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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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ROUNDTABLE ON CHANGES IN INSTITUTIONAL DESIGN OF COMPETITION AUTHORITIES

-- Note by Indonesia --

17-18 December 2014

This document reproduces a written contribution from Indonesia submitted for Item VIII of the 122nd meeting of the OECD Competition Committee on 17-18 December 2014.

More documents related to this discussion can be found at <http://www.oecd.org/daf/competition>.

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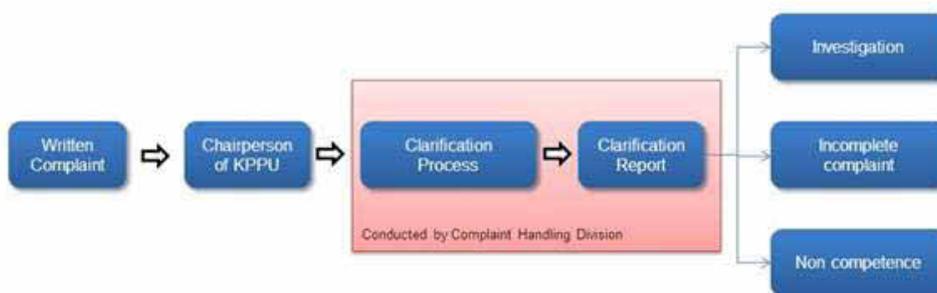
INDONESIA

1. KPPU is an independent and sole authority to supervise the implementation of competition law and policy in Indonesia. The agency is fully equipped with two major missions, namely to supervise and enforce the competition law; and to create a sound competition policy through policy recommendations.

2. In these third periods, our agency leads by nine Commissioners – the minimum number of the commissioners – that work in collegial manner. And start from this period, Chairman and Vice Chairman is elected for two and half year amongst Commissioners. To support the Commissioners, a permanent secretariat is established.

3. In the term of independency, KPPU holds the liberty to proceed the investigation process of any competition cases. This process starts from the complaint handling procedure:

Figure 1. Complaint Handling Procedure



4. After the Complaint’s Handling Process completed, the Case will be proceeded to Investigation Process as illustrated below:

Figure 2. Investigation Process



1. The Bureaucracy Transformation

5. In conducting its tasks and duties, KPPU is funded by the State's Budget. Since its establishment in the year 2000, KPPU's budget was ran under the Ministry of Trade and Industry. But after several years, KPPU shows the ability to manage, and as an order form of the law, the President Regulation Number 80 Year 2008 was promulgated to be a legal basis for KPPU to manage its own financial budget and plan. As a control mechanism, an Internal Auditor Unit established and report directly to the Chairman for check and balance the effective and efficient of every expenditure in all unit under the Secretariat.

6. In order to enhance the performance and public credibility of competition laws' administration, high levels of transparency in performing investigative, enforcement, and adjudicative functions are desirable¹. This is one of the reasons which underlied bureaucracy transformation in KPPU, as illustrated below:

Figure 3. Bureaucracy Transformation



7. Transparency is one of the attributes that well maintained at the Commission. KPPU itself made changes in the regulation to facilitate such attribute with an objective to improve effectiveness in case handling and due process of law, as well as improving business compliance.

8. This is provided in the revised version of case handling procedures under Commission Regulation No. 1/2010 (CR No. 1/2010) concerning the Case Handling Procedure. Improvements were made in the aspect of transparency in the case handling procedure and the quality of substantiation. At the present time, a case could only be examined if there are at least two kinds of evidence (statements and documents), unlike the previous rules, which allowed the use of single evidence in the examination of case. In addition, every related parties and general public could attend the hearing process to follow the course of Commissioner's council examination and they should comply with the examination code of ethics.

9. After being introduced in April 2010, the CR No. 1/2010 convinced each party (investigators and reported parties) would be treated fairly by the Commissioner's Council. Each party has the right to propose witnesses and experts to support their arguments. Adversarial systems that brought to this hearing, guarantees the decision making process by the commissioner's council is distinguished from investigation

1. Trebilcock, Michael J. and Edward M. Iacobucci, "Designing Competition Law Institutions: Values, Structures, and Mandates", Loyola University Chicago Law Journal, Volume 41, 2010.

process that was conducted by the Secretariat (Investigators). The CR No. 10/2010 has a clear due process of law and a strong position and the Supreme Court has rejected a judicial review on the CR that was submitted by a group of lawyers.

10. Further bureaucracy transformation also occurred by the promulgation of Government Regulation Number 57/2010. On July 20, 2010, the Indonesian Government released the long-awaited implementing regulation² regarding to merger notification in Indonesia, this regulation is a pursuant to the relevant provisions of the Indonesian anti-monopoly law. The previously proposed government merger regulations (drafted by the KPPU and released for consultation for public) has set out a new and far-reaching framework involving mandatory pre-merger notification. The scope of merger regulation in Indonesia covers merger, consolidation, and acquisition of share.

