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THE IMPACT OF DISRUPTIVE INNOVATIONS ON COMPETITION LAW ENFORCEMENT

Contribution by Indonesia

-- Session III --

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ENFORCEMENT ISSUES IN DISRUPTIVE TECHNOLOGY - INDONESIAN CASE STUDY FROM GO-JEK APPS

-- Indonesia --

1. Preface

1. *“Move fast and break things. Unless you are breaking stuff, you are not moving fast enough”* said the famous founder and CEO of Facebook, Mark Zuckerberg. The fact is, every once in a while, there is the smallest change in our life. The smallest change that we live constantly until it becomes a habit, and without realization, our way of communicating is changed, our way of having fun is changed, our way of moving from one place to another is changed, even now, our way of buying daily groceries is changed. Thus, changing is a part of human nature.

2. This need of change has triggered a chain process that leads to what we call as “Innovation”. A ten letter word that contributes a lot to human civilization. Starting from the era of the Industrial Revolution that marks a major turning point in history, when almost every aspect of daily life was influenced in some way, innovation has become a determinant factor of one successful enterprise and one successful nation.

3. Most of the leading enterprises in the world are well known for their innovative technologies, technology that affects their business development, their profit intake, and turns them into the pride of their nation.

4. However, technology changes aggressively, even an incumbent enterprise should be cautious to the technological changes that will be brought by their competitor. If not, their incumbencies will fall apart.

2. Disruptive Technologies in Indonesia

5. The technological changes that damage established enterprises are usually not radically new or difficult from a technological point of view. They do, however, have two important characteristics: First, they typically present a different package of performance attributes – ones that, at least at the outset, are not valued by existing consumers. Second, the performance attributes that existing consumers do value improve at such a rapid rate that the new technology can later invade those established markets. Only at this point will mainstream consumers want the technology. Unfortunately for the established suppliers, by then it is often too late: the pioneers of the new technology dominate the market.¹ The famous international example is, of course, the case of Google Android.

6. How about in Indonesia? Indonesia is one of the largest economies in the world, with a total population of more than 260 million people, making this country one of the best target markets for enterprises.

¹ Bower, Joseph L. and Clayton M. Christensen, *“Disruptive Technologies: Catching the Wave”*, Article from Harvard Business Review, January – February 1995 Issue, Page 3.

7. New technology also spreads very well in Indonesia, since most of the people are accessing the social media and internet on a frequent basis. This fact leads to the emerging of start-up enterprises in this country, which are growing up fast by utilizing the lethal combination between:

innovation + high accessibility of technology + large number of consumer

8. There are several successful start-up enterprises in Indonesia, which are Disdus, BukaLapak, Biznet, and GrabTaxi. But the most successful and phenomenal one this year, which is literally breaking out of the ordinary, is GO-JEK Application. This start-up enterprise is offering an excellent on-demand service to the Indonesian consumer.

3. GO-JEK: An Ojek for Every Need

9. The main objective of on-demand services is making our life almost too easy. This is especially helpful for those of us who live in metropolitan (or even megapolitan) cities, where running errands could become a never-ending nightmare of traffic jam, forcing us to waste our valuable time on the street. GO-JEK was born into that idea.

10. GO-JEK is a social enterprise that brings together experienced and trustworthy 'ojek' (motorcycle taxi) drivers to deliver a one-stop convenience service for Jakartans. GO-JEK was built upon the belief that the ojek industry is an increasingly relevant transport mode in the congested city of Jakarta. By professionalizing ojeks in Jakarta, GO-JEK aims to improve their welfare and status while providing Jakartans with a practical and fast convenience service.²

11. GO-JEK Apps was formally launched in February 2011, but year 2014 was monumental for this enterprise. Not only did it manage to reach a number of milestones like 1,000 drivers equipped with android devices, it also became a fully mobile tech enterprise following the launch of its apps for android and iOS, which enables consumers to not only place orders using their smartphones, but also check pricing, track drivers and use a cashless in-app wallet system.³

12. Until today, the GO-JEK application has been downloaded for more than 400.000 times in Google Play, Android OS.⁴ The business has also been expanded and available in Jakarta, Bogor, Depok, Tangerang, Bekasi, Bali, Bandung, and Surabaya. Even the closest competitor of GO-JEK, which is GrabBike (the differentiation product of GrabTaxi), putting their best effort and promotion strategy to seize the GO-JEK consumers.

