

OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Viet Nam

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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 Competitive Neutrality Reviews: Small-Package Delivery Services in Viet Nam, undertaken within the framework of the ASEAN Competition Action Plan, assesses the impact of state-owned enterprises on competition in Viet Nam. The analysis focuses on small-package delivery services, a fundamental part of the logistics sector due to their important role in the rapidly growing e-commerce sector. In parallel, the OECD has assessed the impact of regulation on competition in the logistics sector in the OECD Competition Assessment Reviews: Logistics Sector in Viet Nam.

The OECD assessment was conducted in consultation with the Vietnamese authorities and with local stakeholders, with the support of the ASEAN Secretariat and the ASEAN Economic Reform Programme under the UK Foreign, Commonwealth & Development Office (UK Government). The assessment prioritises 68 pieces of legislation and identifies 26 regulatory barriers where changes could be made to foster competition in the small-package delivery services by levelling the playing field between public and private companies. This is especially important for Viet Nam, where the e-commerce sector is expected to grow at double-digit pace. This report offers policy recommendations that can help the Vietnamese government address structural and regulatory shortcomings in the small package delivery services sector.

These structural reforms have become even more pressing as the Vietnamese economy has been seriously impacted by COVID-19, while remains resilient. These policy recommendations contribute to reforms that can help the Vietnamese economy resume sustainable growth and job creation, by enhancing competitiveness, encouraging investment and stimulating productivity in the logistics service sector, with knock-on economy-wide effects and benefits for its consumers.

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

Greg Medcraft



Director, OECD Directorate for Financial and Enterprise Affairs

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- Central Institute for Economic Management
- Ministry of Finance
- Ministry of Information and Communications
- Vietnam eCommerce and Digital Economy Agency
- Vietnam Post Corporation.

The following stakeholders were also interviewed:

- DHL-VNPT Express Ltd
- State Capital Investment Corporation
- US-ASEAN Business Council
- Vietnam Association for Women Entrepreneurs
- Vietnam Chamber of Commerce and Industry
- Vietnam Association of Small and Medium Enterprises
- Vietnam Women Entrepreneurs Council.

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

Valuable comments throughout the process and on the final report were provided by Antonio Capobianco, Acting Head of the OECD Competition Division; and Hans Christiansen, Senior Economist; Sara Sultan, Policy Analyst; and Chung-a Park, Policy Analyst, all three from the OECD Corporate Affairs Division.

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

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

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

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

This report contributes to ACAP Outcome 4.2.1 (Impact of state-owned enterprises and government-linked monopolies on competition), building on a competitive neutrality assessment in the small-package delivery services sector.

The current report on Viet Nam is part of a series of 10 similar assessments (one for each ASEAN Member State).

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Abbreviations and acronyms

3PL	Third-party logistics
ACAP	ASEAN Competition Action Plan
AEC	ASEAN Economic Community
AEGC	ASEAN Expert Group on Competition
APEC	Asia-Pacific Economic Cooperation
ASC	Authorised service contractor
ASEAN	Association of Southeast Asian Nations
B2B	Business-to-business commerce
B2C	Business-to-consumer commerce
BIDV	Bank for Investment and Development of Vietnam
CIEM	Central Institute of Economic Management
CMSC	Committee for the Management of State Capital
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CPV	Communist Party of Vietnam
GLC	Government-linked company
GLM	Government-linked monopoly
GSO	General Statistical Office
ICT	Information and communications technology
iDEA	Viet Nam e-Commerce and Digital Economy Agency
MIC	Ministry of Information and Communications
NCC	National Competition Commission
OSP	Outside service providers
PSO	Public-service obligation
PUD	Pick-up and delivery
SCIC	State Capital Investment Corporation
SCIC	State Capital Investment Corporation
SEG	State economic group
SOE	State-owned enterprise
SPDS	Small-package delivery services
UPU	Universal Postal Union
USO	Universal-service obligations
VCCA	Vietnam Competition and Consumer Authority
VECITA	Viet Nam eCommerce and Information Technology Agency
VECOM	Vietnam E-Commerce Association
VNPT	Vietnam Posts and Telecommunications Group
WTO	World Trade Organization

Executive summary

State-owned enterprises and competition

Assessing the impact of SOEs on competition is important because competitive neutrality – state-owned and private businesses competing on a level playing field – ensures that all enterprises, public or private, domestic or foreign, face the same sets of rules. In order to ensure optimal economic outcomes, SOEs should compete against private entities on fair terms, while recognising and taking into account their contribution to socio-economic and policy objectives (OECD, 2015^[1]).

SOEs may enjoy rights or privileges unavailable to private competitors, which give them undue competitive advantage over their rivals, including selective subsidies, explicit or implicit loan guarantees, preferential purchasing, preferential standards, support for unnecessary new capacity, and regulatory or tax favouritism. This may make market entry more difficult for private companies (both domestic and foreign) and can therefore also constitute a competitive obstacle. However, SOEs may also be subject to certain duties, such as a requirement to operate (underfinanced) public services or the need to comply with civil-service labour rules, which affect their ability to compete effectively with privately owned competitors.

A level playing field between public and private market participants leads to more choice, higher quality and lower prices for consumers and ultimately benefits economic growth and development. For example, research has shown that financially disadvantaged consumers often suffer disproportionately from the exercise of market power (OECD, 2014^[2]). A level playing field also benefits taxpayers as (often limited) public resources can be better allocated to other public services, including pensions, healthcare and social benefits. Finally, research has shown that including gender considerations in competition policy can improve gender equality.¹

Vietnam Post and the small-package delivery services sector in Viet Nam

The shift from a centrally planned to a market-oriented economy has transformed Viet Nam into a lower middle-income country. A member of ASEAN since 1995, Viet Nam – located in the Greater Mekong sub-region – is now one of the most dynamic emerging countries in the area.

SOEs play an important role in the Vietnamese economy, including in the small-package delivery services sector, where Vietnam Post is designated as the public-service operator, in charge of universal-service obligations (also called public-service obligations (PSO)). A level playing field in the small-package delivery services sector is crucial for developing a competitive market, fulfilling the sector's potential and reaping full benefits from international developments.

The sector is regulated by a substantial body of legislation. The main pieces of legislation are Law No. 49/2010/QH13 on Post and Government Decree No. 47/2011/ND-CP Implementing the Law on Post, followed by a number of Ministerial Circulars.

Preventing the existence of a level playing field in the Vietnamese small-package delivery services sector are several obstacles that may harm competition, hinder the Vietnamese economy, and stop consumers from benefiting fully from a rapidly developing e-commerce market.

Some of these obstacles are linked to or affected by Vietnam Post's dual role of providing public services and competing in the highly competitive market for small-package delivery services. As has also been observed in many countries around the world, electronic communications are leading to drastic falls in the

volume of traditional letters and postcards in Viet Nam, increasing the commercial importance of small-package delivery services to the incumbent postal operator, Vietnam Post.

This situation is similar to many OECD countries in the late 1990s, when postal services were provided by monopoly operators and technological developments began to erode incumbent postal operators' core businesses, potentially threatening their ability to continue financing their social obligations such as universal service. These monopoly operators were mostly state-owned, protected from competition, and enjoyed certain benefits over their privately owned competitors. Since the 1990s, many OECD countries have addressed the issue of levelling the playing field between incumbent postal operators and private competitors also active in (contestable) commercial markets. In these countries, the postal sector was gradually opened to competition.

While there are different options to improve the level playing field in the small-package delivery services sector, it is important to note that the rights, privileges and duties (or advantages and disadvantages) of Vietnam Post are often interrelated and should therefore be looked at as a whole. Consequently, addressing the obstacles to competition in the small-package delivery services sector in Viet Nam requires a holistic approach. For instance, reversing or decreasing the rights and privileges of Vietnam Post should be accompanied by a clear reassessment of the impact of possible disadvantages resulting from Vietnam Post's PSO, including the compensation mechanism.

Key recommendations

This draft report identifies 26 recommendations that aim to improve the level playing field in the Vietnamese small-package delivery services sector. If fully implemented, these recommendations can be expected to generate significant benefits for the Vietnamese economy, and more broadly to ASEAN. Full implementation of the recommendations set out in this report can be expected to deliver positive long-term effects on employment, productivity and growth, and improve the ability of businesses to compete.

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

The main recommendations are:

1. Ensure that SOEs, such as Vietnam Post, which are required to perform non-commercial activities for government agencies and other public authorities, receive adequate compensation for these services.
2. Ensure that Vietnam Post complies with separate accounting obligations to avoid over-compensation for its delivery services to government agencies and to avoid cross-subsidisation of its commercial activities with state funds received to perform its PSO.
3. Ensure that agencies and line ministries responsible for policies in the SPDS sector, such as the Ministry of Information and Communications (MIC), perform their functions without (actual or perceived) favour or discrimination between businesses that are state owned or privately owned. A separation between the line ministry (MIC) and Vietnam Post can be achieved by transferring the shareholding in this SOE to the State Capital Investment Corporation (SCIC) or another such body, whose sole responsibility shall be to exercise ownership rights over the SOE.
4. Increase the independence of SOEs boards (members' councils) and limit excessive governmental intervention in SOE management.

5. Provide the Vietnam Competition and Consumer Authority (VCCA) with sufficient resources that it can assess conduct by SOEs operating in state-monopolised sectors that may have an impact on sectors open to competition, as well as allow it to carry out advocacy initiatives including in the field of competitive neutrality.
6. Assign land rights through competitive processes with the aim of maximising their value. If land rights are assigned to Vietnam Post, Viettel Post and other SOEs, rents and land levy should reflect market value.
7. Adopt a more commercial approach to state ownership by applying harder budget constraints. Investments from the state budget and extra-budgetary funds given to SOEs should be made under commercial terms and conditions that would be acceptable to a private investor. This objective can be achieved, for instance, by creating a degree of separation with state-owned investment funds or holding entities.
8. Refrain from providing state guarantees for SOEs' loans because this results in SOEs having access to preferential rates.
9. State-owned banks and other financial institutions should engage under commercial terms with SOEs, including Vietnam Post, requiring external financing: the granting of loans to SOEs should be subject to appropriate due diligence and to market interest rates.

1 Introduction

1.1. Scope of the report

State-owned enterprises (SOEs) play a significant role in Viet Nam as in many other national economies around the world. In order to ensure optimal economic outcomes, SOEs should compete with private entities on a level playing field, while recognising their contribution to socio-economic and policy objectives.

This report assesses the impact of state-owned enterprises on competition in Viet Nam, identifying the key advantages or disadvantages of state-owned enterprises when competing with private companies. The analysis focuses on the logistics sector, and more specifically on small-package delivery services. Efficient logistics can play a significant role in increasing a country's economic development by facilitating international trade and improving its competitiveness. Small-package delivery services are a fundamental part of the logistics sector due to their important role in the rapidly growing e-commerce sector.

1.2. The impact of COVID-19 on e-commerce

The COVID-19 pandemic is disrupting global supply chains in unprecedented ways and will have a significant economic impact with GDP contractions in most ASEAN Member States in 2020. As in other countries, due to COVID-19 and the resulting restrictions to contain the pandemic, ASEAN Member States are facing a decline in consumption, investment, and trade, with a severe impact on key sectors such as tourism. Nevertheless, COVID-19 should not affect the long-term progress of ASEAN, driven by its middle-class boom. In April 2021, the Asian Development Bank (ADB) revised its estimates for GDP growth in Asia in 2021 and 2022. According to the ADB (2021^[3]), Southeast Asia's (i.e. ASEAN Member States + Timor-Leste) GDP contracted 4.0% in 2020 and is expected to rebound to 4.4% in 2021 and 5.1% in 2022. For Viet Nam, the ADB expects GDP to grow 6.7% in 2021 and 7.0% in 2022.

The pandemic has provoked an abrupt and sharp increase in the use of e-commerce. For instance, in the week of 22 March 2020, weekly downloads for shopping applications in Thailand are estimated to have increased by 60%, while Indonesia, Singapore and Viet Nam each recorded a 10% increase (OECD, 2020, p. 99^[4]). E-commerce is likely to keep growing as consumers continue to shun physical stores in favour of online shopping solutions (ASEAN, 2020^[5]).

The COVID-19 crisis will lead to long-term changes. It will likely expedite the shift to e-commerce, especially for consumers that were until recently more resistant to online retail channels. Brick-and-mortar businesses will also evolve offering services beyond retail, including last-mile deliveries. Digital transformation is occurring rapidly in ASEAN. For instance, Cambodia, Lao PDR and Myanmar recorded an annual growth of approximately 20% in e-commerce users in April 2020 compared to the previous year. In terms of value of online sales, high annual growth rates (above 15%) were recorded in Indonesia, Thailand, the Philippines and Malaysia. Moreover, COVID-19 is expected to accelerate governments' and businesses' initiatives to provide connectivity to "vulnerable communities", removing barriers for SMEs, and providing easier access to products with better price and quality (World Economic Forum, 2020^[6]).

Notwithstanding the above, e-commerce deliveries often remain expensive and unreliable because of barriers to logistics services, at least in some ASEAN Member States. This affects the development of e-commerce, both domestically and internationally. Lifting such barriers would support the development of e-commerce and provide consumers with more choice and better prices.

Regional co-operation plays and will continue to play a key role in this context. ASEAN has put in place a framework for COVID-19 response across multiple sectors (United Nations, 2020^[7]). Moreover, the ASEAN Expert Group on Competition (AEGC) released a joint statement in Response to the COVID-19 Pandemic.² APEC is also taking collective initiatives. In May 2020, the ministers responsible for trade in APEC economies pledged to work together to mitigate the impact of COVID-19, committing (among other considerations) to facilitate the flow of goods across borders, as well as to strengthen e-commerce and related services (OECD, 2020, p. 99^[4]).

1.3. Report structure

The report is structured as five chapters. The Executive summary outlines the content of the report and provides an overview of its key recommendations; Chapter 1 introduces the scope and structure of the report; Chapter 2 defines state-owned enterprises and the relationship between state-owned enterprises and competition policy; Chapter 3 provides an overview of the economic importance and the legal framework of state-owned enterprises in Viet Nam; Chapter 4 describes the competitive landscape and the regulation applicable to small-package delivery services in Viet Nam; Chapter 5 focuses on Vietnam Post, the main state-owned enterprise providing small-package delivery services in Viet Nam, advantages or disadvantages that can impact on competition, and recommendations to improve the level playing field.

2 State-owned enterprises and competition

2.1. Introduction

SOEs play a significant role in many national economies around the world. Approximately 22% of the world's largest 100 firms are estimated to be effectively under state control, with many of these operating key upstream and downstream activities in international supply chains, such as public utilities, manufacturing, metals and mining, and petroleum (OECD, 2016^[8]).

The role and importance of SOEs differ substantially between regions, countries and sectors. In Southeast Asia, they still represent a major part of many economies, measured by percentage of GDP, employment and fiscal revenues, and remain indispensable players in almost all key sectors, building, maintaining and operating critical infrastructure, delivering critical services, and providing public employment. Their characteristics as publicly owned enterprises allow them to play a critical role in most economies and to contribute to developmental goals that – in practice – often result from other (political or economic) objectives (OECD, 2015^[9]).

In order to ensure optimal economic outcomes, however, SOEs should compete against private entities on level playing fields that nevertheless recognise – to an appropriate and relevant extent – their socio-economic and developmental roles and policy objectives.

Several ASEAN Member States have begun considering SOE reform in view of improving economic outcomes; this has seen differing results. These states could capitalise on the experiences of different OECD countries, including those cited in the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (OECD, 2015^[10]).³ In OECD countries (and beyond), SOEs' roles evolved significantly between 1990 and 2010, with large privatisation initiatives throughout the 1990s and early 2000s. At the same time, many governments have sought to rationalise the enterprises they continue to own, subjecting them to the same laws and treatment as private enterprises and professionalising their ownership and governance.

2.2. Definition of SOEs

An SOE is an enterprise entirely or partly owned by the state; it can be organised in different forms and serve a wide range of functions. Certain countries, including ASEAN Member States, use different terms for these entities, including state-owned companies, state-owned entities, state enterprises, publicly owned corporations, government-linked monopolies (GLMs), or government-linked companies (GLCs).

The OECD's definition of an SOE, as set out in the *OECD Guidelines on Corporate Governance of SOEs*, recognises such diversity and focuses on entities' corporate forms, commercial orientation, and degree of state ownership and control:

“any corporate entity recognised by national law as an enterprise, and in which the state exercises ownership, should be considered as an SOE. This includes joint stock companies, limited liability companies and

partnerships limited by shares. Moreover, statutory corporations, with their legal personality established through specific legislation, should be considered as SOEs if their purpose and activities, or parts of their activities, are of a largely economic nature.” (OECD, 2015, pp. 14-15^[10])

For the purpose of this report, the following factors are relevant in determining whether an entity is an SOE, and more broadly, in terms of competition policy.

1. Ownership structure

- a. **Enterprise wholly owned by the state.** An enterprise under a nation’s laws over which the state exercises full ownership is more than likely to be an SOE. An enterprise’s institutional form, such as company limited by shares or partnership, is not generally determinative.
- b. **Enterprise controlled by the state.** An enterprise controlled by the state should ordinarily be considered an SOE. “Control” should be assessed in a substantive way and may require case-by-case assessment. It would normally be established in cases where the state, by directly or indirectly holding a majority of the voting rights in an enterprise, exercises influence over an enterprise’s strategic decisions, such as approval of budgets, business plans and major investments, as well as appointment of senior management.⁴ In countries where the state invests in a wide range of companies through sovereign wealth funds or publicly owned holding companies, the state’s control may be indirectly exercised; this may require an assessment. The state can exercise an equivalent degree of control in situations where, for example, an enterprise’s by-laws allow the state to appoint the majority of the board of directors or assign a “golden share” that gives veto rights for certain strategic decisions. Not all ownership amounts to control, however. For instance, small equity holdings of less than 10% held by independent asset managers such as public pension funds would not ordinarily amount to control and an enterprise would not be considered an SOE. Similarly, enterprises temporarily controlled by the state in the course of bankruptcy or similar procedures would not ordinarily be SOEs.