11. Post-merger notification means, the company who will carry out a merger, consolidation or acquisition must inform KPPU concerning the corporate action on the date such corporate action becomes formally effective. The procedure of notification is by submitting a written notification to the KPPU by no later than 30 work days, started from the date on which a merger, consolidation or acquisition becomes formally effective. The written notification is conducted by filling certain form constructed by KPPU under Article 8 of PP 57/2010. The business actors oblige to report the contemplated merger, consolidation or acquisition is the business actor with consolidated asset value of more than IDR 2.5 trillion or sales value of more than IDR 5 trillion, and consolidated asset value of more than IDR 20 trillion for banking corporations. This provision confirms the existence of restriction for business actors who are oblige to submit a written notification. However, not all categories of business actors who are carrying out a merger, consolidation or acquisition are oblige to report to KPPU.

12. The GR also provides the possibility of voluntary pre-merger notification. Moreover, the outcome of the pre-merger notification process does not represent a binding KPPU “decision” - it is only advisory in nature and cannot erase the right of KPPU to issue a violation decision after the implementation of the merger (if the related parties violate the Indonesian Competition Law in the future). Consequently, the notifying parties may use the voluntary pre-merger notification to obtain an indication whether the proposed transaction is likely to be challenged by the KPPU, or not. Should the parties carry out the merger or acquisition, they are still required to make a post-merger notification under the Government Regulation.

13. KPPU keep updating its merger control regulation. On 2 October 2010, KPPU issued two new merger control regulations, namely Commission Regulation No. 3/2012 and Commission Regulation No. 4/2012. The new regulations amongst others clarify the scope of application of the Indonesian merger control regime and set out new procedures for sanctioning failures to notify reportable transactions.

14. Commission Regulation No. 3/2012 replaced the Commission Regulation No. 10/2011. Whilst the previous regulation was silent on the treatment of joint ventures, the new regulation now expressly provides that greenfield joint ventures are not subject to merger control requirements. The new regulation also clarifies that the specific notification thresholds for banking institutions do not applied to transactions involving both banking and non-banking entities. Other modifications include changes to the merger notification forms, the notification criteria for foreign transactions, as well as the procedural rules for the imposition of remedies.

15. Commission Regulation No. 4/2012 replaces the procedural provisions for the imposition of administrative fines for failure to notify under Chapter IV of Commission Regulation No. 10/2011. It

2. Government Regulation Number 57 /2010 on Merger, Consolidation and Acquisition which may Result in Monopolistic Practices and Unfair Business Competition.

provides clarifications on the computation of the 30-day post-transaction filing period for different types of transactions. It also revamps the existing procedures for the imposition of administrative fines for failure to notify. The new regulation confirms that in case of late notification, the KPPU may impose an administrative fine of Rp1 billion (US\$84,000) for each day of delay up to a maximum fine of Rp25 billion (US\$2.1 million).

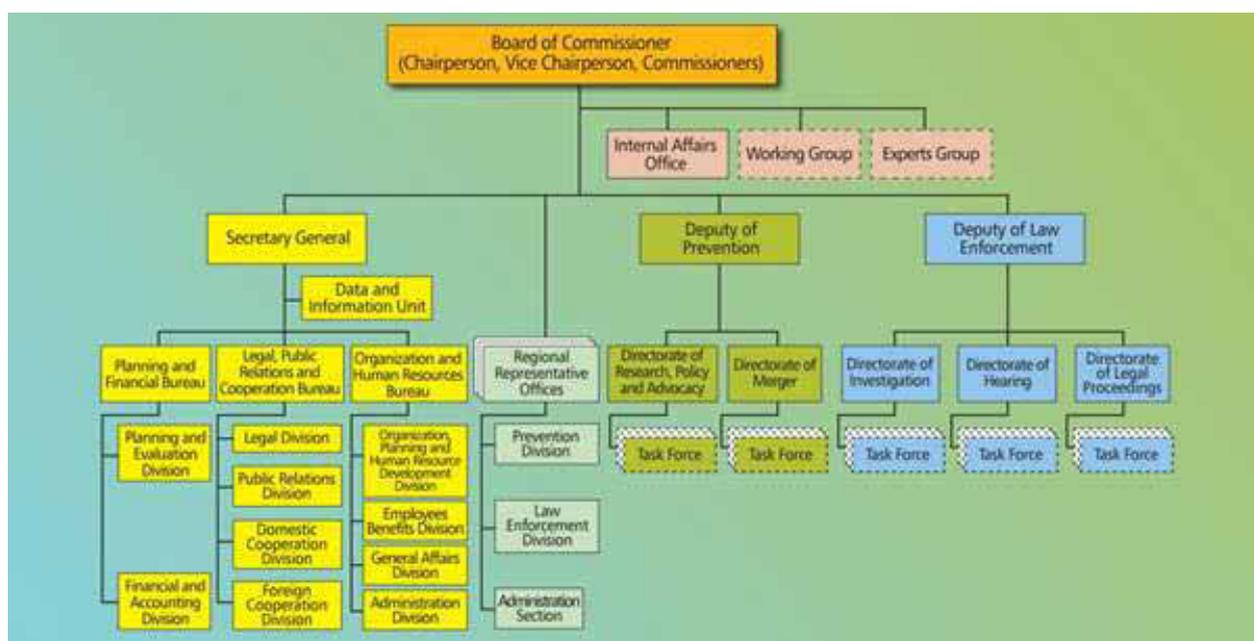
16. Moreover in 2008 and 2013, the Government of Republic of Indonesia issued the Law Number 20/2008 and Government Regulation 17/2013. The Law No. 20/2008 concerning Micro, Small, and Medium Enterprises (MSME) mandated KPPU with a task to supervise partnership between MSME and large/big enterprises. In March 2013, the implementing regulation, Gov. Reg. No. 17/2013 on the Implementation of the Law No. 20/2008, was issued. With that regulation, KPPU may supervise the implementation of partnerships (which take form in subcontract, franchise, general trade, distribution, profit sharing, joint venture, outsource, etc.). KPPU still preparing the necessary regulations to further implementation in cooperation with the Ministry of Cooperation and MSME.

