

kompetisia

Newsletter on Indonesian competition law and policy



Published monthly by the Directorate of Communication
Commission for the Supervision of Business Competition (KPPU)
Republic of Indonesia

Vol. 06/I/2008

June 2008

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KOMPETISIA
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competition law and policy

Team of Editor:
Ahmad Junaidi
Deswin Nur
Isti Prisiwi
Fathin Kemala Nashir
Alia Saputri

Contact address:
KPPU Building
Jl. Ir. H. Juanda No. 36
Jakarta 10120
INDONESIA

Also available online in our website:
<http://www.kppu.go.id>

Foreword

This month will be one of the busiest month in KPPU in which there was numerous activity and substances in law enforcement that extract energy from many parties, either internal or externally. One of the activities is the APEC Seminar for Sharing Experiences on Relations between Competition Authority and Regulatory Bodies which held on 11-13 June 2008 in Kuta, Bali. The seminar is a representation of KPPU's action in promoting regulatory reform process, especially in Indonesian competition policy. The seminar has been valued as a success and hope to bring new knowledge for participated economies in regulatory

reform and competition policy. Apart from the international activity, KPPU issued a Decision in telecommunication industry that consumes public interest for the whole month. The case is the price fixing (cartel) case in off-net Short Messaging Service (SMS) by most of Indonesian cellular telecommunication operators. Other telecommunication case, the Temasek case, was also grown debate by Indonesian experts, especially due to Temasek's action in selling its stock share although still under the cessation process by the Supreme Court. Please enjoy it!

Important Synergy between KPPU and Minister of Transportation

KPPU convinced Minister of Transportation on several advices and recommendations in transportation industry that need precise action plan forward. These issues involve Ministry Decree No. KM15/2007 concerning Organization of Tally Management in Harbor, price fixing for second line sector in Tanjung Priok Harbor (Indonesian main harbor), and roll on-roll off container transportation between Batam and Singapore. These were brought into discussion between Chairman of KPPU (accompanied by several high level officials) and Minister of Transportation on 20 June 2008. KPPU also highlight the important of synergy or harmonization between regulator and government for these issues, especially for container

transportation which involve international agreement between Indonesia and Singapore.

Minister of Transportation welcome KPPU's advice and recommendations and delighted that KPPU has a same vision in developing transportation industry. Furthermore, Minister always observes public reactions in defining their strategy to reduce the consumer loss. Several ideas that brought by KPPU have been summarized to strategic implementation. Minister also assured that KPPU will be involved in defining suitable policy on these matters, especially those whose involve in competition policy.

Minister always observes public reactions in defining their strategy to reduce the consumer loss...



KPPU and Local Parliament to Synchronize the Role of Local Government

KPPU received visit from the Local Parliament of Sukabumi to synchronize the role of local government in competition supervision in the regions. Through this chance, the parliament shared there were still unprofessional bid process in their jurisdiction while there was also lack of socialization of KPPU in the region. This is valued important to get clear unfair competition indicator in this issue.

Other matters that come up were KPPU's action and opinion in preventing unfair competition by legal authorities and unfair competition in local retail sector.

KPPU stop price fixing agreement in Indonesian telecommunication industry

Nine Indonesian telecommunication operators are founded guilty in price fixing agreement on tariff of off-net short messaging service (off-net SMS) and obliged to pay fine with amount of Rp 4 – 25 billion. This decision was stated after an intensive examination process done by KPPU's Commission Council since November last year.

From 2007 until today, stable price for SMS had become a reason by the Commission Council to view that price cartel was still exist until April 2008 when there were basic tariff reduction for off-net SMS's tariff in the market.

The case was brought up after a report of violation on price fixing (Article 5 of the Law No. 5/1999) for off-net SMS by several business actors, Excelkomindo Pratama, Telekomunikasi Selular, Indosat, Telekomunikasi Indonesia, Hutchison CP Telecommunication, Bakrie Telecom, Mobile-8 Telecom, Smart Telecom, and Natrindo Telepon Seluler.

Based on these facts, the Commission Council stated that Excelkomindo Pratama, Telekomunikasi Selular, Telekomunikasi Indonesia, Bakrie Telecom, Mobile-8 Telecom, Smart Telecom were proved to breach Article 5 (on price fixing) of the Law No. 5/1999. Furthermore, the council also found that there was consumer loss involved result from spread between the cartel price incomes with the competitive price for off-net SMS with amount of Rp 2,827,700,000,000. This detail loss is showed by the table below (in billion rupiah).

Based on examination process, KPPU founded several facts that lead to this violation:

1. From 1994-2004 there were only three cellular telecommunication provider in Indonesia and there were only one tariff on SMS, which is Rp 350/message. However, there were no cartel evidences between the operators due to oligopostic market creation.
2. From 2004-2007, Indonesian cellular telecommunication industry run by several new entrants and create an intense price competition. However, the existing tariff for SMS (off-net) was ranged between Rp 250-350/message. In this period, KPPU founded several price fixing clauses in the Cooperation Agreement which did not allowed SMS's tariff lower than Rp 250.

Notwithstanding that the Commission Council not in the position to impose sanctions on consumer loss for the consumer, hence the council considering evidences that profound/reduce sanctions for each operator that involved in the cartel. The fine was imposing with variety from zero until maximum fine of Rp 25 billion. The detail fines for certain operator were as follows:

1. Excelkomindo Pratama and Telekomunikasi Selular, each with amount of Rp 25.000.000.000;
2. Telekomunikasi Indonesia, with amount of Rp 18.000.000.000;
3. Bakrie Telecom, with amount of Rp 4.000.000.000;
4. Mobile-8 Telecom with amount of Rp 5.000.000.000;
5. Smart Telecom (as a new entrant) with amount of Rp 0

In June 2007, based on meeting between Indonesian Telecommunication Regulator Agency (BRTI) and Indonesian Cellular Telephone Association (ATSI), revealed that ATSI has issued a letter requesting their members to revoke price fixing agreement for SMS which being followed by the operators. However, the Commission Council still did not found significant price changes in SMS in the market.

Indosat, Hutchison CP Telecommunication, Natrindo Telepon Seluler was not proved in breaching the Article 5 of the Law No. 5/1999.

Year	Telkomsel	XL	M-8	Telkom	Bakrie	SMART	Total
2004	311.8	53.4	2.6	12.2	5.8		385.8
2005	446.3	62.4	10.2	30.6	7.8		557.4
2006	615.5	93.7	15.9	59.3	17.5		801.9
2007	819.4	136.4	23.6	71.2	31.8	0.1	1,082.5
Total	2,193.1	346.0	52.3	173.3	62.9	0.1	2,827.7

Nine Indonesian telecommunication operators are founded guilty in price fixing agreement...

