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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN INDONESIA**

-- 2011 --

*This report is submitted by Indonesia to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 24-25 October 2012.*

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## ANNUAL REPORT 2011

*By the Commission for the Supervision of Business Competition (KPPU)*<sup>1</sup>

### 1. Introduction

1. In year 2011, KPPU (Indonesian competition commission) focused its activities to some priorities, namely (i) strategic sectors related to the livelihood of majority of the population; (ii) high concentration industry; (iii) price sensitive markets (commodity); and (iv) public infrastructures and services. The priorities are performed by optimizing internal and external coordination.

2. The internal coordination emphasizes on the strengthening of the secretariat's roles in supporting the implementation of the Commissioner's tasks through several systematic activities, namely: (1) law enforcement, (2) delivery of policy advice to government, (3) industrial assessment, (4) socialization and advocacy, (5) institutional strengthening, and (6) cooperation and coordination among domestic and overseas agencies.

### 2. New regulations in 2011

3. Throughout 2011, seven guidelines are significantly published to increase internal and public awareness for better implementation of competition law. The guideline includes (i) guideline on discriminatory pricing; (ii) guideline on price fixing; (iii) guideline on exclusive dealings; (iv) guideline on predatory pricing; (v) guideline on cross ownership; (vi) guideline on resale price maintenance; and (vii) guideline on the exclusion of small enterprises.

4. This year, the Commission also published two new guidelines, namely the revised guideline on merger review to facilitate procedures for imposition of penalty for late notifications, and guideline on application of article on monopoly practices.

### 3. Government proposal for new legislation

5. 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. By conducting an in-dept study and discussion on existing provisions, the Commission finally could prepare a draft amendment of Law Number 5 of 1999 with many important notes. 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. The draft is now waiting to be submitted to the Parliament.

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<sup>1</sup> The report is prepared by the Foreign Cooperation Division for the OECD Competition Committee Meeting in 22-25 October 2012. For further information, please kindly visit our website ([eng.kppu.go.id](http://eng.kppu.go.id)) or email us at [international@kppu.go.id](mailto:international@kppu.go.id). Full annual report can be downloaded at the following link: [http://eng.kppu.go.id/wp-content/uploads/2012/06/annual\\_reports\\_2011.pdf](http://eng.kppu.go.id/wp-content/uploads/2012/06/annual_reports_2011.pdf).

6. In addition, the Commission was also involved in preparing laws and regulations, which included the preparation team for the draft Law on Public Procurement of Goods and Services and Government Regulation on Partnership Agreement, where provided a right to the Commission to supervise (vertical) partnership agreement.

#### **4. Enforcement of competition laws and policy**

##### **4.1 Actions against anticompetitive practices**

###### *4.1.1 Case enforcement*

7. As mentioned in the last annual report, KPPU has been started to implement new case handling procedures that clearly differentiate the role of investigation and adjudication, extended the time period needed for investigation and examination, and increase transparency for due process of law. However, the procedure has caused the reduction of number of examination by the Commission, since the investigation period can be extended to meet requirement of two types of evidence for a case to enter a preliminary examination process.

8. For the past five years to 2011, the Commission received 1,271 complaints on violations against Law Number 5 of 1999. Two hundreds and thirty seven of them are received in 2011. The decision made in 2011 is 12 decisions, where eleven of which are related to bid-rigging and one discriminatory practice. Total imposed sanction for 2011 was IDR 10.36 billion.

9. The total of 86 issued decisions was filed for objection to the District Court (PN), and 56% or 48 decisions were affirmed and won by the Commission. The rest, 58 decisions, were reviewed to the Supreme Court, where 76% of which or 44 decisions were affirmed and in favor the Commission. The relatively high numbers are showing that the Commission started to increase their due process of law and the quality of their decision.

10. Although the imposition of sanction in case-handling is not the main goal, in accordance with the implementation of the law, it was recorded that the State has received a Non-Tax State Revenue/PNBP resulting from the penalty for competition cases which reach IDR 150.8 billion (US\$ 15.7 million), while the outstanding (potential) state income reaches IDR 45.9 billion or equal to US\$ 4.8 million.

###### *4.1.2 Business monitoring*

11. In addition to receiving complaints, the Commission also conducts business monitoring and market study. The Commission Regulation Number 1 of 2010 regulates 2 (two) monitoring activities, namely (i) market study which is aimed at gaining early evidence of an alleged violation committed by enterprises in conjunction with case initiative, and (ii) monitoring which aimed at supervising a dominant enterprises for prevention.

