Organisation de Coopération et de Développement Économiques Organisation for Economic Co-operation and Development

10-Oct-2011

English - Or. English

Directorate for Financial and Enterprise Affairs COMPETITION COMMITTEE

Cancels & replaces the same document of 29 September 2011

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN INDONESIA

-- 2010 --

This report is submitted by Indonesia to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 19-20 October 2011.

JT03308744

TABLE OF CONTENTS

1.	Intro	ductionduction	3					
2.	Changes in competition laws and policies, proposed or adopted							
3.	Prop	osal for new legislation	4					
4.	Enfo	rcement Aspects	5					
4	4.1 4.2 4.3 4.4	Records on enforcements Litigations Major competition cases Merger and acquisition	6 6					
5.	Com	petition advocacy aspects	8					
	5.1 5.2 5.3	The role of competition authorities in the formulation and implementation of other policies . Industrial and Commercial Assessment for Air Transportation	9					
6.	Instit	cutional aspects	10					
(6.1	Resources of competition authority	10					
7.	Next	vear priorities.	12					

1. Introduction

- During 2010, the Commission for The Supervision of Business Competition (KPPU) worked hard to realize a vision in improving the people's welfare, generate a conducive business climate, prevent monopolistic practices and unfair competition, and create effectiveness and efficiency in business activities as mandated in Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. The one-year (2010 2011) leadership of Prof. Dr. Tresna P. Soemardi and Dr. Anna Maria Tri Anggraini, respectively the KPPU's Chairperson and Vice Chairperson, may be too short if compared to the Commission's main task in stimulating national economy so as to be free from monopolistic practices and unfair business competition. But we shall be thankful that in a one-year period, many progresses were achieved. One of them was the government support through the issuance of Government Regulation (PP) Number 57 of 2010 on Corporate Merger or Dissolution and Share Acquisition that may Result in Monopolistic Practices and or Unfair Business Competition. The issuance of the Government Regulation that had been awaited for approximately ten years had completed the implementation of Articles 28 and 29 of Law Number 5 of 1999.
- 2. In order to achieve the Commission's vision to be an effective and credible institutions in order to improve the welfare of the people, the Chairperson and Vice Chairperson of the Commission for the 2010 2011 period launched 3 (three) strategic missions as the spirit of implementation of the Commission's main tasks, namely (i) Excellent law enforcement; (ii) Excellent policy advocacy; and (iii) Sustainable development of the credible institution and organization of the Commission (KPPU). Excellent law enforcement in 2010 was supported with initial implementation of the Commission's Regulation (PerKom) Number 1 of 2010 on Procedures of Case Handling. The Regulation that completed the Commission's Regulation Number 1 of 2006 (PerKom 1 of 2006) was effectively implemented on 5th April 2010. The issuance of this Commission's Regulation Number 1 of 2010 reinforces good governance principles in case handling, especially in transparency and authority sharing aspects.
- 3. In addition to carrying out routine checking, decisions, and assessments to provide the Government with recommendations and considerations, during 2010 the Commission (KPPU) conducted various actions that supported the development and strengthening of organizational capacity and the growth of fair competition-conscious cultures. Those activities included the restructuring of the Commission's organization into 9 bureaus, the launching of the Regional Representative Office (KPD) in Manado, the signing of cooperation agreement (MoU) with the Center for Financial Transaction Reports and Analysis (PPATK), the Indonesian National Police (POLRI) and a Social Organization, namely the Central Board of Nahdlatul Ulama (PBNU), and active participation in advocacy of fair business competition, both in domestic and international levels.
- 4. The data of monthly reports released by the Norton Rose Hong Kong appreciated the performance of the Commission (KPPU) from the number of handled cases compared to the similar competition authorities at the regional level. According to the Norton's records, the Commission produced the highest number of decisions (29 decisions) in Asia. This number was far above those of Japan and Korea, which numbered only 11 and 10 decisions respectively.