13. This is not a surprising fact, since GO-JEK is providing a good service to the consumer. GO-JEK offers 60 minute delivery anywhere in the city, transparent pricing, free shower cap, mask, and rain coat. No wonder the consumer love GO-JEK very much.

14. As of today, GO-JEK has 8 type of services offered to their consumer, like instant courier, transporting consumers, food delivery, daily needs delivery, logistic service, on-call cleaning service, on-call beauty treatment service, and even on-call massage service.

² <http://www.newcityessummit2015.org/speakers/nadiem-makarim/>

³ <http://www.establishmentpost.com/go-jek-upbeat-growth-2015-despite-looming-jakarta-motorcycle-ban/>

⁴ <https://id.wikipedia.org/wiki/GO-JEK>

Picture 1. GO-JEK riders and application



4. Issues Surrounding GO-JEK Application

15. The introduction of new technology or application in a market will affect three issues, namely (i) social and culture, (ii) regulation, and (iii) competition. This also takes place by the introduction of GO-JEK. Since it was launched, GO-JEK has triggered controversies in its home country.

16. First, social and culture issues. New technology will change how people to react and did what they usually do. By the introduction of GO-JEK, consumer will no longer need to go to an ojek stand (or pool). They can easily put orders and meet their ojek at a convenience place to consumer. Consumer will no longer need to bargain for the service they got. It all can be seen through an application. They even do not need to pay in cash. For the ojek driver, they will have to change their habit from waiting for an order to compete for an order. They will not receive a hard cash for their service, but they received credit that can be changed for certain amount of hard cash. Some of conventional ojek drivers refused this new culture, since they prefer to wait in line to get a consumer at their ojek stand or pool and received a hard cash from consumer. They viewed that, conventional system able to provide them with equality and lead to share prosperities. They refuse to compete for a consumer through an application.

17. In a large city like Jakarta, where most of their people use mobile phone, this new culture is far interesting to them. Consumer is happy since they are the one who take control over the supplier (ojek driver). They can define the faith of the driver through consumer rating. Therefore, this culture creates its blast for recent year. In contrary, it caused unease among the regular ojek drivers. Assault and physical threat to the GO-JEK drivers are reported from various locations in Capital Jakarta. This condition happened because the regular ojek drivers take that the existence of GO-JEK is a main cause for their declining daily income.

18. Second issue is regulation. We understand that regulation comes second when facing robust growth of technologies in communication. This includes by the introduction of GO-JEK Apps, where they are also facing policy issue of unregulated business. As we know, GO-JEK business model is actually quite similar to other transportation booking services like Grabtaxi or Uber where user can book transportation from one location to another. The main difference is the transportation method is motorcycle instead of the typical car/taxi route.⁵ But then the problem is, this method of transportation (ojek) is not catered for in the 2009 *Traffic and Land Transportation Law (the Law No. 22/2009)* and mainly operated by individual. Even though GO-JEK and GrabTaxi were registered, taxpaying businesses offering legitimate employment, they were neither licensed nor regulated to provide public transportation services.

⁵ <https://www.linkedin.com/pulse/go-jek-swot-analysis-its-future-yandri-susanto>

19. If the ojek service is to be legalized under the transportation law, then it should put number of requirements as other transportation, including certification, safety standards and regulated tariffs. Then, why not putting ojek as one of formal model for transportation? Well, to that, the transportation law needs to be amended. The problem is, it is extremely a difficult process to have an amendment to a law in Indonesia, and it will impact the conventional ojek. The supervision itself also will be difficult, since all of the motorbike owns by individual.