12. Throughout the 2006 – 2011 periods, the Commission had implemented a total of 155 monitoring activities (monitoring and market study) which were conducted at central and local offices. The scopes and the types of business as objects for monitoring were consistent with the Commission priorities.

13. Specifically in 2011, the Commission held 29 monitoring activities, consisting of 20 monitoring activities by central office and 9 monitoring activities by local offices. The sectors are varied, and mostly involved sectors on capital market, financial and banking (credit card and banking industry), manufacturing (textiles, steel, automotive, glass, paper, and lubricant), food and agricultural sector (wheat flour, basic commodities, and fertilizer), telecommunications service, transportation, health, and fuel.

#### 4.1.3 Merger and acquisition

14. As further implementation of Articles 28 and 29 of the competition law, the Government issued a regulation in 2010 in M&A. In general, the nature of such regulation is to regulate four main issues, namely (i) the assessment method of M&A which may lead to monopolistic practices and unfair business competition, (ii) notification threshold, (iii) notification procedures, and (iv) pre-merger consultation. The issuance of the government regulation has supplemented the legal requirement to conduct mandatory merger assessment. To implement such regulation, the Commission issued supplement regulations on notification forms, consultation, and merger review guideline.

15. Business responses to the new merger regime is positive and reflected by increasing number of (voluntary) pre-merger consultations and number of (mandatory) post-merger notification. The Commission received three consultations and 44 (forty-four) notification in 2011, compare to one consultation and three notifications in 2010. Based on the category of enterprises undertook the consultation and notification, foreign mergers<sup>2</sup> were dominant in term of transaction value (56% of the total transactions), compare to domestic mergers. But in term of quantity, domestic mergers took the highest in number.

Mergers	Total Transactions	% Transactions	Number of mergers	%
Between local companies	9.5 trillion	9.00	35	64.81
Between foreign and local companies	26.3 trillion	25.00	11	18.52
Between foreign companies	70.9 trillion	66.00	9	16.67
Total	106.7 trillion	100.00	55	100.00

#### 4.1.4 Summary of main cases (non-merger and merger case)

16. There are several significant cases that invited international concern in 2011, namely bid-rigging in Donggi-Senoro Project, and bid rigging at West Java Transportation Agency.

- The Donggi-Senoro Case

The first case, bid rigging in Donggi–Senoro Project, is the case where KPPU found competition violation by PT. Medco Energi International, Mitsubishi Corporation, PT. Pertamina, and PT. Medco E&P Tomori Sulawesi. They have been convicted to conduct bid rigging in the beauty contest process. KPPU was found that Mitsubishi Corporation had been enter into conspiracy with PT. Pertamina and PT. Medco Energi Internasional to set up Mitsubishi Corporation as a winner of beauty contest. Mitsubishi Corporation was also had conspiracy with PT. Medco Energi International and PT. Medco E&P Tomori Sulawesi to obtaining information of their competitor which are PT. LNG International as company secret in order to made proposal of beauty contest.

Based on the result of the examination, the Commission decided all companies are proved to violate the competition law and put a total fine of Rp 31 billion. In addition, the Commission made several recommendations to government to promote the optimization of utilization of gas reserved. The optimization is through the use of technology that appropriate with the characteristic of gas field. Based on Law No 22/2001, the Commission ask the government to have a standard policy to determine the price of natural gas.

<sup>2</sup> Foreign M&A is a mergers activity that took place in overseas, but (i) both enterprises are having affiliates in Indonesia, or (ii) one enterprise has one affiliate in Indonesia and other sell its product abroad, or (iii) the activity directly impact Indonesian market.

- Bid-rigging at West Java Transportation Agency

KPPU has decided the Bid Committee, PT. Djoyokusumo Margo Utomo (DMU), and PT.

Lintasmarga Nusantara Djaya (LND) guilty for violating Article 22 of Law Number 5 Year 1999 in a bid rigging case for Procurement and Installment of 40,000 M<sup>2</sup> Road Marks at West Java Transportation Agency. The results of examination indicate that horizontal conspiracy has occurred between DMU and LND by adjusting the bid price and area division to determine certain bidders as the tender winner. The horizontal conspiracy between DMU and LND are also seen in the same format and composition of the bid documents, the same mistyping in the bid documents and the same share ownership and management between DMU and LND.