Creating healthy business competition in telecommunication Industry

Innovation in Indonesian telecommunications sector becoming grows since alteration of rate structure until addition of facility as the tool to compete in this sector. It also cannot be denied that telecommunications is strategic sector to support economic growth. Growing innovation in telecommunications sector enquire KPPU to have knowledge and develop way of thinking to optimize the exercise of Law No. 5/1999 concerning Prohibition of Monopolistic Practice and Unfair Business Competition.

In observing this, KPPU actively explore the dynamics of telecommunications sector. Not less than three cases in the sector have and are being handled by KPPU over the past three years. Firstly was the blocking of international direct access case by PT. Telkom (Persero) (Decision No. 02/KPPU-I/2004). The second case is the Temasek case. This case becomes a highlighted case since KPPU's existence. Pro and counter about KPPU decision has become discussion by a number of experts. Beside criticism addressed to KPPU during the case handling process until today (the case is in the cessation process in the Supreme Court). All description about the spirit of KPPU decision actually has been formulated in detail in the Decision No. 07/KPPU-L/2007 (Temasek Case). However along with the process, this issue is frequently becomes debate, especially in cognition of majority stock according to Law No. 5/1999.

The precise definition of majority stock Article 27 Law No 5/1999 is existence of control owned by one perpetrator to other business perpetrator. In the decision also explained that from magnitude side, there is no absolute value to conclude the existence of control. Stock ownership with voting rights above 50% almost can be concluding to gives control to its owner. Stock ownership below 50% but above 25% is ascertained to gives ability of its owner to hinder strategic decisions required acceptance of special majority (negative control). As for stock ownership of 25% or more by one company is also gives significant control to the company. While for stock ownership below 25% is not at moment notice indicates its owner doesn't have control to company, certain factors must be allowed to be considered to sees whether the owner has decisive influence or material influence to direct of company's policies. The existence of influence to company's policies indicates the stock owner though is not a controller stock but has ability to control the company.

Based on obtained facts, Temasek through its subsidiaries is having 35% of stock with voting right in Telkomsel, nomination right of board of directors and commissioners, and the authority to determine direction of company's policies especially in the acceptance of budget through Committee and the ability to veto Stock Owner Meeting's decision (negative control) in the primer budget, buy back company stock, merger, acquisi-

tion, dissolution and liquidation of company.

The same thing happened also at Indosat, Temasek have around 41,94% voting stock in Indosat, nomination right of board of directors and commissioner and the authority to determine direction of company's policies of Indosat. Other shareholder is the Indonesian Government that equal to 15% and public equal to 43.06%. Public stock is commercialized in Indonesia stock exchange and United States that constantly changes its ownership and as a whole was impossible to act jointly. Therefore Temasek is an active controller (positive control) in Indosat, thus the District Court decision No. 02/KPPU/2007/PN.JKT.PST strengthening facts in KPPU decision as the correct decision in de facto and de jure. Even, the application of intervention submitted by PT. Telkom Indonesia was denied by the District Court.

Application of intervention in a competition case in fact is not enabled. This pursuant to the Law No. 5/1999 that there are no legal right to enable the application of intervention in the objection process. This argument was supported by the Supreme Court Regulation No. 3 year 2005, especially on Article 2 until Article 5 (visit our website to download this regulation).

Hereinafter, KPPU also assess that the basic reason for run to process the objection on KPPU decision was the Law No. 5/1999 and the Supreme Court Regulation No. 3/2005. Hence before submitting the objections, all the related parties shall refer to aforementioned legal instruments.

Third case in telecommunications sector being handled by KPPU is the price fixing case by several Short Messaging Service (SMS) providers, Excelcomindo Pratama, Telkomsel, Indosat, Telekomunikasi Indonesia, Hutchison CP Telecommunication, Bakrie Telecom, Mobile 8 Telecom, Smart Telecom, and Natrindo Telepon Seluler. This case is discussed in other article within this newsletter.

All cases stemming from report and also KPPU initiative will be processed pursuant to applied regulation in KPPU (Perkom No. 1/2006 on Case Handling Procedures). Every step shall be obeyed by related parties. Thereby, they will have opportunity to apply their opportunity to use their right to submits accurate description to Commission Council that handled their case.

Above mention images are a small part of KPPU's authority in realizing healthy business competition in Indonesia. The aforementioned competition cases in telecommunications sector shows that unfair business competition still be susceptible occur along with its dynamic. It is a real challenge for KPPU as the only competition agency in Indonesia in investigating a competition case according to its procedures and independency principle.

Pro and counter about KPPU decision has become discussion by a number of experts....

Anti competitive behaviors in taxi services in Batam

KPPU found that several business actors and administrator (twenty eight alleged parties) in taxi service in Batam had breach the Article 5 (price fixing), Article 9 (division of territory), Article 17 (monopoly), and Article 19 (letter "a" on entry barrier and "d" on discriminatory practices) of the Law No. 5/1999. KPPU found that there was enough evidence to conclude that:

Twenty eight alleged parties in taxi service in Batam had breach the Article 5 (price fixing), Article 9 (division of territory), Article 17 (monopoly), and Article 19 (letter "a" on entry barrier and "d" on discriminatory practices) of the Law No. 5/1999...

1. There was division of territory in taxi service in Batam by taxi cooperation in certain divisions, Hang Nadim airport, Sekupang international harbor, Harbour Bay harbor, Batam Center harbor, Telaga Punggur harbor, Sekupang domestic harbor, Marina City harbor, and Nongsa Pura harbor.
2. There were substantial evidences in price fixing in taxi service in several areas, the Sekupang international harbor, Harbour Bay harbor, Batam Center harbor, and Telaga Punggur harbor.
3. There were substantial evidences in entry barrier conducted by several cooperation and administrators in several areas, such as Hang Nadim Airport, Sekupang international harbor, Batam Center harbor, Telaga Punggur harbor, and Sekupang domestic harbor.
4. There were substantial evidences in discrimination by administrator or Hang Nadim Airport.
5. There was monopolistic practice held by several cooperatives in Hang Nadim Airport, Sekupang domestic harbor, and Marina City harbor.

