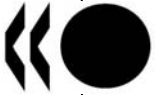


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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Global Forum on Competition

**THE RELATIONSHIP BETWEEN COMPETITION AUTHORITIES
AND SECTORAL REGULATORS**

Contribution from Indonesia

-- Session II --

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THE RELATIONSHIP BETWEEN COMPETITION AUTHORITIES AND SECTORAL REGULATORS IN INDONESIA

1. Background

1. Competition has been introduced in various sectors industries in Indonesia. Telecommunication sector, as an example, has adopted competition value in Law No. 36 of 1999 on Telecommunication. Article 10 of the Law states that telecommunication operators are prohibited to conduct activities that could result in the occurrence of monopolistic practices and for unfair business competition. In line with competition policy in telecommunication sector, government has issued supporting regulations to ensure fair competition in the market place. One of those supporting regulations is Ministerial Decree No. 33 of 2004 on Fair Competition Supervision in Fixed Network Operation.

2. The Ministerial Decree No. 33 of 2004 covers specific competition issues and unfair conducts in telecommunication sectors that include:

1. The obligations for dominating operators to provide good services in accordance with standard service
2. The criteria of dominant position, which is market control in terms of business activities, coverage area and revenue that control the majority of market
3. The prohibition of abuse of dominant position, such as selling below cost, selling above the price formulated by regulation, cross subsidy, directly or indirectly coerce other network providers or customer to use their network or basic telephony service only, refuse to provide interconnection and discrimination
4. The usage of access code and interconnection, such as prohibition for fixed network operator to block access code of other network operators
5. Limited services. All telecommunication operators may request all services and facilities they need to the fixed network operators and the fixed network operators are obliged to give all possible services and facilities they can provide.

3. In the closing provision, the General Director of Post and Telecommunication is assigned to implement and supervise the decree.

2. BRTI as Sectoral Regulator

4. In line with the competition policy of the telecommunications market, it is necessary to establish a regulatory body which is transparent, independent and impartial to all operators to give healthy competition.

2.1 Stated in the Law No. 36/1999, article 4 (explanation)

5. The Telecommunications Minister could delegate regulation function to a Regulatory Body.

Ministerial decree no 31 year of 2003 :

- establishment of Badan Regulasi Telekomunikasi Indonesia (BRTI) – Indonesian Telecommunications Regulatory Body;

- to secure *transparency, independency and fairness* in telecommunication Network and Service operations;
- effective from 5 January 2004;
- as the transitional Body toward full Independent Regulatory Body.

6. BRTI consists of Telecommunications Regulatory Committee Members (of five) and Directorate General Posts and Telecommunications.

7. The Committee members consists of a chairman which is Director General of Posts and Telecommunications and 4 experts in technical (telecommunications & IT), legal, economics and social.

8. The 4 experts members were selected through independent selection team.

9. The Committee Members are elected for two years term, which can be extended one more term if necessary

10. The decision of BRTI is implemented by the Committee members collegially. In case no consensus is reached, voting is taken by the Committee members with equal voting right

11. In carrying out its task, Committee members is independent from power/influence of other interest.

12. Each Committee decision has to:

- go through process considering input in the form of opinion and thought which developed within the community;
- to secure transparency, independency and fairness.

13. The BRTI's decisions are in the form of Ministerial or DG decree.

14. BRTI reports to Minister of Transportations and Telecommunications.

Supervision of:

- operational performance;
- competition safeguard;
- utilisation of telecommunications tools and equipment.

Control of operation of network and service operators:

- settlement of dispute between operators;
- utilisation of telecommunications tools and equipment;
- utilisation of tools and equipment.

3. KPPU as Competition Authority

15. Article 35 and 36 of the competition law provides KPPU with duties and authorities.

16. As stated in Article 35 of the competition law, KPPU is assigned to perform the following duties:

- evaluate agreements that may result in monopolistic practices and or unfair business competition;
- evaluate business activities and or conduct of business actors which may result in monopolistic practices and or unfair business competition;
- evaluate the existence or non existence of misuse of dominant position which may result in monopolistic practices and or unfair business competition;
- undertake actions in accordance with the authority of the Commission;
- provide advice and opinion concerning government policies related to monopolistic practices and or unfair business competition;
- prepare guidelines and or publications related to the law;
- submit periodic reports on the results of the Commissions' work to the President and the People's Legislative Assembly.

