste is still obliged to provide universal service, and the state provides compensation for the costs associated with universal-service obligations, mainly funded by a tax on other service providers.</p> <p>Similarly, in Germany, although the monopoly has been lifted following EU directives, the 2014 Postal Universal Service Ordinance law (Post-Universaldienstleistungsverordnung, PUDLV) provides that the following falls within the universal postal obligation: “the conveyance of letter items [...] provided their weight does not exceed 2,000 grammes and their dimensions do not exceed those laid down in the Universal Postal Convention and its Detailed Regulations.”</p> <p>In Sweden, Posten AB's postal monopoly was removed and the postal market liberalised in 1993. In 2007, the regulator conducted a study on the liberalised market and concluded that the company's service quality improved as a result of growing competition. It also found that new products had been developed and delays had been reduced.</p> <p>In Australia, the market is open to any business for most postal services, except letters for which state-owned Australia Post has a monopoly. By contrast, the parcel market is competitive and there is no monopoly of parcel services.</p>	<p>Option 1: clarify the boundaries of ThaiPost's monopoly to exclude express mail and parcels/small-package delivery services. This could be done, for instance, by defining more precisely what falls within the description of “letter”;</p> <p>Option 2: lift ThaiPost's monopoly on letters and parcels and introduce a mechanism to compensate it for the additional costs stemming from the universal service obligation.</p>

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Market participants alerted the OECD of this potential barrier, but the precise legislation involved has not been identified.	-	Approval process	<p>The specific cases for which ThaiPost is required to seek the approval of the Ministry of Digital Economy and Society (MDES) in setting the rates of its services to the general public are not clearly defined. It would appear that such an approval requirement also applies to those segments of the market that are not subject to a legal monopoly and in which ThaiPost competes with private operators. Also, the law does not fix the procedure and criteria that the MDES must follow when granting approval of the rates.</p> <p>By contrast, certain market participants reported that the need to seek approval only applies to those services falling within the legal monopoly, while for the remainder, ThaiPost is free to set its own prices.</p> <p>Indeed, market participants confirmed that ThaiPost freely negotiates prices on a case-by-case basis with larger customers, depending on the volumes and other business considerations.</p> <p>The OECD has been unable to determine the actual situation in practice.</p>	By depriving it of the necessary flexibility to adjust to market dynamics and compete with private operators, this approval requirement might hinder ThaiPost's market competitiveness.	The objective of this provision is to avoid ThaiPost charging inflated prices. The approval process may also stem from internal government requirements that applying to SOEs, such as ThaiPost.	No recommendation.

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Trade Competition Act, B.E. 2560 (2017)	Art. 4(2)	Exclusion from Competition Act	The 2017 Thai Competition Act excludes from its scope of application SOEs and other public organisations or government agencies that conduct their business according to the law or cabinet resolutions (adopted by the group of government ministers) and which are necessary for the interest of society or the provision of public utilities. Due to the broad wording of this provision, ThaiPost's letter business could be exempted from competition law as the postal business may be considered a public-interest activity. This could theoretically lead to ThaiPost implementing anticompetitive practices, such as abusive bundling of mail delivery (a legal monopoly) with small-package delivery (open to competition with private operators).	Although this exemption is less broad than the formulation in the previous competition act (that exempted all SOEs), it is still extremely broad. If this provision is interpreted as exempting ThaiPost's business from competition with private operators, this may allow ThaiPost to implement anticompetitive practices.	<p>To create more clarification regarding the exemption criteria, OTCC confirmed that it might consider issuing guidelines on the assessment of the benefit of maintaining national security, public interest, the interests of society or the provision of public utilities.</p> <p><u>International comparison</u> <u>Belgium</u>: In 2001, the European Commission found that Belgian SOE De Post-La Poste abused its dominant position by offering a preferential tariff for general letter mail service subject to the acceptance of a supplementary contract covering a new B2B mail service (case IP/01/1738). In similar cases of dominant companies, the European Commission has not generally intervened if the price remains above costs and there is no cross-subsidisation between the monopolised products and those facing competition.</p>	Exclusions from the scope of competition law should be clearly defined. This may be done, for instance, by providing a list of such exceptional exclusions in an implementing act, such as ministerial regulations or OTCC guidelines. Also, exemptions should be based on an independent OTCC assessment. The OECD also supports the OTCC's plan to issue guidelines on how it will assess national security, public interest, and the interests of society in the provision of public utilities when granting an exemption.
Foreign Business Act, B.E. 2542 (1999)	Art. 4-5	FDI restriction	Pursuant to the general rules in the 1999 Foreign Business Act (FBA), foreigners can hold up to a 49% share in courier companies. Above this threshold, a foreign business licence (FBL) is required. In practice, it is almost impossible to obtain a FBL as Thai operators are already providing similar courier services, meaning foreigners need to create Thai majority-owned joint ventures or other legal vehicles in order to operate lawfully in Thailand.	This provision restricts market access for foreign postal and courier service providers.	<p>The overall purpose of the FBA is to screen foreign investments that may affect the safety or security of the country, such as those involving armaments and firearms for military use. Other activities not directly affecting safety and security appear to be included in the FBA to protect national suppliers from international competition when they are not deemed to be ready to compete or when the competent authorities consider enough national suppliers exist.</p> <p><u>International comparison</u> Among ASEAN member states, Cambodia, Lao PDR, the Philippines, Singapore and Viet Nam committed under the ninth commitment package of the ASEAN Framework Agreement on Services (AFAS) to allow up to 100% foreign ownership in courier services.</p>	<p>Option 1: progressively relax foreign-equity limits towards a long-term goal of up to 100% foreign ownership without any specific foreigners-only licence being required.</p> <p>Option 2: relax foreign-equity limits on a reciprocal basis, for nationals of those countries that allow Thai nationals to hold a 100% share in a company.</p> <p>Option 3: allow 100% ownership and consider introducing a screening system for certain foreign direct investments, for example, those that go beyond a certain value threshold (such as is the case in Australia) or when they affect certain sensitive sectors.</p>