As such, the Commission Council recommended KPPU to give advice and recommendation as follows:

1. Batam Municipal must implement the Law No. 14/1992 concerning Highway Traffic and Road Transportation and especially Batam Municipal Decree No. KPTS.228/HK/IX/2001

2. concerning Implementation of People Transportation with Public Transportation in Batam City, and other relevant regulations.
2. Batam Police Headquarter must implement several tasks to control the private cars functioning as public transportation, and support the implementation of the Law No. 14/1992 concerning Highway Traffic and Road Transportation and especially Batam Municipal Decree No. KPTS.228/HK/IX/2001 concerning Implementation of People Transportation with Public Transportation in Batam City, and other relevant regulations.

Based on circumstance evidences and facts found during the examinations, the Commission Council ordered the alleged parties to:

1. terminate the cartel price (price fixing agreement) for taxi service in Batam and embark the tariff according to the regulations;
2. terminate the division of territory agreement of taxi service in Batam;
3. terminate the monopolistic practices in taxi management in Hang Nadim Airport, Sekupang domestic harbor, and Marina City harbor;
4. within six months, the alleged parties must offer opportunity for taxi service to other business actor;

The Commission Council also imposed fines as follows:

1. For the administrator of Hang Nadim Airport, Sekupang domestic harbor, Telaga Punggur harbor, and Sekupang international harbor each with amount of Rp 1,000,000,000. This fine is obligated if the alleged parties refuse to terminate the aforementioned anti competitive behaviors.
2. For the alleged parties in taxi service with amount of Rp 1,000,000,000. This fine shall be borne together by the alleged parties.

Competition Policy Harmonization toward Regulatory Reform; Sharing Experiences with APEC Economies

The concept of effective and precise competition law enforcement is the key success from creation of healthy competition climate. Positive value of competition law and law is expected to bring significant changes in each economy in Asia Pacific region that implement competition law. Competition law is part of competition policy that need to be harmonized one another.

As we are witnessing together, worldwide economy is now in the middle of a real fluctuation. This fluctuation definitely will affect the economic system of each APEC member economy, either in macro or micro level.

To anticipate this, each APEC member economies need and must draw up economic policy which can damp various distortions on worldwide economy, especially affecting negativity for national economy. In this context, economics policy reform becomes very important and relevant for implementation.

In the APEC Seminar for Sharing Experience in APEC Economies on Relations between Competition Authority and Regulatory Bodies (CTI 13/2008T), APEC member economies will share experience and knowledge from each economy on how to harmonize relation between competition agency with other government agency as regulator to reach comprehensive economic policy. The conference which will be carried out in Ramada Bintang Bali Resort & Spa, on 11-13 June 2008 was participated by the delegations from Chile, Japan, Korea, Mexico, Peru, Philippine, Papua New Guinea, Russia, Singapore, Thailand, Vietnam, Malaysia and Chinese Taipei.

Economic policy reform agenda has become topic of discussion in so many bilateral, regional and multilateral cooperation forums. In APEC fora, reform has become one of priority and strategic agenda, in which showed by the establishment of APEC-OECD Integrated Checklist on Regulatory Reform as one of toolkit for policy taker in implementing policy reform.

Indonesia will put into use the checklist which starts functioned by the APEC ministers in the year 2005. The purpose of the checklist is to give understanding about elementary principles of competition policy which has been implemented in some economies. Besides, it was also planned that the checklist can be exploited in creating harmonization program between competition policies and the Government policy.

In principle, APEC Seminar for Sharing Experience in APEC Economies on Relations between Competition Authority and Regulatory Bodies (CTI 13/2008T) is focused for:

1. Discuss things related to implementation of economic policy reform and settlement of institution, especially coordination between sectors regulator with competition authority.
2. Absorb as many as possible approach in best practices, knowledge and experience of from every APEC member economies related to implementation of regulation reform and settlement of the relation of between sectors regulator with competition authority.

Besides comparing notes and opinion with APEC delegations, this activity also will be followed by notable guest speaker in institutional regulation reform area and institutional economic like Prof. Tetsuzo Yamamoto (Waseda Univ), Nikolai Malyshv (OECD) and Sandro Gleave (ICN).

Finally, recognizes and identifies problem in developing effective competition policy and law is the main recommendation expected from this seminar. Entire series of seminar action carried on full support from APEC Secretariat and Convenor CPDG Office in Japan Fair Trade Commission with co-sponsorship from Chinese Taipei and Peru.

For further information on the seminar, please refer to the next page. The presentation materials and full report of the seminar is available on our website, www.kppu.go.id.

..APEC member economies need and must draw up economic policy which can damp various distortions on worldwide economy...



Upcoming international events

The 4th APEC Training Course on Competition Policy, **November 5-7, 2008**, Sanur Paradise Plaza Hotel & Suites, Bali, Indonesia

Summary Report

APEC Seminar for Sharing Experiences on Relations between Competition Authority and Regulatory Bodies, 11-13 June 2008, Bali- Indonesia

Introductory

APEC Seminar for Sharing Experiences on Relations between Competition Authority and Regulatory Bodies was held in Bali, Indonesia on 11-13 June 2008. Participants from APEC member economies namely from Chile, Japan, Republic of Korea, Indonesia, Malaysia, Mexico, Papua New Guinea, Peru, Philippines, Russia, Chinese Taipei, Thailand and Viet Nam. In addition, the seminar was also attended by representatives from the Organization for Economic Cooperation and Development (OECD) and International Competition Network (ICN).

The main objective of this seminar to deepen basic understanding of the principles contained in the APEC-OECD Checklist and how they can be an effective tool for competition authorities and relevant government authorities as well as give a chance to the participants to exchange experience and expertise in applying the Checklist and its effect on regulatory reform process from the point of view of competition policy. The seminar also produced a list of recommendations of possible concrete actions related to the utilization of the Checklist for policy harmonization especially between Competition Authority and Sector Regulator Authorities and its effect on regulatory reform process from the point of view of competition policy.

Opening Remarks

In his opening remark, Dr. Koki Arai, Acting Convener of Competition Policy and Deregulation Group, emphasized on the need to increase of awareness Regulatory reform thru exchange information, as well as deepen the understanding and the challenges in the future for regulatory reform and competition Policy in order to create a sound competition in the business community. He also emphasized the use of the checklist as a useful guide in order to make high regulatory reform. In addition, the acting Convener of CPDG also informed the forum on the developments in APEC such as the CPDG and Economic Committee meeting to be held in August. He also emphasized that the outcomes of this seminar will contribute the Leaders' Agenda to Implement Structural Reform where both competition and regulatory reform are highlighted.

