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COMPETITION COMMITTEE****Cancels & replaces the same document of 17 October 2019****Global Forum on Competition****COMPETITION PROVISIONS IN TRADE AGREEMENTS – Contribution  
from Indonesia****- Session II -****5 December 2019**

This contribution is submitted by Indonesia under Session II of the Global Forum on Competition to be held on 5-6 December 2019.

More documentation related to this discussion can be found at: [oe.cd/cpta](http://oe.cd/cpta).

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## *Competition Provisions in Trade Agreements*

### *Competition Policy in International Trade Agreements*

#### **- Contribution from Indonesia -**

#### **1. Introduction**

1. Competition law in Indonesia has been around for almost two decades. From the adoption, the implementation of the law has been progressing in a rapid phase. There has been more than 300 decisions made by the competition authority, the Competition Supervisory Commission of Indonesia (KPPU). Many of the appeal have been won by the Commission. Its involvement in regulatory making process has been significant. Thanks to the effort made by the public and relevant stakeholders.

2. Toward its importance, competition policy is started to be adopted by many international trade agreements. Competition policy has been acknowledged to affect the work of free trade or movement of goods and services across the world. Hence, newer bilateral trade agreements have started to include competition provision as the negotiated chapters. In Indonesia, competition provision was first adapted by the Indonesia Japan Comprehensive Economics Partnership Agreement (IJEPA).

#### **2. Initial engagement in trade negotiation**

3. Economic Partnership Agreement (EPA) is an international agreement to deregulate regulations for investment and immigration control in addition to the contents of the agreement. EPA and FTA (Free Trade Area) have similarities in terms of tariff reduction or elimination, but the scope of EPA is not only about reducing or eliminating tariffs but covers various other fields, such as liberating or facilitating the movement of human resources, goods and capital, intellectual property rights (IPR) and competition policy rules. By collaborating within the EPA framework, countries can obtain lower tariffs than other countries. The World Trade Organization (WTO) as a world trade organization has set the principle of the Most Favored Nation (MFN) so that the treatment of a country of all countries in the world must be the same, but if two countries agree on the EPA then the country can lower tariffs lower than the MFN rates. This is one of the benefits of EPA.

4. The first EPA agreement made by Indonesia with the substance of business competition with Japan, through the Indonesia-Japan Comprehensive Economics Partnership Agreement signed on August 20, 2007. The agreement contains various agreements in the fields of trade in goods and services, taxes, intellectual property, and business competition.

5. The formation of the IJEPA itself began when the proposal for the establishment of the FTA was offered by the Japanese PM to the Indonesian President who was visiting Tokyo on 22-25 June 2003. In a joint announcement by the Prime Minister of Japan and the President of the Republic of Indonesia on the possibility of the economic partnership agreement between Indonesia and Japan. In the IJEPA agreement, Japan stated its

commitment to help the Indonesian side to increase its industrial capacity (capacity building) so that products / services can meet the quality requirements demanded by the Japanese market through elements of the agreement or cooperation. The main concept or basic pillar of FTA cooperation between Indonesia and Japan is to improve the competitiveness of each country's industries through liberalization of market access, trade facilities, and capacity building for priority industrial sectors. Meanwhile Indonesia certainly also hopes that with the existence of IJEPA can encourage increased Japanese investment in Indonesia which can further develop industry and technology as well as deepen Indonesia's involvement in regional and international production networks.

6. Specifically for competition, one of the objectives of the agreement is to promote competition by addressing anticompetitive activities, and cooperate on the promotion of competition. In this case, there is a particular Chapter that specifically regulates competition. The specific chapters of competition in general cover several substances such as cooperation on the promotion of competition, non-discrimination, and procedural fairness. Specifically, the cooperation covers various detailed aspects such as notifications, information exchange, and coordination of law enforcement activities, technical assistance, transparency, consultation, and arrangements regarding information confidentiality.

7. The new wave of EPA later came to Indonesia and the ASEAN region. Many international trade agreements started to adopt competition policy as one of the pillars. The agreement by Indonesia with competition matter later agreed with Australia, and European Free Trade Agreement. The ongoing trade negotiation with competition's inclusion was made with European Union. While in the ASEAN region, the agreement with competition chapters was agreed under ASEAN-Australia-New Zealand Free Trade Agreement, and Regional Comprehensive Economics Partnership (RCEP) Agreement between ten ASEAN countries and six of its dialogue partners (Australia, China, India, Japan, New Zealand and South Korea).