In addition, a vertical conspiracy is also found between DMU and LND and the bid committee, in which the tender committee as facilitated the bidders to conduct the horizontal conspiracy by way of qualifying these two companies, despite of the fact that they are affiliated. In this case, the bid committee qualified DMU and LND up to the qualification evaluation phase and qualification verification and then proposed DMU as the prospective winner. Based on the evidences, facts and conclusion, the Commission Assembly stated that PT. Djoyokusumo Margo Utomo (DMU), PT. Lintasmarga Nusantara Djaya (LND), and the Bid Committee for Procurement and Installment of 40,000 M Road Marks at West Java Transportation Agency in the Fiscal Year 2009 are legally and convincingly proven to have violated Article 22 of Law Number 5 Year 1999, and punish the reported parties to pay a fine in the amount of Rp 25 million against DMU, Rp 10 million against LND and Rp 50 million against the Bid Committee.

In addition to the fine, the Commission Assembly also provide suggestions to the Governor of West Java to impose sanction against the Bid Committee for its negligence in performing its tasks and to order the direct superior thereof or competent officer to impose administrative sanction against the Bid Committee and asks the Governor of West Java to instruct the Head of Transportation Agency of West Java Province along with agencies under its control to establish and implement the tender regulations in accordance with the applicable laws and regulations and with due observance of the principles of business competition.

- Merger between Indosiar and Elang Group (television sector)

Major case on merger that was handled KPPU in 2011 was the share acquisition of Indosiar Karya Media Corp (Indosiar) by Elang Mahkota Teknologi Corp (Elang) with joint sales value of Rp 4.1 trillion and joint assets of Rp 5.2 trillion. Indosiar is one of the national free to air television network. That company move on the field of trade and services except in law and taxes but not limited to services of provision and utilization of multimedia, mass media, consultation, management, and administration. In addition, Indosiar also run business in general trade including trade of technical tools, machines, spare parts, electronic devices, electrical, broadcast tools, and also export-import trade. The main reason of this acquisition is that the Elang want to gain market share in broadcast sector and became one of reputable group in Indonesia. Elang is part of Elang Group who owns one of the free to air television network, calls SCTV. The acquisition is indirectly increased coordination between Indosiar and SCTV.

In the assessment process, the Commission identified that relevant market on this acquisition is broadcast services through television free to air by ad revenue. Thus, the Commission is also assessing the justification of this acquisition which is based on a parameter (1) quantity of entry barrier (barrier to enter market for competitors), this acquisition would not hinder new entrant to enter the market because the mechanism of enter the market was based on government permit and slot (frequency) that is confined to grow and provided by the government. (2) efficiency, where the Commission think that the transaction is create efficiency because it will be going on use of joint infrastructure and production facility between SCTV and Indosiar so that efficient

and increase capability to compete with other competitors, and (3) potential collusive behavior, the Commission argued that the potential behavior is small because broadcast industry was promoting diversification program so each company has target viewers with a specific segmentation. In addition, the television station would not be able to control the price of advertising because the television station creates an option to advertisers and consumers in choosing program. Based on this analysis, the Commission concludes that the acquisition is not violating the Law no 5/1999.

## **5. Competition advocacy aspects**

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

17. Sectoral research and business strategy analysis are two of the important tools for the Commission for their effective advocacy program. In conducting the activities, the Commission has always considered the urgency of intended sector on their relation to economic performance and public welfare. Some sectors have been studied by the Commission including, finance, banking, steel and its derivative products, rice, infrastructure, and retail. In addition, the Commission also conducted an assessment on competition impacts on Indonesia's macroeconomic parameters (economic growth, inflation, and welfare). Output of the research is dedicated as preliminary tool for case initiative. To date, there are several researches which lead to enforcement, including pharmaceuticals and telecommunications.

18. In 2011, the Commission has conducted several researches, namely research on the application of competition perception index; distribution of basic commodities; and fast-moving consumer goods. Research on distribution of basic commodities is focused on potency for price fixing on each level of distribution. Meanwhile, research on fast-moving consumer goods (FMCG) is focused on the relationship between fast-moving consumer goods (FMCG) and modern retailers, including impacts on their performance.