2. **Economic nature of activities.** An entity established by law whose purposes or activities are largely economic in nature would be considered an SOE. An economic activity is one that involves offering goods or services in a given market and which could, at least in principle, be carried out by a profit-seeking private operator. Economic activities mostly take place in markets open to competition or where competition could occur, given existent laws and regulations.

2.3. Benefits of competition

There is broad consensus that competition creates significant benefits for consumers. When consumers can choose between different providers of goods or services, firms are forced to compete, innovate more, and be more productive. Consumers benefit from more choice, advanced products and services, higher quality and lower prices. Competition ultimately enhances productivity growth and consumer welfare.

On a macroeconomic level, this productivity growth leads to faster growth for the overall economy. Empirical evidence demonstrates that improving market regulation to make competition work increases productivity in affected markets and ultimately stimulates faster economic growth and job creation. Where binding and significant regulatory restrictions on competition are eliminated, prices may fall by as much as 20% (OECD, 2014^[2]). For instance, when Australia engaged in broad pro-competitive regulatory reforms in the 1990s, its Productivity Commission estimated that these reforms resulted in a GDP increase of at least 2.5%. Importantly, research has shown that competitive restrictions have a disproportionately negative impact on the poor meaning that pro-competition policies, by eliminating cartel-like market conditions, can substantially enhance living standards for the economically disadvantaged or impoverished by reducing prices and increasing real income (Ennis, Gonzaga and Pike, 2017^[11]).

Given these benefits, competition can also play an important role in achieving other government policies, including those promoting consumer protection, entrepreneurship, innovation, investment, corporate governance, equal opportunities, effective public procurement, open trade, growth and competitiveness. Competition benefits are also the reason for governments' liberalisation and deregulation policies, notably in network industries.

That said, sound and effective competition does not always arise naturally: the temptation is strong for economic players to restrict competition to achieve greater profits.

2.4. SOEs and competitive neutrality

SOEs' anti-competitive behaviour can be as harmful as restrictions of competition by private competitors. Governments and competition authorities must recognise the fundamental role of competition law and policy in markets where publicly and privately owned entities are (or could be) competing.

At ASEAN level, the *Economic Community Blueprint 2025* affirms that one of the elements necessary to increasing the region's productivity is to ensure "a level playing for all firms, regardless of ownership". This is also identified as the fundamental goal of competition policy and law.⁵ These principles are also noted in the 2010 *ASEAN Regional Guidelines on Competition Policy*, in which the ASEAN Expert Group on Competition (AEGC) stated that: "Competition policy should be an instrument of general application, *i.e.*, applying to all economic sectors and to all businesses engaged in commercial economic activities (production and supply of goods and services), including State-owned enterprises".⁶ This results in no ASEAN competition law giving SOEs a general exemption.

The ultimate objective is to level the playing field between privately owned entities and entities owned by, or linked to, the state, so that no business entity has advantages or disadvantages that result solely from its ownership (OECD, n.d., pp. 62-63_[12]). This principle, broadly known as competitive neutrality, should address distortions of competition caused by the state playing an active role in commercial markets.

The rationale for pursuing competitive neutrality is both economic and political. The main economic rationale is that it enhances allocative efficiency throughout the economy. Where certain agents – whether state-owned or private – are put at an undue disadvantage, goods and services are no longer produced by those who can do it most efficiently. This leads to lower real income and a suboptimal use of scarce resources relative to a baseline scenario, such as inefficient production methods or the non-adoption of new and better technologies (OECD, n.d., p. 39_[13]).

The political rationale is linked to governments' roles as universal regulators in ensuring that economic actors are on a level playing field (in terms of state-owned corporate assets and other market participants), while also ensuring that PSOs are being met. Although the political commitment to maintaining a level playing field is generally strong, state-led commercial activities may still damage the competition landscape due to deliberate or unintentional departures from neutral practices (OECD, 2012_[14]).

2.4.1. SOEs and departures from competitive neutrality

Governments may take deliberate decisions to depart from competitive neutrality in cases where SOEs may be necessary to correct market failures or to achieve other policy objectives. In other words, governments' choices for non-neutrality include both economic rationales (circumstances where the economic outcome may be made more efficient through intervention), and broader policy rationales (in which case social objectives may justify exceptions to economic efficiency principles) (OECD, 2012_[14]) (Capobianco and Christiansen, 2011_[15]).

A common economic rationale is the correction of market failures in specific markets. While the majority of markets may be best served by suppliers pursuing ordinary commercial objectives, certain markets have special characteristics that can lead to “market failures”, in which the ordinary interaction of supply and demand does *not* lead to the most economically efficient outcome. In such identifiable circumstances, an SOE whose operating principles depart from ordinary profit maximisation may achieve the most efficient attainable outcome.

The rationale for correcting market failures is most widely seen in industries with “natural monopoly” characteristics where – due to cost structures – it would not be economically efficient or likely in practice for competitors to operate. This effect is particularly common in network industries and utilities industries, such as segments of the telecommunications and electricity industries, and domestic water supply, where economies of scale and network effects often legitimise the presence of a single provider.

A further economic rationale is that in some markets, “externalities” – wider social benefits or costs not captured in price – associated with a product or service may make the market outcome inefficient, justifying provision of the product or service through an SOE.⁷

Beyond these economic rationales for SOEs, a number of broader policy rationales may also be relevant. First, governments may identify certain basic services that should be accessible to all members of society through a provider with a PSO. Such services typically include: 1) communication services such as postal services and telecommunications; and 2) utilities such as electricity and water distribution. A PSO requires provision of a minimum service to all consumers, often including those in sparsely populated areas where provision is uneconomic; it does not necessarily require the presence of an SOE and instead may be imposed on privately owned operators, with loss-making services compensated through cross-subsidisation from other services or direct government transfers (or both). Governments may decide, however, that it is more effective to achieve the social objective through an SOE rather than a privately owned operator.

Furthermore, governments may have strategic or industrial policy objectives in exercising ownership rights over certain industries. These national interest objectives may include:

1. protecting the viability of sectors that are viewed as being of systemic importance
2. maintaining state ownership of strategic industries (for instance, national defence)
3. supporting nascent or emerging industries that may be seen as strategically important in the future
4. more broadly, achieving developmental goals.

In addition, governments may have fiscal objectives for SOEs, such as ensuring a profit stream from the SOE to the national budget.

Finally, other political objectives may include the support of interest groups, such as public employees. For instance, SOEs remain a major source of employment and can provide better conditions than those in the private sector (OECD, 2017^[16]).

When analysing the level playing field between public and private entities, the socio-economic and developmental role and policy objective of an SOE should be considered. A key aspect is to have full transparency around these objectives.

2.4.2. Key distortions of competition by SOEs

Whether intentional or not, departures from competitive neutrality can result in significant distortions of competition. An SOE’s market competitiveness can be enhanced (or impaired) through government ownership or connections in several ways.⁸

1. Financial treatment

- a. **Outright subsidies.** SOEs may receive direct state subsidies – not equally accessible to others – or may benefit from other forms of public financial assistance to sustain their commercial operations, such as favourable tax regimes or exemptions, or in-kind benefits.
- b. **Concessionary financing and guarantees.** SOEs may enjoy credit provided directly by governments or through state-controlled financial institutions at below-market interest rates. Explicit or implicit state guarantees are also linked to this distortion.

2. Asymmetrical regulation

- a. **Monopolies and advantages as incumbents.** Governments may entrust SOEs with exclusive or monopoly rights over some activities. This may foreclose access to competitors and enhance SOEs' competitiveness in other markets open to competition, for instance, through cross subsidisation.
- b. **Other preferential treatment by the government.** SOEs may not be subject to the same, often costly regulatory regimes as private firms. Examples include exemptions from compliance with disclosure requirements and antitrust enforcement or preference in accessing public procurement.

3. Corporate governance

- a. **Lack of structural separation.** SOEs may be entrusted with both commercial and regulatory functions.
- b. **Captive equity.** SOEs' equity is generally "locked in", meaning control of an SOE cannot be transferred as easily as in privately owned firms. The absence of any risk of takeover and exemptions from bankruptcy rules can result in distortions in SOE managements' incentives to operate efficiently.

3 SOE framework and the importance of SOEs in Viet Nam

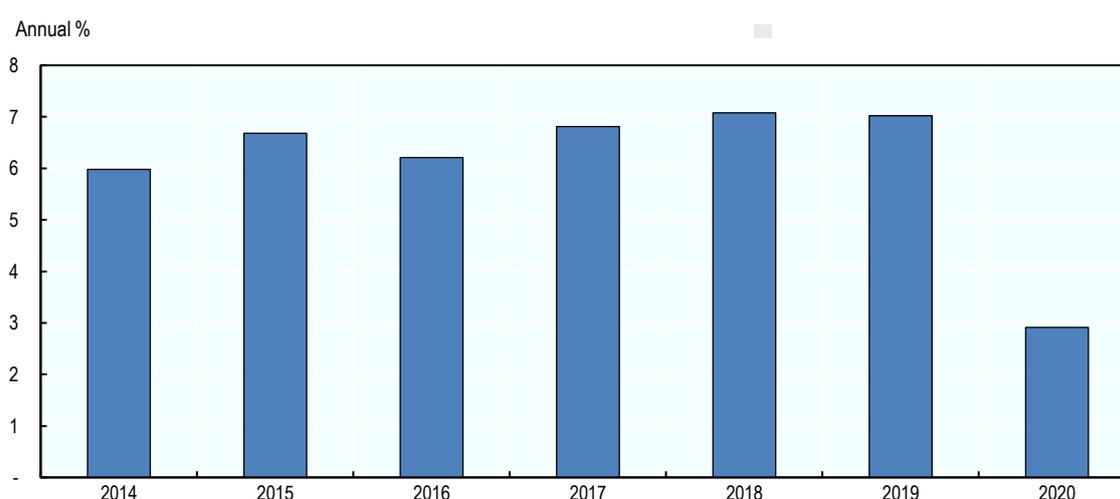
3.1. Viet Nam

Viet Nam, a republic with a population in 2018 of 97 million, is in the Greater Mekong sub-region. It has the third largest population and the fifth largest territory in ASEAN.

The country operates as a socialist market-oriented economy. Viet Nam's Socio-Economic Development Strategy for the Period 2011-2020 sets out its long-term economic development priorities.⁹ To realise these objectives, Viet Nam's economic policy is mainly set through five-year plans.

Since the Doi Moi economic reforms launched in 1986, Viet Nam has successfully pursued an export-oriented, foreign direct investment-driven industrialisation strategy, alongside legislative reforms, that together have reduced the gap with more advanced economies across Southeast Asia (OECD, 2019^[17]). Viet Nam is rapidly developing a strong manufacturing sector. Moreover, Viet Nam has large reserves of bauxite, coal, manganese and offshore oil and gas (OECD/ERIA, 2018^[18]). Viet Nam GDP growth rate in 2019 was 7%.¹⁰ Due to COVID-19, its GDP grew 2.9% in 2020 and is expected to grow 6.7% in 2021 and 7.0% in 2022 (ADB, 2021, p. 22^[3]).

Figure 3.1. Viet Nam's real GDP growth rate, annual percentage



Source: Asia Regional Integration Center Asian Development Bank, <https://aric.adb.org/vietnam>.

The World Bank considers Viet Nam a lower middle-income country (World Bank, n.d.^[19]). The country was ranked 78 in the World Economic Forum's 2020 Global Competitiveness Index, four positions lower than in 2017 (World Economic Forum, 2020^[20]). Viet Nam is a signatory to ASEAN, APEC and the World Trade Organization (WTO).¹¹

3.2. The scope and importance of SOEs in Viet Nam

In Viet Nam, SOEs (also called “state enterprises”) are defined as enterprises wholly owned by the state (Nguyen, 2014^[21]).¹² The General Statistical Office (GSO) of Viet Nam, however, uses a broader definition to include any enterprise in which the government owns at least 51% of the share capital (OECD/KIPF, 2016^[22]). Over time, the preferred shareholding model of SOEs in Viet Nam has shifted towards majority-ownership, as in other countries (OECD, 2018^[23]).

The major domestic players in Viet Nam have traditionally been SOEs. In the past, investors have often chosen to form joint ventures with SOEs to navigate the regulatory framework and to benefit from state incentives (OECD, 2018^[23]).

Since the late 1990s, the public sector's influence has lessened.¹³ Indeed the number of wholly owned SOEs declined significantly from 12 000 in 1991 to 780 in 2015.¹⁴ This reduction in the number of SOEs was achieved through “equitisation”, which is the transformation of SOEs into joint stock companies, through partial or full sale of the state's capital (OECD, 2018^[23]);¹⁵ mergers; closures; and sell-offs.¹⁶ The restructuring process has also focused on creating state economic groups (SEGs), which are in general formed from the transformation or reorganisation of SOEs and operate as parent-subsidiary companies.¹⁷ The original aim of these SEGs was to achieve economies of scale and scope; in some cases, however, they have led to major financial losses through imprudent expansion, diversification, and debt financing (World Bank/Ministry of Planning and Investment of Vietnam, 2016^[24]).

In 2005, the government established the State Capital Investment Corporation (SCIC), an agency at ministerial level acting as the sole representative of the state's shareholdings in equitised SOEs. SCIC commenced operations on 1 August 2006. Organised as a financial holding company, entirely owned by the state, it is currently chaired by the former chief of office at the Ministry of Finance (OECD, 2018^[23]). Shifting ownership of SOEs to SCIC enables a more rigorous commercial management. It has been a stepping stone towards privatisation and it reduces the scope for favouritism by line ministries (OECD, 2018^[25]). That said, following government instructions, it appears that SCIC typically acquires minority stakes to improve SOEs' performance and then divests these stakes. Moreover, SCIC does not usually retain control over SOEs that already are under line ministries.

Viet Nam's 2013 Constitution¹⁸ was an important step to “gradually restrain[ing] the role of SOEs” (Nguyen, 2015^[26]). It states that as a socialist-oriented market economy the state plays a leading role, while recognising freedom of enterprise for all and acknowledging that different forms of ownership exist.¹⁹ Competitive neutrality principles are echoed in the constitution, which states that entities in different economic sectors are equal before the law and that the state encourages and creates the conditions for businesses to carry out investment, production and business activities.²⁰ These constitutional principles are also reflected in the following Resolutions adopted in 2017 by the Central Committee of the Communist Party of Vietnam (CPV):

1. Resolution No. 10/2017/NQ-TW on the Important Role of the Private Sector in Building a Socialist-Orientated Market Economy in Viet Nam recognises that to establish favourable investment conditions, Viet Nam will: a) focus on ensuring fair competition in the market and eliminating barriers that result in unequal access to social, capital and land resources; and b) create favourable conditions for the private sector to participate in the SOEs' restructuring process and in the provision of public services.

2. Resolution No. 11/2017/NQ-TW on Completing the Institutional Framework for the Socialist-Orientated Market Economy in Viet Nam points to: a) the implementation of a single legal regime applicable to all enterprises, regardless of ownership form or economic sector; b) increased transparency of state monopolies, eliminating direct administrative state interventions and subsidies; and c) an institutional framework for the restructuring and reform of SOEs to increase their efficiency, meet international standards on corporate governance, and operate under market mechanisms.
3. Resolution No. 12/2017/NQ-TW on Continuing the Restructuring and Reform of SOEs, Increasing SOE Efficiency states that SOEs shall operate under market mechanisms, with economic efficiency as the main evaluation criterion: SOEs should be autonomous, accountable, and compete equally with other enterprises. Moreover, the duties of SOEs producing and trading in market goods and services and those of SOEs producing and providing public goods and services shall be clearly separated.

On 30 September 2018, the government established the Committee for the Management of State Capital (CMSC) to improve SOE co-ordination. CMSC should manage and provide strategic guidance to 19 SOE groups (including SCIC). The prime minister appoints the chair of CMSC. The OECD understands that CMSC may not yet be fully operational and that ministries are acting as “assisting agencies”.

Based on the latest data available, in 2015, Viet Nam had still more than 780 (wholly owned) SOEs (OECD, 2018, p. 17^[23]). Total assets of wholly owned SOEs corresponded to approximately 80% of GDP, while their total debts reached VND 1.5 trillion, the equivalent of 39% of GDP (OECD, 2016^[8]; 2018, p. 17^[25]). Moreover, SOEs were estimated to account for more than one-third of total assets of Vietnamese companies, while equitised SOEs represent 450 out of the approximately 700 companies publicly listed on the Ho Chi Minh and Hanoi stock exchanges (OECD, 2018^[25]).

SOEs still play a key role in ensuring the socialist orientation of the national economy²¹ and are prominent in many markets that exhibit oligopolistic characteristics (OECD, 2018, p. 19^[25]). Even though SOEs partly contributed to Viet Nam’s growth in the 1990s, they also constitute a drag on the economy and an obstacle to the development of other forms of domestic enterprises due to various factors, including credit misallocation.²² In fact, SOEs continue to remove oxygen from the business environment, undermining economy-wide efficiency and crowding out productive parts of the private sector. The state has also retained a virtual monopoly or oligopoly in several sectors, including coal, rubber and plastics, electricity and gas, fertilizers, and water supply (World Bank/Ministry of Planning and Investment of Vietnam, 2016, pp. 119-120^[24]).