### 3. Common scope of cooperation

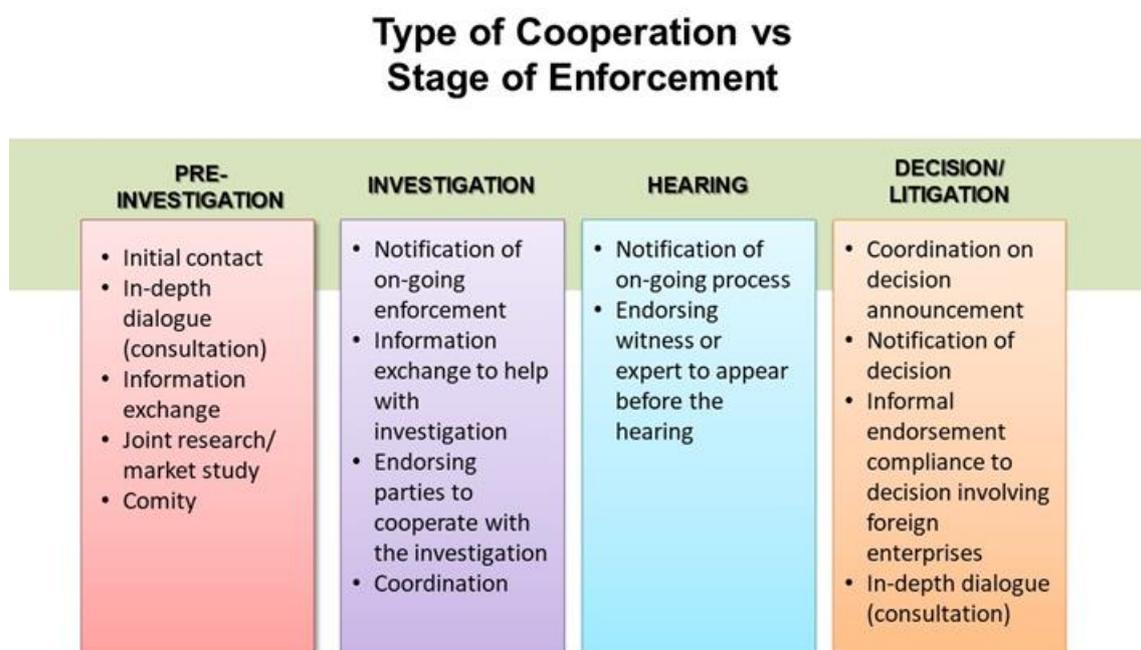
8. OECD in their survey expect to see more international enforcement co-operation in the future, particularly at regional level. Moreover better provisions for international cooperation and in particular for information sharing will be escalated. All those will be supported by globalization as a motivation for more cooperation. They also highlighted that some future models for enforcement cooperation in competition. Those includes, commitment, consultation, comity, notification, coordination, exchange of confidential information, and investigation assistance.

9. Cooperative activities can take place at the bilateral, regional, or multilateral levels. Cooperation between competition authorities can also be either formal or informal. Refusal to cooperate may lead to several potential outcomes like:

- Gaps in information available to agencies and lead to less informed agency decision making, or lower quality of decision;
- Harm our attempt to promote convergence, both in the analysis of specific or general cases;
- Un-familiarity between agencies and mutual understanding of their enforcement processes, which in turn may help affect future cooperation and trust.

10. In various international trade agreements, competition is negotiated by the competition authority, involving various relevant ministries or institutions in the economic field. The purpose of competition in the international agreement is in general to prevent and overcome anti-competitive behavior that can disrupt trade relations between countries. In particular, the focus of cooperation (whether it is a domestic agreement, through an international agreement or without an agreement) is how to facilitate the process of law enforcement and prevention by competition authorities. The cooperation is carried out formally and informally. Informal cooperation is carried out in forms such as the pick-the-phone approach (direct communication), informal meetings and task forces, and shared best practices. Following is a table of the various types of cooperation that are preferred by institutions in supporting their law enforcement processes.

Figure 1. Type of cooperation vs stage of enforcement



11. Noting these priorities, cooperation in competition by Indonesia currently still considers the importance of the following scope of cooperation.

- Exchange of (public) information;
- Notification of enforcement activities;
- Discussion on competition policy and law's issues;
- Exchange of experts and staffs; and
- Capacity building.

