

## Indonesia



### Issue and background

In the context of the preliminary discussions to prepare the launch of Free Trade Agreement (FTA) negotiations between the EU and Indonesia, providers of express delivery services (EDS) encourage that a number of issues relevant to express and postal services are addressed.

#### 1. EEA position

Whilst the European Express Association supports the idea of a comprehensive Free Trade Agreement between the EU and Indonesia and having in mind that private companies can provide courier and Express Delivery Services in Indonesia, there are a number of barriers significantly impairing the ability to do so at present. This document lists a number of barriers as well as some recommendations under each point which can contribute to overcoming them.

#### 2. Barriers currently faced by EDS

**Postal Law:** The most recent Postal Law was passed in September 2009 with very limited transparency, even within the Indonesian Government. The Law sets to privatise the Indonesian postal market and dismantle the postal monopoly within five years but contains a number of unclear and very restrictive provisions. In particular:

- The wide scope of postal services goes beyond international best practices and what normally constitutes postal services. It includes among other things electronic transactions and logistics services (delivery of “goods”), creating an overlap with freight forwarding services regulated by the Ministry of Transportation.
- It restricts operation of foreign postal operators to international gateways in provincial capitals, from which point the remaining transport has to be carried out by a fully domestically owned company. Although a clarification letter from the Ministry of Communication and IT (KOMINFO) to the Indonesian Courier Association (ASPERINDO) expands the operational area somewhat, it does not cover the domestic leg of all international shipments and the legal validity of such a clarification letter is doubtful, particularly as it goes beyond the geographical scope of the Law itself.

The most pressing issue, however, is a Ministerial Regulation (No. 01/PER/M.KOMINFO/01/2012) issued on 10 January 2012. This regulation obliges postal and courier companies to publish their tariff rates in a bid to avoid “predatory pricing”. Most notably, the Regulation forces companies to provide detailed reports to KOMINFO about the cost components of the tariffs, including commercially confidential information such as profit margin.

Recommendation:

- Customers pay a premium for time definite express delivery shipments. For this reason, it is important that the EDS provider has full custodial control throughout the shipment. This can only be ensured if courier and express delivery companies are allowed to conduct the continuous domestic leg of international shipments, regardless of the destination within Indonesian territory, under fully owned legal entities.
- The Ministerial Regulation must be amended as it would simply be impossible to comply and submit such company confidential and commercially sensitive information.
- In particular express delivery companies charge high prices for premium services (substantially higher than local market prices for courier services); hence prices are not being charged below cost. The Ministry could instead impose a “price-weight multiple” or some kind of a floor price for postal items.

**Regulated Agent:** This regulation (Director General Regulation), initially issued in April 2010, was amended in April 2011 with no consultation with the foreign business community. All cargo, regardless of risk and shipper status, must be x-rayed prior to export. The implementation of the regulation with three regulated agents being appointed initially led to severe delays, congestion and protests at the airport. As an interim solution by the Ministry of Transportation, the Regulatory Agents have been allowed to screen its outbound cargo at the airport where relevant – an approach also favoured by airlines, including those from the EU.

After complaints by the local business association, the Indonesian Ombudsman reviewed the matter in early 2012. A new regulation was issued in April 2012, making the regime more transparent and fair as all logistics providers are now eligible to become regulated agents. However, the Ministry of Transportation will still not grant permanent approval for screening at the airport. In addition, the Ministry of Transportation has not indicated when/if this regime would be implemented in the rest of the country.

Recommendation:

- Commend the Ministry for re-considering the regulation and making an effort to align it with international standards and best practices, but confirm that screening can take place at any facility of a Regulated Agent, including within the airport

area.

**Government Regulation on Multimodal Transport:** Government Regulation No. 8/2011 on Multimodal Transport was enacted in February 2011. The aim of the regulation to streamline licensing procedures and create a more conducive business climate for logistics providers is welcomed. The Government also seeks to enhance the standards of logistics providers in the country, which is positive for the development and improvement of the sector in Indonesia. This regulation currently applies to freight forwarding and supply chain companies – although there is a risk that it could apply to courier companies as well.

The regulation aims at streamlining and consolidating licensing requirements for logistics service providers. It states that a multimodal transport service providers can, under one single license and legal entity, perform all types of logistics activities, for instance transportation, warehousing, sorting, packing, container handling and customs clearance, for which companies today need multiple licenses from several ministries and agencies. The implementation of a single license for all these activities, if this is indeed the intent of the policy maker, would greatly enhance the business climate in Indonesia and reduce the cost of doing business.

However, there are a number of unclear provisions in the regulation which are of concern:

- “Foreign” multimodal transport providers are prohibited from performing any domestic logistics related services, not even the contiguous leg of an international shipment (Articles 8-9 and its elucidation). This Regulation imposes gateway requirements, i.e. a foreign logistics provider has to appoint a domestic agent to handle the domestic logistics activities, taking over at the international seaport or airport. However, the interpretation of this provision is unclear as a “national” multimodal transport provider according to the regulation implies a company established under Indonesian Law, regardless of ownership structure, while the Ministry of Transportation has indicated that they might not share this interpretation. We assume that existing ownership structures are “grandfathered” or protected, as this is a fundamental principle for legal certainty. The shipper (multimodal transport service provider) is responsible for the goods being delivered on time as stipulated in the transport document or else is obliged to compensate the consignee (Article 17). However, it is not common practice to be able to hold shipping lines liable for delays.
- Although the price-setting is said to be left to the market, the “type, structure and category” of the tariffs for each transport mode is to be set by the Government (article 27). On that note, clarification from the Government that price-setting would be left entirely to market forces, is urgently needed.

After a legal review, it has been clarified that freight forwarding companies would not have to re-apply to become multimodal companies. However, doubts remain as to the interpretation of foreign vs. national multimodal transport operators as the Ministry of Transportation seems to want to interpret the regulation as any company with foreign ownership is a foreign company, contrary to the legal interpretation of the regulation.

Recommendation:

- If the issue is brought up for discussion, it would be helpful if clarification could be obtained as to what is implied by a “national” vs. “foreign” multimodal service provider. In addition, it would be important to know what would happen to existing ownership structures for foreign companies.

**General FDI restrictions:** The Government backtracked on liberalisation in numerous capital and technology intensive sectors through the issuance of the revised negative investment list (“DNI”) in July 2007. All transportation services (e.g. freight forwarding, road transport, maritime transport services, air cargo transportation services etc.) are now subject to minority (49%) foreign ownership.

Recommendation:

- The Government should continuously be reminded that in order to facilitate trade and improve connectivity in Indonesia, allowing foreign logistics service providers to own their operations would encourage investments in the sector, leading to improved quality of services and technology transfers.

### 3. Next steps:

The EEA calls on all parties concerned to raise these express industry related issues further and when appropriate to use the recommendations set out above in the remit of FTA negotiations with Indonesia, both formally and informally.

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