Horizontal

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Foreign Business Act, B.E. 2542 (1999)	Art. 4-5	Restrictions on investment, foreign ownership of companies	<p>Foreigners (as defined by the law) need a foreign business licence (FBL) in order to operate in Thailand.</p> <p>Depending on the business activity, an FBL is granted by the Minister of Commerce, the director general of the Department of Business Development or any person appointed by the Minister.</p> <p>Thai law provides a definition of foreigners who need to obtain an FBL in order to operate in Thailand: 1) a natural person of non-Thai nationality, or 2) a legal person whose capital shares are more than 49% held by natural persons of non-Thai nationality or legal persons not registered in Thailand.</p> <p>To grant the FBL, the competent authorities take into account different elements, including the country's economic and social development, local employment, consumer protection, and the size of the proposed undertakings.</p> <p>These criteria for granting the FBL are in principle transparent. However, in practice, it seems that the decision is qualitative in nature and based on an ad hoc assessment.</p> <p>The Department of Business Development provides data on the number of FBLs issued under the</p>	<p>This provision imposing specific requirements for foreigners wishing to operate in Thailand may constitute a barrier to entry and discourage foreign investment.</p> <p>The legal criteria for granting a FBL may lead to a "public interest assessment" of entry by foreigners, meaning that an FBL will be granted only when the competent authorities consider that there are no sufficient national suppliers of the same service in Thailand. In practice, this may result in protecting national service providers from competition by international companies, and so reduce the number of active suppliers.</p> <p>The legal criteria are broad and give significant discretion to the competent authorities responsible for issuing FBL. Such discretion may lead to discrimination against foreigners and so result in certain being prevented from entering the market, for example, due to their size or on the grounds that their entry would be contrary to Thailand's economic development. It may also raise costs of entry.</p> <p>In practice, these criteria appear to make it almost impossible for foreigners to obtain a FBL when the same services are provided by national suppliers. Generally, FBLs</p>	<p>The overall purpose of the Foreign Business Act is to screen foreign investments that may affect the safety or security of the country, for example, involving armaments and firearms for military use. It seems, however, that other activities not directly affecting safety and security are included in the act for the purpose of protecting national suppliers from international competition. Indeed, the Department of Business Development confirmed that the FBL is intended to "protect Thai business operations that are not ready to compete with foreign businesses" in order to "fully and genuinely strengthen our economy, before Thailand opens itself to the free market".</p> <p>In terms of restrictions on foreign investments, the 1995 ASEAN Framework Agreement on Services (AFAS) provides for the legal framework of each member state to progressively liberalise services and aims to eliminate substantially restrictions to trade in services among ASEAN countries. The objective is to allow ASEAN nationals to hold up to 70% equity participation in entities providing services.</p> <p>Thailand has not yet implemented the liberalisation commitments regarding logistics. In the Southeast Asia Investment Policy Review (2018), the</p>	<p>Option 1: progressively relax foreign equity limits with the long-term goal of allowing up to 100% foreign ownership without any specific licence being required. A first step may be to implement the agreed changes towards the AFAS target of 70% ASEAN foreign-ownership in entities providing logistics services and then applying and extending it to non-ASEAN nationals. In the long term, Thailand may consider full liberalisation by allowing 100% foreign-ownership in entities providing logistics services.</p> <p>Option 2: Relax foreign equity limits on a reciprocal basis for nationals of those countries that allow Thai nationals to hold 100% shares in a company.</p> <p>Option 3: Allow 100% ownership and consider introducing a screening system of certain foreign direct investments, for example when the investment goes beyond a certain value threshold (as in Australia) or when it affects certain sensitive sectors.</p> <p>Before implementing any of these recommendations, the government may consider conducting additional studies to assess the impact on Thai businesses and consumers.</p>