20. GO-JEK itself has taken steps in this direction, most recently signing up with insurer Allianz to provide coverage for commuters.⁶ But then the controversies continued, since aside from social and regulation issues, GO-JEK also leaves problems to the competition authority.

21. The final issue is competition. This problem arise when the latest news stated that due to the current social issues with the regular ojek drivers, GO-JEK has asked its main competitor, GrabBike, to rationalize their price.⁷ Their price setting which provoke the social issue was as follow:

- During the promotion period, GO-JEK put their price of GO-RIDE at IDR 10.000, while GrabBike put their price at IDR 5.000. Both prices are valid for the trip under 25 KM distances.
- After the promotion period is done, GO-JEK put their price at IDR 15.000 for the trip under 25 KM distances, while GrabBike put their price at IDR 10.000.

22. Comparing to the regular ojek drivers, these prices are very cheap. Since it will cost about IDR 25.000 – IDR 50.000 for the trip under 25 KM distances with regular ojek. No wonder the desperate regular ojek drivers put their anger into the GO-JEK and GrabBike drivers.

23. Nevertheless, when this rationalization of price between GO-JEK and GrabBike is realized on whatever reason, the competition authority should respond accordingly. Because the said conduct will violate the Indonesian competition law, specifically article 5 on price fixing. It also may relate to a predatory pricing infringement, since it may put significantly low price for their services. But this may too early to judge, since many factors should be considered, like how to constitute a market price in this service?

24. Moreover, in handling the probable violation, the competition authority should also be very careful in defining the GO-JEK market. Since some of their differentiated services have different competitors, and even though GrabBike is the closest competitor of GO-JEK, their offered services and geographical coverage are not exactly the same. For example, GrabBike is the competitor of GO-JEK in the term of GO-RIDE service. But GrabBike does not offer GO-FOOD service or GO-MART service in their application.

25. To put us in misery, GO-JEK also serves other services, like logistics. Under this application, the ojek driver also can provide a service as a courier, just like what the logistic enterprises provided. Indonesia has other large logistic companies like TIKI, JNE, Pandu Logistic, and other enterprises who offer the service of moving small to enormous sized goods. However, we should put in mind that those mentioned enterprises are not equipped with mobile application like GO-JEK. They also provide service as food deliverer, where we also have many food delivery companies. So, we are facing two-sided market for this application. Both sides should be put in the analysis on this type of case.

⁶ <http://jakartaglobe.beritasatu.com/news/police-search-middle-way-go-jek-controversy/>

⁷ <http://www.cnnindonesia.com/teknologi/20150813085048-185-71833/gojek-dan-grabbike-akhiri-perang-tarif/>

26. However, an ultimate question to this problem will be, is ojek service a market that falls under competition law? We understand from the previous that ojek is not part of transportation services regulated by law. So, can a competition authority put its hand on a non-regulated market?

27. So it can be said that when facing a robust technology development, competition law needs to adapt preceding the existing regulation. Even though enforcement cannot play its role due to the inexistence of regulation, competition authority can put their competition advocacy effort to a disruptive technology. Since probably most of the new player in such industry, did not have sufficient information on competition law. It is important to advocate all players in this industry, without limiting their incentive to provide more innovations for consumer.

5. Conclusion

28. Disruptive innovations might trigger controversies and problems in the market, but that does not mean disruptive innovation is bad. Even in fact, most of disruptive innovations contribute a lot to the human civilization. They do invite competition concern at first sight, but this may be due to their lack of understanding on competition law.

29. Therefore, the right way to deal with innovation is to keep up our pace and to be well informed. The competition authorities should not be left behind the rapid movement of business development. In order to do so, put competition advocacy as your first choice. We need to put enforcement as the second priority in dealing with this issue, and avoid dis-incentive to further innovation. Conducting regular market enquiries or market studies is important to understand the new market, and of course, never underestimate the power of monitoring. Monitoring could include media monitoring and social media monitoring, thus the competition authorities will know the latest trending issues in the market.