This was followed by the official opening of the seminar by Dr. Syamsul Maarif, Chairman of Indonesia's Commission for Supervision of Business Competition (KPPU). In his opening remarks, the Chairman stated the importance of implementing fair competition principles and how it may reduce the high economic cost burdening businesses and

thus will allowing them to innovate and be more efficient. He also reminded the forum on the significant relationship between the economic Policy reforms with fair competition policy. In addition, he emphasized the need to improve the harmonization and coordination between sectoral institutions with competition authorities in order to avoid overlapping of policies.

Keynote Speeches

Following the opening, two keynote speeches were delivered. The first keynote speech delivered by Professor Tetsuzo Yamamoto of Waseda University, Japan. The Professor shed light on the current Japanese economy as well as the current regulatory reform policies in Japan being implemented is in line with the five sectors emphasizes in APEC LAISR. In addition the Prof. Yamamoto also emphasized on how Japan is taking steps to promote market openness as well as how regulatory reform is supported by competition policy thru what is called "advocacy activity". The presentation ended with the possible future challenges that the Japanese Fair Trade Commission in terms of making policies may face in the future.

The second keynote speech was conveyed by the Nikolai Malyshev from the OECD, during which he reviewed a study that has been carried out by the OECD on the developments of Better Regulation in EU New Member States and how it can be applied to APEC economies. Better regulation refers to the improvement on the regulatory environment and regulatory processes. The study concluded that there is a need to have strong political support and attention through seminar, debates, and media coverage to promote understanding of better regulation as well as appropriate and adequately-funded arrangements in maintaining policy on Better Regulation. There is a necessity to use better regulation tools (new legislation and laws) that are underpinned by adequate methodologies or institutional arrangements. In addressing Better regulation agenda, creating network between the regulatory bodies and government officials would be an important step to take. Furthermore, a well-funded Small unit could be established to undertake the Better Regulation agenda by facilitating political support from the Govt.

Plenary Presentations

Presentations on "Sharing Experience on the Importance of Developing Institution Framework for Regulatory Reform" were delivered by representatives from Indonesia's Coordinating Ministry of Economic Affairs and from Chinese Taipei Fair Trade Commission. Mr. Raksaka Mahi of Indonesia shared experiences on the ongoing process of

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regulatory reform through the issuance of economic packages aimed to better reforms in particular sectors such as financial, investment, SME and Infrastructure development. In addition, Mr. Mahi explained the challenges that Indonesia face and concluded that although reform has been progressing for the last three years, there is still a need for Indonesia to continue its gradual reform and the need to improve public communication on reforms in order for the public to understand the significance of reform.

Mr. Tzu-Shun Hu from Chinese Taipei explained the regulatory reform in the world and shared the experience of regulatory reform in Chinese Taipei. From what Chinese Taipei has experienced, competition policy and law play important role in creating better regulation. There are several factors to undertake a successful regulatory reform, such as strong political support, good coordination between related institutions, and the role of competition authority.

The first day was concluded with representatives from Peru and ICN who shared experience on the improvement of coordination of policy harmonization between competition authority and sector regulator authorities in member economies.

In the presentation Andres Calderon, of INDECOPI of Peru explain the Peruvian experience on the policy harmonization between the Competition Authority and sector regulator Authorities. Through the process the Peruvian Government concluded that the both the Competition Agency and sectors regulators should rule on the same fact pattern, that in some sectors several competition issues arise due to the lack of regulation as well as the fact that there are several contradictory factors between competition law and sector regulations. In this regard, the Peruvian government sees the need to harmonize certain criteria between competition agency and regulators, in order to avoid duplication.

In the last presentation of the day, the representative of ICN Mr. Sandro Gleave presented the history of energy market liberalization of Germany as well as how the competition authority and regulator work together in Germany. The presenter also emphasized on the necessity for coordination of the Competition policy and regulation policy in order to enhance competition. The presenter also emphasized the need for regulators and the competition authority must work in close contact with similar goals as well as speak one voice. And in order to prevent duplication there must also be an adequate division of task must be reached between both institutions.

The second day was broken into two working groups. The themes of the two working group were "Strengthening Regulatory Reform" and

"Inter-relations between competition Authority and Regulator Authorities". The presentations that were delivered were as follows:

Working Group 1 "Strengthening Regulatory Reform"

In a presentation given by Mrs. Marcia Pardo, National Economic Prosecutors Office (FNE) Chilean Competition Agency, gave an overview of the Chilean regulatory reform and how it has evolved from 1973 to the current day. The presenter emphasized the fact that in the Chilean Competition policy is applied to all without exception, the policy is not only applied to the private sector but is also applied to the public entity/governmental institution. In addition, it was also stated that regulations improvements are moving hand-in-hand with competition policy. In connection to how the FNE may strengthen regulatory reform in the future, FNE at this time is through Advocacy activities, consultations process and enforcement activities. These three steps are the main tools to improve the regulatory reform. It was emphasized that regulatory reform was a gradual process and that even small steps may have big impacts on reform.

Dr. Supriadi, Special Assistant to Coordinating Minister for Economic Affairs presented about Indonesian policies related to globalization and regulatory reform. Globalization is increasing flow of trade, investment and services across countries. Efficient and competitiveness is vital point to reap the benefit of globalization. Regulatory reform is a continuous and systematic process which needs comprehensive planning in each stage. Political support is necessary to make sure that the whole process of regulatory reform could be implemented effectively. Indonesian policies repositioning the role of government as the regulator; deregulation, liberalization and privatization for competitiveness and efficiency ex. railway sector, private company are able to build their own rail; and maintain fair competition. General policy applied by Indonesian government is ensuring the predictable policy and rules, introduce enforceable contractual agreements, and commit to accelerate infrastructure development. Indonesia has regulatory and supervisory bodies that already established under sectoral and competition law. Deregulation on telecommunication, oil and natural gas, road and shipping law has paved the way for competition in all market and has opened for private sector to participate and cooperate with government. To support regulatory reform Indonesia has to develop legal and regulatory framework, and harmonize the coordination between regulatory bodies and government, increase the quality of existing and future regulations, and also fully support and comply with regulatory agenda as already set.

The second day was broken into two working groups, the strengthening Regulatory Reform and Inter-relations between competition Authority and Regulator Authorities.

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...the Federal Commission of Regulatory Improvement was also established in order to guarantee the transparency in the process of elaboration and application of federal regulations.

