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OECD Global Forum on Competition

CONTRIBUTION FROM INDONESIA

**Promoting Compliance and Education Business about Competition Law
-- (Session II) --**

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**PROMOTING COMPLIANCE & EDUCATING BUSINESSES ABOUT COMPETITION LAW:
INDONESIA'S EXPERIENCE
(-- Session II --)**

Introduction

In addition to creating the Commission for the Supervision of Business Competition ("KPPU"), Indonesia's first agency charged with investigating and enforcing the nation's new competition law, Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition tasks the KPPU with educating businesses and the public about the competition law and promoting compliance with the law.¹ As described below, Law Number 5's "socialisation" process started well before the law actually came into effect, and the need to educate businesses, the public, the press, and the courts about the law likely will need to continue for many years to come.

The purpose of this paper is to review some of the activities that already have been undertaken in Indonesia to promote the socialisation of, and compliance with, Law Number 5. It is also hoped that this paper, in conjunction with discussions during the course of the OECD Global Forum on Competition, will spur additional ideas about how law enforcement agencies might best develop programs to educate business and others about the existence and meaning of competition law in a systematic, continuous, on-going manner.

Background on Law Number 5 of 1999

Law Number 5 of 1999 is Indonesia's first comprehensive law prohibiting monopolistic practices and unfair business competition. Prior to its passage on March 5, 1999, legal provisions touching on competition were fairly limited in scope and could only be found as snippets of law scattered throughout numerous codes and statutes, including both Indonesia's criminal and civil codes.²

The interest in developing a comprehensive competition law in Indonesia dates back to around 1990. It was at this time that legal scholars as well as members of various political parties, non-governmental organisations, and certain government institutions began to discuss the need for such a law. In fact, a number of different groups, including the Indonesian Democratic Party and the Indonesian Ministry of Trade (in co-operation with the Faculty of Law University of Indonesia), produced draft competition laws. These proposed draft laws, however, were not given serious attention by those in power at the time, because much of the unfair business competition and monopolistic practices that was taking place, often by Indonesia's largest industries and businesses, was the result of direct and active government support. Crony capitalism was the order of the day under the so-called "New Order" government of former President Soeharto, right up to about 1998.

¹ See, for example, Law Number 5, Article 30 (1) (establishing the KPPU to supervise the implementation of Law Number 5) and Article 35 f (giving the KPPU responsibility to prepare guidelines and publications related to the law).

² See, for example, Criminal Code of 1945, Article 382 bis (concerning fraud and unfair business practices); and Civil Code of 1945, Article 1365 (concerning the recovery of damages by private parties for violations of the law).

While Law Number 5's passage in 1999 came about in part to satisfy conditions of a Letter of Intent entered into between the Indonesian government and the International Monetary Fund in July 1998, the law's passage also drew much support from politicians, the government, the public, and the press as a means to address growing concerns about monopolistic practices and unfair business practices stemming from the closely related practices of rampant corruption, collusion, and nepotism (known by the Indonesian acronym "KKN") that had been taking place in Indonesia between the government and favoured businesses.

Law Number 5 was passed by the House of Representatives ("DPR") on February 18, 1999, and it was signed into law by Indonesia's President on March 5, 1999, with an effective date of March 5, 2000. The competition law's effective date was purposely set one year after its passage in order to provide time for socialisation of the new law. Moreover, businesses were given an additional six-month grace period under the law, until September 5, 2000, to come within compliance of the law.³ This grace period undoubtedly was included in the law to give businesses, the public, and others a clear signal that the rules of doing business in Indonesia were about to change -- perhaps dramatically.

Efforts to Educate Businesses Regarding Law Number 5 of 1999

The major activity that the KPPU and the government of Indonesia (primarily through the Ministry of Industry and Trade, Law Number 5's original sponsor within the government), have undertaken to socialise businesses and others about the new competition law has been through the sponsorship of, and participation in, conferences and presentations to various target groups in cities throughout the Indonesian archipelago.

Specifically, conferences have been held with:

1. Universities
2. Industry Groups, Business Associations, and Trade Sectors, including the Indonesian Chamber of Commerce ("KADIN")
3. Local Governments
4. Government Ministries and Institutions
5. General Audiences and the Public

These conferences have taken place in most of Indonesia's largest cities, and some of its regional capitals, including: Jakarta, Surabaya, Jogyakarta, Makassar, Bandung, Medan, Manado, Denpasar, Malang, and Palembang.

The focus of such conferences has been first to simply make the various constituencies aware that Indonesia has a law concerning the prohibition of monopolistic practices and unfair business competition. These meetings included activities as simple as distributing copies of the law. The focus then shifted to more detailed discussions about the law's operative provisions, that is, the kinds of business practices -- such as price fixing, bid rigging, market division, abuse of dominant position, and certain vertical restraints of trade -- likely to draw the most scrutiny by the KPPU. These discussions also covered the general modes of competition law analysis, with specific reference to the concepts of the "rule of reason" and "per se" illegality, and they touched upon some of the more significant economic concepts underlying sound

³ See Article 52(2) ("Business enactors having entered into agreement and/or conducting activities and/or undertaking actions not complying with the provisions of this law shall be given 6 (six) months from this Law's coming into effect to make adjustments.")

enforcement of competition law, such as market power, barriers to entry, and identifying likely competitive effects. Finally, such socialisation conferences covered the role and organisation of the KPPU, how the KPPU handles investigations and processes cases, and how to properly lodge a complaint with the KPPU.