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			Foreign Business Act between March 2000 and December 2017. In its Southeast Asia Investment Policy Review (2018), the OECD observes that six ASEAN countries (including Thailand) are highly restrictive and "are now among the top ten most restrictive countries for FDI among the over 60 economies currently covered by the Index".	are granted for in-house services and services provided to state-owned enterprises (SOEs) under a specific contract or concession. Data from the Department of Business Development show that the number of FBLs issued under the Foreign Business Act between March 2000 and December 2017 was limited. In this data, FBL for transport services are included in the much broader category of "service business" for which the total number of FBL issued in that 18-year period was just 2 298. As a consequence of these difficulties, if foreigners wish to operate in Thailand, they are obliged to come up with alternative solutions, such as minority-participation partnerships with Thai companies or appointing Thai nominees.	<p>OECD observes that: "AFAS negotiations, for instance, have mostly failed to meet goals stipulated up-front within the approved timelines. To some extent, they failed even to bring greater transparency and clarification to the process as demonstrated by how challenging it can be to access the latest AFAS schedules." It shares the view of the World Bank that AFAS "has not resulted in significant additional liberalization on the ground".</p> <p><u>International comparison</u> <u>Australia:</u> A foreign company wishing to conduct business in Australia must register with the Australian Securities and Investments Commission (ASIC). This is a procedural requirement to obtain a business name and number (Australian Business Number, ABN). Approval of foreign investment is necessary when foreigners acquire at least a 20% interest in an Australian entity whose value is above AUD 261 million. This threshold applies to the transport sector without exceptions – even when there is an FTA – since transport is considered as a sensitive business. The Treasurer of Australia (the minister responsible for government expenditure) has the power to prohibit an investment if satisfied it would be contrary to the national interest. Government policy, however, is that the "general presumption is that foreign</p>	