The representative from Mexico, Mr. F. Javier Soto-Alvarez, gave an overview of the Mexican regulatory reform and how it has evolved to the present day situation. As one of the main institutions that were formed to strengthen regulatory reform was the formation of the Federal Competition Commission an institution has the duty to define market and monopolistic practices as well as evaluate mergers and promote competition advocacy. In addition to this institution, the Federal Commission of Regulatory Improvement was also established in order to guarantee the transparency in the process of elaboration and application of federal regulations. The presenter also gave examples of best practices of reform which occurred in Mexico. It was also stated that as one of the reforms or recent developments/ improvement that was made in order to make the process a more transparent by establishing law of transparency and access to public Governmental Information which allows anyone to access to information of federal government, its works, procedures, as well as the use of public resources and performance indicators.

According to Lincoln Flor Rojas of Transport Facilitation Supervision Agency of Peru (OSITRAN), initial actions for the regulatory reform in public services in Peru happened when there was a process of stabilization and structural reform was initiated in response to the Peruvian economical and political crisis. From Peru's experience we can learn that the regulatory bodies must be created before the beginning of privatization process. The situation today is that competition has been introduced in several sectors, such as protection of intellectual property, water and sanitary sector, telecom sector, energy, gas and hydrocarbons sector and transport infrastructure. The division of competency between regulatory body and competition agency is that regulator will focus on the ex ante while the competition agency will focus on the ex post approach. Transparency through public consultancy and close relationship with competition agency is very important when doing regulatory reform.

Mr Ryan Gener of the Department of Foreign Affairs of Philippines Delivered a presentation entitled International Cooperation as a Domestic Catalyst for Regulatory reform. During the presentation the Philippines regulatory reform emphasized the need to foster both competition and competitiveness, which entails regulatory reform as a component of structural reform and is complementary to trade liberalization, at the same time regulatory reform also emphasizes on institutional capacity building and social infrastructure. As one of the conclusions of the presentation, the Philippines states that International cooperation can complement as well as catalyst push domestic regulatory reform through the increasing aware-

ness, benchmarking as well as increasing the capacity building on regulatory reform.

Chief Consultant of Ministry of Economic Development of the Russian Federation Dr. Nikolay Kushnarev, gave a brief overview of Russia's economy in the last 20 years, the presentation then focused on the recent changes on the structure of the regulatory bodies and the legal frameworks. The presentation also shared the experience of Russia as the first non-member economy that has volunteered to participate the in the OECD Regulatory Program. From this experience Russia took several important lessons, of which was implemented into the system. It was emphasized that the application of laws and implementation of competition policy actions are aimed against monopolistic activity as well as aimed to the suppression of unfair competition, and control of economic concentration. It was also mentioned that although Political will is important for all forms reform, at its core reform must be market driven.

Mr. Chintapun Dandubutra, from Thailand informed the forum on the transition from absolute monarchy to constitution monarchy, as well as the current Thai legislative process. Thai law over the years, have accumulated a large number of laws and regulations, as a result the Thai government took several steps to review legal reforms such as review whether legislation is outdated, legislations were conflicted or whether the legislation which have passed are seen to inadequate to be implemented. The presenter gave three examples of how Thailand had preformed legal reform. From these reforms, Thailand learned several lessons from the experience, such as determination and support from the policy level and the direct involvement of related agencies are key principles for success, it was also stated that the need for a short and long term plan as well as detailed guidelines are needed for the implementation of legal reform program and lastly the need for a permanent and dedicated organization should also be established for legal reform.

Regulatory reform is a core of structural reform in Vietnam. Mr Tran Anh Son from Vietnam explained about management of regulatory reform, where has two aspects, namely result-focused and at the lowest possible cost for both the government and private sector. Reform in Vietnam could mean creating new regulation and retargeting old regulation. In the case of Vietnam regulatory reform has increasing investment capital and registered enterprises, improve business and investment climate, changing the awareness of the government and competition with others countries. Vietnam still see the needs of developing a framework strategy for the market development, strengthening competition and efficiency incentives for former state owned enterprises, improving the regulatory and administrative envi-

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environment for business. Beside that, reform institution at the center of government should be strengthened. In the area of competition, effective competition policy and institutions should be designed and market oriented regulation regimes should be established.

Mr. Paulus Ain, representative from Independent Consumer and Competition Commission of Papua New Guinea explained on the review and regulatory reform in state owned enterprise regulation. He also shared the PNG experience in conducting regulatory review and reform, where the key element of doing the reform is the establishment of Independent Consumer & Competition Commission. ICCC endeavors to ensure that there is a balance between the consumer-through fair and reasonable prices through fair and reasonable rate of return

Working Group 2

“Inter-relations between competition Authority and Regulator Authorities”

The session started with a presentation from Mr. Paulo Oyanedel, from Chile's National Economic Prosecutor. In his presentation, Mr. Paulo Oyanedel highlighted the Chilean competition system and interrelationship between competition authorities. Competition systems aim at promoting and defending free competition. Chilean competition authorities consists of two bodies, i.e. competition agency and competition court. Mr. Oyanedel gave examples of coordination between competition authorities in some sectors, such as banking, power utilities, gas and water utilities, telecommunications, and airports. The coordination between competition authorities and regulator authorities in Chile has been improved in terms of more focused objectives, efficient time of response and market vision.

Mr. Bambang Adiwiyoto explained about inter-relations between competition authority and regulator authorities in the case of telecommunication sector. In the first part of his presentation, Mr. Adiwiyoto highlighted the Indonesian telecommunication regulatory agency which has been effective since January 2004. The agency has 3 functions i.e. regulating, supervision and controlling and is aimed at creating fair competition in Indonesian telecommunication industry with the participation of public and private companies. Furthermore, Mr. Adiwiyoto, explained about the relations between KPPU and BRTI and how it affects telecommunication sectors competitiveness.

Representative from Japan Fair Trade Commission (JFTC) Mr. Takaki Tanabe presented Japan's competition authority and competition law in Japan. JFTC enforces Japan's Competition Law namely the antimonopoly act (AMA). The purpose of AMA

is to promote the democratic and wholesome development of the national economy as well as to assure the interests of general consumers. To achieve this purpose, JFTC takes some steps such as policy recommendation, coordination between AMA and other economic laws ordinances and administrative guidelines, as well as providing guidelines.