2. Changes in competition laws and policies, proposed or adopted

5. Year 2010 is concluded with two major and important regulations in competition law enforcement. The first one is the new case handling procedure through Commission Regulation No. 1/2010, which introduce more transparent hearing and clearer diversion of task between Commissioners as the judge and Investigator as the prosecutor. The second regulation is the merger regulation, which started a mandatory post merger notification and voluntary pre merger notification in Indonesia. Until now,

Indonesia had issued several regulations dedicated to competition enforcement, namely (1) Presidential Decree No. 75/1999 (concerning KPPU); (2) Presidential Decree No. 80/2008 (Amendment on Presidential Decree No.75/1999); (3) Supreme Court Regulation No. 1/2003 (the Procedure for Filing Objection to the KPPU Decision); (4) Supreme Court Regulation No. 3/2005 (the Procedure for Filing Objection to the KPPU Decision (amendment)); (5) Commission Regulation No. 1/2009 (Pre-Merger, Acquisition, and Take-over Notification); (6) Commission Regulation No. 1/2010 (The Case Handling Procedure); and (7) Government Regulation No. 10/2010 on Mergers.

6. Other relevant measures, such guideline, KPPU established 5 (five) guidelines in 2010, namely guideline on cartel, vertical integration, dominant position, exemption on agency's partnership, and mergers. In addition, 7 (seven) draft guidelines are still undergoing, where two of which are currently being uploaded on the KPPU's website to get feedbacks and inputs from the public. These draft guidelines include share ownership, and resale price maintenance. It is expected that this guideline can be issued in early 2012. Meanwhile, 5 (five) other draft guidelines is being developed, namely on definition of monopolistic practice, exclusions related to Small and Medium Enterprises, price fixing, exclusive dealing, and discriminative practice.

3. Proposal for new legislation

- 7. From times, Law Number 5 / 1999 was enacted effectively since 2000. Many constraints began to appear in the enforcement of the Law derived from the Law Number 5 of 1999 itself. These constraints were owing to the formulation of legal norms contained in the Law Number 5 of 1999 that are difficult to be implemented. The assessment on the need for amendment of the Law has been long undertaken by the Commission since 2003. The basis of this assessment is the emergence of urgency for improvement on some settings in the hope that the business competition law enforcing process and internalization of business competition values in each government policy take place better.
- 8. The assessment was performed by involving a number of academicians, universities, experts in economics and competition law, some concerned State Agencies, some related government bodies, business actors to whom Law Number 5 of 1999 was addressed and all other stakeholders. In addition, the Commission also conducted literary studies and best practices from countries that had applied competition laws, especially in some developed countries such US FTC, ACCC, KFTC, JFTC, Bundeskartelamnt, TFTC (Chinese Taipei) and the best practices of such relevant world institutions as OECD, UNCTAD and so forth.
- 9. By conducting an in-dept study and discussion on existing provisions, the team finally could prepare a draft amendment of Law Number 5 of 1999 with some important notes in it. Based on the assessment results, it can generally be informed that the assessment focused more intensely on improving arrangements for articles on substantial economy in the hope that it would be better to meet the Commission's current and future demands, improve the KPPU's institutional status with its strengthening as a state institution and strengthened authorities to streamline the enforcement process of business competition law, and lastly improve case-handling process by giving priority on any arrangement that gives more space to a process which supports due process of law and strengthens the Commission's roles in it.
- 10. In the assessment of this amendment, as a whole there were 13 (thirteen) fixed articles and 40 (forty) articles of which their contents were edited and 4 (four) additional articles. In the arrangement of articles on economic substance, the improvements were made by rationalizing the articles containing the same settings that they seem overlapped and strengthened the things not yet regulated in Law Number 5 of 1999, even if there were practically some acts of monopolistic practice and unfair business competition.

4. Enforcement Aspects

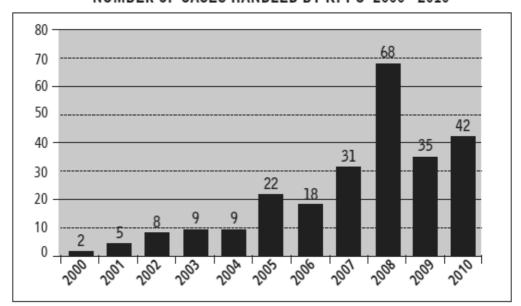
4.1 Records on enforcements

- 11. Commission for the Supervision of Business Competition (KPPU) is a state commission and an agency that enforces the law against business competition practices and provides advice on competition policies as advised by the Law Number 5/1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. The Commission always makes every effort to ensure that every person doing businesses in Indonesia will enjoy the atmosphere of fair competition, without a fear of abused by dominant business actors. KPPU is believed as plays a key role in the establishment of an efficient economy in Indonesia by guaranteeing the availability of legal certainty in doing businesses.
- 12. During the period of June 2000 to January 2011, the Commission handled 249 cases, and out of such a number of cases, 198 decisions and 51 verdicts were generated. The number of decisions that declared to be guilty was 165, and the number of decisions that declared to be not guilty was 25, and the remaining recommendations and considerations numbered 5 decisions. Out of 51 verdicts produced, there were 41 verdicts indicated to have not violated Law Number 5 of 1999, and 10 verdicts indicated to have had behavioral changes. The recapitulation of case handlings was shown in details in the following table.