The continued prominence of SOEs – often controlled by line ministries that are also responsible for market policy and regulations – calls into question the extent to which a level playing field or “competitive neutrality” has been achieved.

3.3. Competition law and SOEs

Competition law is regarded as one of the building blocks of Viet Nam’s market economy. A first competition law was adopted in 2004,²³ as part of Viet Nam’s accession to the WTO, and applied to all sectors of the economy and enterprises, with no general exclusion for SOEs, including those providing public-utility products and services.²⁴

On 12 June 2018, Viet Nam adopted a new competition law: Law No. 23/2018/QH14 on Competition. Article 2 of this new law clearly states that its scope includes: “business organisations and individuals, including enterprises that produce and provide public-utility products and services, enterprises that operate in state-monopolised sectors/domains [and] public sector entities.”

Article 8 of Law No. 23/2018/QH14 sets out that state agencies shall not discriminate between enterprises and shall refrain from imposing or requesting enterprises or individuals to source (or provide or sell) services and products from (or to) specific enterprises, except for services and products under state monopoly. Furthermore, under Article 3.5 of Decree No. 75/2019/ND-CP on Sanctioning of Administrative Violations in Competition, when state agencies engage in such behaviour, the National Competition Commission (NCC) can request a stop to their violations, impose remedial measures and compensate for damages.

Finally, Article 28 of Law No. 23/2018/QH14 recognises that the state can exercise control over enterprises operating in state-monopolised sectors, but that if the same undertaking has activities outside the monopoly, these activities shall remain subject to competition law. Decree No. 94/2017/ND-CP provides the list of commercial goods and services under monopoly, while it reiterates under Article 7 that these SOEs are still subject to competition law.²⁵

Competition enforcement actions against SOEs remain limited, however.²⁶

3.4. SOE-specific legislation

SOEs in Viet Nam are subject to a number of laws and regulations. The main framework includes Law No. 68/2014/QH13 on Enterprises, which defines SOEs' requirements, management structure and disclosure requirements,²⁷ and Law No. 69/2014/QH13 on the Management and Utilisation of State Capital, which specifies the powers and responsibilities held by state representatives, and regulates the management and investment of state capital in SOEs.²⁸

The adoption of a new Law on Enterprises in 2005 (amended in 2014) was the first step towards a single legal framework applicable to both SOEs and private companies.²⁹ Before its introduction, private enterprises were regulated under the 1999 Law on Enterprises, while SOEs were governed by the 2003 Law on State-Owned Enterprises.³⁰ From 1 July 2006, the Law on Enterprises came into effect and the Law on State-Owned Enterprises was repealed with the purpose of converting all SOEs into limited-liability companies and joint-stock companies.³¹ This major change resulted in uncertainty that required the adoption of a number of regulations and an implementing act to govern SOEs' activities.

Law No. 69/2014/QH13 on the Management and Utilisation of State Capital governs investments of state capital (defined as capital assets, grants, state-guaranteed loans and loans granted by the state) in SOEs, as well as in joint-stock companies and multiple-member limited liability companies (for the portion of state capital). The objectives of this framework are to: 1) improve the use of state capital; 2) enhance enterprises' efficiency; and 3) promote socialist-oriented socio-economic growth.³² The scope of state investments includes enterprises providing basic products or services, as well as enterprises operating in natural monopolies.³³ The principle of competitive neutrality is echoed in Article 5(3), which indicates that state investments should be limited to sectors in which private market participants are insufficiently investing or to sectors that are considered important for the country's development.³⁴ The OECD understands that, in practice, there is no clear interpretation and application of this principle.

3.4.1. Governance principles

Viet Nam has a generally decentralised ownership model, with a multitude of line ministries exercising ownership in SOEs (OECD/KIPF, 2016^[22]). For these ministries, Article 5(4) of the Law No. 69/2014/QH13³⁵ states that the state body exercising ownership rights and the regulatory bodies shall not be involved in day-to-day operations and business decisions of an SOE. At the same time, other ministries such as the Ministry of Finance, the Ministry of Interior and the Ministry of Labour are involved in oversight and corporate decisions that have an impact upon their respective areas of competence

(OECD, 2017_[27]).³⁶ The creation of CMSC and SCIC attempted to centralise (if only partially) the state's ownership function.

In principle, each SOE should be established in the same way as a privately owned company or, if that is not possible, corporate governance arrangements should mirror those of privately owned companies as closely as possible (OECD, 2018_[25]). The corporate governance framework in Viet Nam remains a work-in-progress, however, with regulatory steps taken in the last few years to address, among other issues, the organisation of SOEs' state-ownership function, and disclosure and transparency standards (OECD, 2018_[23]).

In particular, Decree No. 87/2015-ND-CP, which relates to the supervision of government capital, efficiency evaluation and the publication of financial information, confers to the Ministry of Finance a supervisory role; this is exercised in co-operation with the line ministry, which appears to remain the main supervisory body.³⁷ The Ministry of Finance's supervisory powers are not limited to the efficient use of state capital, but they also extend to projects and other investment activities, as well as to remuneration schemes. Moreover, the Ministry of Finance is responsible for reviewing SOEs' financial statements and taking decisions on dividends (OECD, 2017_[27]).

3.4.2. SOEs' governing bodies

Law No. 68/2014/QH13³⁸ prescribes that SOEs establish a "members' council"/board of directors with up to seven members (including a chairperson) appointed for one renewable term of five years. Pursuant to Article 41 of Law No. 69/2014/QH13, the prime minister appoints and can dismiss SOE board members, including chairpersons. These individuals shall meet the requirements set out in Article 92 to ensure professionalism and mitigate risks of conflicts of interest. Members' council resolutions require a vote by half of the attending members.³⁹

Moreover, SOEs have a director or a director general who shall be appointed by the members' council or the chairperson. Articles 94 and 99 create a clear separation between the chairperson's role and that of the SOE's director or director general. Article 100 prescribes criteria for the director or director general to ensure professionalism and mitigate risks of conflicts of interest.

3.4.3. Transparency

SOEs in Viet Nam must publicly disclose and ensure transparency in their utilisation of state capital.

Law No. 69/2014/QH13 imposes a number of disclosure requirements.⁴⁰ Moreover, Article 108 of Law No. 68/2014/QH13 requires SOEs to publish online their charter, business plans, annual reports and financial statements. These disclosure requirements are further detailed in Decree No. 81/2015/ND-CP, according to which SOEs must produce annual and bi-annual financial reports, five-year business strategies, annual plans for business activities, annual management reports, annual salary reports and annual income reports. SOEs are also required to publish six-month and annual financial statements on their websites, prior to sending them to the responsible line ministry and the Ministry of Planning and Investment (OECD, 2017_[27]). Other information that must also be published includes details on the SOE's management.⁴¹

In practice, it appears that many SOEs do not comply with these requirements. According to Central Institute of Economic Management (CIEM) data, only 130 out of the 432 SOEs examined met these requirements in 2016 (OECD, 2017_[27]).

Additional requirements include:

1. Under Articles 33, 34 and 35 of Law No. 69/2014/QH13, SOEs' annual financial plans and statements must be audited. The duty to undertake these audits and publish the results is assigned to the State Audit Office. In addition to this state audit, Article 10(4) of Decree No. 87/2015/ND-CP affirms that SOEs' financial statements must also be subject to independent audit.⁴²

2. Article 42(k) of Law No. 69/2014/QH13 confers upon the state (through the owner's representative agency) powers to examine and inspect SOEs.⁴³ However, it appears that these provisions are not yet implemented.
3. Section 4 of Decree No. 87/2015-ND-CP provides for "special" financial supervision in cases where SOEs incur losses or have a debt-to-equity ratio exceeding safe standards, or if they fail to meet reporting obligations for financial statements.⁴⁴
4. Decree No. 91/2018/ND-CP regulates the issuance and management of state guarantees and imposes on state-guaranteed borrowers reporting obligations and conferring to the Ministry of Finance the power to perform regular supervision and conduct inspections.⁴⁵

3.4.4. Performance and accountability

A legal framework for the evaluation of SOEs' performance was initiated in the early 2000s (OECD/KIPF, 2016^[22]). Law No. 69/2014/QH13 prescribes a number of reporting requirements and evaluation criteria applicable to SOEs and their management.⁴⁶ The main framework is described below, but the OECD understands that implementing regulation is not yet sufficiently in place to ensure SOE compliance.

First, Section 5 of Decree No. 87/2015-ND-CP established the criteria for SOE performance assessment, in accordance with Article 59 of Law No. 69/2014/QH13. These take into account financial performance, level of compliance with applicable laws, and the level of implementation of the plan to supply public products or services (if any). Performance evaluations result in SOEs being graded from A to C. Article 46 provides for a reward system for management and Article 47 allows for disciplinary procedures against management, the SOE's representative and representative agency for failure to meet disclosure and reporting requirements. However, there is no publicly available evidence on the implementation of these two provisions.

Second, managers' remuneration is linked to SOE performance. Article 33 of Law No. 69/2014/QH13 sets out the principles for SOE managers' remuneration and provides that bonuses, not exceeding 20% of salary, can be approved by the owner's representative agency. Article 32(2) prescribes that bonuses are based on productivity and funded from SOE's after-tax profits.

Third, pursuant to Article 96(6) of Law No. 68/2014/QH13, the chairperson and other members of an SOE's members' council can be held personally liable.⁴⁷ In particular, pursuant to Articles 26(3) and 63 of Law No. 69/2014/QH13, violations may result in administrative or criminal sanctions and compensation (if any damage is caused). In other words, SOEs' management can be held personally liable (including subject to criminal liability) in cases of capital losses, insolvency or bankruptcy. In this regard, it shall be noted that Article 179 of the Viet Nam Criminal Code⁴⁸ prescribes that, in cases of negligence that result in damages to state property, which includes SOEs' assets, a responsible manager can be subject to a fine up to VND 500 million or imprisonment of up to 10 years, depending on the amount of damages caused.

Finally, at state level, the Ministry of Planning and Investment prepares an annual aggregate report on SOEs. This is not publicly disclosed, but it is submitted to the Prime Minister and the Cabinet, and then presented to Parliament. The aggregate report includes a general overview of SOE business operations and performance, but does not provide detailed assessments of individual SOEs. The report also includes information on SOEs' contributions to the national budget, the overall value and financial performance of SOEs, total employment in SOEs, and information on board-member remuneration (OECD, 2017^[27]). Additionally, to prevent public debt risks, the Ministry of Finance classifies and periodically reports on guaranteed loans and bonds.⁴⁹

3.4.5. Access to public resources

Article 22 of Law No. 69/2014/QH13 deals with SOEs' equity and prescribes that they are subject to the same minimum capital requirements as privately owned enterprises. Government Decree

No. 91/2015/ND-CP⁵⁰ provides for the key criteria and procedures for state investments in, and management of, SOEs. In particular:

1. Section 2 allows for additional investments in the charter capital of an active SOE if a) it meets performance criteria; and b) it requires a capital increase for the main scope of its operations (or if it is involved in national defence or security).⁵¹
2. Article 20 allows SOEs to autonomously apply for and repay (even foreign) loans, subject to debt-to-equity ratio limitations, while Article 21 grants SOEs the possibility to invest in other business activities, including those located overseas.⁵² The state, through the representative agency can inspect and supervise the use of its capital, leaving the Ministry of Finance to “decide and handle responsibilities assumed” by the SOEs.

Article 3(2) of Law No. 20/2017/QH14 on Public Debt Management defines “sovereign-guaranteed debt” as debt arising from a loan borrowed by an enterprise or a bank for social policies and guaranteed by the state through the Ministry of Finance. SOEs can access state loans or issue government-guaranteed bonds, as reaffirmed under Article 23(2) of Law No. 69/2014/QH13; stakeholders have flagged that no SOE has issued government-guaranteed bonds in the past decade.

Conditions and eligibility criteria to access state guarantees are set out in Law No. 20/2017/QH14 (Article 41 and follow). According to these provisions, state guarantees may be received only for investment projects⁵³ and are subject to decisions by the National Assembly, the government or the prime minister. Although Article 43 does not explicitly limit these guarantees to SOEs, eligibility criteria such as providing a financial plan assessed by the Ministry of Finance and approved by the prime minister would appear difficult to meet in practice by non-SOEs, especially if combined with qualification requirements under Article 41. Similar conditions also apply to the issuance of state-guaranteed bonds. Finally, Article 46 of Law No. 20/2017/QH14 imposes a “guarantee fee”, which varies depending on the risk level of each project, but cannot exceed 2% of the guaranteed outstanding capital. Decree No. 91/2018/ND-CP further regulates the issuance and management of state guarantees.

3.5. Transformation of SOEs

The *Socio-Economic Development Strategy for the Period of 2011-2020* recognised the need to “renovate financial mechanisms and policies applied to state owned enterprises” by “further innovating and raising the effectiveness of state owned enterprises’ operation [...]; facilitate the privatization of state owned enterprises; establish some strong and multi-owned economic groups, in which the State plays governing role; clearly define the State ownership and the right to do business in these enterprises”.

The *Five-Year Socio-Economic Development Plan 2016-2020* acknowledged that the restructuring of SOEs has achieved positive results enhancing management capabilities, transparency and defining the rights and responsibility of the state’s representative entities. At the same time, restructuring, equitisation and divestment plans have not met the targeted progress and the implementation of corporate governance models, inspection and internal monitoring has been slow or inadequate. The *Plan* also highlights certain SOE-related measures as means to improve economic productivity, efficiency and competitiveness, in particular: 1) restructuring SOEs in order to improve efficiency and transparency, by promoting privatisation and divestments from non-primary line industries; 2) establishment of an agency for managing state capital; and 3) legislative reforms to allow private enterprises to have equal access to resources (especially capital, land properties and natural resources).

Article 36 of Law No. 69/2014/QH13 entrusted the government with the task of preparing a roadmap for SOEs’ divestments. Under Article 37, SOEs can be transformed in the following terms: 1) equitisation; 2) sale of the whole SOE; or 3) sale of (a part) of the state investment in a mixed ownership company. Prime Minister Decision No. 58/2016/QD-TTg defined a plan for 2016-2020. Under this plan, SOEs are

classified in three categories depending on their areas of activities: 1) SOEs remaining 100% owned by the state active in sectors such as national defence and security, national railways, and public postal services; 2) SOEs equitised with the state maintaining a stake of at least 65%; and 3) SOEs equitised with the state maintaining a stake between 50% and 65%.⁵⁴ As noted in Section 3.2, a company is no longer considered an SOE if the state's stake falls below 50%.

Prime Minister Decision No. 58/2016/QD-TTg was followed in 2017 by:

1. Prime Minister Decision No. 707/QD-TTg approving the 2016-2020 SOE restructuring plan. Among the measures to support SOE reforms, this decision pointed out to the need to review the Law on Management and Utilisation of State Capital Invested in the Enterprise's Manufacturing and Business Activities, the Law on Enterprises and the Law on Bankruptcy.
2. Prime Minister Decision No. 1232/QD-TTg and Prime Minister Letter No. 991/ TTg-DMDM approving the list of SOEs to complete equitisation in the period 2017-2020.
3. Government Resolution No. 97/NQ-CP setting out more detailed targets for 2020 and 2030. In addition to implementing the equitisation plan, targets for 2020 include: 1) improving SOEs' productivity, product quality and competitiveness; 2) meeting international standards of corporate governance; and 3) urgently setting up a specialised agency to act as the owner representative in SOEs. Targets for 2030 include: 1) fully meeting international standards of corporate governance; and 2) moving most SOEs into mixed, public-private ownership. Moreover, this resolution aims to: 1) ensure transparency in the restructuring and divestment of state capital in SOEs; 2) promote the divestment of non-core businesses; 3) eliminate direct and indirect subsidies to SOEs (access to state resources, credit, land, investment opportunities and finance, tax benefits); 4) improve transparency and accountability of SOE managers; 5) improve state inspection and auditing powers; and 6) respect independence, professionalism and accountability of SOEs' management

To summarise, Viet Nam is currently focusing on reforms to streamline regulations applicable to the SOE sector and make its economic growth sustainable. SOEs are also being restructured, with large conglomerates shedding non-core activities to improve their focus (and improve their performance).⁵⁵ In this context, CIEM is working in co-operation with and providing technical support to CMSC.

The OECD recognises the recent efforts to revamp equitisation of SOE in Viet Nam. This divestment process resulted in an increase of the involvement of private investors in equitised enterprises, which has encouraged the application and implementation of internationally recognised corporate governance practices. The OECD also observes that the government's plan to reform the SOE sector is in line with international standards and includes the objective of further separating state regulatory functions from the exercise of state ownership, improving SOE management practices and board professionalism, and separating SOEs' commercial objectives from their social obligations.

Last year, the prime minister issued Directive No. 1/2019/CT-TTg asking the line ministries and local authorities to speed up the SOE restructuring and indicating that if the targets established for the period 2016-2020 were not met, then unequitised SOEs would be transferred to SCIC for equitisation.⁵⁶ The OECD has no information on whether there has been any implementation in this regard. According to a July 2019 report of the Steering Committee for Enterprise Renewal and Development, it appears that the government's 2017-2020 plan was still behind schedule both in terms of SOE equitisation and the divestment of state capital from SOEs with only 88 out of 403 planned divestments implemented.⁵⁷ In response, the government reiterated its intention to speed up the process.⁵⁸

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the EU-Viet Nam Free Trade Agreement (EU-Viet Nam FTA) will encourage further reforms of SOEs' corporate governance and the achievement of a level playing field between SOEs and privately owned enterprises.