In addition to conferences sponsored by the government and the KPPU, various private, non-governmental organisations ("NGOs"), such as the Partnership for Business Competition, the Center for Indonesian Law and Policy Studies, and the Center for Strategic and International Studies also have sponsored conferences and workshops targeting many different Indonesian constituencies including businesses and business associations, government organisations, the courts, the press, and the public, to assist in the process of educating interested parties about Law Number 5. These conference typically included the participation of KPPU Commissioners and other government officials, and generally covered the same topics as those identified above. Thus, many socialisation activities in Indonesia have been the product of close, co-ordinated public-private co-operation.

Many of the socialisation activities of the NGOs have been underwritten, at least in part, by international donor agencies such as the U.S. Agency for International Development, Germany's Gesellschaft für Technische's Zusammenarbeit, Australian Agency for International Development, Canadian International Development Agency, World Bank, Asian Development Bank, and others. Given the involvement of the donor agencies, many socialisation conferences have included the participation of notable antitrust scholars and government enforcement officials from the United States, Germany, Canada, Australia, Japan, Korea, and other countries.

Public Hearings and the Dissemination of Decisions

Other important activities that the KPPU has undertaken to socialise businesses and the public about Indonesia's new competition law include public hearings and the public dissemination of the KPPU's decisions.

The KPPU has adopted operating procedures for the conduct of public hearings that are used to investigate highly concentrated industries in which there may be violations of Law Number 5.⁴ As part of this process, companies in these highly concentrated industries, together with other industry participants and interested parties, have been invited to appear before the KPPU to give testimony and to answer questions. These sessions have been open to the public and have been well attended by the press and other observers. Such sessions provide businesses and others insights into how the KPPU operates and how the KPPU thinks about and applies the law. To date, such public hearings have taken place in the following industries:

1. Paper and Pulp
2. Wheat Flour
3. Day-Old Chickens

Additionally, the KPPU has adopted the practice of issuing written decisions when it decides a case and then disseminating these decisions in open, public session. Such decisions include: (1) a summary of the evidence collected, including the witnesses who testified before the KPPU and the documents reviewed; (2) the KPPU's findings of fact; (3) the KPPU's conclusions of law; and (4) the sanctions being ordered. The practice of issuing written decisions may not at first appear to be so remarkable, but one must consider that to this day even Indonesia's Courts of Appeal ("High Courts") do

⁴ See KPPU Decision Number 8 of 2000, concerning "Consultation Meetings."

not issue written decisions most of the time; additionally, the written decisions of the Indonesia's Supreme Court are often difficult to locate, even for Indonesians.

To date, the KPPU has completed two investigations resulting in the imposition of sanctions -- the *Caltex* and the *Indomaret* case. Accordingly, the KPPU has issued two written opinions. The public sessions at which these decisions were read were well attended by representatives from various businesses, the press, and the public.

Socialisation Activities Being Planned

In addition to the socialisation activities described above, the KPPU currently is in the process of planning and developing two additional projects intended to educate businesses and others about Law Number 5. First, the KPPU is planning to develop its own website. Although some materials related to the KPPU and Law Number 5 are currently available on other's websites, most notably that of the Partnership for Business Competition (www.pbc.or.id), the KPPU is interested in developing its own website. Such a site would include copies of all of the KPPU's decisions, the KPPU's internal operating procedures, background information about the KPPU, its membership, and how it is organised, and instructions on how to file a complaint. Much of this material already has been translated into English, and English versions of key materials also would be posted on the site.

Second, the KPPU is planning for the publication of guidelines and instructional pamphlets intended to explain Indonesia's competition law in a straightforward, non-technical manner, for the benefit of businessmen, the public, and the press. Guidelines would be written to cover topics such as cartels and horizontal restraints of trade, vertical restraints of trade, and abuse of dominant position. Pamphlets might also be written explaining how the KPPU is organised, how it does its job, and how to file a complaint about suspected violations of the law.

Conclusion

The socialisation of competition law faces some challenges in Indonesia that make it somewhat more difficult than in many other countries. Although it is not commonly known, Indonesia is the world's fourth most populous country, with a population of over 220 million. Our people, in turn, comprise more than 350 different ethnic groups and speak more than 300 different languages (although most Indonesians also do speak a common language known as "Bahasa Indonesia"). Further, Indonesia is an archipelago consisting of more than 13,000 islands, of which more than 6,000 are populated.⁵ These islands are spread out over an area of 3200 miles east to west and 1,250 miles north to south (an area significantly larger than the United States). In terms of political subdivisions, the country consists of 30 provinces, which are further subdivided into more than 300 districts and municipalities. Obviously, given these geographic and demographic conditions, effectively getting the word out about the new competition law is a daunting task.

Nonetheless, the KPPU believes that it is up to the challenge. With the assistance of Indonesia's government, NGOs, international, donor agencies, businesses, the press, and the public, we have successfully undertaken the "get-the-word-out" phase of Law Number 5's socialisation. We now are interested in moving into the next phase. Learning about the kinds of activities that other countries -- both developed and developing -- have undertaken to promote the socialisation of their competition laws is one

⁵ Most of the population, however, lives on one of Indonesia's five main islands: Java, Sumatra, Kalimantan, Sulawesi, and Irian Jaya.

of the key components of planning for this next phase. In this regard, we are interested in -- and welcome the opportunity to discuss -- ideas of how to develop and implement a sustained, continuous program of socialisation and business compliance, capable not only of building upon our past successes, but capable of ensuring that the people of Indonesia get the benefits of competition that they expect and deserve.