Mr. Jorge L. Velasquez-Roa from Mexico Federal Competition Commission (CFC) delivered a presentation on recent changes to the interface between the competition authority and sectoral regulators in Mexico. Mexico CFC participates in the regulatory process through two mechanisms, nonbinding opinions and determining the existence of effective competition substantial market power possessed by an economic agent. These two mechanisms have some limited in promoting competition as well as difficulties in its interaction with sectoral regulators. To address this problem, the Government of Mexico has reformed the LFCE (Mexican competition law) in 2006 to address legal deficiencies affecting CFC's work.

In this session, Mr. Paulus Ain from PNG Independent Consumer and Competition Commission delivered presentation on regulatory reform in PNG. In his presentation, Mr. Ain gave details on the background of the establishment of ICCC as the regulatory authority in PNG. ICCC is an independent statutory organization which plays a role as the main vehicle in ensuring effective economic regulation of state Owned Entities (SOEs) and other prices controlled goods and services. It serves both as regulator body as well as competition authority. The new regulatory framework has brought some significant changes such as greater degree of certainty for new investment by SOEs and adoption of an incentive-based regulation. It also contributes in strengthening economic activities, promoting economic growth and efficiency and encouraging more active competition.

Mr. Yutin Prajuntaboribal from Department of Internal Trade, Ministry of Commerce, Thailand, delivered a presentation titled Relations between the Office of Trade Competition Commission and the National Telecommunications Commission. The presentation began with the comparison between the two organizations. It further gave information of ongoing process of establishing a MoU between OTC and NTC concerned with fair trade competition. OTC and NTC have shown a harmonious work in regulatory reform, which is reflected by a good cooperation in terms of information exchange, investigation process and also regulations implementation. NTC is now considering applying Guidelines of Dominant Position established by OTC in 2001 for telecommunication business.

ICCC is an independent statutory organization which plays a role as the main vehicle in ensuring effective economic regulation of state Owned Entities (SOEs) and other prices controlled goods and services. It serves both as regulator body as well as competition authority.

Summary Report

APEC Seminar for Sharing Experiences on Relations between Competition Authority and Regulatory Bodies, 11-13 June 2008, Bali- Indonesia

...several factors which are needed to have effective regulatory reform especially strong political support, good coordination among sector regulator and competition policies...

Mrs. Tran Phuong Nhung from Viet Nam Competition Administration Department highlighted the challenges in the relationship between VCAD and Viet Nam sector regulators, such as Intellectual Properties Department, Ministry of Information and Communications, State Bank of Viet Nam, Drug Administration Authority and Electricity Regulation Authority. Viet Nam is facing lack of concrete coordination mechanism between competition agency and specific sector regulators. The problem lies at inconsistencies between sector regulations and competition law that causes overlapping between competition authority and sector regulators. From this experience, it is recommended that to strengthen cooperation mechanism by carrying out advocacy, training, workshop, and information dissemination, enhancing information exchange, and observing the law enforcement, in order to achieve an effective coordination between the competition agency and specific sector regulators.

Wrap-up Session

During the wrap-up session on third day, the moderators of the two working groups Mr. Nikolai Malyshev from the OECD dan Mr. Sandro Gleave of ICN gave a brief overview of the results of the discussion as well as the recommendations as a result of the discussions. Participating economies had no comment on these recommendations, hence can be concluded as the result of the seminar.

Closing Remarks

The seminar was concluded with closing remarks from Prof Tresna P. Soemardi, Vice chairman of KPPU and Dr. Koki Arai Acting Convenor of CPDG. In the remarks summed up the series of discussion that took place during the three day seminar, he emphasized on the issues of positive effect of regulatory reform toward the economies especially at macro level. Also, several factors which are needed to have effective regulatory reform especially strong political support, good coordination among sector regulator and competition policies. In this condition, the role of competition law and competition agency is strategic in the implementation of regulatory reform.

Based on the discussion working group 1, Prof. Tresna underlined the wide differences in institutions and the complexity of issues, any attempt to recommend reforms for such a large and complicated region as APEC must be accompanied by a

certain sense of humility. Clearly there is a need to avoid one-size-fits all solutions or to suggest reforms without a careful consideration of local circumstances. Moreover, reforms must be country-owned and country-led if they are to be successful. In that sense, any recommendations are only suggestions. Several ideas need to be considered are that political support needs to be developed to maintain a policy on regulatory reform, regulatory reform works best when there are appropriate and adequately funded institutions in place to support and maintain it, and regulatory reforms may be developed through the effective use of regulatory management tools.

And based on the discussion from working group 2, Prof. Tresna observed that there are several problems conveyed in interrelation between competition authority and regulatory bodies, includes the authority overlap between competition agency and sector regulator; lack of independency; lack of competition consideration in regulatory and other policies; and different objectives of public policies. To overcome these problems, some economies have memorandum of understanding between stakeholders. This memorandum may implement the formation of working team, regular meeting and discussion, and exchange of information on competition issues.

In addition, Professor Tresna also thanked the member economies participants as well as representative of the OECD dan ICN for their active participation and valuable contributions to that resulted important recommendation, and acknowledged co-sponsorship from Chinese Taipei and Peru, support from APEC Secretariat and Convenor CPDG Office. In the end, Professor Tresna also invited economies to attend the Forth APEC Training on Competition Policy event that will be host by KPPU in Bali, 5-7 November 2008.

In his closing remarks, Dr Arai mentions that best of new session of cooperation function in this APEC Seminar. Our future challenge is to achieve powerful and stable economic development through sound competition and efficient regulation. This type of seminar is use through for us to check our real situation. This knowledge and experiences learnt from this seminar is very important. But also our network built through this seminar another prizes for our future challenge.

Member economies appreciated the discussion and outcomes of the seminar and thanked Indonesia in particular the organizing committee for their efforts and hospitality during the length of the seminar.

Competition issues in Indonesian construction industry

Country Submission for W/P3 Roundtable Discussion, OECD Competition Committee Meeting Paris, 9-13 June 2008

Introduction

Problems in construction industry are arising due to the existence of a development agency for construction service (hereafter refers as "LPJK") in undertaking its authorities and tasks. Several problems which arise are the legality of LPJK as an agency as being meant by the Law No. 18/1999 on Construction Service. Furthermore this problem also positioned in the implementation of LPJK's role, which considered only benefited several parties, such as business actors that encourage the establishment of LPJK.

Policy characteristic in construction industry

In the elucidation of article 32 the Law No. 18/1999 explained firmly that in the process of development for construction industry, Government's rule will be very dominant. But confidentially business development is handed over to the construction community. With regard to the structure of construction community as stated by the Law No. 18/1999, then the biggest role in developing construction industry is entrusted to a construction agency. The elucidation of the Law No. 18/1999 that stressed development of construction industry was handed over to the community without involvement of the Government still have to interpreted further. Especially the real definition on "Government in development of construction industry is still dominant, by these regulations, the development of construction industry was handed over fully to the construction community".