Chapter 17 of the CPTPP deals with SOEs and designed monopolies, introducing rules on non-discriminatory treatment, non-commercial assistance and transparency. Viet Nam benefits from certain exemptions, however; for instance, an ad hoc mechanism applies for the requirement to publish a list of SOEs. Moreover, Viet Nam would be allowed to provide financing (called “non-commercial assistance”) to SOEs “if necessary to the SOE restructuring if it does not result in ‘a significant increase of market share’ or ‘a significant price-undercutting of a good produced and sold’ by the SOE”. It also allows Viet Nam to purchase SOEs’ “non-performing loans or unused assets at market value and finance the SOE to settle excess employees, if for the purpose of equitisation and non-recurrent/non-repeated”. Finally, Viet Nam may provide commercial assistance to cover reasonable costs to SOEs and designated monopolies “as means of ensuring economic stability or the provision of public goods”.

Finally, in Chapter 11 of the EU-Viet Nam FTA, Viet Nam committed to ensuring the enforcement of laws and regulations in a consistent and non-discriminatory manner, and to ensuring that SOEs act in accordance with commercial considerations in their purchases or sales of goods or services.⁵⁹ It is worth noting that Annex 11-A provides that these provisions do not apply to the process of “privatisation, equitisation, restructuring or divestment” of state-owned assets in Viet Nam.⁶⁰

4 Small-package delivery services in Viet Nam

4.1. Economic overview of the logistics sector: a focus on small package delivery services (SPDS)

4.1.1. Competition in the postal sector

Postal services are a form of transportation or communication service for delivering goods and information from one point to another. Postal services differ from other physical delivery services due to the volume and nature of letters and other goods delivered through the post, which allows them to take significant advantage of economies of scale and scope in delivery (OECD, 1999^[28]).

In many countries, an incumbent postal operator benefits or has benefited in the past from a monopoly over the handling of certain classes of mail, usually defined as mail items below a certain weight or size, or both. The primary reason for this protection of certain areas from competition is the need to preserve the internal cross-subsidisation used to finance non-commercial PSOs. This allows the operator to maintain service quality on unprofitable high-cost or low-volume delivery routes when other concerns, such as the obligation to maintain geographically uniform prices, limit its ability to raise prices (OECD, 1999^[28]).

This type of cross-subsidisation – using revenues from commercial activities for the non-commercial and non-profitable activities – is threatened by increasing competition. When introducing or increasing competition, countries must consider other mechanisms for the provision of any non-commercial services that need to be maintained. A variety of competitively neutral methods exist for financing non-commercial obligations, which do not threaten competition (OECD, 1999^[28]).

For many incumbent postal operators, the often non-regulated or less regulated and commercially attractive activity of delivering small packages to consumers has been one of the main means through which non-commercial activities have been cross-subsidised. Moreover, the drastic decline in the volume of traditional letters and postcards due to electronic communications, as has been observed in many countries around the world, continues to increase the commercial importance of SPDS for incumbent postal operators in many countries.⁶¹ Combining commercial and non-commercial activities should not provide the incumbent postal operator a competitive advantage in relation to its competitors in an openly competitive market.

4.1.2. Definition of “small package”

There are various definitions of “small package” in the logistics industry. One method is its weight, with the upper limit determined by how much a single person can handle without using any specific equipment. Different market participants use different weight limits,⁶² but a commonly used upper weight limit is 31.5 kilogrammes for a package. A separate category called “parcels” also exists, which is often used to

identify packages with a weight of up to 20 kilogrammes within the framework of the Universal Postal Union (UPU).⁶³

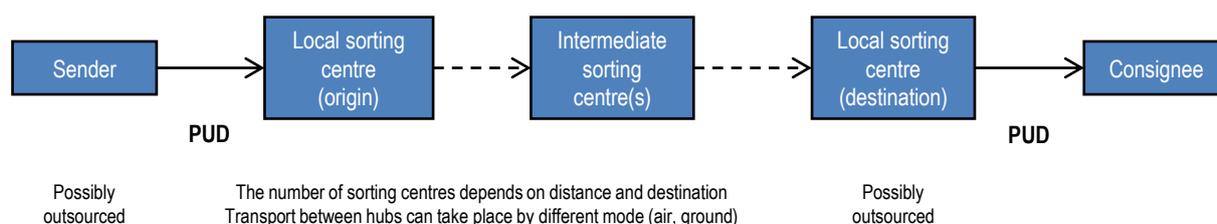
In Viet Nam, no definition of small packages appears in any legislation and there is no generally applicable weight limit. Vietnam Post's internal regulations classify items with a weight up to 30 kilogrammes as small packages.

4.1.3. SPDS market structure and value chain

The SPDS industry is made up of companies that transport small packages from one location to another. An important feature of this market is that packages are picked up at an origin and delivered to destination. Known as pick-up and delivery (PUD), this involves vehicles transporting small packages from senders to consignees, through local centres and final-stage sorting facilities. Another important feature of the industry is the ability to track a shipment at every step of the delivery process.

A package moving from sender to consignee will pass through a varying number of “nodes” before reaching its final destination.⁶⁴ SPDS are inherently multimodal, using small trucks, cars or messengers for pickup and delivery and other modes of transport such as truck, rail or air for longer distances (Dennis, 2011^[29]).

Figure 4.1. Overview of steps in a small-package delivery service



Source: OECD analysis based on EC merger case COMP/M.6570 – UPS/ TNT Express, 30/1/2013 and Dennis, W.T. (2011^[29]).

Different actors are active in the SPDS value chain, roughly split between integrators and non-integrators.⁶⁵

An integrator has operational control over the SPDS logistical chain from origin to destination (including air transport), so that it can ensure delivery to meet a time commitment. The global integrators are FedEx/TNT, DHL and UPS.

There are several types of non-integrators active in the SPDS value chain.

1. **Incumbent postal operators.** In many countries, the incumbent domestic postal operator is active in domestic and international small-package delivery. Generally, declining mail volumes have forced these operators to develop new business areas such as logistics, and in particular, SPDS.⁶⁶
2. **Regional, national or local SPDS companies and partner networks.** These are often concentrated in the domestic small-package market. They may form alliances and partner networks to offer wider-ranging SPDS and expand into neighbouring countries.
3. **Smaller companies** with a domestic PUD ground service in one or more countries.

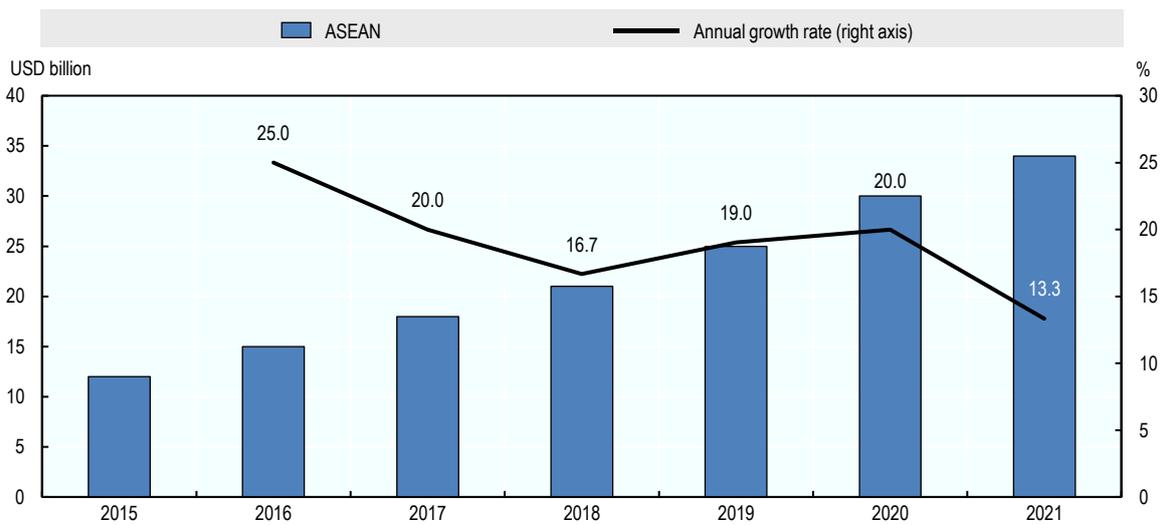
Many SPDS operators offer ancillary services as a way of diversification, including warehousing and value-added services, such as quality-control service, packaging, labelling and tagging.⁶⁷

4.1.4. E-commerce growth and its impact on the SPDS sector

The advent and rapid growth of e-commerce has contributed to the rapid growth in demand for postal and courier services, which are responsible for the transportation and delivery of the package and some (or all)

of the fulfilment activities.⁶⁸ The e-commerce market in ASEAN remains relatively small compared to other regions of the world,⁶⁹ but by 2021 it is expected to have grown at a double-digit pace with a compound annual growth rate of 19% since 2015 (see Figure 4.2). This may be a conservative estimate, as a 2019 study that covered the six largest markets in the region (Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam) reported that the e-commerce market in these six countries was then worth USD 39 billion and predicted that it would grow to USD 153 billion by 2025, at a compound annual growth rate of 39% between 2015 and 2025 (Google, Temasek and Bain & Company, 2019^[30]).

Figure 4.2. E-commerce market value in ASEAN, 2015-21



Source: OECD (2018^[31]).

Globally, cross-border e-commerce transactions between businesses (B2B), as well as between businesses and consumers (B2C), have introduced new dynamics to international trade, transforming value chains and requiring logistics companies to change their business models.

In ASEAN, the rapid increase in the scale of e-commerce – and so the concomitant rise in the importance of SPDS – is being driven by multiple factors including: 1) rising levels of the use of information and communications technology (ICT); 2) the development of ICT infrastructure; 3) transportation infrastructure and logistics capabilities; 4) the use of e-commerce payment systems; and 5) the legal and regulatory environment (OECD, 2018^[31]). Ensuring a level playing field and stimulating competition plays a crucial role when optimising the legal and regulatory environment.

ASEAN adopted the *Work Programme on Electronic Commerce 2017-2025*⁷⁰ on 7 September 2017 and ASEAN Economic Ministers signed the ASEAN Agreement on Electronic Commerce on 12 November 2018.⁷¹ Both show that ASEAN has recognised the potential of the digital economy, and the need to develop the region's e-commerce industry by creating a conducive environment for its growth through advancing trade rules and building up greater digital connectivity in the region.

In Viet Nam, in 2015, e-commerce sales were estimated at VND 11 624 billion and reached VND 23 196 billion in 2017, driven by rapid Internet-access uptake (iDEA, 2018, p. 83^[32]). Moreover, in 2015, the use of e-commerce increased by 37% year-on-year, according to a report by the Viet Nam eCommerce and Information Technology Agency (VECITA),⁷² while in 2017 – according to estimates by Vietnam E-Commerce Association (VECOM) – the growth rate of e-commerce reached over 25%, with several leading businesses showing revenue growth from delivery services from 62% to 200% (VECOM, 2018^[33]). E-commerce revenue was projected to reach USD 7 billion in 2021 (Statista, n.d.^[34]).

In 2016, the Viet Nam E-Commerce and Digital Economy Agency (iDEA) conducted a survey on logistics in the e-commerce sector. The survey showed that 45% of e-commerce platforms active in Viet Nam had their own logistics services, 10% outsourced logistics services completely, while another 45% combined the two by performing some of their own logistics services and outsourcing others to third-party logistics (3PL) companies.

In 2017, a new iDEA survey indicated that the number of e-commerce platforms using exclusively their own logistics services had dropped to 26%. According to iDEA, this may be explained by an increased number of SPDS providers and an increased quality of their services. That said, 31% of users mentioned poor delivery service or unprofessional logistic services among obstacles affecting online purchasing (iDEA, 2018^[32]). The survey also showed that approximately a third of the Vietnamese population shopped online in 2017 (33.6 million people), with online sales accounting for 3.6% of total retail sales (iDEA, 2018, p. 26^[32]).

The latest figures – for 2018 – were provided to the OECD by iDEA and showed: 1) a growth in online sales in 2018 to 4.2% of the total retail sales; and 2) an increase in the number of people who had shopped online (approximately 39.9 million).

The OECD notes that important government initiatives that may benefit the e-commerce sector are in place, such as the *Master Plan on E-commerce Development 2016-2020* and the *National E-commerce Development Program 2014-2020*. These will not be discussed further as they do not directly concern fulfilment activities.

4.2. Competitive landscape of the SPDS sector

Competition in the SPDS sector has increased in recent years, as Viet Nam's e-commerce market has seen rapid growth. A number of 3PL companies are active in the SPDS market.

For international deliveries, the main players are DHL (with an estimated market share of approximately 50%), UPS, and FedEx/TNT. Imports are mainly performed by air and then deliveries by road using trucks. Since 2007, DHL's international express delivery activities in Viet Nam are performed by DHL-VNPT Express Ltd (DHL Express),⁷³ a joint venture between DHL (51%) and Vietnam Post (49%).⁷⁴

In 2018, Viet Nam had 350 licensed domestic delivery-service providers, with 18 357 outlets (MIC, 2019, pp. 17-18^[35]). Two SOEs led the market: Vietnam Post (with 34.1% market share by revenue and 44.2% market share by volume) and Viettel Post (with 21% market share by value and 19.5% market share by volume) according to figures from the Ministry of Information and Communications (MIC) 2019 White Book. By adding the market shares of Vietnam Post's own express mail service (EMS) business⁷⁵ (5.8%) and of its joint venture with DHL (7.5%), Vietnam Post's overall activities accounted for 47.4% and Vietnam Post and Viettel Post for almost 70% of the total market value. These market shares seem to include revenue generated through the traditional mail business, which had a limited impact because of its declining volumes and low rates. The remaining 30% of the market is highly fragmented and mainly represented by SMEs with limited capital investment and human-resource capabilities,⁷⁶ often acting as agents of Vietnam Post and Viettel Post. Finally, it should be noted that DHL entered the domestic delivery segment with DHL eCommerce in July 2017.

Focusing on e-commerce activities, in addition to 3PL companies, certain e-commerce platforms, such as Lazada, 5giay and Grab, provide their own delivery services. Their capacity is not, however, sufficient to perform all deliveries, so most of these e-commerce businesses are also customers of Vietnam Post and other 3PL companies.⁷⁷

Most SPDS providers in Viet Nam offer express delivery services⁷⁸ and real-time shipment-tracking facilities. For express services, delivery times range between 24 and 72 hours for most in-country

destinations and elsewhere in the ASEAN region.⁷⁹ Despite the large number of competitors, according to iDEA, shipping rates for consumers remain quite high compared to other countries in the region; this has a direct impact on e-commerce businesses.⁸⁰

4.3. Sector regulation

SPDS sector liberalisation and regulation is built upon Viet Nam's commitments made during the accession process to the WTO in 2007. As already mentioned above, the regulatory framework is mainly based on Law No. 49/2010/QH13 on Post (Law on Post) and Government Decree No. 47/2011/ND-CP Implementing the Law on Post, followed by a number of Ministerial Circulars. While Article 20(2) of the Law on Post seems to restrict foreign investments in the SPDS sector, according to MIC, this provision is not implemented because Viet Nam committed to lifting restrictions to foreign ownership within five years as part of its accession to WTO.

The Law on Post aims at building a competitive environment to encourage all economic actors to enter the market⁸¹ and it applies to all market participants operating delivery services in Viet Nam.⁸² It also reaffirms and designs the scope of "public postal services", which are considered services provided at the request of the state, including the PSO, universal postal service obligations, postal service for national defence and security, and other special tasks.⁸³ Under Article 2 of Prime Minister Decision No. 45/2015/QD-TTg, "public postal services" are further defined as 1) basic mail (letters and documents) services up to two kilograms; 2) postal services serving national defence and security; and 3) other particular tasks.

Pursuant to Prime Minister Decision No. 41/2011/QD-TTg, Vietnam Post is designated as the public-service operator in charge of managing and operating the "public postal network", which is the network invested by the state and assigned to Vietnam Post.⁸⁴ State direct support for public postal services is reflected in Article 10 of the Law on Investment of State Capital, since SOEs providing basic products and services (such as non-express delivery services) or operating natural monopolies fall within the scope of state investments.

There is no independent sectoral regulator for SPDS. As SPDS are considered part of the postal sector, MIC, supported by its Postal Department advisory unit, is the policy-making and regulatory body in charge. Article 2(9) of Government Decree No. 132/2013/ND-CP lists MIC's powers and functions for delivery services. These include: 1) setting up a mechanism to support the designated enterprise (Vietnam Post) to provide public postal services; and 2) issuing price and quality regulation. The content of this provision is reflected in Decree No. 17/2017/ND-CP, which repeals Government Decree No. 132/2013/ND-CP. The OECD understands that MIC consults with market participants before adopting rules applicable to the SPDS sector. MIC is also competent for disputes related to universal service.

The regulatory framework is complemented by the following Circulars:

1. Circular No. 20/2016/TT-BTTTT, which adopted implementing guidelines of Prime Minister Decision No. 45/2015. In particular, Article 7 imposes on Vietnam Post annual reporting obligations⁸⁵ and Article 11 introduces an evaluation mechanism (with a grading scale) for public postal services.
2. Circular No. 17/2015/TT-BTTTT⁸⁶ prescribes quality criteria for Vietnam Post's services. These include specific targets for delivery times and frequency of collection and delivery,⁸⁷ while the quality of Vietnam Post's public postal services should also be ensured through MIC inspection powers.
3. Circular No. 14/2018/TT-BTTTT imposes on SPDS providers quality standards not lower than the standards applicable to public postal services for delivery services outside the scope of public postal services. Unlike the public postal services provider, which must seek MIC approval of its quality standards, non-public postal service providers are only obliged to submit to MIC a declaration and a self-evaluation report of their quality standards.⁸⁸ Articles 6 to 8 do confer to MIC, however, the power to conduct inspections to ascertain the quality standards; the results of such inspections are posted on the MIC website.
4. Circular No. 35/2016/TT-BTTTT prescribes periodic (six-month and annual) reporting obligations on licenced SPDS providers.
5. Circular No. 2/2012/TT-BTTTT prescribes that for delivery services contracts, providers shall follow MIC forms and notify MIC in advance of the rates charged to their customers.

