Competition, Consumer Protection, and Objective of Competition Law

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1. Introduction

Indonesia, which most of the consumer is still lack of information regarding products or services they consume, is increasingly aware of the needs to take special scrutinize on consumer welfare through the establishment of competition and consumer protection regime. In terms of alleviating consumer welfare to its visible potential, Indonesia is not as good as developed countries who already had a comprehensive competition and consumer protection policy. Competition and consumer protection policy in Indonesia is newly adopted; it was confirmed by the enactment of competition law (Law No.5/1999) and Consumer Protection Law (Law No.8/1999).

Consumer Protection Law and Competition Law are amongst the most important areas of law, having a deep regulatory impact on the functioning of markets. Their alignment, in terms of goals and approach to the regulation of markets, seems in principle very substantial: both share the benefit of consumers as their most relevant purpose and organizing principle.¹

In Indonesia, the interface between competition and consumer protection policy is much recognized on the benefit from the existence of competition to consumer welfare, it’s mostly sounded from parliament and consumer protection agency. Indonesian consumer society, who is still learning on the interface, put great trust on the competition role to promote consumer welfare and to the dynamic of in economic condition. So its quiet reasonable, for several economic disturbance that have negative impact to consumer welfare then the Indonesian competition authority is being put as relevant body that responsible, namely: price increase, lack of safety in airplane flight, etc.

Discussion on consumer protection will eventually lead to question whether the incremental characteristic of price is associated with the existence of lack of competition

in the market. But in reality, which consumer should aware, that having competition in place is doesn’t always bring positive-consumer wannabe-consequences, which is cheaper or affordable price to their pocket. The aforementioned perspective of interface between competition and consumer protection is quiet common within Indonesian consumer society.

As acknowledged, the main objectives of competition policy for some extent will intersect with consumer protection policy. While competition policy try to pursue efficient functioning of the market, consumer protection works to ensure that consumers can make well-informed decisions about their choices and that seller will fulfill their promises about the products they offer. Simply stated, the core of modern consumer protection policy consists of preventing sellers from increasing sales by lying about their products or by engaging in unfair practices such as unilateral breach of contract or unauthorized billing. If sellers make a habit of lying about their products, a pernicious atmosphere of consumer distrust may well develop.

Indonesia competition law, which imposes multi objective including non-efficiency goal, put a clear relevance with the consumer interest. Consumer interest is being placed as a part of public interest which is having the right to be the basis of consideration for competition law enforcement. This implies that consumer welfare should be protected from the harmful of anticompetitive activities. In the other hand, the other objective is to improve national economic efficiency as one of the efforts to improve the people’s welfare. From those two objectives, problems could arise when the efficiency objectives is confront with other public interests which is not an economic efficiency objective. In this case, it seems that consumer welfare and economic total welfare is compromised to the extent comply with the current political economic will.

It is worth to know to have a deep understanding on both competition and consumer protection policy, especially for competition authority that has built in consumer protection function. Through this paper, the author would like to give recommendation on
the important aspect that should be considered critically for both consumer protection and competition authority in promoting both consumer and economic welfare.

2. Asymmetric Information and Consumer Deception Process

Value discovery process for most of consumer is difficult to understand, complexity of interaction between suppliers, product characteristic, etc is somehow rarely recognized. Fairly to say, consumer doesn’t have enough resources to gather and process information regarding their purchase decision so in turn forcing them to make a decision that is not optimal compared if they had had perfect information (necessary and sufficient information) for their purchase decision, conform to their preferences.

If we look at consumer in Indonesia, the condition is very ironic, most of the consumer only care for an affordable price without comparing the feature, characteristic, or functionality. Well, in this case I agree that consumer is facing some short of bounded rationality which let them falsely make purchase decision. It could be identified that buying decision of consumer is limited by information and their capacity to process it. Those two in turn emerge the bounded rationality that is different for each consumer. Bounded rationality, if used to measure the utility of consumer when they made any buying decision could allow us to examine the different utility function that consumer obtain when they had or hadn’t sufficient and necessary information. From this point forward, it’s obvious that information plays a vital role in price discovery process in the market.