17. In order to be able to carry out its duties effectively, KPPU is provided with the following authorities:

- receive reports from public and or business actors regarding allegations of the existence of monopolistic practices and or unfair business competition;
- conduct research concerning the possibility of the existence of business activities and or actions of business actors which may result in monopolistic practices and or unfair business competition;
- conduct investigations and or hearings on allegations of cases of monopolistic practices and or unfair business competition reported by the public or by business actors or discovered by the Commission as a result of its research;
- make conclusions regarding the results of its investigations and or hearings as to whether or not there are any monopolistic practices and or unfair business competition;
- summon business actors suspected of having violated the provisions of this law;
- summon and invite witnesses, experts and any person deemed to have knowledge of violations of the provisions of this law;
- seek assistance of investigators to invite business actors, witness, experts or any persons as intended in sub-articles e and f who are not prepared to appear upon the commission invitation;

- request the statements of government institutions related to the investigations and or hearings about business actors who violate the provisions of this law;
- obtain, examine and or evaluate letters, documents or other instruments of evidence for investigations and or hearings;
- determine and stipulate the existence or non existence of losses on the parts of business actors or society;
- announce the commission's decision to business actors suspected of having engaged in monopoly practices and or unfair business competition;
- impose administrative sanctions on business actors violating the provisions of the law.

18. In principle, the responsibility of KPPU is to react to anticompetitive behavior in the market. As the telecommunications market shifts from monopoly to competition, the role of KPPU has grown in this sector. KPPU takes regulatory action *ex post* based on the competition law, after determining that there has been anticompetitive behavior in the market. KPPU is assigned by law also to provide advice and opinion concerning government policies related to monopolistic practices and/or unfair business competition

4. The Relationship between Competition Authorities and sectoral regulators in Indonesia: Ways to make the relationship work effectively

19. As mentioned in Article 35 of Competition Law, the main role of KPPU as a competition authority is to protect competition from anticompetitive behavior and mergers, while the BRTI as a sectoral agency is responsible for economic, competition (to some extent) and technical regulation. Since the BRTI is assigned also to supervise the competition in their sector, there will be potential problems of overlapping tasks between KPPU and BRTI in the future. Any problems arise from those unclearly defined competition responsibility between the two agencies would lead to policies which are incompatible or not in line with competition values. By remembering that telecommunication sector is one of public utilities, the disharmonic and incompatible policies would have effect on public welfare and national resources allocation (efficiency).

20. Based on its duties given by law, KPPU has to give recommendation to government, including sector regulator regarding competition issue. By disseminating competition values to the executive and legislative institution, KPPU could speed up the process of internalisation competition values and culture in each institution. The internalisation of competition values in related institution or sector regulators is significant and vital so that policies coming out from these institutions can be in line or compatible with the competition values (policies). Through what so called "Policy Harmonisation Mechanism" KPPU would identify related industrial policies which are believed to effect competition in each sector.

21. Under policy harmonisation mechanism, KPPU has initiated discussions, workshops and seminars for technical department or ministerial institution. Some of the policies and regulation which has been evaluated by KPPU has been reformed and the remaining is still under consideration.

22. The relationship between KPPU and BRTI regarded and defined as evolving, continuous and simultaneous process of coordination and cooperation. At the earlier stages, the process of coordination and cooperation would include intensive communication to achieve a common understanding of each responsibility. The process of communicating and understanding between sector regulators and competition authority regarding each responsibility is very important especially at the beginning stages like today. An understanding between KPPU and BRTI on common perspective (maximum welfare and

efficiency) and clearly defined responsibilities would minimize the probability of conflict of tasks between the two agencies.

23. Telecommunication is in the earlier stages of restructuring, the delegating responsibilities and function from the related department to the BRTI is still in the initial process. Some say that this process would take time longer than the expected. Under those conditions, the most effective way in harmonising policies is by coordinating with the related department or ministerial institution directly.

24. As competition authority, KPPU would still need coordination with Ministry and BRTI. KPPU would be responsible for maintaining competition in telecommunication while the BRTI would be responsible more for the technical issues and economic (include non discriminatory access to input and pricing policy). Those classifications would follow the area of expertise of the agencies. Also, the coordination process would make sure that the agencies will function accordingly and create a synergy between them.

25. In establishing cooperation, several possible problems may arise though. For example, the independency of BRTI is still questioned, since it has to report to the executive body (Department or Ministerial). Another problem is that there is no clear separation of functions of BRTI and government.

5. Conclusion

26. Adoption of competition policy now becomes a must in order to survive from economic problems and the global competition. Competition policy will ensure that the economic efficiency will be achieved in sector industries. Therefore, it is important that competition policy is effectively enforced to prevent unfair competition of public and private sectors.

27. To create business climate which is conducive for all business actors, it is important to be open, transparent and competitive. These three factors are essential to create healthy economic growth and sustained employment in the long term. Competition is a relatively new issue in Indonesia, lasting results will take years to achieve. Several steps are identified to create better competition in sector industries:

- there is a clear need for KPPU to develop frameworks for cooperation with sector regulators in order to integrate a strong network of competition law and enforcement within the sector regulations;
- KPPU can establish a regular information exchange with all sector regulators so that KPPU could be more effective in identifying anticompetitive practices and optimally used its capability to play the role of monitoring in sector industries.

28. Rapid liberalisation without putting safety nets first, including the implementation of competition policy in place will lead Indonesia into problems. On the other hand, with the right type of regulation, Indonesia has a remarkable chance to establish markets as engines for economic progress.