Finally, it shall be noted that no specific rules apply to express delivery services, except for a dedicated customs procedure for international deliveries pursuant to Circular No. 191/2015/TT-BTC, supplementing Circular No. 49/2015/TT-BTC.⁸⁹

4.3.1. Licensing

The Law on Post requires postal service providers to obtain a licence from MIC;⁹⁰ no licence is required for companies delivering their own products. Article 21 of the law, which sets out the conditions for the granting of postal service business licences, applies only to providers delivering letters and single items weighing up to two kilogrammes, while Article 25 (Notification of postal activities) prescribes that providers must also submit an application to MIC for offering SPDS.

There are two types of licences, for international delivery and for domestic delivery. The OECD understands that a provider with an international delivery licence cannot perform delivery services within and between provinces in Viet Nam, as this service requires a domestic licence. Licences are valid for ten years⁹¹ and renewable, subject to a new request filed with MIC at least 30 days before the expiration of the original licence.⁹² Licensees can operate warehouses, although specific requirements (including a separate licence) apply to "import/export warehouses". Furthermore, pursuant to Article 5 of Government Decree No. 47/2011/ND-CP, licences are conditional to minimum-capital requirements. In particular, a domestic delivery services licensee must have a minimum paid-up capital of VND 2 billion, while an international delivery services licensee must have a minimum paid-up capital of VND 5 billion. There are no specific conditions for network coverage, but applicants are required to have a network with sufficient capacity for their delivery commitments.

Licence applicants shall pay a fee⁹³ as prescribed by the Ministry of Finance.⁹⁴ Application fees for the first-time issuance and the re-issuance of a licence (after the expiration of the first licence) are VND 21.5 million for a national licence and VND 39.5 million for an international licence.⁹⁵ A licence is issued within 30 days from the date an application is deemed complete.⁹⁶

4.3.2. Price regulation

For price regulation purposes, delivery services are divided in two categories: 1) non-universal services, and 2) universal services (which are non-express delivery of letters and items up to two kilogrammes in “reserved service areas”). Non-universal services, including SPDS, are not subject to any price regulation.⁹⁷

For universal services, the rates of Vietnam Post, the public-interest operator, cannot exceed those imposed by MIC. Under Article 28 of Law on Post, these rates shall be formulated taking into account costs and supply and demand, as well as rates applied for similar services in other regions and countries. Circular No. 12/2018/TT-BTTTT prescribes Vietnam Post’s current maximum rates for universal postal services, which can be adjusted to ensure “socio-economic development plans and policies”.⁹⁸ These rates range from VND 4 000 for domestic mail to VND 136 000 for international mail, depending on weight and destination country (for overseas deliveries). Vietnam Post must publicly disclose its rates and report to MIC prior to their implementation.⁹⁹ The same rates correspond to the minimum prices that other market participants shall comply with for mail up to two kilogrammes in the reserved area.¹⁰⁰

Moreover, Circular No. 23/2017/TT-BTTTT regulates the maximum rates that apply to Vietnam Post’s provision of delivery services (not limited to mail) for local party and state agencies (also called “KT1 services”).¹⁰¹ Vietnam Post also has exclusivity over delivery of documents for administrative procedures, which are subject to the same rates and quality requirements as other public postal services.¹⁰² Circular No. 22/2017/TT-BTTTT prescribes maximum prices for such delivery services and grants exemptions or 50% discounts to a number of customers. Vietnam Post’s financial statement and annual report do not appear to note any subsidy or other compensation for the provision of these services.

Finally, Vietnam Post performs deliveries to remote areas on behalf of other market participants, such as DHL Express. Rates for these services are freely negotiated, with Vietnam Post entering into commercial agreements with large organisations and offering its services with small discounts on its over-the-counter rates. In other words, no access or price regulation exists at wholesale level. Vietnam Post is not the sole operator providing delivery services to remote areas.

5 SOEs and their impact on competition in SPDS

5.1. SOEs active in the SPDS sector and the focus on Vietnam Post

Vietnam Post and Viettel Post are the two SOEs with a consolidated presence in the SPDS sector (in particular, the domestic segment) in Viet Nam, with a combined market share of almost 80%. Vietnam Post is the market leader.¹⁰³

Vietnam Post was originally part of the Vietnam Posts and Telecommunications Group (VNPT), which acted as the government's "ownership representative" in Vietnam Post. In 2005, the government approved a scheme to reorganise VNPT into a conglomerate and to consider the establishment of wholly owned subsidiaries, including Vietnam Post.¹⁰⁴ As a result, in 2008, VNPT's telecommunications and postal activities were separated (although they remained under the VNPT umbrella) and Vietnam Post was assigned a charter capital not lower than VND 8 122 billion.¹⁰⁵

On 1 January 2013, Vietnam Post was carved out of VNPT and transferred to MIC, with the agreed charter capital.¹⁰⁶ It was foreseen that VNPT would be fully equitised by the end of 2019,¹⁰⁷ but when Vietnam Post was transferred to MIC, postal activities were excluded from the scope of this equitisation.

Now wholly owned by MIC, Vietnam Post has over 50 000 employees and more than 13 000 service points, including more than 2 500 post offices. As mentioned above, Vietnam Post is designated as the public service operator, in charge of PSO. Legislation makes no mention of the length of these obligations. Vietnam Post is also the entity designated to provide international postal services and the UPU designated operator for Viet Nam.

Viettel Post is an SOE and a joint stock and publicly listed company; it is part of Viettel Group, which is its majority shareholder (60.8%); the second largest is Japan Asia MB Capital (JAMBF) (5.08%). Viettel Group is wholly owned by the Ministry of Defence.¹⁰⁸ According to its charter, postal services are Viettel Post's main business, but it is also active in other businesses such as goods transportation by road, logistics, trading and retails, and printing and publication.

Both Vietnam Post and Viettel Post are subject to the SOE legal framework described in Section 3.4. Vietnam Post and Viettel Group (and consequently, its subsidiary Viettel Post) are also regulated by their respective charters,¹⁰⁹ which reflect the corporate structure prescribed by the Law on Enterprises.

In line with other country assessments undertaken in ASEAN Member States, this report will focus on a single SOE, in this case, Vietnam Post, because: 1) it is the operator designated by the government to manage and operate the public postal network, and responsible for the PSO in Viet Nam; and 2) it is the market leader in the SPDS sector. Some recommendations in this report may also apply to Viettel Post.

5.1.1. Mandate

Section 6 of Prime Minister Decision No. 674/2007/QĐ-TTg mandated Vietnam Post with managing and developing the “public postal network”,¹¹⁰ as well as with providing other public services at the request of competent state agencies. Vietnam Post is also engaged in “community activities” such as providing free delivery services for charity goods. Prime Minister Decision No. 41/2011/QĐ-TTg designated Vietnam Post as the public-service operator making it the “designated enterprise” as defined under Article 3(19) of the Law on Post. Its PSO are set out under Article 4 of Vietnam Post Charter.

5.1.2. SPDS business

In 2018, Vietnam Post’s total revenue was VND 21 000 billion. Its postal business (including SPDS) accounted for VND 8 000 billion, of which approximately VND 300-500 million was the provision of universal service. Vietnam Post’s financial services generated VND 3 600 billion and its distribution and communication business VND 9 600 billion. In 2018, Vietnam Post made an after-tax profit of VND 347.9 billion.

Vietnam Post is active in SPDS mainly through its joint venture with DHL (see Section 4.2) in the international express delivery segment, and VN Post Express JSC¹¹¹ in the domestic express delivery segment. Non-express deliveries account for 60% of Vietnam Post’s deliveries, while express deliveries account for 40%.¹¹² Vietnam Post’s SPDS business is heavily concentrated in the domestic B2C segment: approximately 90% of its SPDS business is domestic deliveries, while 95% of its SPDS business is made up of B2C deliveries.¹¹³

5.2. Assessment of Vietnam Post’s advantages and disadvantages in the SPDS sector

This section identifies and assesses Vietnam Post’s advantages and disadvantages in the SPDS sector, and offers recommendations to address these issues. Each sub-section commences by setting out the general principles guiding the assessment; these are mainly based on the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (2015_[10]).

5.2.1. Public-service obligation (PSO)

General principles

In order to maintain a level playing field with private competitors, SOEs need to be adequately compensated for the fulfilment of public-policy objectives, with measures taken to avoid both overcompensation and under-compensation.

Costs related to public-policy objectives can be funded by the state and should be disclosed.

Where SOEs combine economic activities and public-policy objectives, high standards of transparency and disclosure regarding their cost and revenue structures must be maintained, allowing for an attribution to main activity areas.

Decree No. 130/2013/ND-CP illustrates criteria for the provision of public-utility services. In the Appendix of this decree there are two lists: “List A” for public-utility products or services provided by “order placement” or “plan assignment”, and “List B” for public-utility products or services provided by bidding (or order

placement, if conditions are not met). Public-utility post and telecommunications services fall under List B. However, it is unclear whether Article 5 of Decree No. 130/2013/ND-CP prescribes the application of “order placement” or “plan assignment” in the case of the presence of SOEs.

Moreover, under Article 7(2), line ministries assume prime responsibility and co-ordinate with the Ministry of Finance to set specific price subsidies and the support level for public-utility products and services. As a general principle, the price subsidy level corresponds to the difference between the price set by the state and the reasonable costs incurred in providing such services.¹¹⁴ Article 9 of Decree No. 130/2013/ND-CP further prescribes that SOEs entrusted with public-utility tasks shall have adequate capital and comply with the public-utility object set by the agencies exercising ownership. Moreover, Article 9(4) of Decree No. 130/2013/ND-CP allows SOEs to use public-utility resources for other business activities, if 1) permitted by the agency exercising the ownership rights; 2) these activities do not affect the performance of public-utility tasks; and 3) they fulfil tax obligations and keep separate accounts.

Within this general framework, specific provisions apply to Vietnam Post:

1. Vietnam Post’s universal delivery services (i.e. delivery of non-express mail up to two kilogrammes in “reserved service areas”) are subject to maximum rates established by MIC.
2. Vietnam Post has exclusivity over deliveries of documents for administrative procedures. These deliveries are subject to the same rates and quality requirements as other public postal services.¹¹⁵ Circular No. 22/2017/TT-BTTTT prescribes maximum prices and grants exemptions or 50% discounts to a number of customers. In Vietnam Post’s financial statements and annual reports, there is no evidence of any (extra) compensation mechanism for the provision of these services.
3. Article 5(5) of the Law on Post contemplates incentive mechanisms for the provision of “public postal services” in areas with “difficult socio-economic conditions”; and Article 6(2) of Prime Minister Decision No. 45/2015 assigns to the Ministry of Finance the task of providing guidelines for the incentive policies, taxation and accounting of public postal services. The OECD was not able to identify any guidelines in this regard, so this point is not addressed in the report.

In addition, Article 19 of the Law on Post establishes that delivery services for the government (the Communist party, the state and national defence and security agencies) can only be performed through the public postal network and not for profit. Vietnam Post submitted, however, that the local party and state agencies choose the postal service provider based on special quality standard, and Vietnam Post is the provider that meets such requirements and standards. Circular 23/2017/TT-BTTTT regulates the maximum rates that shall apply to Vietnam Post’s provision of mail and SPDS for local party and state agencies (also called “KT1 services”). Vietnam Post charges government agencies and payments are made under contracts between Vietnam Post and the local party/state agencies. Vietnam Post submitted that KT1 services shall be considered as distinct from PSO.

The OECD understands that, between 2008 and 2013, Vietnam Post had a compensation “package” to cover its universal-service obligations. In 2008, this saw Vietnam Post receive compensation of VND 1 700 billion. This compensation declined in the following years until it reached zero in 2013. Vietnam Post does not currently receive any direct compensation for universal-service obligations. The current scheme contemplates indirect compensation in two ways: 1) through a periodic increase (every two years) of rates applied to mail; and 2) through tax and land-use benefits, such as VAT exemption for public postal services. Vietnam Post submitted, however, that regulated rates for PSO are lower than “market price”.

The OECD also understands that SOEs do not separate the accounts of commercial activities from those related to their PSO. With regard to Vietnam Post, it is unclear whether it separates its accounts, which would allow for the clear identification and allocation of revenue and costs to its different activities. There is no evidence of separate accounting in Vietnam Post’s financial statements. Vietnam Post submitted that PSO activities are executed under commercial contracts and that, therefore, they are part of its overall

financial statements. Moreover, MIC submitted that PSO activities are supervised separately from other Vietnam Post's services, in accordance with Article 33(7) of the Law on Post.

To maintain a level playing field with private competitors, SOEs need to be adequately compensated for the fulfilment of public-policy objectives. Governments should avoid both overcompensation and under-compensation. If SOEs are overcompensated for their public-policy activities, this would result in a subsidy for their competitive activities, distorting the level playing field, while under-compensation can jeopardise SOEs' viability. Adequate compensation can be achieved through different mechanisms including specific legal or contractual provisions. Moreover, to assess whether the compensation is adequate, it is crucial to ensure any costs related to the fulfilment of public-policy objectives be clearly identified and disclosed (OECD, 2015, p. 47_[10]).

In other countries, adequate compensation of public policy objectives takes different forms. In the past, the European Commission considered compensation schemes legitimate if subject to accounting separation and the application of a so-called "overcompensation test". For instance, the European Commission authorised: 1) the UK to grant a network subsidy to the Post Office to keep open and modernise non-commercially viable offices, such as those in rural areas; 2) Italy to grant compensation to Poste Italiane for the universal postal service and for reduced postal tariffs offered to publishers, not-for-profit organisations and electoral candidates; and 3) France to grant compensation to La Poste to finance the public service of delivering press items to citizens and the provision of postal services in remote areas.

The OECD has three recommendations.

1. Ensure that SOEs such as Vietnam Post receive adequate compensation for obligatory non-commercial activities for government agencies and other public authorities.
2. Ensure that regulated rates for PSO reflect Vietnam Post's actual costs, and take into account any other cross-subsidisation or other public funds or subsidies to which it has access.
3. Require that revenue and costs related to PSO are clearly separated in Vietnam Post's accounts.

5.2.2. SOEs governed and managed as an arm of government

General principle

A clear separation between state ownership rights in SOEs and state regulatory functions in a sector is a fundamental prerequisite for ensuring a level playing field and for avoiding competitive distortions.

As mentioned in Section 3.5, Prime Minister Decision No. 58/2016/QD-TTg classified SOEs into three categories depending on their areas of activities: 1) SOEs that remain 100% owned by the state active in sectors such as national defence and security, national railways, and public postal services; 2) SOEs that have been equitised with the state maintaining a stake of at least 65%; and 3) SOEs that have been equitised with the state maintaining a stake between 50% and 65%. The Appendixes to this Decision provide a detailed list of SOEs falling into each category. According to Appendix II.a, Vietnam Post – as provider of public postal services – will remain wholly owned by the state, through MIC.

MIC reported to the OECD that, although it directly owns and controls Vietnam Post, its Postal Services Department, which is in charge of sector regulation and policy issues, does not exercise ownership rights over Vietnam Post as it reports directly to the minister. Nevertheless, such a thin line between SOE management functions and state administrative functions (policy-making and sectoral regulation) may not be ignored.¹¹⁶ Furthermore, MIC directly appoints Vietnam Post's members' council and chairperson. Further, Prime Minister Decision No. 41/2011/QD-TTg assigns to MIC the responsibility of co-ordinating

with Vietnam Post in providing public postal services and of guiding Vietnam Post in providing international postal services.

It should also be noted that the lack of separation between commercial activities and administrative functions, in combination with the possibility (or sometimes even the requirement) for a foreign private company to establish a joint venture with an SOE in order to enter a market (see Section 3.2), can result in mixed incentives as it can provide opportunities for private companies to gain closer access to regulators and policy makers.

More broadly, in the 2018 *OECD Peer Review of Competition Law and Policy: Viet Nam*, multiple sources pointed to actual and perceived conflicts of interest as a factor discouraging investments by private-sector entities, reinforcing the dominance of key SOEs and more generally distorting good policy-making and the efficient functioning of markets.¹¹⁷

Line ministries in Vietnam continue to exercise a great degree of operational control over SOEs, which are considered important for implementing their policies. Line ministries both owning a stake in significant operators and being responsible for regulating operators in the same market often leads to actual and perceived favouritism as they have a vested interest in ensuring that SOEs succeed. This, in turn, has two kinds of anticompetitive effects. Firstly, privately owned operators can be discouraged from entering a market in the first place, thereby distorting potential competition, and secondly, where there are privately owned operators in the market favouritism may distort actual competition.¹¹⁸ A clear separation is a fundamental prerequisite for ensuring a level playing field with the private sector and for avoiding competitive distortions. A perceived conflict of interest can be just as damaging as an actual conflict of interest, and the safeguards needed to avoid actual or perceived conflicts are absent. Without these explicit safeguards separating the government's regulatory role from its role as an investor in the largest market participant, customers and investors may fear unfair regulatory treatment.