#### *5.1.1 Competition policy harmonization*

19. Providing policy advice and recommendation on competition policy is one of the mandates by the law which dedicated to create a more competitive market structure. Fifteen recommendations were made in 2012. One of which is regulation on price fixing for freight inspection service for air cargo, where the Commission advised the Ministry of Transportation to reconsider their plan to fix quotas and allocations of x-ray application on a regulated agent since it leads to facilitate cartel practices and abuse of dominant position. Other focused related to sectors related to medical equipments, oil and gas, and other type of transportation. Since its establishment, the Commission has submitted 103 (one hundred three) policy advices to the relevant institutions.

#### *5.1.2 Institutional cooperation*

20. Institutional cooperation gains significant output in 2011 by concluding cooperation with many agencies including, the Indonesian National Police, the Supreme Audit Agency, and Nahdlatul Ulama (NU). Academic institutions are prioritized since they are expected to lead to a research center or research-based university in supporting cutting-edge ideas on competition law.

#### *5.1.3 International cooperation*

21. The performance of foreign affairs can be seen from various indicators, such as (i) how far the international views or opinions on the Commission, (ii) how far the Commission has been asked to represent Indonesia in contributing to various overseas activities, (iii) how many capacity building activities are facilitated, (iv) how many consultations have been held for foreign parties, (v) how interested

are foreign audience at the agency, and (vi) how many international activities are there in Indonesia which are facilitated by the Commission.

22. Foreign opinions on the Commission are valuable inputs and outcomes for the commission to measure to what extent its overseas involvement has been reached. So far, the Commission has been acknowledged as the most advanced competition agency in the Southeast Asia and become a model on how a young competition agency implements competition law and policies<sup>3</sup>, and also as the most dynamic competition agency in the world<sup>4</sup>. At the OECD level, the Commission has been appointed as regular observer of the OECD Competition Committee from 2005. This status is the highest membership status for non-OECD countries. This week (end of September 2012), Indonesia and OECD has signed cooperation framework for a closer and formal cooperation between parties. In addition, Indonesia also being involved with some bilateral agreements with EFTA States and South Korea, and implementation of OECD Regulatory Reform Review for Indonesia.

23. It is recognized that, at the ASEAN level, the Commission is positioning itself to take an important role for competition policy in ASEAN. With such great commitment, the Commission is trusted to chair AEGC in 2011 and lead working groups on Regional Core Competencies (RCC) to provide manuals for member countries in preparing and developing their competition agencies. During the leadership, the Commission had initiated a multi-stakeholders forum, namely the ASEAN Competition Conference as an official and regular forum to extensively discuss competition issues with stakeholders. Furthermore, to enhance the roles of competition policy in regional policy making process, the Commission also initiated the establishment of ASEAN High Level Meeting on Competition (AHLMC) as the official forum of competition leaders in ASEAN in addressing various strategic policies and providing recommendations of competition policy to the ASEAN Ministerial Meeting.

#### *5.1.4 Outreach activities*

24. Enhancing understanding of government, enterprises, academics, journalists, legal practitioners, and public is important to increase awareness through various outreach events. Over the 2011, there were 29 listed events which dedicated to media, public institutions, parliament and government, businesses, judiciary, and socialization along with academics. In total, there were 519 registered participants were benefitted from the outreach activities by the Commission.

## **6. Institutional aspects**

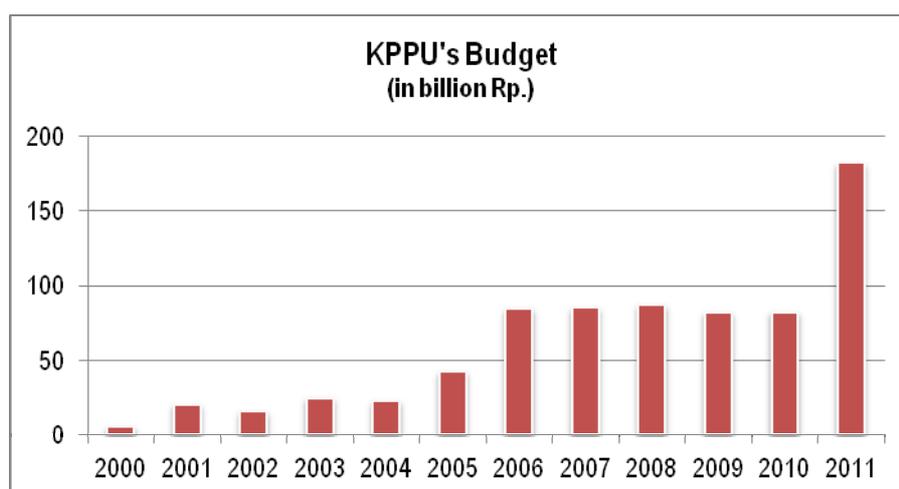
### ***6.1 Resources of competition authority***

25. In Fiscal Year 2011, the Commission obtained an allocated budget of Rp 181,620,344,000 (equal to US\$ 18,820,761). The 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.

