Laws and Regulations in the Logistics Sector in Brunei Darussalam

Highlights

Laws and regulations are key instruments to achieve public-policy objectives, such as consumer protection and public health. When they restrict market forces more than necessary or impose unnecessary costs, a comprehensive competition review can help identify restraints and develop alternative, less restrictive policies that still achieve government objectives. More intense competition is linked to increased productivity, growth and other benefits, including lower consumer prices, greater consumer choice, better quality of products and services, and faster adoption of innovation.

The OECD was tasked by the ASEAN Secretariat and the 10 ASEAN Member States to carry out an independent competition assessment to identify rules and regulations that may hinder the efficient functioning of markets in the logistics sector. The project was supported by the UK Prosperity Fund (UK Government). The assessment covered the following activities:

- Freight transport (by road, railway and water)
- Freight forwarding
- Warehousing
- Small package delivery services
- Value-added services

This booklet presents the key findings and highlights from this analysis. The full results of the analysis are available at oe.cd/comp-asean.

The assessment took place in stages. In Stage 1, the OECD held a fact-finding mission to Brunei Darussalam and prioritised 63 pieces of sector-relevant legislation. Stage 2 screened this legislation using the OECD’s Competition Assessment Toolkit and identified potential barriers. Stage 3 involved an in-depth analysis of the potential barriers, including assessing the possible competitive harm resulting from these barriers and taking the objectives of policy makers into account. Stage 4 developed 47 recommendations for provisions found to restrict competition unnecessarily, taking into account Brunei Darussalam’s context, international experience and relevant economic literature, and consulted the relevant authorities on these recommendations. Stage 5 finalised the recommendations. The final report including all findings and recommendations was released as an OECD publication.

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Key Findings and Main Recommendations

Brunei Darussalam’s economy is heavily dependent on the oil and gas mining sectors, which in 2019 accounted for 45% of its GDP. In 2001 the country launched a plan of reforms to diversify its economy. The most recent wave of efforts to this purpose began in 2008, when the government revealed its Wawasan 2035 (Vision 2035) plan, setting the country’s development strategy. Logistics was included in the list of the Tenth Year Development plan and the country has made significant investments in its transport infrastructure. Currently, on a global level, Brunei Darussalam ranks 80th in the World Bank’s Logistics Performance Index (LPI) and 7th out of the 10 ASEAN member States.

Such efforts to diversify the economy have become even more pressing following the impact of the Covid-19 pandemic. Similarly to other countries, Brunei Darussalam has suffered from the impact of the pandemic, with exports in June 2020 decreasing by 15.3% year-on-year, while the Asian Development Bank’s forecasts a GDP growth of 1.4% in 2020 and 2% in 2021, lower than in previous years.

Freight Transport

In 2019, transport services (including transport by land, water, air and other means of transport) contributed to approximately 1.8% of GDP and accounted for BND 325.5 million, thus constituting the sixth largest non-oil and gas sector.

Maritime transport accounts for more than 50% of the total transport-related GDP, compared to 3.2% for land transport. The importance of maritime transport is confirmed both by the growth of Brunei Darussalam’s national fleet and the amount of general cargo handled in Muara Port, that increased by 96% between 2014 (when the handling was done by the Ports Department) and 2019 (after Muara Port Company took over port operations in 2018).

Key recommendations

1. **Remove the provision allowing the introduction of limitations on the number of motor vehicle licences in certain areas.** Although congestion and environmental concerns are legitimate objectives, they can be achieved in different ways, for instance by introducing truck bans at peak hours.

2. **Allow registration of as many trailers** as the truck operator applies for independently of the number of prime movers and trucks.

3. **Remove the possibility for the Minister of Transport and Infocommunications to give directions “as he thinks fit” resulting in regulatory and operational overlap** within the Maritime and Port Authority of Brunei Darussalam (MPABD). After a transition period, the government should ensure full separation of regulatory and operational functions in ports as the general rule.

4. **Remove minimum prices and only keep maximum prices for handling and storage of goods within ports.** MPABD, the tariff-setting committee and/or the MOFE that eventually approves prices should request the opinion of the Competition Commission Brunei Darussalam regarding the justified nature and level of such tariff regulation, in order to ensure consistency with the objectives of the Competition Order.
5. **Clarify either in the law or in separate guidelines** the criteria for and circumstances in which financial grant, aid or assistance to any person for the purposes of the MPABD Order can be granted.