For these reasons, it is important to have an arm of government responsible for owning the shares in SOEs that is separate from the line ministries responsible for policy and regulation. Viet Nam has already established SCIC and CMSC to centralise or integrate the ownership function and separate it from (other) regulatory and policy functions carried out by line ministries (OECD, 2018, p. 28_[25]). So far, however, Vietnam Post and Viettel Post – like many other ownership interests – remain under the control of the line ministry.

The OECD has three recommendations:

1. As a step towards an independent exercise of its regulatory functions, MIC could issue internal guidelines to ensure a strict separation between the Postal Services Department and Vietnam Post's ownership functions.
2. Ensure a separation between the line ministry (MIC) and Vietnam Post by transferring the shareholding in the SOE to SCIC (or another such body) whose sole responsibility shall be to exercise ownership rights over the SOE.
3. In case of equitisation or divestment of Vietnam Post (and Viettel Post), an economic agency or regulator with competition policy expertise could, in principle, play a valuable part in providing guidance to ensure that anti-competitive legacy issues are not left behind in the SPDS market, where these SOEs have a significant presence. Such agency or regulator could, for instance, assist with the tender (or other competitive procedures) design for the equitisation or divestment, as well as with defining the exact scope of the assets being divested. However, the institution chosen to provide guidance would have to be assigned specific functions in order to be able to provide specific guidance.

General principle

The boards of SOEs should have the necessary authority, competencies and objectivity to carry out their functions of strategic guidance and management monitoring. They should act with integrity and be held accountable for their actions.

In Viet Nam, there is neither an SOE corporate governance framework nor specific provisions regulating the selection and appointment of SOEs' top management. In practice, it seems that, in some instances, members of council (directors) of SOEs may have been selected from a pool of (former) government officials and bureaucrats (and appointed by the prime minister).

In an attempt to prevent conflicts of interest, the Law on Enterprises prescribes that: 1) once a council member, chairperson or president of an SOE is appointed, this individual cannot maintain her or his position in the ministry;¹¹⁹ and 2) members of an SOE's council are not allowed to establish and manage other enterprises in Viet Nam.¹²⁰ In addition, based on information provided by the Ministry of Information and Communications in June 2021, the Enterprise Law prescribes that cadres, civil servants and public employees do not have the right to establish and manage enterprises. Further, according to Decree No. 159/2020/ND-CP, managers of SOEs shall not be cadres, civil servants or public employees. Finally, the list of the board of directors is publicly available. It is either posted on the official website or including in the annual report of each SOE.

Vietnam Post's directors are listed on its website,¹²¹ while Viettel Post directors are listed (with their CVs) in its annual report.¹²² Based on publicly available information, it appears that Vietnam Post's board is composed of some members with prior state links.

Moreover, the public perception in Viet Nam is that in some cases even independent directors are not independent-minded and that there is political interference in the nomination process (OECD, 2018, p. 187^[23]). This is particularly relevant because government decision-making generally remains shielded from public scrutiny (World Bank/Ministry of Planning and Investment of Vietnam, 2016, p. 347^[24]).

The OECD has two recommendations:

1. While a certain level of political oversight in SOEs with public-policy objectives is legitimate, Viet Nam should increase the independence of SOEs' boards (i.e. members' councils) and limit excessive governmental intervention in SOE management. Transferring the shareholding to SCIC (or other such body) could support efforts to further professionalise SOE management.
2. Improve the nomination process of SOEs' boards (i.e. members' councils) by fully disclosing information about prospective members, including their qualifications, with emphasis on the selection of qualified candidates.

5.2.3. Different regulatory treatment

General principle

The legal and regulatory framework for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs undertake economic activities.

Competition laws

As indicated in Section 3.3, SOEs are in principle subject to competition law in Viet Nam. In practice, however, enforcement actions against SOEs on competition grounds have to date been limited.

Article 28 of the new competition law acknowledges that the state controls enterprises operating in state-monopolised sectors, while Decree No. 94/2017/ND-CP provides a list of commercial goods and services under monopoly. This list includes the operation of a public postal network (and the issuance of postage stamps). However, Article 28 of the new competition law clarifies that if the same undertaking has activities outside the attributed state monopoly, these activities are subject to competition law.

A strict interpretation and independent assessment of the latter provision is required because SOEs' conduct in monopolised sectors may still affect other (adjacent) markets that are open to competition and subject to competition law and in which SOEs operate. This is the case, for instance, for Vietnam Post, which is active in both a monopolised market (public postal services) and the liberalised SPDS market, where it competes with privately owned enterprises. Anticompetitive effects on the liberalised market that may result from the conduct of dominant companies include cross-subsidisation, which might occur if the postal incumbent receives more state compensation than is necessary to perform its mandated tasks. These excess state funds can be used to compete in liberalised SPDS markets, affecting the possibility for more efficient private operators to enter or invest in such markets. Companies active in both monopolised and liberalised markets may also engage in "tying", which occurs when the purchase of one product or service where a company is dominant is conditional on the purchase of another product or service.

The OECD has two recommendations:

1. Adopt a strict interpretation of Article 28 of the new competition law with regard to SOEs' conduct in monopolised sectors and empower VCCA with adequate resources to assess conduct by SOEs operating in state-monopolised sectors such as the public postal services that may have an impact on sectors open or due to be opened to competition such as the SPDS market. VCCA should act independently in conducting a technical assessment of such conduct to ensure a level playing field.
2. Allocate resources to VCCA for advocacy initiatives, including in the field of competitive neutrality and on specific sectors such as SPDS, involving all levels of government (central, provincial and municipal).

Exemption from licensing requirement

As mentioned in Section 4.3.1, the Law on Post requires postal service providers to obtain a licence from MIC, subject to a fee. A licence is valid for ten years and renewable.¹²³

In practice, the procedure to obtain a licence appears to be burdensome. For instance, to be deemed complete and thus be accepted, the application must include *inter alia* a detailed business plan, including an analysis of the feasibility and socio-economic benefits. The application can be submitted online.

The licensing system was introduced in 2007. At that time, there were only three players – all SOEs – already active in the market: Vietnam Post, Viettel Post and Saigon Postel Corporation (SPT).¹²⁴ These “pre-existing players” were not and are still not subject to the licensing requirement, nor were they required to pay a licence fee. This different treatment provides a clear advantage to SOEs in terms of both costs and regulatory burden.

The OECD has one recommendation.

1. Apply the same licensing requirements applicable to other SPDS providers to the commercial activities (non-PSO services) performed by Vietnam Post and other SOEs. Alternatively, Viet Nam should consider lowering the burden on licensees by simplifying the licensing procedure.

Transparency and auditing requirements

In *OECD Investment Policy Reviews: Viet Nam 2018*, the OECD recommended Viet Nam improve disclosure of financial and non-financial information for SOEs and ensure that it is made in a timely manner. In this regard, the OECD recommended full convergence with international standards and practices for accounting and audit, and the promotion by the authorities of the need to adopt good practices for non-financial disclosure.¹²⁵

For Vietnam Post and Viettel Post, the OECD observed that updated information on their management, annual reports and financial statements are made available on their respective websites. The OECD understands that Vietnam Post’s accounts are subject to external independent audit, even though there is no strict legal requirement. It would therefore appear that the SOEs analysed in this report already meet to a sufficient degree the appropriate transparency and auditing standards.

For specific measures to enhance Vietnam Post’s transparency, see recommendations under 5.2.1, 5.2.4, and 5.2.5.

5.2.4. Privileged access to public procurement

General principle

When SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be competitive, non-discriminatory and safeguarded by appropriate standards of transparency to ensure a level playing field.

In Viet Nam, the public procurement framework provides for investor selection through open bidding or direct appointment of a contractor.¹²⁶ Direct appointment of a contractor is limited to cases where a single investor registers and satisfies the requirements for pre-qualification or is capable of executing the project due to intellectual property, commercial secrets or funding arrangements, or when an unsolicited proposal is considered feasible and most efficient following the prime minister’s consideration and decision (OECD, 2018_[23]).¹²⁷

No *prima facie* preferential treatment is granted to SOEs. Nevertheless, under Article 8(4) of Law No. 69/2014/QH13, the government may assign contracts for specific products or services at a “service price”, in other words, to perform social obligations.

The delivery of administrative documents is assigned to Vietnam Post under Prime Minister Decision NO. 45/2016/QD-TTg, so for this service government agencies are legally bound to use Vietnam Post. For other delivery services, government agencies can in principle use any provider.

Moreover, for its delivery services to government agencies, the OECD understands that Vietnam Post charges its standard (commercial) rates and is compensated every quarter. Certain stakeholders have indicated, however, that compensation mechanisms for such contracts remain a grey area, while the Ministry of Information and Communications submitted that this not the case. The Vietnam Post's annual reports do not account for such compensation separately.

The OECD has three recommendations:

1. Should Vietnam Post be granted preferential access to the provision of delivery services, establish internal guidelines and provide training to government agency personnel to ensure that public procurement rules are fully enforced (e.g. tenders awarded to the best bidder).
2. Ensure that any compensation for the provision of delivery services to government agencies is calibrated to the actual costs of fulfilling well-defined public-policy objectives and not being used to offset any financial or operational inefficiencies.
3. Ensure that Vietnam Post complies with separate accounting obligations to avoid overcompensation or cross-subsidisation.

5.2.5. Financial advantages

In 2016, the World Bank noted that in Viet Nam the state's influence in allocating land and capital, gives rise "not only to opportunities for corruption by handing over arbitrary power to officials but also to heavy economy-wide inefficiencies" (World Bank/Ministry of Planning and Investment of Vietnam, 2016, p. 13^[24]).

It has been noted that SOEs often have easier access to finance in terms of loans and capital (Nguyen, 2014^[21]). This seems to be confirmed by Article 10(1-r) of Vietnam Post Charter, which states that: "Vietnam Post would be entitled to preferential treatment in terms of access to loans, taxes and investment incentives." Even though the government is in the process of reducing the direct subsidies granted to SOEs (as seen in Section 3), the OECD understands that subsidies are still granted, for instance, in the form of state funds for specific projects supporting social policies (OECD, 2018, pp. 18; 23-24^[25]).

Protection from debt claims and bankruptcy procedures

General principle

SOEs undertaking economic activities should not be exempt from the application of general laws and regulations. An SOE's legal form should allow creditors to press their claims and to initiate insolvency procedures.

Article 3 of the Law on Bankruptcy states that bankruptcy rules apply to every enterprise and co-operative based in Viet Nam.¹²⁸ It also prevents SOE directors and representatives of the state capital in an SOE that has been declared bankrupt from holding similar positions in other SOEs. SOEs do not therefore benefit from any legal exemption from bankruptcy.

In practice, however, bankruptcy risks for SOEs are mitigated by state capital injections and other forms of support (Nguyen, 2014^[21]) that see financially troubled SOEs bailed out, with debts frozen, restructured or even eliminated, or transferred to other SOEs. Similarly, when SOEs are liable to taxes, but unable to pay them, they are permitted to remain in arrears or enjoy debt reduction and even debt elimination (OECD, 2018, p. 21^[25]). Cases of SOEs going bankrupt are rare in the last years;¹²⁹ indeed, in 2017, CIEM released a report that stated that only eight SOEs had been declared bankrupt in the 2011-2015 period.¹³⁰

Most OECD countries subject SOEs to the same regulatory framework – for example, with no exemptions from bankruptcy laws – and lending conditions as private-sector companies (OECD, 2012, p. 92^[14]). Indeed, the possibility of bankruptcy is considered an essential factor in policing management in these companies (OECD, 2015, p. 12^[10]).

The OECD has one recommendation:

1. Avoid providing capital injections and other financial support by the state to SOEs in severe financial distress.

Tax treatment

General principle

SOEs undertaking economic activities should not be exempt from the application of general laws and tax codes. Laws and regulations should not unduly discriminate between SOEs and their market competitors.

In Viet Nam, SOEs are generally not exempt from corporate income tax, which is currently set at 20%.¹³¹ Limited exemptions apply under Article 4 of the Law on Corporate Income Tax.¹³² Section 8 of Prime Minister Decision No. 674/QD-TTg partially exempted Vietnam Post from corporate income tax for five years (so for the period 2007-2011). The OECD understands that Vietnam Post – like other SOEs – is currently subject to the same taxation as privately owned entities, while its public postal services remain VAT exempted.

Although tax benefits may be to compensate for public policy or other non-economic activities, the exemption should not apply to SOEs' commercial activities as this confers a non-neutral advantage that none of its competitors enjoys for similar activities.

The OECD has one recommendation:

1. Avoid any tax exemptions on SOEs' commercial activities. Any tax exemption should be strictly limited to public services, which should be accounted separately (see Section 5.2.1).

Usage of land

General principle

SOEs' economic activities should not receive inputs (such as energy, water or land) at prices or conditions more favourable than those available to private competitors.

Under Articles 53 and 54 of the 2013 Constitution, ownership rights over land in Viet Nam are reserved to the state, which may allocate, lease or assign land use rights to individuals or organisations, subject to payment of levies and rents. Law No. 45/2013/QH13 on Land sets out a general framework, while Government Decree No. 46/2014/ND-CP regulates these land rights and the collection of land rents, as amended by Government Decree No. 135/2016/ND-CP and Government Decree No. 123/2017/ND-CP.

Government Decree No. 46/2014/ND-CP does not exempt SOEs from land rents, nor apply a different calculation of the due amount for SOEs. Articles 19 and 20 provide, however, a list of cases for which

exemption or reduction of land rents do apply. These include land allocated to projects initiated before 1 July 2014, which will continue to be exempted until the end of lease period. Moreover, Articles 19(10) and 20(5) provide for the prime minister to grant case-by-case exemptions or lease reductions.¹³³ Government Decree No. 45/2014/ND-CP regulates the collection of land-use levies, with exemptions from these use levies seeming to apply only to residential uses. There is no list of organisations (including SOEs) that have been allocated land eligible for levy exemption or levy reduction by the state.

It has been observed that in Viet Nam land disputes are a source of complaints against the design and implementation of economic regulations that grant SOEs (or state-connected firms) easier access to land on a case-by-case basis (Nguyen, 2014^[21]) (World Bank/Ministry of Planning and Investment of Vietnam, 2016, p. 340^[24]). Within this framework, SOEs have in the past been assigned lease-exempted and levy-exempted land rights (or in exchange of nominal fees). Such preferential treatment is still in place as a legacy advantage for certain SOEs.¹³⁴

Article 4 of Prime Minister Decision No. 1746/QD-TTg Transferring Vietnam Post Under MIC reaffirmed Vietnam Post's exemption from rent for facilities, land and land levy, and conferred prime responsibility for this to the Ministry of Finance. In certain cases at local level, Vietnam Post is assigned rent-free land to build "points of service" in remote, rural areas. Even for land that is not lease-free, rents paid by Vietnam Post appear to be lower than market prices.

In this regard, Vietnam Post submitted that Circular No. 176/2013/TT-BBC guided the implementation of lease exemptions on Vietnam Post's main business activities as part of the general policies of public postal services until the end of 2018. It also submitted that since 2019 it has not been allocated land eligible for tax reduction or exemption by the state, and that it paid rents as other enterprises pursuant to Government Decree No. 46/2014/ND-CP.

The OECD has three recommendations:

1. Except for land and facilities strictly related to Vietnam Post's PSO, the Ministry of Finance should revise rent exemptions for facilities and land and from the land levy granted to Vietnam Post.
2. Assign land rights through competitive procedures with the aim of maximising their value. If land rights are assigned to Vietnam Post, Viettel Post and other SOEs, rents and land levy should reflect their market value.
3. Increase transparency by disclosing a list of properties granted to each SOE that are exempted from rents or land levies; SOEs' financial reports should contain clear information on these rights.

Other advantages

In Viet Nam, SOEs often have priority access to state-developed infrastructure (Nguyen, 2014^[21]). According to Decree No. 59/2015/ND-CP on Construction Project Management, projects related to postal services and with total capital above VND 1 500 billion – such as large buildings, post offices and warehouses – are deemed projects of national importance that require a feasibility study by the Ministry of Finance.¹³⁵ Being the designated operator of public postal services, Vietnam Post directly benefits from state investments in the public network. At the same time, Vietnam Post has no obligation to allow access to other SPDS providers to these state-invested facilities.

The OECD has one recommendation.

1. Through ministerial guidelines, ensure that funds allocated to projects related to postal services deemed of national importance are limited to investments in the public postal network and do not result in undue financial support to Vietnam Post's commercial activities competing with other SPDS providers. Obligations on Vietnam Post to implement transparency and accounting separation should be introduced to mitigate risks of cross-subsidisation.

General principles

SOEs' economic activities should face market consistent conditions regarding access to debt and equity finance.

SOEs' relations with all financial institutions, as well as non-financial SOEs, should be based on purely commercial grounds. SOEs' reliance on state-owned financial institutions may distort their incentive structure and lead to excessive indebtedness and wasted resources.

Even when funding is obtained from private lenders and granted on commercial terms, if the creditors assume there is an implicit state guarantee on SOEs' debts, this situation can lead to artificially low funding costs for SOEs and distort the competitive landscape.

State direct investments

As seen in Section 3.4.5, Government Decree No. 91/2015/ND-CP¹³⁶ provides for key criteria and procedures for state investments in and management of SOEs in Viet Nam. Public postal services, as an essential public service in ensuring "social security", are explicitly listed under Article 5 to be within the scope of state capital investment; Section 2 allows for additional investments in the charter capital of an active SOE, if it meets performance criteria and if it needs a capital increase for its main scope of operations (or if it is involved in national defence or security activities).¹³⁷ In addition, the OECD understands that a certain number of extra-budgetary funds are made available to SOEs at central and subnational level; these include the Vietnam Social Security Fund, the Enterprise Restructuring and Development Support Funds, and the Accumulation Fund for Foreign Debt Repayment (World Bank/Ministry of Planning and Investment of Vietnam, 2016, p. 70^[24]).