Information which gathered and processed by consumer before made any purchase decision is primarily available from the supplier. In this regard, supplier plays a vital role in determining purchase decision in the market. In terms of consumer detrimental process we could envisage whether caused by the false information given from the supplier (it could be in form of: making false claims, not correcting obviously mistaken beliefs or use high pressure sales tactics) or by misinterpretation from the consumer regarding details of
product and services. To prevent the opportunity of sellers to falsely inform their consumer, the authorization of a clear code of conduct to tackle fraudulent and deceptive commercial practices against consumers is necessity.²

To be fair, we need to look at the consumer perspective on information availability. Consumer is much rely upon the detail of information disclose to product or service. In many cases, consumers have neither capacity nor willingness to understand the full prescription described about product or services. Thus, it causing counter reaction from the suppliers to met this type of consumer’s need. As a result, we could expect that suppliers are trying to disclose information of their product in an easily understand manner or it forces suppliers to disclose more limited information.

While it may be relatively easy to disclose price information or information about a specific supplier’s location, information on product quality may be difficult, if not impossible, to disclose because of credibility problems. For example, it may be relatively cheap to disclose technical information about intrinsically complex products which can easily be verified, but consumers will pay little attention to these details because they are extremely difficult to understand and evaluate. Thus, even if a specific product offers superior performance, and suppliers should have an interest in disclosing this information, they may decide not to do so unless they can find a way to present these facts in a way so that they affect consumer behavior.³

We, as competition authority, should also recognize characteristic of consumer that needs to be protected. Consumer society, which mostly has substantial barrier to gather and process any relevant information before made purchase decision, is need more protection. KPPU frequently facing situations in which the consumer is not having deep understanding about their purchase decision (bounded rationality occurrence). As

² The code should cover product and service details (including its main feature, negative effects, terms of trade, etc) in suppliers marketing campaign or other commercial activities.

³ London Economics, Consumer Detriment under Conditions of Imperfect Information, OFT research paper, August 1997
competition authority, KPPU try to protect such consumer characteristic by influencing the supplier to actively educate consumer about the main function of their product. For instance we could see on Indonesia pharmaceutical industry in which the supplier introducing new drugs that doesn’t have significant benefit compared with the old one. This of course successfully undertake by giving false information to consumer, and it done by suppliers in the industry by adding substance or formulation of drugs to the old prescription. After that, the suppliers simply campaigning that the newly added substance is benefit to protect the consumer from illness. In Fact, the added substance is only help to protect the consumer from illness if consumed before the illness occurs.

To this end, it is fruitful recommending consumer protection and competition authority to do constructive actions in which unfair competition or consumer protection code of conduct could not reach. We could start with creating informational environment which easily access and understand by consumer at the lowest possible price, at least to the level in which the cost to gather and obtain information is lower then the benefit gain from having rational purchase decision. In this respect, it is a critical role of competition and consumer protection to advocating the needs to accelerate information penetration and market understanding to consumer. For some extent it might also interrelated with other regulatory function and authorities.

3. Impact of Non Efficiency Objective of Competition Law to Consumer Welfare

Indonesia, which has multi objectives in its competition law, is start to aware about the difficulty to poise those different objectives. In one aspect, promotion of economic efficiency is explicitly set as one of the efforts to improve the people’s welfare. In the other hand, public interests which is foundation of competition law enforcement might not intended to promote consumer welfare but for other non economic goal. Undeniably, there will be condition or excuse in which competition law enforcement is allowed to negatively affecting consumer welfare.
It is true, that defining and separating consumer interest from public interest is somewhat difficult. What constitutes the benefit of consumers is not something that everyone would agree upon, and that it can be understood in different forms and with various emphasis: as economic efficiency and social welfare in consumers’ markets, as a re-distributive policy objective favoring consumers, or even as a paternalistic view of what the legal and economic rights of the consumer population should look like.\(^4\)

Even if we could state clearly that the purpose of competition Law is evidently to preserve and enhance the competitive structure of markets for goods and services, still, in Indonesia the decision to make conformity with the law should also rely on the exclusion article (article 50). Again, consumer is placed as beneficiary of the second priority of competition law enforcement. Article 50 Law No.5/1999 implies that supplier is given favorable protection, of course, it firmly saying that lessening pressure of competition in the market is acceptable.