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					investment is beneficial, given the important role it plays in Australia's economy". <u>Singapore</u> : There are no restrictions on foreign ownership in Singapore and the regulatory framework offers a level playing field for foreign investors. Foreign investors are required neither to enter into joint ventures nor to cede management or control to local entities.	
Foreign Business Act, B.E. 2542 (1999)	Art. 8, No. (3)	Restrictions on investment, foreign ownership of companies	In addition to the limit of 49% foreign ownership of companies to obtain a foreign business licence, this provision includes additional conditions for obtaining a FBL for businesses included in List Three, an annex to the Foreign Business Act that lists "businesses in respect of which Thai nationals are not ready to compete with foreigners". For activities included on List Three, a foreigner is defined as a legal person whose shares are more than 49% held by non-Thai nationals. If such foreigners want to carry out one of the activities included under List Three, they will need a FBL from the director general of the Department of Business Development, as well as the approval of the Foreign Business Commission. The central criterion for granting a FBL for List Three activities is whether Thai nationals are ready to compete with foreigners. While List Three does not expressly	List Three is a "catch-all" list of businesses as it includes "other service businesses, with the exception of service businesses as prescribed in the Ministerial Regulation", and so possibly covers any service business provided by foreigners. As a consequence, foreigners providing any type of logistics service would possibly need a FBL, which would restrict their access to the market compared to Thai nationals. Also, the fact that a FBL is granted to foreigners only if the director general of the Department of Business Development or the Foreign Business Commission considers Thai businesses ready to compete with foreigners may result in a "public-interest assessment" that may lead to discrimination. This could result in foreigners being prevented entry into the market.	This provision likely aims to protect national businesses not ready to compete with foreigners in order to allow them to grow and reach a certain capacity level before the market is opened to foreigners. <u>International comparison</u> <u>Australia</u> : Australian companies not being ready to compete is not a factor taken into account in foreign-investment screening. Approval of foreign investment is necessary when foreigners acquire at least a 20% interest in an Australian entity whose value is above AUD 261 million. This threshold applies to the transport sector without exceptions – even when there is an FTA – since transport is considered as a sensitive business. The Australian government takes competition into account when foreign investments may result in an investor gaining control over market pricing and production of certain goods and services in Australia, or when it could lead to concentration	Option 1: Progressively remove logistics-specific items from List Three and open them up to majority foreign ownership. This might be done by using the procedure set out in Article 9 of the FBA, which provides for an annual review of List Three by means of a royal decree. Option 2: Relax foreign equity limits on a reciprocal basis for nationals of those countries that allow Thai nationals to hold 100% shares in a company. Option 3: Allow 100% ownership and consider introducing a screening system of certain foreign direct investments, for example, when the investment goes beyond a certain value threshold (as in Australia) or when it affects certain sensitive sectors. Any of these recommendations may be subject to national-security exceptions. Also, before implementing any of these recommendations, the government may consider conducting additional studies to assess the impact on Thai businesses and consumers.

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			<p>include logistics-specific businesses, it does refer to broad categories of businesses that may encompass logistics services and have an impact on them. In particular, the list includes "other service businesses, with the exception of service businesses as prescribed in the Ministerial Regulation". The OECD's ASEAN FDI Regulatory Restrictions Database would suggest that investments by foreigners in all services (including all surface transport services other than domestic land and water transport services included under List Two or services not explicitly subject to sector-specific legislation) are subject to approval under List Three.</p> <p>Ministerial regulations do exempt certain services from the obligation to obtain an FBL, but they do not refer to logistics services (they are mainly financial businesses, securities, trustees, services provided under a contract with an SOE). Generally, exempted services are those for which there are sector regulators or which have their own specific laws prescribing specific foreign-equity limits.</p>		that might distort competitive market outcomes, for instance by allowing "an investor to control the global supply of a product or service".	

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Foreign Business Act, B.E. 2542 (1999)	Art. 17, paras 1-2	Restrictions on investment, foreign ownership of companies	<p>Article 17 of the Foreign Business Act provides that the competent authorities shall process the FBL application within 60 days. However, this statutory limit can be extended by 60 additional days after expiry of the initial time period if a reasonable cause has prevented completion of the process. The initial time period only begins when the application is deemed complete and the presiding official issues a receipt of confirmation. Once approval is granted, the FBL shall be issued within 15 days of the approval date. According to market participants, the application process for a FBL can take months in practice and a large number of documents have to be compiled and collated.</p> <p>The Department of Business Development has published an Application Preparation Handbook Under the Foreign Business Act B.E. 2542, which lists the required documents and other details for submitting an application. The handbook also contains an example application.</p>	The complex and long application process may delay market entry for foreigners compared to nationals.	<p>The overall purpose of the Foreign Business Act is to screen foreign investment that may affect the safety or security of the country (such as armaments and firearms for military use). Other activities are included, however, in the Act to protect national suppliers from international competition when they are not deemed to be ready to compete or when the competent authorities consider there are enough national suppliers.</p> <p>The OECD received mixed messages from market participants as to the actual duration of the process. Certain market participants stressed that the time limit can and is often extended, while others stated that the Department of Business Development has never extended the time limit.</p> <p><u>International comparison</u> <u>Australia:</u> When a foreign investment is subject to an approval requirement, the treasurer has 30 days to consider the application and make a decision. This period can be extended by up to further 90 days, but an interim order must be published in the official gazette to this purpose.</p>	<p>Conditions for obtaining a FBL, as well as the average processing time, should be clarified in the Department of Business Development's Application Preparation Handbook. The OECD recommends that the Ministry of Commerce and Department of Business Development publish an annual report with statistics on average times for FBL issuance (including FBL for Lists Two and Three), as well as how often the time limit is extended by 60 days. Moreover, explanations should be provided for cases in which the initial deadline for issuing a FBL is not met. The OECD encourages the Ministry of Commerce and the Department of Business Development to pursue their efforts in reducing the time frame for issuing an FBL.</p> <p>The adoption of this recommendation would increase transparency and legal certainty, and so contribute to the encouragement of investments.</p>

