

kompetisia

Newsletter on Indonesian competition law and policy



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KOMPETISIA
Newsletter on Indonesian
competition law and policy

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About us

Commission for the Supervision of Business Competition (stand for "KPPU") is an independent authority which was established to supervise the implementation of the Law concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Independent from the influence and control of the Government and other parties, KPPU's duties include drafting implementing regulations, conducting examinations of any party alleged to have violated Law No. 5/1999, issuing binding decisions, imposing legal sanction(s) on any violators of the law, and provide advice and recommendation to the Government. KPPU reports directly to the President and the Parliament (DPR). KPPU that was inaugurated in June 7, 2000 was consisted of thirteen members – whose appointments have been made with the approval of the DPR, with a five-year term of office. From thirteen Commissioners, four Commissioners are former Commissioner who were reappointed, while nine other are new Commissioners who are mostly from academicians with law and economic background. Chairman and Vice Chairman themselves are vote amongst Commissioners every years. Currently, Dr. Syamsul Maarif and Prof. Tresna P. Soemardi are entrusted as the Chairman and Vice Chairman for period 2008-2009.

Dr. Syamsul Maarif, Chairman

Beginning his career in 1979, Syamsul Maarif has spent most of his professional life as a lawyer, lecturer, and legal consultant before being appointed as a Member of the KPPU and elected as the Commission's Chairman for the period of June 2006-January 2007 and Vice-Chairman for the period of June 2000 to June 2001. Born in Mojokerto, September 26, 1957, Syamsul received a first degree in law from Brawijaya University, Malang, in 1984. He continued to higher education at McGill University, Montreal, received a master degree (LL.M.) and a doctoral degree (D.C.L.), in 1991 and 1998, respectively.



Prof. Tresna P. Soemardi, Vice Chairman

Tresna Soemardi had experiences both academic career and business activities ever since hold his Bachelor Degree from Bandung Institute Of Technology on Mechanical Engineering. Tresna was a researcher in technological field and then switch his career to become an academician in University of Indonesia. Tresna is a lecturer in Faculty of Engineering as well graduates school of management. Tresna hold his Doctoral Degree from Ecole Centrale de Paris-France (1987-1990).



The aim of KPPU to supervise implementing of the Law concerning the Prohibition of Monopolistic Practices and Unfair Business Competition is to give shape for an efficient Indonesia economy through the creation of a conducive business climate that ensures equal opportunities for all business