2. KPPU Nowadays

17. During the 2012-2017 Commission Member periods, KPPU has a vision of “Materializing Efficient and Just National Economy for People’s Welfare”. In line with the vision, KPPU has a mission of “Prevention and Taking Action, Internalization of Competition Values, and Strengthening of Institution”. This mission makes KPPU not only become a law-enforcing institution which in certain matters concentrates on the amount of penalty or the number of cases handled, but also gives priority to preventive action aspect. Consequently, the benchmark for the success of KPPU is not merely seen from the multitude of cases handled but also its improved role in engendering awareness and improvement of policy in the context of improving people’s welfare. This mission underlied the reformation of KPPU’s Organizational Structure to the latest structure, as described below:

Figure 4. Organisational Structure

Commission for the Supervision of Business Competition (KPPU)

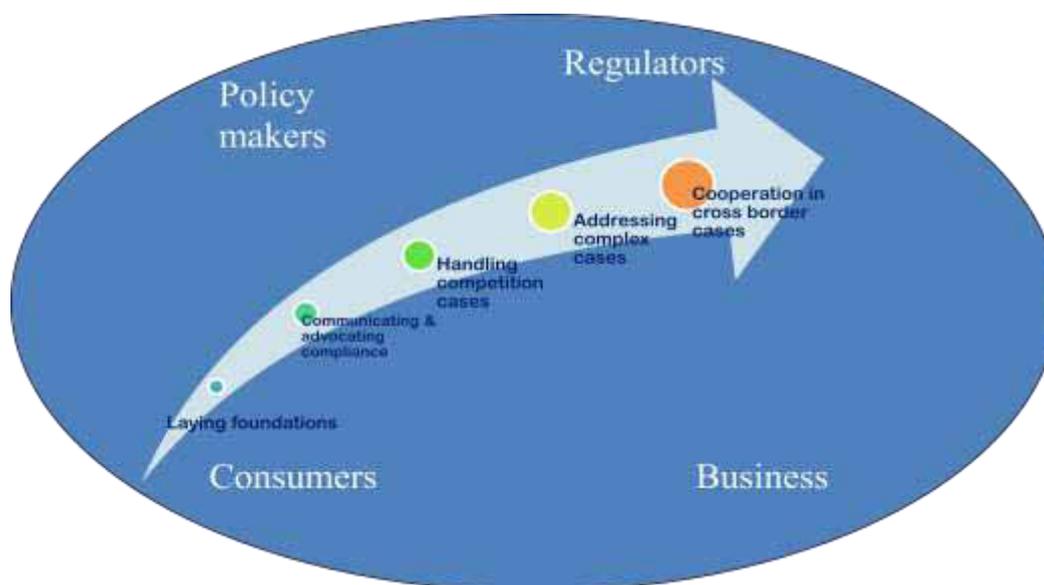


18. Before the reformation, every administrative requirement of investigation process and policy recommendation process (such as the issuance of summoning letter and policy recommendation letter) will be proceeded after the approval of Secretary General of KPPU, which created a congestion in operational procedure. And to break the bottlenecking, such process will be proceeded by the Deputy of Law Enforcement and Deputy of Prevention, while the Secretary General holds the responsibility for supporting bureaus. This breakthrough alone has created an efficient administration process in day-to-day operational procedure of KPPU.

19. The other concern of the reformation is to maximize the prevention effort through policy recommendation and policy harmonization. Under the Deputy of Prevention, there are advocacy and policy analysis functions that should stand and execute side by side. Thus, the improvement of the market will be sustainable.

20. Every competition agency has its own life cycle, depends on their stage of development year after year, as described below³:

Figure 5. Competition Agency Life Cycle



21. Nowadays, KPPU is in the middle of stage 4 (Addressing complex cases) which might need further development and changes in Institutional Building. The agency itself will keep transform and reform to adapt in every stage of the life cycle.

22. Under one condition, to achieve the most efficient and effective performance.

3. Hassan Qaqaya, "Formulation of a Competition Policy Framework, National Competition Law and Policy Coherence", presented in Workshop on the Appropriate Design and Formulation of Competition Policy and Law in ASEAN Member States, 24 – 25 September 2014, Bali, Indonesia.