In principle, a public authority should invest in an enterprise on terms and in conditions that would be acceptable to a private investor. If this is the case, the enterprise receiving the state investment gains no particular benefit since it could have obtained the same financing in the open market. Such criteria do not seem to apply in Viet Nam, however, where SOEs enjoy a competitive advantage through investments from state funds (Nguyen, 2014^[21]); these state capital injections result in less pressure on SOEs' efficiency and risk management.

The OECD has one recommendation:

1. Adopt a more commercial approach to state ownership by applying harder budget constraints. Investments from the state budget and extra-budgetary funds into SOEs should be on terms and conditions that would be acceptable to a private investor. This objective can be achieved, for instance, by creating a degree of separation between public policy bodies and representatives of the state's shareholdings in SOEs, establishing state-owned investment funds or holding entities.

Dividend policy

Article 34 of Law No. 69/2014/QH13 sets out the principle of profit distribution for dividends paid for state capital investments. It prescribes that less than 30% of after-tax profits shall be set aside for investments in an SOE's core business, with another part set aside for welfare funds and bonuses, while the state shall collect the remainder.¹³⁸ Article 31 of Government Decree No. 91/2015/ND-CP details the procedures that SOEs shall follow for profit distribution in application of Article 34 of Law No. 69/2014/QH13.

Based on its 2018 Annual Report, Vietnam Post seems to be profitable, with a total after-tax profit of VND 340.3 billion and total taxes and other payments made to the state of approximately VND 52.5 billion. There is no specific information on dividends paid to the state.

The OECD has two recommendations:

1. For each SOE, establish an appropriate dividend policy, including clearly set rates of return, in line with market practices.
2. Publicly disclose in SOEs' annual reports information on dividends paid to the state by SOEs, such as Vietnam Post.

State loans and state-guaranteed loans

Vietnamese SOEs are frequently able to borrow from commercial banks on advantageous terms and are among the few firms able to borrow from fully state-owned, quasi-fiscal, special-purpose vehicles such as Bank for Investment and Development of Vietnam (BIDV) and Vietnam Development Bank (OECD, 2018, p. 191_[23]; OECD, 2018, p. 24_[25]).¹³⁹ Moreover, the OECD understands that these loans require little or no disclosure by the borrower and are largely unsupervised by the relevant financial-sector enforcement agencies.¹⁴⁰ This was confirmed by stakeholders, who suggested that SOEs may not be subject to due diligence before loans are granted. This possibility for SOEs to borrow at favourable conditions may be crowding-out funding to more efficient private-sector companies (OECD, 2018, p. 24_[25]).

Anecdotal evidence points to a number of cases of poor SOE performance and its potential impact on the Vietnamese economy. In 2010, for example, in a well-known case, state-owned shipbuilder Vinashin defaulted on a foreign loan, triggering a downgrade of Viet Nam's sovereign debt (OECD, 2018, p. 192_[23]).

Furthermore, it seems that SOEs' access to finance is facilitated by state guarantees, which support SOEs' commercial loans at preferential rates.¹⁴¹ These loans are granted based on a case-by-case assessment and interest rates applied to SOEs are not publicly disclosed. Decree No. 91/2018/ND-CP regulates the issuance and management of these state guarantees. First, interestingly, it obliges the borrower to hold separate accounts for the projects guaranteed by the state or, if revenue cannot be separated, the Ministry of Finance can request that the prime minister allow for the supervision of the enterprise's total revenue.¹⁴² Second, Article 33 of the Decree allows the prime minister to decide upon the cancellation and termination of the mortgage "if no longer valid" or if "the collateral has become State property". It could be argued that this provision allows the state to intervene in cases of SOE bailout; there is no publicly available information to suggest that this provision has been applied in practice.

The latest Ministry of Finance Bulletin on Public Debt (released in December 2018) reports that the total outstanding loans guaranteed by the state (not explicitly mentioning SOEs) amounted to USD 20.3 billion in 2017.¹⁴³ According to the 2018 *Government Report to the National Assembly on the Management and Use of State Capital Invested in Enterprises*, the total amount owed by 83 wholly owned SOEs amounted to VND 1.5 trillion.¹⁴⁴ The Ministry of Finance submitted that the state does not guarantee SOEs' loans.

With regard to Vietnam Post, Section 8 of Prime Minister Decision No. 674/QD-TTg provided that until 2011 the enterprise was able to "borrow preferential capital from the State to invest, maintain, expand and develop the public postal network". This period is elapsed and the OECD understands that the provision has not been extended. According to Vietnam Post, its current charter capital is sufficient to operate. Based on its 2018 annual report, Vietnam Post received a small short-term loan of VND 765 million, and a long-term loan of approximately VND 3.7 billion from Vietcombank, a state-owned commercial bank. There is no publicly available information on these loans' interest rates and government guarantees. Vietnam Post submitted that both loans were contracted by Vietnam Post's subsidiaries and that these loans were granted under commercial terms and interest rates, without government guarantees.

The OECD has three recommendations:

1. Refrain from providing state guarantees for SOE loans as this results in SOEs having access to preferential rates.
2. Ensure any external finance sought by SOEs, including Vietnam Post, is taken out under commercial terms with both state-owned banks and other financial institutions. In particular, loans to SOEs should be subject to appropriate due diligence and to market-based interest rates.
3. Apply clear reporting requirements for debt obligations and financial assistance to SOEs, including for guarantees received from the state.

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Notes

¹ See, for example, Santacreu-Vasut and Pike (2018^[41]) and OECD (2018^[42]).

² See <https://asean.org/asean-experts-group-competition-releases-statement-response-covid-19>.

³ In this context, the OECD-Asia Network on Corporate Governance of State-Owned Enterprises provides a forum for the governments of Asian countries and corporate governance practitioners to share good practices and identify common priorities for strengthening SOEC corporate governance.

⁴ EU Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (Merger Regulation), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008XC0416\(08\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008XC0416(08)), paragraphs 65-73.

⁵ *AEC Blueprint 2025*, paragraphs 25-26. See also, *AEC 2025 Consolidated Strategic Action Plan*.

⁶ *ASEAN Regional Guidelines on Competition Policy* (2010), Section 3.1.2, www.icao.int/sustainability/Documents/Compendium_FairCompetition/ASEAN/ASEAN-RegionalGuidelinesonCompetitionPolicy.pdf.

⁷ The provision of education is a broadly accepted example of a service that has a positive externality beyond the immediate recipient of the education. The provision of basic research is also commonly mentioned as potentially being the subject of market failures leading to under-provision.

⁸ For a more elaborate description, see Capobianco and Christiansen (2011^[15]).

⁹ One of the three main objectives of this strategy is to complete the transition to a socialist-oriented market economy by eliminating remaining barriers to fair competition.

¹⁰ See www.adb.org/countries/viet-nam/economy.

¹¹ See OECD (2019, p. 41^[17]): “Viet Nam implemented important reforms in the run up to its accession to the WTO on November 2006 (effective January 2007) after 11 years of negotiations [...]. Among other things, it adopted a new Law on Investment and a new Law on Enterprises in 2005, later replaced in 2014”.

¹² Government Decree No. 91/2015/ND-CP; Law No. 68/2014/QH13 on Enterprises, Article 4(9). A similar definition applied under Article 1 of the Law No. 14/2003/QH11 on State-Owned Enterprises now repealed. Under a previous classification, SOEs were divided in two forms: national champions comprising state-owned economic groups (so-called “91 Corporations” under PM Decision No. 91/TTg) and state-owned enterprises (so called “90 Corporations” under PM Decision No. 90/TTg) or SOEs under the previous Law on Enterprises, which included state companies, state-owned joint stock companies and state-owned limited liability companies.

¹³ The Law on Sole Proprietorships and the Company Law (both passed in 1990) established the legal basis for private enterprises and limited liability companies.

¹⁴ OECD (2018, p. 25^[23]): “Between 1989 and 1992, the number of government-owned corporations was halved to 6 000 and approximately 800 000 employees were let go”.

¹⁵ The equitisation of SOEs proceeded rapidly in the 1990s and early 2000s, but has slowed down over the past decade.

¹⁶ OECD (2018, p. 19^[25]): “From 2011 to 2016, 537 SOEs were equitised with a total enterprise value of VND 789.9 trillion”. According to the World Bank, this process mainly involved non-strategic SOEs; See World Bank/Ministry of Planning and Investment of Vietnam (2016^[24]).

¹⁷ For further information on State Economic Groups, see Ho Chi Minh National Academy of Politics (2016^[49]).

¹⁸ The 2013 Constitution of the Socialist Republic of Vietnam is the fourth constitution adopted by the Vietnamese government since the country’s political reunification in 1976.

¹⁹ 2013 Constitution, Articles 33 and 51.

²⁰ 2013 Constitution, Article 51.

²¹ See Nguyen (2014^[21]).

²² See OECD/ERIA (2018^[18]). Credit to SOEs has come down since 2012, but 13.3% of total bank credit was still allocated to SOEs in 2016. See also World Bank/Ministry of Planning and Investment of Vietnam (2016, p. 142^[24]): “Much of the lending – especially by state-owned commercial banks – has gone to SOEs or, increasingly, to private companies with connections”.

²³ Law No. 27/2004/QH11 on Competition.

²⁴ See OECD (2018^[50]). See also Nguyen (2014^[21]).

²⁵ It is unclear whether this decree addressed concerns under the previous competition law related to the discretion as to the sectors under monopoly. See Nguyen (2015^[26]).

²⁶ VCCA confirmed that it had two relevant enforcement cases so far: one case against an enterprise wholly owned by the state (VINAPCO) and one case against an enterprise in which the state held a majority stake (Bao Viet Holdings).

²⁷ Law No. 68/2014/QH13 on Enterprises, Article 4 and Chapter IV. Article 88 prescribes that the Law on Enterprises provisions in other sections also apply to SOEs, except for the matters specifically covered in Chapter IV.

²⁸ Law No. 69/2014/QH13 on Management and Utilisation of State Capital Invested in Enterprises’ Manufacturing and Business Activities. See also OECD/KIPF (2016^[22]).

²⁹ The 2005 Law on Enterprises (merging the separate laws covering SOEs and private enterprises) entered into force together alongside the 2005 Investment Law and an Intellectual Property Rights Act. For further information, see OECD (2018^[23]).

³⁰ Law No. 14/2003/QH11 on State-Owned Enterprises.

³¹ Article 89 allows requires the representative agencies to transform SOEs in limited-liability companies according to one of the forms generally prescribed for companies under Article 78.

³² According to Article 8(2), SOEs’ development and investment strategies shall conform to socio-economic development and the planning for sector development.

³³ Law No. 69/2014/QH13, Article 10. Law No. 39/2019/QH14 on Public Investment entered into force on 1 January 2020; it extends the applicability of the Law on Management and Utilisation of State Capital to the management of and use of state-owned funds’ investments.

³⁴ A similar rationale applies for further state investments in existing (wholly-owned SOEs) and in joint-stock companies (SOEs with private minority stakeholders); Law No. 69/2014/QH13 on Management and Utilisation of State Capital Invested in Enterprises’ Manufacturing and Business Activities, Article 13 to 18.

³⁵ Law No. 69/2014/QH13 on Management and Utilisation of State Capital Invested in Enterprises' Manufacturing and Business Activities.

³⁶ For other institutions involved in SOE governance and ownership in Viet Nam, see OECD/KIPF (2016^[22]).

³⁷ Article 5 and following, Decree No. 87/2015-ND-CP.

³⁸ Law No. 68/2014/QH13 on Enterprises. Under Article 212, separate regulations apply to SOEs with national defence and security activities.

³⁹ Article 97(4), Law No. 68/2014/QH13 on Enterprises.

⁴⁰ Article 5(7) and Article 61, Law No. 69/2014/QH13. Moreover, if the SOE has government-guaranteed loans, additional reporting requirements apply under Law No. 20/2017/QH14 on Public-Debt Management and Decree No. 91/2018/ND-CP on Provision and Management of Government Guarantees.

⁴¹ In addition to periodic disclosure, Article 109 provides for the requirement of an immediate disclosure (within 36 hours) in case of events such as suspension of business licences, prosecution of management, auditing of financial statements refused, or decision to establish, merger or divest a subsidiary.

⁴² However, according to Decree No. 87/2015/ND-CP, Article 12(1) the representative agency is required to hire independent accounting and audit firms only if the SOE's financial statements lack information or appear inaccurate.

⁴³ Articles 102 and 103 of the Law on Enterprise provide for the appointment by the agency representing the owner of an external inspector or inspection committee (of three to five members), with the power to review the SOEs' financials and other internal documents, as well as to evaluate operations and management decisions. The external inspector or inspection committee reports to the agency representing the owner.

⁴⁴ Under Article 12 of Decree No. 87/2015/ND-CP, the representative agency is responsible for preparing a report to submit to the Ministry of Finance.

⁴⁵ Articles 39 and 40, Decree No. 91/2018/ND-CP.

⁴⁶ Chapter VIII, Law No. 69/2014/QH13.

⁴⁷ Article 90 and following, Law No. 68/2014/QH13 on Enterprises.

⁴⁸ Law No. 100/2015/QH13 Criminal Code, as amended by Law No. 12/2017/QH14.

⁴⁹ Decree No. 91/2018/ND-CP.

⁵⁰ This decree replaces Decree No. 71/2013.

⁵¹ The capital increase procedure is detailed under Articles 10 and 11, Government Decree No. 91/2015/ND-CP.

⁵² Limitations apply to investments in real estate, banks, insurances and other financial companies, unless for specific cases decided by the prime minister.

⁵³ Article 45 of Law No. 20/2017/QH14 on Public Debt Management limits guarantees to 70% of the overall investment. This is further detailed under Article 6 of Decree No. 91/2018/ND-CP.

⁵⁴ A detailed list of SOEs falling in each category is provided in the Appendixes to Prime Minister Decision No. 58/2016/QD-TTg.

⁵⁵ See also OECD (2018_[25]).

⁵⁶ See www.vietnamlawmagazine.vn/pm-sets-deadline-for-state-enterprise-restructuring-6566.html and www.e.vnexpress.net/news/business/economy/vietnam-privatization-efforts-bogged-down-in-new-rules-3950110.html.

⁵⁷ See VN Express (2019_[47]) and OECD (2018_[25]).

⁵⁸ See www.reuters.com/article/vietnam-economy-privatisation/rpt-vietnam-aims-to-sell-stakes-in-nearly-100-state-firms-by-end-of-2020-idUSL4N25C0M6.

⁵⁹ Articles 11.4 and 11.5 of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2020.186.01.0003.01.ENG.

⁶⁰ Annex 11-A of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam.

⁶¹ See, for example, European Commission (2018_[58]).

⁶² European Commission Case M.6570 – UPS/ TNT Express, paragraphs 36-39, and European Commission Case M.7630 – FEDEX / TNT EXPRESS, paragraphs 78-80.

⁶³ Established in 1874, the Universal Postal Union (UPU) is a specialised agency of the United Nations. With 192 member countries, the UPU is the primary forum for co-operation between postal-sector participants. The UPU helps to ensure a truly universal network of up-to-date products and services, sets the rules for international mail exchanges, and makes recommendations to stimulate growth in mail, parcel and financial services volumes and improve quality of service for customers.

⁶⁴ A node is a connection point within a network. See, European Commission Case COMP/M.6570 – UPS/ TNT Express, recital 44.

⁶⁵ The European Commission defines integrators using five basic characteristics: 1) ownership of or full operational control over all transportation assets, including an air network with scheduled flights, through which a large proportion of the volumes handled by the company is carried; 2) sufficient global geographic coverage; 3) a hub-and-spoke operating model; 4) a proprietary IT network that allows all relevant data to run across one network; 5) a reputation for reliably delivering parcels on time (so-called “end-to-end credibility”).

⁶⁶ See European Commission Case COMP/M.7630 – Fedex / TNT Express, paragraph 28 and following. Several postal operators had changed their focus from the traditional mail business to small-package, e-commerce-based companies with cross-border presences. Examples include Deutsche Post, Royal Mail, PostNL, Swiss Post, Estonian Post, Correos, Bpost, Österreichische Post and PostNord, which are upgrading or have upgraded their offer in order to meet new demands, especially in the B2C segment.

⁶⁷ Integrators or larger SPDS operators may outsource certain elements of the value chain to subcontractor outside service providers (OSP), which generally perform pick-up, delivery and certain sorting functions for small-package companies. This is often on a branded basis, so that the customers are not aware that the OSP is a subcontractor. An authorised service contractor (ASC) is typically a small-package company within a particular region – usually a single country – that enters into direct relationships with the customer of its own account in that country. An ASC may also be integrator branded, in which case the vans and drivers usually carry the brand of the integrator on their trucks, paperwork and uniforms, so customers may not realise that the ASC is an independent company.

⁶⁸ The definition of e-commerce used in this report is that in *OECD's Glossary of Statistical Terms*: “An e-commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have

to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments, and other public or private organisations.” (<https://stats.oecd.org/glossary/detail.asp?ID=4721>).

⁶⁹ In 2018, the ASEAN e-commerce market accounted for approximately 1% of worldwide e-commerce revenue. See OECD (2018^[31]).

⁷⁰ See <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2017-2025-ASEAN-WP-e-Commerce.pdf>.

⁷¹ See <http://agreement.asean.org/media/download/20190306035048.pdf>.

⁷² See OECD/ERIA (2018^[18]).

⁷³ The joint venture’s name remained unchanged after Vietnam Post was carved out from VNPT.