No. and title of Regulation	Article	Category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Foreign Business Act, B.E. 2542 (1999)	Art. 14	Restrictions on investment, foreign ownership of companies	<p>Thai law provides for different minimum capital requirements for the same activities, depending on whether the activity is carried out by Thai nationals or foreigners. The World Bank defines the minimum paid-up capital requirements as the "amount that the entrepreneur needs to deposit in a bank or with a third party (for example, a notary) before registration or up to three months after incorporation".</p> <p>As a general rule, all foreign businesses, independently of their size, must have a minimum capital of THB 2 million to begin operating a business in Thailand (unless otherwise prescribed by Ministerial Regulation).</p> <p>Moreover, three lists of business activities listed as annexes to the Foreign Business Act provide for specific requirements applying only to foreigners. If the activity is included in one of these lists, the minimum capital requirement is even higher, namely THB 3 million. This is the case, for instance, for domestic land and water transportation services (included under List Two).</p> <p>Thai businesses that conduct the exact same activities are not subject to any minimum capital requirements.</p>	<p>This provision may constitute a barrier to entry especially for smaller companies, discourage potential new entrants, and reduce the number of participants over time.</p> <p>Also, as the higher minimum capital requirements do not apply to local businesses, they may result in discrimination between local and foreign businesses, although they carry out exactly the same activity.</p>	<p>The policy objective of this provision appears to be to ensure that foreigners investing in the country make a substantial commitment, demonstrated by the value of their investment.</p> <p>Generally, minimum capital requirements are implemented to protect consumers and creditors from risky and potentially insolvent businesses. By requiring investors to lock in a minimum amount of capital, investors are expected to be more cautious about undertaking commercial opportunities.</p> <p>It seems that the Ministry of Labour takes into account the amount of investment made by foreigners when granting work permits, which reflects this provision.</p> <p><u>International comparison</u> For an assessment by the World Bank and a comparison with other countries, see above under Freight-forwarding section.</p>	<p>Option 1: Consider the total lifting of minimum capital requirements.</p> <p>Option 2: Ensure that minimum capital requirements are the same for all businesses, irrespective of whether they are Thai or foreign entities. In order to comply with these capital requirements, bank guarantees or insurance contracts rather than cash or bond deposits should be accepted.</p> <p>Before implementing either of these recommendations, the government could consider conducting further studies of their impact on the Thai economy, businesses and competitiveness, as well as on consumers.</p>

No. and title of Regulation	Article	Category	Brief description of the potential obstacle	Harm to competition	Policymakers' objective	Recommendations
Foreign Business Act, B.E. 2542 (1999)	Art. 17(3) and 18	Restrictions on investment, foreign ownership of companies	<p>When granting a FBL to foreigners for activities on List Two annex of the Foreign Business Act (or the Director-General of the Department of Business Development for those activities included on List Three), the Ministry of Commerce may impose specific conditions, including:</p> <ol style="list-style-type: none"> 1) ratio of the capital to loans 2) number of foreign directors who must be domiciled or resident in Thailand 3) amount of minimum capital in the country 4) any other necessary conditions. <p>The law does not foresee that the Minister of Commerce or the director general of the Department of Business Development impose such additional conditions upon Thai nationals and in practice no specific conditions are applied to Thai companies.</p>	<p>The possibility of imposing additional conditions upon foreigners only for listed activities may discriminate against them, when compared to Thai nationals operating the same business sectors.</p> <p>Imposing such additional conditions may also discourage non-Thais from operating such listed businesses and eventually result in additional costs compared to national operators, so reducing the overall number of suppliers. For instance, taking into account the ratio of capital to loans may reduce foreigners' opportunities to invest in Thailand by limiting their access to loans.</p>	<p>The policy objective of this provision appears to be to allow stricter state control upon foreign entities than Thai entities.</p> <p><u>International comparison</u> <u>Australia:</u> Authorities can impose conditions on foreign investments when granting approval. This is only possible, however, when the investment proposal is subject to public screening and the Treasurer of Australia (the minister responsible for government expenditure), who is charged with granting the approval, considers that the investment proposal runs counter to the national interest. In such a case, it can impose conditions to safeguard the national interest.</p>	<p>Option 1: Treat foreigners and nationals alike, unless there are specific, exceptional circumstances that justify different treatment. Conditions should be based on the type of activity rather than the nationality of the operator in order to achieve legitimate policy objectives, such as the safety of transport of certain dangerous goods.</p> <p>Option 2: Make any possible imposition of conditions subject to strict requirements. Consider publishing guidelines describing which conditions can be imposed in which cases.</p> <p>Before implementing either of these recommendations, the government may consider conducting further studies on their impact on Thai economy, businesses and competitiveness, as well as on consumers.</p>