RECAPITULATION OF CASE HANDLINGS THE COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION JUNE 2000 - JANUARY 2011

	Reported Cases													Total										
Year		00	01	02	03	04	05	06	07	08	09	10	00	01	02	03	04	05	06	07	08	09	10	Cases
	No Indications	0	1	4	2	1	4	2	1	16	3	4	0	0	0	0	1	0	0	0	1	0	1	41
Decisions	Behavioral Changes	0	0	0	0	0	0	1	2	3	0	0	0	0	0	0	0	0	3	1	0	0	0	10
	Guilty	1	0	1	2	6	11	6	24	41	25	27	0	1	1	4	1	4	0	1	1	5	3	165
Verdicts	Not Guilty	0	2	0	1	0	3	6	1	6	3	1	0	0	1	0	0	0	0	1	0	0	0	25
	Recommendations and Considerations	0	1	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	3
Ongoing Cases		0	0	0	0	0	0	0	0	0	0	5	0	0	0	0	0	0	0	0	0	0	0	5
Total		1	4	5	5	7	18	15	28	66	30	38	1	1	3	4	2	4	3	3	2	5	4	249
	217								32											1/				

13. The Commission handled 42 cases in 2010. This number increased compared to that of 2009 numbering cases. More clearly, the number of cases handled by the Commission during from 2000 to 2010 may be referred to in the following table:



NUMBER OF CASES HANDLED BY KPPU 2000 - 2010

Source: Assembly Hearing Section of Legal Measures Bureau

4.2 Litigations

- 14. Out of 198 Commission's Decisions, 78 decisions were appealed for objections by parties to the District Court, and 59 appeal decisions were summoned to the Supreme Court (MA). At the District Court level, 43.6% or 34 decisions out of 78 Commission's decisions were reconfirmed, and 37% or 29 cases were canceled by the District Courts, and the remaining 15 decisions or 19.4% were still in the process of appeals at the District Courts. At the Supreme Court, there were 59 appeals against the District Court's decisions, and the results were that 53% or 31 of the Commission's verdicts were reconfirmed, 20% or 12 cases cancelled by the Supreme Court and the remaining 16 decisions or 27% still in legal processes.
- During a 10-year period, the Commission in its decision imposed a fine amounting to Rp 949,542,844,090 (nine hundred and forty four thousand and ninety Rupiah) or equal to US\$ 105,504,761¹ and a compensation amounting to Rp 919,691,129,987 (nine hundred and nineteen billion, six hundred ninety one million, one hundred and twenty thousand, and nine hundred eighty-seven Rupiah) or equal to US\$ 102,187,903².

4.3 Major competition cases

16. There are several significant cases that invited international concern in 2010, namely cartel case in pharmaceutical sector, cooking oil case, and airline fuel surcharge. The first case, pharmaceutical sector, is the case where KPPU found competition violation by group companies of Pfizer and Dexa Medica. They have been convicted to conduct price fixing in anti-hyper tenses with active ingredient of Amlodipine Besylate. The violation was conducted by collaboratively determining production and marketing of such medicine that formed in-appropriate price to the consumer. They also use their dominant position to affect doctor's preference in providing prescription for Norvask medicine. Monitoring result and witness

6

 $^{^{1 \&}amp; 2}$ 1 US\$ = Rp 9.000

testimonies showed that pharmaceutical companies are difficult to compete. They tend to compete through personal affection to the doctors using sponsorships and success fees.