⁷⁴ Vietnam Post Charter, Annex 2; Vietnam Post Financial Report.

⁷⁵ Express mail service is letters, documents, printed matter and merchandise from sender to receiver between Vietnam and other countries under frame of Universal Postal Union (UPU) and EMS co-operative.

⁷⁶ For more information, see ASEAN-Japan Centre (2018^[38]).

⁷⁷ OECD interview with Vietnam Post’s representative.

⁷⁸ ASEAN-Japan Centre (2018^[38]): “According to Article 4 (2) of Decree No. 128/2007/ND-CP dated 2 August 2007 on delivery service, ‘express delivery service’ means providing delivery service in an expedited and reliable manner”.

⁷⁹ For more information, see ASEAN-Japan Centre (2018^[38]).

⁸⁰ OECD interview with iDEA’s representatives.

⁸¹ Article 5(2), Law No. 49/2010/QH13 on Post.

⁸² Article 2, Law No. 49/2010/QH13 on Post.

⁸³ Article 3(4), Law No. 49/2010/QH13 on Post.

⁸⁴ Article 3(10), Law No. 49/2010/QH13 on Post.

⁸⁵ These include reports on the implementation of the annual plan, estimated revenues and a service provision plan.

⁸⁶ MIC Circular No. 17/2015/TT-BTTTT on National Technical Regulations on the Quality of Public-Utility Postal Services and Public-Utility Press Distribution.

⁸⁷ The frequency of collection and delivery for public postal services depends on the specific geographic conditions and is regulated under Circular No. 28/2015/TT-BTTTT.

⁸⁸ Articles 4 and 5, Circular No. 14/2018/TT-BTTTT.

⁸⁹ Circular No. 49/2015/TT-BTC Stipulating the Customs Procedure for Mail, Packages or Parcels of Goods Exported or Imported through Postal Services Provided by Authorised Enterprises.

⁹⁰ For intra-provincial postal services, licences are granted by the Department of Information and Communication.

⁹¹ Article 22, Law No. 49/2010/QH13 on Post.

⁹² Article 12, Government Decree No. 47/2011/ND-CP.

⁹³ Article 14, Government Decree No. 47/2011/ND-CP.

⁹⁴ Circular No. 291/2016/TT-BTC on Rates, Collection, Management and Use of Fees for Examining Applications to Provide Postal Services.

⁹⁵ The MIC examines the applications and receives the fees for national and international licences, while Provincial Departments of Information and Communication examine the applications and receive the fees for sub-national or provincial licences.

⁹⁶ Article 8, Government Decree No. 47/2011/ND-CP. According to information provided by the Ministry of Information and Communications in June 2021, 100% of the administrative procedures (including postal licences) have to be done through online public services.

⁹⁷ Article 28(3), Law No. 49/2010/QH13 on Post.

⁹⁸ Article 1(2), Circular No. 12/2018/TT-BTTTT.

⁹⁹ Article 5(3), Circular No. 12/2018/TT-BTTTT. Current maximum rates have been further detailed and lowered (especially for light mail) compared to the 2012 rates, which corresponded to VND 8 000 for domestic mail and VND 150 000 for international mail; see Circular No. 22/2012/TT-BTTTT.

¹⁰⁰ Article 2(2), Circular No. 22/2012/TT-BTTTT.

¹⁰¹ Circular No. 23/2017/TT-BTTTT; Article 3 seems to suggest that Vietnam Post may add a surcharge for deliveries to remote areas.

¹⁰² Decision No. 45/2016/QD-TTg.

¹⁰³ According to information provided by Ministry of Information and Communications in June 2021, the combined market share amounted to 37.1% in 2020.

¹⁰⁴ Prime Minister Decision No. 58/2005/QD-TTg.

¹⁰⁵ Prime Minister Decision No. 674/2007/QD-TTg.

¹⁰⁶ Prime Minister Decision No. 1746/2012/QD-TTg.

¹⁰⁷ See Prime Minister Decision No. 1232/QD-TTg and Prime Minister Letter No. 991/TTg-DMDM Approving the List of SOEs to Complete Equitisation in the Period 2017-2020. VNPT plans to offer 35% of its equity to the market, with the state retaining 65%; the date for this has been pushed back. In July 2019, Tran Manh Hung, chairman of VNPT, told Vietnamese newspaper VN Express that, “the company will at best complete its valuation in December 2020, equitization will take place in 2021.” See VN Express (2019^[47]).

¹⁰⁸ Decree No. 05/2018/ND-CP.

¹⁰⁹ Vietnam Post Charter approved by MIC Decision No. 1538/2016.

¹¹⁰ Article 10 (1-dd) of Vietnam Post Charter states that Vietnam Post is entitled to manage and use the public postal network owned and invested by the government, including the 63 provincial post offices listed in Annex I of the Charter.

¹¹¹ VN Post Express JSC is Vietnam Post’s EMS subsidiary. Vietnam Post owns 90% of the company, while the remaining 10% is owned by a subsidiary of VNPT and by its employees.

¹¹² Vietnam Post internal estimates provided to the OECD during interview on 21 March 2019.

¹¹³ Vietnam Post internal estimates provided to the OECD during interview on 21 March 2019.

¹¹⁴ Article 3, Decree No. 130/2013/ND-CP.

¹¹⁵ Decision No 45/2016/QĐ-TTg.

¹¹⁶ See Nguyen (2015^[26]).

¹¹⁷ See OECD (2018, p. 19^[25]).

¹¹⁸ Ibid.

¹¹⁹ Article 92(3), Law No. 68/2014/QH13 on Enterprises.

¹²⁰ Article 18, Law No. 68/2014/QH13 on Enterprises.

¹²¹ See www.vnpost.vn/en-us/chuyen-trang/gioi-thieu/id/114/key/ban-lanh-dao.

¹²² See <https://viettelpost.com.vn/wp-content/uploads/2019/04/BC-thuong-nien-nam-2018-VTP.pdf>. Vietnam Post and Viettel Post have no common directors.

¹²³ Article 22, Law No. 49/2010/QH13 on Post.

¹²⁴ Vietnam Post had a full monopoly until 1997.

¹²⁵ A similar recommendation is included in World Bank/Ministry of Planning and Investment of Vietnam (2016, p. 64^[24]).

¹²⁶ Law No. 43/2013/QH13 on Bidding and Decree No. 63/2014/ND-CP Detailing the Implementation of Several Provisions of the Law on Bidding Regarding the Selection of Contractors.

¹²⁷ Selection processes for bidders and investors in special cases are further stipulated in Prime Minister Decision No. 17/2019/QĐ-TTg.

¹²⁸ Law No. 51/2014/QH13 on Bankruptcy.

¹²⁹ For instance, during the restructuring of Vietnam Maritime Corporation (Vinalines), two of its subsidiaries, Vinashin Ocean Shipping Company (Vinashinlines) and the Vietnam Oil and Gas Transportation Company (Falcon), were allowed to go into bankruptcy. Moreover, one of Vietnam National Coal and Mineral Industries Group (Vinacomin) subsidiaries was also allowed to file for bankruptcy. For further information, see VietNamNet (2013^[44]) and Saigon Times (2013^[45]).

¹³⁰ See Viet Nam News (2017^[54]).

¹³¹ Article 11, Circular No. 78/2014/TT-BTC. See also, Article 31, Government Decree No. 91/2015/ND-CP.

¹³² Law No. 14/2008/QH12 on Enterprise Income Tax, as amended by Law No. 32/2013/QH13.

¹³³ The prime minister considers whether to grant exemptions when these are requested by the Ministry of Finance, and according to proposals of line ministries or other public stakeholders. Moreover, Article 31 of Government Decree No. 46/2014/ND-CP states that enterprises and individuals that had been allocated non-levied land shall switch to land lease. Enterprises and individuals that had already paid the rent before the entry into force of Law No. 45/2013/QH13 on Land shall continue to use the land under the previous terms until termination of the lease.

¹³⁴ The OECD understands that land titles also have implications during divestment or equitisation of SOEs, in particular with an impact on SOEs' overall valuation.

¹³⁵ Ministry of Finance Circular No. 209/2016/TT-BTC set out the calculation of fees for such evaluation and examination.

¹³⁶ This decree replaces Decree No. 71/2013.

¹³⁷ The capital increase procedure is detailed under Articles 10 and 11. Moreover, it shall be noted that international, sea, rail and air transport is among the sectors listed under Article 12 in which the state can also contribute with additional capital to joint stock companies.

¹³⁸ The after-tax amount is subject to deductions to funds for the SOE development, staff welfare and reward of managers, with the remaining amount to be paid into the state budget.

¹³⁹ See also World Bank/Ministry of Planning and Investment of Vietnam (2016, p. 70^[24]).

¹⁴⁰ See OECD (2018, pp. 191-192^[23]); and OECD (2018, p. 24^[25]).

¹⁴¹ Article 5(4) of Law No. 69/2014/QH13 states the principle that the main obligation remains on the borrower, even in case of state guarantee. The head of the guaranteed borrower can be held personally liable in case of infringements by the borrower.

¹⁴² Article 23, Decree No. 91/2018/ND-CP.

¹⁴³ See Ministry of Finance (2018^[56]).

¹⁴⁴ See Thanh Tra, the Government Inspectorate of Vietnam official newspaper (2018^[55]).

Annex A. List of reviewed legislation

Central Committee of the Communist Party, Resolution No. 10/2017/NQ-TW Developing the Private Sector Toward an Important Driving Force of the Socialist-Oriented Market Economy

Central Committee of the Communist Party, Resolution No. 11/2017/NQ-TW on the Performance of Economic Institutions in the Socialist-Oriented Market Economy

Central Committee of the Communist Party, Resolution No. 12/2017/NQ-TW on the Restructuring, Innovation and Efficiency of State-Owned Enterprises

Circular No. 78/2014/TT-BTC Guiding the Implementation of the Government's Decree No.218/2013/ND-CP of December 26, 2013, Detailing and Guiding the Implementation of the Law on Enterprise Income Tax

Circular No. 191/2015/TT-BTC on Customs Procedures for Goods Imported or in Transit With International Express Delivery Services

Circular No. 49/2015/TT-BTC Stipulating the Customs Procedure for Mail, Packages and Parcels of Goods Exported or Imported through Postal Services Provided by Authorized Enterprises

Constitution of the Socialist Republic of Viet Nam 2013

Decision No. 1232/2017/QĐ-TTg Approving List of State-Owned Enterprises Undergoing Divestment in the Period 2017-2020

Decree No. 91/2015/ND-CP on Direct Investment of State Capital and Use and Management of Capital and Assets in Enterprises

Decree No. 68/2016/ND-CP on the Regulations on Conditions for Duty-Free Business, Warehouses, Sites for Customs Clearance, Customs Inspection and Supervision

Decree No. 05/2018/ND-CP on the Organization and Operational Charter of Viettel Post

Decree No. 91/2018/ND-CP on Government Guarantee Issuance and Management

Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:186:FULL&from=EN#page=1296>.

Government Decree No. 47/2011 on Enforcement of the Law on Post

Government Decree No. 132/2013/ND-CP on the Functions, Tasks and Powers and Organizational Structure of the Ministry of Information and Communications

Government Decree No. 130/2013/ND-CP on the Production and Provision of Public Products and Services

Government Decree No. 63/2014/ND-CP Detailing the Implementation of Several Provisions of the Law on Bidding Regarding the Selection of Contractors

Government Decree No. 45/2014/ND-CP Providing the Collection of Land Use Levy

Government Decree No. 46/2014/ND-CP on Regulation for the Collection of Land Rents and Water-Surface Rents

Government Decree No. 59/2015/ND-CP on Construction Project Management

Government Decree No. 87/2015/ND-CP on Supervision of State Capital Investment in Enterprises, and Financial Supervision and Performance Assessment and Disclosure of Financial Information of State-Owned and State-Invested Enterprises

Government Decree No. 135/2016/ND-CP, Amending and Supplementing a Number of Decrees on Land Levies and Land and Water-Surface Rents

Government Decree No. 123/2017/ND-CP Amending and Supplementing a Number of Articles of the Decrees on Collection of Land Levies, Land and Water-Surface Rents

Government Decree No. 94/2017/ND-CP on Commercial Goods and Services on Which Monopoly is Held by the State and Geographical Areas Thereof

Government Report to the National Assembly on the Management and Use of State Capital Invested in Enterprises 2018

Government Resolution No. 97/2017/NQ-CP on the Government Plan of Action for the Implementation of Resolution No. 12-NQ/TW of 3 June 2017 on the Continuing Structure, Renewal and Improvement of Efficiency of State-Owned Enterprises

Law No. 14/2008/QH12 on Enterprise Income Tax

Law No. 49/2010/QH12 on Post

Law No. 32/2013/QH13 on Amendments to the Law on Enterprise Income Tax

Law No. 42/2013/QH13 on Bidding

Law No. 51/2014/QH13 on Bankruptcy

Law No. 68/2014/QH13 on Enterprises, replacing Law No. 14/2003/QH11 on SOEs

Law No. 67/2014/QH13 on Investment

Law No. 69/2014/QH13 on Management and Utilisation of State Capital Invested in Enterprises' Manufacturing and Business Activities

Law No. 100/2015/QH13, Criminal Code

Law 80/2015/QH13 on the Promulgation of Normative Documents

Law No. 12/2017/QH14 on Amendments to the Criminal Code No. 100/2015/QH13

Law on Public Debt Management 2017

Law No. 23/2018/QH14 on Competition

Law on Public Investment 2019

MIC Circular No. 02/2012/TT-BTTTT Detailing the Provision and Use of Postal Services

MIC Circular No. 22/2012/TT-BTTTT Regulating the Scope of Dedicated Postal Services

MIC Circular No. 21/2012/TT-BTTTT Regulating the Operation of Vietnam Post Corporation of International Organizations on Postal Services

MIC Circular No. 17/2015/TT-BTTTT on the National Technical Regulations on the Quality of Public-Utility Postal Services and Public-Utility Press Distribution

MIC Circular No. 28/2015/TT-BTTTT Regulating the List of Regions with Special Geographical Conditions Applying Specific Collection and Distribution Frequencies in the Provision of Public Postal Services

MIC Circular No. 20/2016/TT-BTTTT Guiding the Implementation of PM Decision No. 45/2015/QD-TTg on Provision of Public-Interest Postal Services and Public-Interest Services in Newspaper Distribution

MIC Circular No. 35/2016/TT-BTTTT Regulating the Postal Operations Report

MIC Circular No. 23/2017/TT-BTTTT Prescribing the Maximum Postage Rates for Local Party and State Agencies

MIC Circular No. 22/2017/TT-BTTTT Regulating the Maximum Rates and Service Charge Exemption and Reduction Policies to Send Dossiers of Handling Administrative Procedures and Transfer Services Return Results of Administrative Procedures Settlement through Public Postal Services

MIC Circular No. 12/2018/TT-BTTTT Prescribing Maximum Postage Rates of Universal Postal Services

MIC Circular No. 14/2018/TT-BTTTT Providing for the Management of Postal-Service Quality

MIC Decision No. 1538/2016 Approving the Charter on Organization and Operation of Vietnam Post Corporation

Ministry of Finance Circular 209/2016/TT-BTC on the Level, Collection, Remittance, Management and Utilisation of Appraisal Fees for Construction Investment Projects, and of Appraisal Fees for Basic Design

Ministry of Finance Circular No. 291/2016/TT-BTC Prescribing the Rates, Collection, Remittance, Management and Use of Fees for Evaluating Postal Operation Conditions

Prime Minister Decision No. 58/2005/QD-TTg Approving the Scheme on Experimentally Forming Vietnam Post and Telecommunications Group

Prime Minister Decision No. 270/2005/QD-TTg on the Organization and Mobilisation, Management and Use of Postal Savings

Prime Minister Decision No. 674/2007/QD-TTg establishing Vietnam Post

Prime Minister Decision No. 41/2011/QD-TTg on the Appointment of Enterprises to Maintain and Manage the Public Postal Network, to Provide Public Postal Services and International Postal Services

Prime Minister Decision No. 1746/2012/QD-TTg of 2012 on Transfer of the State Ownership Rights of Vietnam Post Corporation from Vietnam Post and Telecommunications Group to the Ministry of Information and Communications

Prime Minister Decision No. 45/2015/QD-TTg on Provision of Public Postal Services and Public Services in Press Publishing

Prime Minister Decision No. 58/2016/QD-TTg, Criteria for Classification of Wholly State-Owned Enterprise, Partially State-Owned Enterprises and List of State-Owned Enterprises Undergoing Enterprises in 2016-2020

Prime Minister Decision No. 45/2016/QD-TTg on Receiving Application and Returning Results of Handling Administrative Procedures Through Universal Postal Services

Prime Minister Decision No. 707/2017/QD-TTg Approving Plan for Restructuring State Enterprises with Particular Attention Paid to State-Owned Economic Groups and Corporations for the Period 2016-2020

Prime Minister Directive No. 01/2019/CT-TTg on Strengthening the Direction, Restructuring, Reorganization, Innovation, Equitization and Divestment of State Capital in State Enterprises and State-Owned Enterprises

Prime Minister Directive No. 01/2019/CT-TTg on Restructuring and Equitizing State-Owned Enterprises

Prime Minister Decision No. 17/2019/QD-TTg on Certain Bid Packages and Procurement in Order to Maintain Regular Operations that May Apply to Contractor Selection in Accordance with Article 26 of the Bidding Law

Prime Minister Letter No. 991/2017/TTg-DMDN Approving the List of Equitized State-Owned Enterprises for Each Year in the Period 2017-2020

Public Debt Bulletin No. 7, Ministry of Finance of Vietnam, Hanoi, November 2018.