The development of construction industry needs the role of the Government as policy makers. This policy direction will be critical in developing this industry; hence without supportive policy this industry could be ascertained will not develop accordance to our expectation. On the other hand without involvement from Government in industrial development will cause the Government "to not have enough knowledge" on the general progress of construction industry and Indonesian construction industry as especially. This often happened within dimension of relations between the Government and business society. The presence of this article could influence the interest of the Government in the construction service industry.

The main problem that ought to be worried with this relations model was the Government handed over all the problem that were linked with the development of construction industry to the construction community. When the Government asked about progress of the construction industry then on the basis of not his authority, the Government will not have the accurate data. In fact in the policy making process on construction industry, this condition is a must. For examples are data on company in construction industry, specialization

that was developed, an update data of interaction between stakeholder in the development of construction industry, and etc.

Problems on Construction Company in practices

Certification

In practice, certification will not be only carried out by LPJK but also by business association and appointed certification agency (such as education and training agency). Several actual facts showed that the process of this certification became significant problem because this certification has becoming something new that can not be apply swiftly in various activities in construction industry.

Inability of business actors in following construction requirement

This occurs considering that almost 91% (ninety one percent) of business actors in construction industry is small business actor that could not complete standard on certification in accordance to Government regulation.

Rule on certification colliding with the Presidential Decree on Public Procurement

Based on the Law No. 18/1999 concerning Construction Service and its implemented regulation, each participant in public procurement of goods and services in construction shall require having certain certification on expertise/skills. But in contrary, the Presidential Decree No. 80/2003 about Public Procurement of Goods and Services, the condition for certification was not being obligated. In fact the abolition of certification requirement arose when the Government revised the policy for public procurement in removing certification requirement by business association. This cause contradiction from Indonesian Chamber of Commerce (hereafter refers as "KADIN") and National Development Agency on Construction Industry (hereafter refers as "LPJKN") that argued of these rules broke conducive situation to maintained construction industry. Meanwhile the Government (that represented by National Planning Agency) considered that certification emerged by business association as requirements for public procurement of goods and services had caused inefficiency throughout high cost economics.

The Department of Public Works who is related to this issue gave their explanation that between the Law No. 18/1999 and the Presidential Decree No 80/2003 was not contradiction, even were in synergy one another. As for certification, statement by the Law No. 18/1999 is still valid because article 11 point 1 letter "a" of the Presidential Decree No. 80/2003 stated that requirement in providing goods and services in public procurement is to inclusive with rules for running business

...the Government handed over all the problem that were linked with the development of construction industry to the construction community...

The very crucial problem and became question of many sides at this time (because tend to create high cost economy) was the authority to carry out certification that owned by the business association...

activities as the provider of good and service. Based on this regulation, hence implementation of public procurement in construction industry shall base on the regulation in this industry. Therefore, all public procurement in construction shall underline with the Law No. 18/1999 which include requirement for certifications.

Certification used to seize competition

In practice, there is large number of attempts to made certification as an intention to eradicate competition. This certification deliberation process was made difficult. Thus, it will limit number of competition within this industry. By the end this exertion will swell market concentration to several business actors because competition in significant construction projects was limited due to this requirement.

Indication on abuse of dominant position by construction agency

The very crucial problem and became question of many sides at this time (because tend to create high cost economy) was the authority to carry out certification that owned by the business association. Moreover in practice, this problem tends to show violation of the Law No. 5/1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. In several binding process, conspiracy was tend to exist by using authority of giving certification. These are several activities in construction that potentially breach Indonesian competition law:

- The authority of business association in issuing certification used to discriminate certain competitor;
- Tendency to establish certain business association with specific scope of work;
- Potency for construction agency (LPJK) as the mean for cartel in the industry

With paid close attention to strong domination of business actors in the competition agency (LPJK), thus by the end this agency will transform as a formal institution where certain arrangement in construction industry will be determined by business actor indirectly.

Main root in construction industry dealt with the institutional of construction industry

In previous analysis, it have been revealed that one of crucial foundation was positioned in dis-functionality construction institution as it should be, which factually dashed by LPJK. This problem happened to be complex because related to several institutional aspects that could not be satisfying as that ought to be wanted. To overcome this, the Ministry of Law and Human Right uttered that an institution according to the existing regulation in construction is the only construction agency that operated in Indonesia. Thus, this problem on LPJK's legality had congested.

Factually, role of construction development

agency tends to centralize as well as there is still unclear where this institution will lead. The root problem in construction industry as whole is the weak institutional status of LPJK. LPJK only placed public participation as its main element; hence this institution will not be so different with other society organization. The committee of LPJK was chose by construction society and be responsible to national assembly of construction industry. On other side, the weakness of this institution is also shown by its roles of regulation. It makes that LPJK is far from image as a regulatory body in certain sector or as similar international construction institution. The existence of LPJK is more alike other society organization, equipped with some attributes, such as rules of regulation and its national assembly. Under which condition, LPJK's status becomes unclear on whether as a society organization or a regulatory body. The precise term in explain this will be LPJK is a regulator institution that served as a society organization.

Wide phenomenon of construction companies and association that far from competition

Many sources obtained by KPPU showed that the complexity in this industry is caused by the high growth of construction companies and business associations that utilized the weakness of regulatory reform for personal interest. With regard to number of business associations every year, we will realize that their numbers are increasing, even though several existing associations nowadays are still adequate to accommodate all construction companies. The main weakness was that there is inadequate policy to control these new business associations. This is also being worse by weak infrastructure of LPJK that contribute to several competition violations in regional areas.

Regulation on how is the selection system for companies was not yet established thus only efficient and effective construction companies whose can compete. This will require a package of regulation that will pushed incompetent companies to the edge. Moreover, a black-list recognition system for individuals will also be needed to guarantee professionalism in this industry. Furthermore, there were also no regulations to control business association to achieve their competency. Regulation that based on Government regulation is not enough as a filter for business actors and business associations.

Harmonization toward competition policy in construction industry

Notwithstanding industrial development that far from expectation, a significant effort by the Ministry of Public Work was made through draft for revision of the Government Regulation No. 20/2000 on Construction Industry. Moreover, the Government also conducts several improvements in reforming LPJK toward community's expectation. One of which is the involvement of KPPU as a stakeholder in giving their advocacy toward fair

competition as cite in the Law No. 5/1999. This used as one of the process for selection of Committee of LPJK. Involvement of KPPU is expected to give comprehensive knowledge for their committee as well as to push forward better development of Indonesian construction industry.