From a simple economic theory, it could be shown that the big winners from competitive market structures are precisely the consumers of the goods and services. By lessening competition pressure, thus will end to consumer exploitation, for the sake of innovation, technological progress, or some short of R&D spending, it happen in the short run. In my common perspective, if only the innovation or technological progress showing tremendous or at least significant improvement to product or services then the “legalized exploitation” is acceptable. But if it occurs contrary, obviously that neither comprehensive competition policy nor consumer protection policy could promote consumer welfare. To this point, basically it’s hard to imagine how to foster innovation without having to lessen competition pressure.

While both competition and consumer policy is mean to promote consumer welfare, tendency that the objectives are seemingly convergence is still exist, doesn’t fully fitted each other. It could be seen on the effort to tackle anticompetitive practices with consumer protection law. Indeed, for some extent it might be unproductive and causing

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loss to consumer. But, one thing for sure is that ensuring consumer protection is complement with competition principles, opposite condition may not apply properly.

If we take a look at national development strategy, little piece of justification could be attained to unlock the ambiguity of competition and consumer protection objectives. Literally, there are two approaches to development. The first one is concerned with fulfilling the minimum basic needs of the people, removing the sources of poverty and marginalization, focusing on problems like unemployment, basic health services and so on. The second approach to development is concerned with latest technologies, exports, industrialization, and more competition to provide better choice and so on. At the core of this lies enhancement and maintenance of competitiveness.

Competition policy promotes efficient allocation and utilization of resources, which are usually scarce in developing countries. This also means more output, lower prices and consumer welfare. It does not stop there only as more output is also likely to lead to more employment in the economy. Competition may of course lead to some job losses in some sectors or in the short run. But this can be taken care of by putting an appropriate social safety net in place.\(^5\)

A good competition policy and law lowers the entry barriers in the market and makes the environment conducive to promoting entrepreneurship and growth of small and medium enterprises. This has positive implications for development as small business and entrepreneurial activities promote employment growth. The lack of gainful employment or livelihoods is considered to be one of the major causes for widespread poverty in developing countries.

Consumer protection policy is part of the strategy that emanates from the first approach, while competition policy is an integral part of the second approach though there are

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\(^5\) Nanda, Nitya. Viewpoint Paper for CUTS Centre for Competition, Investment & Economic Regulation (CUTS-CCIER), 2005
significant overlaps. However, it may be noted here that the two approaches do not mean two alternatives, but rather two instruments that must be used simultaneously.

Competition policy has a significant role to play in promoting competitiveness and growth. Efficient allocation of resources leads to increased competitiveness resulting in higher growth and development. This needs sound industrial and trade policies, complemented by a suitable competition policy and law. Similarly, a strong consumer protection regime with empowered consumers will remove managerial slackness and make firms more efficient (X-efficiency) and competitive in terms of quality and prices. Exploitative practices are quite prevalent in developing countries and are a major obstacle to competitiveness. This can be taken care of if the consumers are sufficiently empowered.

As discussed above, for Indonesia case, it seems that competitiveness and development are both necessary to promote consumers’ welfare in the long run. Together, consumer protection policy and competition policy embrace both competitiveness and development as central aims, although competition policy addresses more of competitiveness concerns and consumer protection policy addresses more of development concerns. Again, it could be stated that the ultimate convergence of both consumer protection and competition policy is apparently clear in the long run.

4. Conclusion

Evidently, there always information deficiencies in consumer purchase decision. Degree of information penetration in the market should be enhanced to ensure that value discovery process conform to market mechanism. Indeed, it should be the main focus for competition authority in educating the society regarding the truly objective of competition and how the consumer gets benefit from the existence of current competition pressure in the market. Moreover, it needs more than just a code of conduct to protect value discovery process. Both competition and consumer protection authority should
actively promote penetration of market information and market understanding to consumer.

The interaction between competition policy and consumer protection policy may often be complex. There are issues of trade-offs and striking the balance. Hence, there is a strong case for bringing competition policy and consumer protection policy under an integrated framework. This of course does not necessarily mean that these two issues have to be dealt with by a single agency but there has to be sufficient coordination and congruence.

Multi objectives of competition law should not be an obstacle to promote consumer welfare. Though the short run consequences might have detrimental effect to consumer, it should not deter the non efficiency objective of competition law. Indeed, it should be considered in planning the long run objective of competition law in supporting national development strategy.

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