- 17. Efforts were made to doctors to prescribe medicines from their companies. The high cost of promotion and sponsorship has an impact on high drug prices in Indonesia. The same thing is also recognized by the Chairman of the Indonesian Doctors Association (Dr. Prijo Sidipratomo) in his meeting with the Commission. He said that the price of drugs in Indonesia is higher than other countries. Based on the results of the examination, the Commission decided both companies are proved to violate the competition law and put a total fine of Rp 145 billion. In addition, the Commission made recommendations to the government to impose regulations that govern the ceiling price of branded generic drugs. This price shall maximum three times over the average price of generic drugs in a same therapeutic class (same active substance). The government is also being asked to restrict promotion and sale of prescription drugs or pharmaceutical companies generally do.
- 18. The second case is the cooking oil industry in Indonesia. Cooking oil from crude palm oil is the most widely consumed commodity by society. That's because the characteristics of palm oil has a wide range of derivative products. In addition, the contribution of palm oil as the main raw material is 87% of the total cost of production. Oligopolistic cooking oil market structure encourages the behavior of business actors (producers) to determine the price. Price movements become unresponsive to price movements of CPO (crude palm oil). In addition, the Commission's monitoring results indicated the existence of 68% integrated company in palm oil (upstream to downstream). Those companies will have strengths to control of purchases and sales. Problems arise when the CPO price decline significantly in the April-December 2008. The decline does not respond proportionally by the manufacturer on the sale price. Therefore, the Commission continues to monitor the industry and proved the consumer loss in the period April-December 2008 which amounted to approximately Rp 1.2 trillion for branded cooking oil, and Rp 374 billion for bulk cooking oil. Based on the results of examination, the Commission decided guilty of 20 (twenty) cooking oil companies and imposed a total fine of Rp 290 billion.
- 19. The third case, price fixing on fuel surcharge in the domestic aviation services industry. Fuel surcharge is a new cost component in the airline industry. This cost component is imposed to consumer as to compensate the rising jet fuel price. During its development, the price of fuel surcharge continues to rise along with the rise of jet fuel prices. The problem arises when the price of jet fuel was declining; the fuel surcharge was still in place with a fairly high magnitude. This invited attention at the Commission by which it was founded that the fuel surcharge was misused as other functions other than covering increased cost due to increased jet fuel price. The fuel surcharge was found to be used as an additional source of income by the airline companies. This consumer's exploitation was enjoyed from 2006 to 2009 which lead to a welfare losses of Rp 5 trillion to Rp 13.8 trillion. In the end, after a complete examination, the Commission found guilty of 9 (nine) of airline companies for fixing the fuel surcharge price, and imposed a total fine of Rp 80 billion and compensation of Rp 505 billion.

4.4 Merger and acquisition

20. On 20 July 2010, the Government issued the Government Regulation Number 57 of 2010 regarding Corporate Mergers or Consolidations and Share Acquisitions that may result in Monopolistic Practices and Unfair Business Competition. This Regulation was a mandate of Article 28 and 29 of Law Number 5 of 1999. The outline of contents of the Government Regulation Number 57 of 2010 deals with four things, namely (i) the methodology for merger and acquisition assessment that lead to monopolistic practices and unfair business competition; (ii) threshold for notification values; (iii) notification procedures; and (iv) consultation.

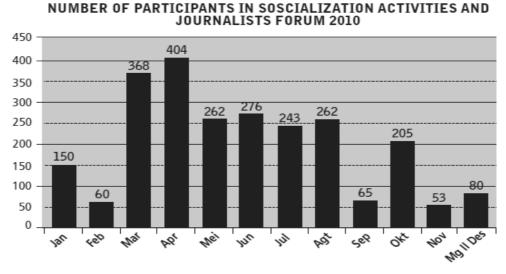
- 21. For the Commissioner/KPPU, the issuance of this Government Regulation (PP) complements necessary legal instruments for exercising merger, consolidations, and acquisition of a business entity. In addition to the Government Regulation, the Commission also issued several regulations to implement such authority, namely (1) the Commission Regulation (PerKom) No. 10/2010 concerning Notification Forms; (2) the Commission Regulation (PerKom) No. 11/2010 concerning Consultation; and (3) the Commission Regulation (PerKom) No. 13/2010 concerning Mergers Guidelines.
- 22. Until recently, the Commission has received seven pre-notification on mergers from (1) PT. Komatsu Indonesia and PT. Pandu Dayatama Patria; (2) Meadown Asia Company Limited and PT. Matahari Department Store Tbk.; (3) Prudential PLC and AIA Group Limited; (4) Unilever Indonesia Holding and BV Sara Lee Body Care Tbk.; (5) PT. Tuah Turangga Agung and PT. Agung Bara Prima; (6) PT. Bank Rakyat Indonesia (Persero) Tbk. and PT. Bank Agroniaga Tbk.;and (7) PT. Astra International Tbk. and PT. General Electric Services. Out of the seven notifications, five notifications were from multinational companies.
- 23. Other than the acquisition by PT/ Astra International which being assessed, until today, there is no mergers activities was objected. It means that the above mentioned mergers did not impact on monopolistic practices and or unfair business competition.
- 24. Number of groups of concerned people assessed that the presence of the Government Regulation (PP) No. 57/2010 will influence the interests for investment in Indonesia. This is understandable considering that the Government Regulation (PP) is still relatively new. Therefore, in addition to its obligation to enhance socialization among business actors, the Commission shall also be required to be capable of creating fast and efficient bureaucracies which ensure legal certainty for business actors.