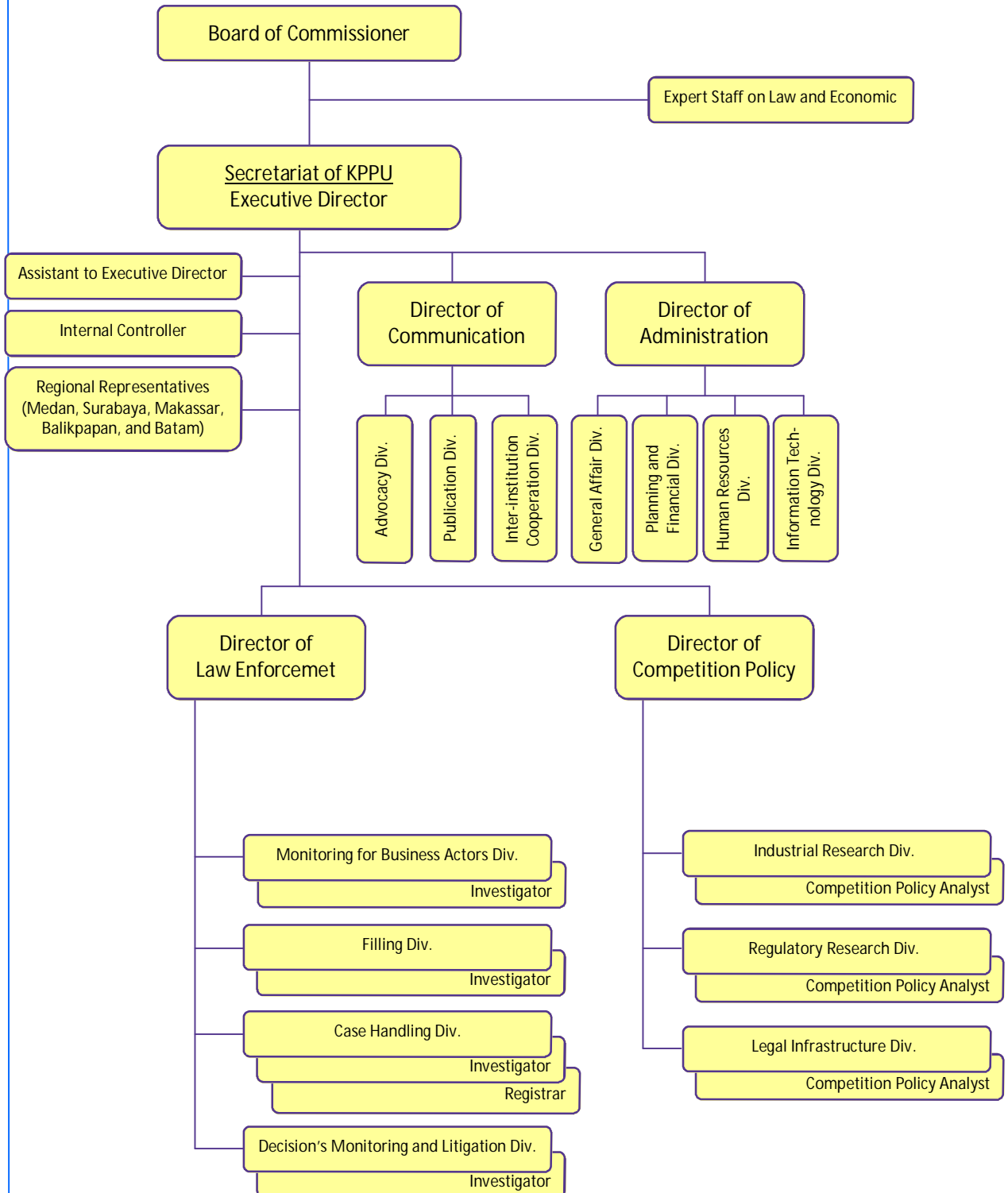
actors. KPPU also seek for the same purpose, to prevent monopolistic practices and/or unfair business competition. KPPU's efforts to ensure that every persons doing business in Indonesia enjoy a healthy and equitable competitive situation are directed toward preventing the abuse of dominant position by certain business actor(s). Business opportunities resulting from the prevention of monopolistic practices will open wide consumers' opportunities to exercise their right to make appropriate choices. The resulting economic system is ensuring equilibrium between business actors' interests and the public interests which will increase public welfare ultimately.



Board of Commissioners

Organizational Structure

In carrying out its function and duties, KPPU supported by a Secretariat with high professional staffs. KPPU consists of a Chairman and a Vice-Chairman concurrently Commissioners, and eleven other Commissioners, all appointed by the President with the approval of the Parliament.



Law enforcement

Decisions in two bid-rigging cases

KPPU begun year of 2008 by filed two decisions in bid-rigging practices. First was a decision on Case No.16/KPPU-L/2007 concerning bid-rigging on tablet fertilizer procurement, herbicide, and prospective rubber in Local Government of South Kalimantan. This violation was carried out in the form of price and bid winner arrangement that was compiled by several reported party. This arrangement had caused unhealthy business competition that limited Local Government's objective in obtaining competitive price. Through this decision, reported parties were banned from entering similar procurement for two consecutive years. Under which condition where the reported parties didn't follow this decision, then the reported parties must be paid fine with amount of Rp.1.000.000.000,-(one billion rupiah).

Beside the above mention case, KPPU was also filed decision on Case No.10/KPPU-L/2007 concerning bid-rigging on procurement for development/relocation of Ratu Zalecha's Regional Public Hospital in South Kalimantan. Based on investigation, KPPU found that this case was not proven having breached Article 22 of The Law No. 5 in 1999 on prohibition of bid-rigging activity.

Competition advocacy

Advice and recommendation on special treatment in company's restructuring

On its advocacy role, in 31 January 2008, KPPU has conveyed its advice and recommendation to the Government, particularly Ministry of State-owned Enterprises and Ministry of Transportation. First is involving Minister of State-owned Enterprises's decree on special treatment in order to restructure PT. Rukindo (one of Indonesian state-owned company). This treatment was given through specific work for other state-owned enterprise's projects (port administrator). Usually this project was held on the basis of competition for the market. In its recommendation, KPPU stated that we support fully Government's intervention in restructuring a state-owned enterprise, considering this work has strategic value that will ensure safety and operational consistency at the harbor. Nonetheless, KPPU also saw that this intervention will limit Government's opportunity to has more effective and reliable product at reasonable price and creates entry barrier for other business actors accordingly. Under this circumstance, KPPU suggested Government to decide further approach that consistent with the Law No. 5/1999.