#### 4. Implementing the Cooperation

12. International trade agreements in the field of competition always give priority to the principle of equality and recognition of the country's economic, political, social and cultural character. So that changing a regulation through cooperation is not a priority for the institution. This is also due to the limited scope of cooperation that can be carried out by law enforcement agencies. Cooperation is considered not a strategy to change the basic regulations that exist in the field of competition.

13. The international economic agreement that has been ratified is IJEPA. So that the agreement has long been implemented, and an evaluation is being carried out on its implementation. Specifically in answering whether the agreement will be followed up with various activities in the future. The implementation of the agreement is still dominant in the aspect of technical assistance, where the Japanese Government facilitates competition programs for several years. In addition to the implementation in the form of communication and discussion on various occasions, cooperation was also carried out on the notification aspects of competition cases handled by both parties. Information from notifications is generally not memorized. In a sense, notifications that are carried out can be followed up on an initiative by the state or the authority that receives the notification. For example, when getting a notification of a competition case in a country that sends the notification (which affects the recipient country of the notification), the authority of the recipient of the notification can use it as information in determining whether the notification can also be used as an initial indication for an inquiry into investigation by the authority. This is carried out by KPPU in various cross-border cooperation implementations.

14. The substance of competition in various international agreements is still not disputed. This is caused by two things, namely to respect the independence of the competition authority and its laws in regulating the course of competition in the market. The second cause is the absence of a legal framework or formal dispute mechanism at the international level for disputes over cross-border competition behavior. This fact is not a weakness, but is the best form of balancing the legal system differences between countries.

15. The implementation of the collaboration is generally evaluated according to the procedure and period stipulated in the agreement, for example 5 years for IJEPA. In the various agreements also forms of evaluation are used. There are agreements that are evaluated in certain periods, such as every 5 years or other. There are also agreements that are evaluated at any time based on the initiative of one of the parties. Evaluation can also be carried out as a whole for all substances in the agreement, or only include certain substances of the agreement agreed by both parties. The various evaluation models are generally adapted to the availability of resources owned by the two countries.

16. Is the substance of competition beneficial for both countries? The answer is yes. The existence of this substance will guarantee the commitment of the two countries in preventing and enforcing competition law, or to communicate with each other in overcoming any existing competition issues. An economic agreement without the substance of competition in it may not have a big impact (especially if the agreement only talks a lot about the commitment of the investment amount or the elimination of certain tariffs). However, the absence of competition substance in the agreement will make it difficult for the two countries to anticipate competition issues as a result of the trade agreement they made. Unless the difficulty is something they can tolerate. The absence of competition in international economic agreements also indicates that the agreement made may not heed the principles of fair competition and does not pay attention to the impact

that the agreement can have on the national economy. The agreement seemed only to emphasize increasing economic transactions between countries, rather than efforts to maintain the level of competition in the domestic market.

## 5. What the future may hold?

17. The level of global growth that has not improved encourages companies to consolidate business and encourage the government to further protect the sector or business owners from various competitive pressures from abroad. This resulted in an agreement related to competition that was needed in various international agreements. The existence of the competition in international trade agreements shows that the two countries have the same interests in preventing violations of competition policy as a result of increased investment and trade intensity between the two countries.

18. Along with these increasing needs, competition authorities and the government need to improve themselves in facing the challenges of future cooperation. From the government side, for example, they must start accepting competition policies and laws as an important aspect of the agreement. They must be willing to open themselves up with increasing levels of competition in the domestic market and work together with the competition authorities in their countries to prevent future adverse effects. The competition authority must improve its human resource capabilities and supervisory capabilities to be able to anticipate global competition affecting the country's economy, especially as a result of increased cross-border transactions. Authorities must give special priority to countries that have agreements with them, because potential impacts occur more quickly, and coordination to overcome these impacts can be carried out more effectively.

19. Furthermore, in line with these increasing needs, competition authorities and governments must be able to create effective coordination and communication mechanisms in preventing and mitigating risks as a result of violations of cross-border competition. Because it is not possible for the impact of international trade agreements with other countries to be independently overcome by each institution, especially when we talk about competition law and policy.

## 6. Conclusion

20. Competition has started to become an important aspect in various international trade agreements. The substance is needed to create a coordination or communication mechanism in preventing or overcoming any existing competition problems. Unless it is something they can tolerate, the absence of competition in the agreement will make it difficult for the two countries to anticipate competition issues as a result of the trade agreement they made. The absence of the competition in various international trade agreements can lead to the position that, they are more concerned with increasing investment and cross-border trade, rather than the impact of their cross-border trade on the domestic market. This condition, of course, only benefits those who are able to provide low prices and have higher export capabilities.