6. **Accept bank guarantees** as an alternative to upfront payment of minimum paid-up capital in order to register a ship.

**Freight Forwarding and Warehouses**

Brunei Darussalam does not have any comprehensive laws regulating the freight-forwarding sector. Similarly, there is no general legal framework for the regulation of warehouses and the main pieces of legislation affecting this sector are the Land Code and the law on Land Acquisition.

**Key recommendations**

1. Align the requirements so that sea freight forwarders are not subject to more stringent or onerous licensing requirements than road freight forwarders.
2. Allow companies to own land, at least as long as the majority share of the legal person is owned by Brunei Darussalam citizens. Companies are usually not allowed to purchase land and own it under their own name.
3. Simplify the procedure to transfer land ownership with the goal of significantly reducing the number of days required for transferring land. This could be done for example by introducing statutory time limits for the whole process or by removing certain phases from the current process.

**Small Package Delivery Services**

The e-commerce sector is experiencing a rapid growth across ASEAN and as a consequence, similarly to other countries, Brunei Darussalam has registered a rapid growth in demand for postal and courier services. Beyond 2020, e-commerce revenue is expected to show an annual growth rate (CAGR 2020-2024) of 5.6%, resulting in a projected market volume of USD 61m by 2024. In order to help businesses and the public find trusted providers, in April 2020, the Authority for Infocommunications Technology Industry of Brunei Darussalam (AITI) and Darussalam Enterprise (DARE) launched Brunei’s first local online e-commerce directory eKadaiBrunei, listing e-commerce and logistics providers based in Brunei Darussalam.

**Key recommendations**

1. **Clarify the boundaries** of the Postal Services Department (PSD)’s monopoly so as to exclude expressly small package delivery and express delivery. This could be done for instance by defining precisely what falls within the notion of "letter" and exclusive privilege. The OECD supports Brunei Darussalam’s ongoing efforts to provide more clarity in the Postal Services Order. As an alternative, consider lifting the monopoly granted to the PSD and, after assessing universal service obligation (USO) costs, if needed, introduce a mechanism to provide compensation for the additional costs stemming from such USO.
2. **Apply the same liability limitations** to the PSD and private operators with regards to the activities conducted in competition with each other. The Postal Service Act should be amended to fully reflect the UPU standards and international conventions on liability to PSD non-express delivery services.
Horizontal and Regional Issues

A clear regulatory framework is essential for competition as it reduces costs of compliance and facilitates amongst other factors entry of new players. According to the World Bank’s regulatory quality estimates, Brunei Darussalam scores well relatively to other ASEAN countries.

To support its growth and attract foreign direct investments, Brunei Darussalam sees free trade agreements a vital part of its foreign trade policy. The country is also a signing party to several ASEAN-wide agreements concerning the transport sector, including the ASEAN Framework Agreement on the Facilitation on Goods in Transit (AFAFGIT) and the ASEAN Framework Agreement on Facilitation of Inter-state Transport (AFAFIST).

Brunei Darussalam has shown a positive trade balance in transport services several years and has significantly increased its level of integration into the global networks of liner shipping.

Key recommendations

1. Create a legal database including all laws and regulations. As a first step, authorities should publish on their website all relevant legislation within their purview. Every piece of legislation should include subsequent amendments so that all legislation has a consolidated, updated version.

2. Consider lifting minimum capital requirements for logistics providers. Alternatively, ensure that minimum capital requirements are the same for all businesses, irrespective of whether they are Philippine or foreign entities.

3. Continue the process of digitalisation of all application procedures for logistics-related authorisations.

Sources:
Department of Economic Planning and Statistics, Ministry of Finance and Economy, Brunei Darussalam; World Bank; Asian Development Bank.

Fostering Competition in ASEAN

Funded by the UK Prosperity Fund (UK Government, Fostering competition in ASEAN is a project that aims at assessing regulatory constraints on competition in the logistics sector in all 10 ASEAN member states identifying regulations that hinder the efficient functioning of markets and creating a non-level playing field for business.

The project runs two parallel components: competition assessment reviews of specific logistics sub-sectors and competitive neutrality reviews of small-package delivery services.

This report and the accompanying “OECD Competitive Neutrality Reviews: Small-Package Delivery Services in the Philippines” are contributions to the implementation of the ASEAN Competition Action Plan.

Access all reviews and more information on this project at oe.cd/comp-asean