International agreements

No and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policy Maker's Objective/Objective justification	Recommendations
Memorandum of Understanding between the Royal Government of Cambodia and the Government of the Kingdom of Thailand on the Exchange of Traffic Rights for Cross Border Transport through the Poipet-Aranyaprathet Border Crossing Points (see https://tadb.unescap.org/KHM/bilat_KHM_THA_2008_eng.pdf)	Art. 9, lett. C	Cross-border transport	In order to transport cargo between Cambodia and Thailand a vehicle must obtain a licence and is only allowed to use specific routes. The number of licences that can be issued for non-scheduled passenger transportation and cargo transportation through the Aranyaprathet-Poipet border crossing point shall not exceed 40, based on the original agreement of 2008. However, Art. 9(6) provides that the number of licences will be discussed "from time to time" between the two parties to the agreement. As of 2018, the maximum number of licences is 150.	The establishment of a limited number of licences (40 for the first 12 months of the agreement, 150 at the moment, as of 2018) for transporting goods cross-border between Cambodia and Thailand limits access to the market and constitutes a barrier to entry. Such limitation is even more significant if one considers that the number of licences is very limited (150, both for passenger and cargo transportation vehicles). The consequence of this system is that, before crossing the border, cargo needs to be unloaded from one truck and be re-loaded on the licensed truck and this may result in additional costs for companies.	The likely objective of this provision seems to be the protection of national road transport service providers against competition from Cambodia and Thailand respectively. The World Bank and IRU's Guiding Principles for Practitioners and Policy Makers on "Road Freight Transport Services Reform" (p. 45) observes that "access to international markets is still largely dominated by quantitative restrictions. Despite quota limitations, bilateral agreements have played a crucial role in developing international road freight transport during decades. They supported the spectacular growth of export-import and transit operations as well as to a certain extent third-country road freight traffic. International organizations have done their utmost to harmonize these agreements, with mixed success. In order to maximize national reforms of the road transport sector, governments should overcome the drawbacks of bilateralism and quantitative restrictions."	Option 1: repeal this provision and grant a licence to all those that request it. Option 2: regularly assess market needs and demand, and consequently consider increasing the number of licences that can be issued. "From time to time" as per this provision should be further defined in order to ensure regular assessments.

No and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Harm to competition	Policy Maker's Objective/Objective justification	Recommendations
Memorandum of Understanding between Thailand and Myanmar (not signed yet, https://www.mekongeye.com/2018/07/13/cross-border-transport-agreement-makes-progress/)	E. Exchange of Traffic Rights	Cross-border transport	In order to transport cargo between Myanmar and Thailand, a licence will be required for every vehicle. The parties to the MoU have agreed to set a maximum number of licences that they can each issue (100 each). Such licences will be valid for one year but extension is possible.	The establishment of a limited number of licences (100 for each party to the MoU) for transporting goods cross-border between Myanmar and Thailand may limit access to the market and constitute a barrier to entry. Such limitation is even more significant if one considers that the number of permits is very limited (100 issued by each party) and their validity is also limited to one year. The consequence of this system may be that, before crossing the border, cargo will need to be unloaded from one truck and be re-loaded on the licensed truck. This may result in additional costs for companies	The likely objective of this provisions seems to be the protection of national road transport service providers against competition from Myanmar and Thailand respectively.	Option 1: repeal this provision and grant a licence to all those that request it. Option 2: regularly assess market needs and demand, and consequently consider increasing the number of licences than can be issued,