Advice and recommendation on price fixing by business associations

Second recommendation was dealt with price fixing in the harbor of Tanjung Priok that conducted by several relevant business associations. This price fixing was an application of cartel behavior that potentially harm consumer and created inefficiency at the harbor in the long-term. In its recommendation, KPPU advised these associations to stop this price fixing and requested the Government to fully execute its regulatory function in creating detail prescription for duty and minimum quality for service, together with its law enforcement.

Competition forum

On the occasion of promoting latest development in competition law enforcement, KPPU had held 2 (two) forums for the journalist on January 16 and 23. The first forum was involved clarification of objection process for Temasek's Case. In this forum, KPPU explained that alleged parties of this case had filed objection in several district courts. Therefore, this objection process shall be deferred and continued after Supreme Court appointed certain district court to process this objection.

The second forum was aimed to socialize delivery of dossiers and evidences for violation of Article 22 Law No. 5/1999 concerning prohibition of bid-rigging practices to the Indonesian Corruption Eradication Commission (KPK). This case is related to direct appointment for procurement of maintenance devices of paper notes by the Central Bank. Based on our clarification, KPPU founded preliminary evidences that showed this case was related to vertical collusion between the Bid Committee and the Bid Winner, which treat by KPPU as a corruption case. This handover was carried out as implementation for memorandum of understanding between

International activities

Joint Seminar on Competition Law; A Perspective from Japan Anti Monopoly Act

Human resource development always treated extremely important and urge to do related to increase demand on KPPU to move forward in positioning its self as an independent and credible institution. With this regards, KPPU incorporates with Japan Fair Trade Commission and Japan International Cooperation Agency had held a full-day workshop on Japan's competition law, namely "*Joint Seminar on Competition Law; A Perspective from Japan Anti Monopoly Act*".



Prof. Murakami is trade and competition law experts that produce numbers of publication on competition law in Japan, USA, and Europe.

This activity held in 29 January 2008 and presenting competent expert from Japan, Prof. Masahiro Murakami from the Graduate School of International Corporate Strategy, Hitotsubashi University. The seminar that discussed materials on *Indonesian competition law and its comparison from other international competition laws and substantive rules of the Japanese Antimonopoly Act* is participated by 50 (fifteen) KPPU's staff from various backgrounds. Generally this activity is a great success and gives significant benefit for both parties.

Participation in International Activities

It's a precious acknowledgement for KPPU when given changes as speaker in various international activities. We believe these activities not only enhance international recognition on KPPU as well as increasing level of quality of our human resources on international competition law and policy. On January 2008, KPPU has been entrusted as

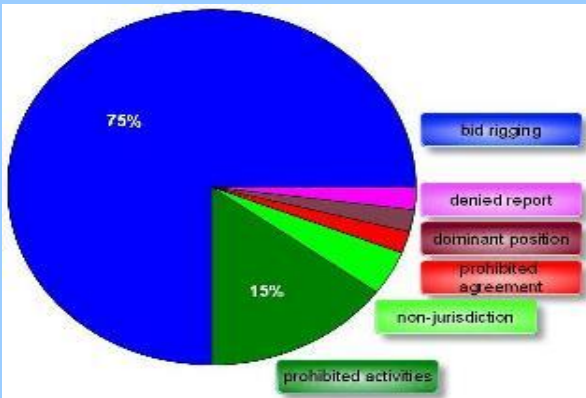
speaker for the Asian Forum on Retail and Wholesale Business which was held by Department of Internal Trade (DIT) Thailand on 8 January 2008 in Nonthaburi, Thailand.

In this international forum, KPPU is represented by Ms. Riris Munadiya. Currently, she is one of our Competition Policy Analyst that specialized in retail and oil and gas industry.



This forum, which dealt with retail and wholesale issues, was represented by representatives from ASEAN countries, Japan, and South Korea. This forum was believed as a mean to share and exchange knowledge on retail and wholesales issues, including their experiences in competition law enforcement. Furthermore, this forum is held based on fact that showed increasing number of foreign investment with enormous financial capability, distribution channel, and superior bargaining power that caused pressure on traditional market and local supplier. KPPU itself is delivered presentation on retail issues in Indonesia, law enforcement, and recent regulation on modern market.

APPENDIX



Number of Report
(simplified from total of 244 reports for the end of 2007)

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Upcoming events

APEC Seminar for Sharing Experiences in APEC Economies on Relations between Competition Authorities and Regulator Bodies, **June 11-13, 2008**, Ramada Bintang Bali Resort & Spa, Bali, Indonesia

The 4th APEC Training Course on Competition Policy
August 27-29, 2008, Sanur Paradise Plaza Hotel & Suites
 Bali, Indonesia