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<sup>3</sup> Statement by the United Nations Conference on Trade and Development (UNCTAD) at a peer review session on the implementation of competition law and policies in Geneva in July 2009

<sup>4</sup> Statement by the Korea Fair Trade Commission (KFTC), in one session at an Indonesian International Conference on Competition Law and Policy, in celebrating the tenth years anniversary of KPPU



26. Since its establishment, the Commission always manages to create professional human resources who are competent and with high integrity. 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, code of ethics for enforcement, and technical training for employees. Number of staffs recorded to increase, with current total number of 456 staffs, where 98 of which are investigators or case handlers.

#### **7. Next year priorities**

27. Starting from early 2013, it is expected that the Commission will have new package of Commissioners, and of course, new Chairperson and Vice Person. This situation will put high priority to the Commission in introducing the new Commissioners with the current practices of competition law and policy implementation. Lot of programs will be dedicated to the new Commissioners.

28. In addition, the Commission has its own problem to be solved in 2013, namely the settlement of institutional issues, both the Secretariat and the Commissioner. Those issues have been a classic problem by the Commission as it will continue to be a stumbling block for the leadership and the Secretariat in optimizing the main tasks and functions as mandated by Law Number 5 of 1999. The problem of the Secretariat's institutional status greatly affects the existence of the Secretariat, inhibiting the development of organization, human resources, budget, work facilities, and systems. This gives a rise to the impacts on the provision of supports to the Commission. Additionally, this is also due to un-clarity and uncertainty of employment status, provision of salaries/honorariums and remunerations, and continuity of sustainable funding that becomes a disincentive for the careers of the staffs.

29. The status of Commissioners also creates its own problem. The Commission is an independent state commission established by the Law No. 5/1999. The Commissioners are appointed by the President and the Parliament, so they should be a State Official. However, the status is yet to be determined. The result is, they did not obtain their right as high ranking state officials, including the raise in their monthly salary. It has been experienced that their salary has not being changed from the Commission's establishment in 1999.

30. The other priorities will be the effectiveness of the execution of KPPU's decision and institutional development of the Commission.

## **8. Conclusion**

31. One year is a short period in carrying out immense and heavy institutional duties. However, the Commission's duties and authorities during the 2011 period were implemented with full passions, responsibilities and high integrity. The attainments of work targets already made may be known from, among others, how many reports were received and ultimately were addressed and resolved in accordance with previous fixed processes of case-handling.

32. Problems, challenges and obstacles faced by the Commission in carrying out its duties and authorities motivated and triggered the Commission to be capable to give the best of performance. It can be recognized from the case-handling results that gave rise to some important decisions quite beneficial to the community, the raising of business actors' awareness to do fair business, and other related things.

33. Achievements of work results already done were certainly uneasy, needed to be performed with hard work, full passions and responsibilities, and were inseparable from the support and assistance from various parties. Supports from the Government, the House of Representatives (DPR), and the Supreme Court (MA) had strengthened the Commission in carrying out the mandate of Law Number 5 of 1999. Supports from the Commission's stakeholders (including any business actor who, with their awareness,

34. Understands and complies with Law Number 5 of 1999) greatly facilitated the Commission's tasks. Similarly, technical, operational and administrative supports from all personnel of the Commission's Secretariat have contributed to all aspects perceived by all Commission's Members. In the absence of the Commission's Secretariat, the smooth implementation of the Commission's tasks and authorities would not be properly and optimally done.

35. Therefore, the presence and the status of the Commission's Secretariat and existing resources shall be strengthened to support the smooth implementation of the Commission's duties and authorities in the future more intensely. Consequently, the attainments of the Commission's visions to become an effective and credible business competition agency for the improvement of the people's welfare will be realized.