5. Competition advocacy aspects

5.1 The role of competition authorities in the formulation and implementation of other policies

- 25. In addition to competition law enforcement, the Commission/KPPU harmonized policies related to business competition issues. The harmonization of policies could be undertaken before or when a regulation is made or after the regulation is set (commonly called policy evaluation). The result from the study of government policy will concentrate on the presence or absence of things that are contrary to the fair business competition principle as stipulated in Law No. 5/1999. If there was a contradiction, the Commission could provide the government with recommendations and considerations.
- In 2010, through a Coordination Meeting, the Commission/KPPU established 16 evaluations of government policies in various sectors, namely (1) Sugar Distribution and Trade; (2) Rattan Trading Systems/Procedures; (3) Iron and Steel Imports; (4) Production of Gas, Methane, and Coal; (5) draft Trade Law; (6) Policies on Telecommunications Services Promotion; (7) Draft Law on Convergence of Broadcasting, Telecommunications and Information Technology; (8) Bali Taxi; (9) Iron and Steel Manufactures; (10) Authorities of the Construction Services Association to provide Certification; (11) Cooperation between Government and Private Agencies in Toll Road Management; (12) Cooperation between Government and Private Agencies in Water Management; (13) Organization of Unloading and Loading Workers; (14) Management of Sea Lanes; (15) Electricity; and (16) Anti-Dumping Policies on Wheat Flour.
- 27. Furthermore, in accordance with the mandate of Article 35 paragraph (e) of the Law, the Commission continues to disseminate fair competition values through providing the Government with policy advices and recommendations. Since its establishment, the Commission/KPPU has submitted 91 (ninety one) policy advices addressed to related institutions.

- 28. In relation to public education efforts, during 2010, the Commission held 51 (fifty one) socialization activities which include: development of mass media network (journalists forum), joint socialization with public institutions, intensive socialization in the media, socialization with parliament/representatives and the government, development of a national competition forum, seminars in Regional Representative Offices' regions, training on business competition with the Supreme Court (MA) for judges in East Java and North Sumatera, joint socialization with relevant institutions, and discussion forums held in Regional Representative Offices (KPD).
- 29. The total number of participants taking part in a series of socialization activities in 2010 was 2,428 persons from journalists, academicians, business actors, the government, the House of Representatives, judges (in East Java and North Sumatera Provinces), and the community. The following graph illustrates the number of participants in socialization activities each month.



30. In the area of market study, the Commission conducted 5 (five) market studies in several sectors. Two which are describe as follows.

5.2 Industrial and Commercial Assessment for Air Transportation

- 31. The purpose of this assessment is to perform mapping and analysis for competitive climate of air travel service sector in Indonesia, particularly in Eastern Part of Indonesia. To obtain descriptions of such business competition conditions, the SCP approach will be used in airline industry where the assessment will focus on several aspects as follows:
 - Identification of strategic routes (based on data of flight traffic) in Eastern Part of Indonesia;
 - Analysis on market structure and performance in strategic routes within Eastern Part of Indonesia;
 - Analysis on business process of air transportation services along with identification of business competition issues related to behaviors in certain route points in Eastern Part of Indonesia;
 - Estimated impacts of enforcement and adjustments of the upper limit of airline fare/tariff;

32. Pursuant to the assessment, it was revealed that the most strategic airports for Eastern Part of Indonesia in 2008 are Ngurah Rai - Bali, Sultan Hasanuddin - Makassar, and Wamena. In terms of performance, it was revealed that the highest load factor belonged to P.T. Lion Air. This was owing to the successful low cost strategy application, the number of airplanes, and the frequency of flights. Meanwhile, the behavior that potentially violates the fair business competition principle is that a travel agency often has a consumer directly purchase a ticket of a particular airline without firstly asking the consumer's preference. Another noteworthy thing is related to flying the mechanism for allocating flight hour slot, considering that this allocation is the authority of airport management; thereby it is vulnerable to abuse of dominant position.

5.3 Industrial and Commercial Assessment for Banking Sector

- 33. The objectives of assessment for Banking Sector are (i) to carry out industrial mapping associated with market credit card structure based on turnover, number of cards/customers, and number of merchandises (outlets); and (ii) to identify and analyze competition patterns in credit card business which includes relationship between an issuing bank and a network manager (cooperative scheme), network tariff fixing pattern, credit card interest rate structure, and relations or schemes of cooperation between the issuing bank and a store/merchant.
- 34. The assessment results show that the credit card business in Indonesia has been among the monopolistic and oligopolistic competition structures in which characteristically there are many business actors but only a few are dominant, and there exists product differentiation. The tendency is towards oligopolistic not accompanied by cooperation among big business actors. The market remains open for new business actors to enter, but the requirements from Visa and Master can be barrier to entry (safety regulation, capital investment). The competition tends not to be head-to-head and is marked with a large potential market and rules of multiple card holders and unique segment/targeting. In terms of targeting, business actors use such strategies as discounts, reliability of services, acceptance and fees (annual fees, late charges, etc.). For little business actors, there are several strategies from big business actors considered to be predatory competition strategic (extremely and continuously high discount and exclusive interlock merchant issuer). The bank that issues credit cards has a minimum limit that shall meet the economies of scale. Such a minimum number of cards are 150.000 to 200.000 cards. This very value will make the credit card market structure become an oligopoly. If, among the banks that issue credit cards, there is any bank that does not meet the economies of scale, it's very likely that the bank will bleed.

6. Institutional aspects

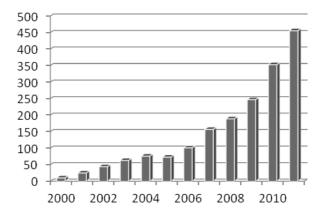
6.1 Resources of competition authority

- 35. In Fiscal Year 2010, the Commission obtained an allocated budget amounting Rp 82,313,900,000 (equal to US\$ 9,145,989)³. In general, the actual budget was spent to support the implementation of the Commission's authorities for, such as case handling, competition law assessment and the enhancement and development of general administrative support.
- 36. Since its establishment, the Commission/KPPU always manages to create professional human resources who are competent and highly integrated. Various strategies for human resource development policies have been carried out, including the preparation of human resources needs analysis, staff recruitment in line with organizational needs, ethic code enforcement for employees, and technical training for employees.

_

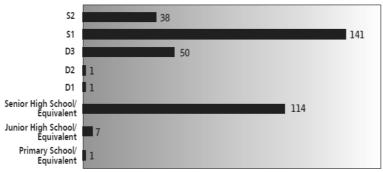
 $^{1 \}text{ US}$ = Rp 9.000

37. Below is the graph showing number of staffs of KPPU. The graph shows that the number of staffs increased due to observed demand and available fund. To date, there are 456 staffs work for KPPU (nation wide), 98 of which are investigators or case handlers.



38. The table below is about the composition of employees in 2010 by education level, from Master (S2), Bachelor (S1), and Diploma (D3-D1) to primary school:

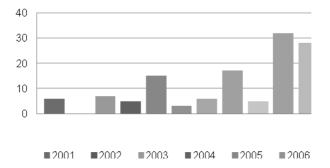




Source: Administration Bureau

39. From the table above, it is shown that KPPU's staffs mostly are Bachelors degree, then, it is followed by staffs from senior high school, Diploma, and Master Degree. Although the number of staffs in KPPU is increasing every year, KPPU also has a dynamic number of resigned staffs since its establishment. As shown below, year of 2005, 2008, 2010, and 2011 are the years with big number of resigned staffs than the other years. The highest number of resigned staff was 32 which happened in 2010.

Number of Resigned Staffs



7. Next year priorities

40. At the very beginning of Year 2011, a number of agenda needed to be prioritized by the KPPU's elected Chairperson and Vice Chairperson, among others, are (1) settlement of KPPU institutional issues; (2) handling of competition case in strategic sectors; (3) effectiveness of government policy harmonization through inter-institutional cooperation; (4) effectiveness of the execution of KPPU's decision; (5) information technology development in case handling process; (6) quality of government review on KPPU's account; (7) strengthening of investigator's capacity and competency.

Full annual report can be downloaded at the following link: http://eng.kppu.go.id/wp-content/uploads/2011/07/annual reports 2010 200711.pdf

For further information, please kindly visit our website (http://eng.kppu.go.id) or email us at international@kppu.go.id.

English news can be obtained through personal blog at http://indocomnews.wordpress.com.