Bundling in Indonesian competition law

Country Submission for WP3 Roundtable Discussion, OECD Competition Committee Meeting Paris, 9-13 June 2008

Introduction

Competition between business actors felt increasingly tight recently. Opening of some previous business sectors that closed has caused a tight competition in those sectors. The result is really amazing for political economy, decreasing in price, increasing quality of product, creation of alternative product and some other positives. Competition itself has rounded into a good model in management various industrial sectors in this country, even for business sector that is at first believed as natural monopoly like telecommunications, electric, and trains.

Industrial sector characteristic which open to visitors (in and out) then to push the presents of firm competition has caused business actor to work hard in defining various strategies to make their existence and wins competition. Development of strategy to competes developed by business actors tend to grows from time to time. Optimization of time usage, resource (man, fund, equipments) implemented in multifarious strategy that more focused and sharper in the effort of netting their consumer as much as possible.

One of strategy which many developed recently is bundling. Bundling which simply defined as effort to oversell out of one products in a sale packet with certain price. Generally the price of bundling is cheaper if compared to if consumer buy them separately. Expansion of bundling as one of strategy competes applied by business actors frequently generates controversy. Because bundling frequently accused as one of way of competing that impede fair competition. The suspicion gains strength because bundling generally applied as strategy to win competition by dominant players with certain market power. On this basis, hence becoming a real interesting thing to see exhaustively on the existence of bundling strategy within the perspective of business competition.

Investigation on Bundling according to the Law No. 5/1999

As competition regulation in other nations, the Law No. 5/1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition is not peculiarly state articles that prohibiting bundling that impedes principle of fair competition. However, this behavior can be banned

throughout available articles, especially related to predatory pricing and tying sales.

Predatory Pricing

In Law No. 5/1999, principles of predatory pricing treated as prohibited activities under Article 20 which says "Business actors shall be prohibited from supplying goods and or services by selling while making a loss or by setting extremely low price with the aim of eliminating or running the business of their competitors in the relevant market which may result in monopolistic practices and or unfair business competition". In accordance with bundling practices which recently identified, this article is hardly match the leverage theory that been used in pushing market dominance in secondary market through usage of market power in primary market. In the end, bundling according to this theory is completely applied to remove competitor through a real low price strategy from its competitor.

It has been a general practice that business actors applies bundling strategy through market power in certain product in one sides by pricing a real cheap price in other product market which correlated with main product. Pays attention to above trend, hence it have been clear for KPPU that research focus on bundling with tendency to predatory pricing strategy is more pointed out to a product with lowest price, and not on a product of dominant firms. The simply focus of investigation by KPPU is first on the indication of the appearance of cheaply product passed as a packet (bundling). Second indication is the appearance of dominant firms that selling other product with a low price.

To prove impeachment of Article 20 of the Law No. 5/1999 is not an easy task for KPPU if concentrated to the intention in finding a loss sale. Because through this intention, the substantial steps which has to be done by KPPU that being proved difficult to obtain for the whole time is the cost structure of a product. As due to bad data structure in Indonesia, an accurate data on certain product is hard to find. Therefore in order to prove Article 20 of the Law No. 5/1999, it will need a depth research to precisely find a certain product cost structure so that KPPU can assure that a product has been selling in term of loss sale.

But if this approach is done with consistent to a

...the Law No. 5/1999 ... is not peculiarly state articles that prohibiting bundling that impedes principle of fair competition. However, this behavior can be banned throughout available articles, especially related to predatory pricing and tying sales...

Although we have not carried out an examination on bundling case, we still have several monitoring on this behavior due to its impact on competition. Two of them are bundling in international direct connection and cellular services; and bundling in cellular service and its handset...

very low price fixing with intention to remove or kills its competitor in market, hence verification becoming not difficult to be done. Verification also can be done by using historical data on a product in market for certain duration of time. Observation done will not be momentary, but rather has the character of time series. Predatory pricing strategy would easily to prove if time series data of a product shows the low price trend when rigid competition takes place, for then the price is becoming higher together with the decreasing number of competitors in the market.

Tying in

Tying Sale is considered as prohibited activities within the Law No. 5/1999 which regulated by Article 15 point 2 and 3. This article stated that:

- Business actors shall be prohibited from entering into agreements with other parties stipulating that the party receiving certain goods and or services must be prepared to buy other goods or services of the supplying business actor;
- Business actors shall be prohibited from entering into agreements concerning prices or certain price discounts for goods and or services, stipulating that the business actor receiving goods and or services from the supplying business actor:
 1. Must be prepared to buy other goods and or services from the supplying business actor; or
 2. Shall not buy the same or similar goods and or services from other business actors, competitors of the supplying business actor.

Both articles are strictly prohibiting tying sale's principle. Meanwhile if we correlate this article with the bundling theory, then it will be seen that this is more appropriate for a pure bundling behavior which doesn't provide any alternatives to consumer (buyer) except to buy other product that hooked with other product (in term of packet). In this case, business actor must force to receive other product other than product that they needed from the supplier. This pure bundling activity strictly treated as tying sale in term of business competition law.

Unfortunately in the application of this section then is being burdened with a situation where transaction must be involving two business actors. While bundling case is tend to have a character of producers that harms their consumers. Even Article 15 point (2) didn't give strict definition on "other parties" in the article. Would it be only business actor or even can involve the consumer? Should this article define "other parties" as business actors, then definitely this article won't reach bundling strategy that harms consumer.

Until today, we haven't publish any guideline for these articles (predatory pricing and tying sale), by

which they still being edited for further references. Moreover, there still no decision issued or examination carried out related to bundling issues.

Investigation in Bundling Issues

Although we have not carried out an examination on bundling case, we still have several monitoring on this behavior due to its impact on competition. Two of them are bundling in international direct connection and cellular services; and bundling in cellular service and its handset, which will be explain briefly below.

Bundling in international direct line and cellular services

During several years, Indonesian consumer might have experience a rare event in Indonesian telecommunication industry, which was a price cut by Indosat Corp. and Telekomunikasi Indonesia Corp. for international direct connection's tariff. One of their programs was limited only for cellular services (001 and 008 connection). Unfortunately this discount only comes for cellular communication within their group. For example, discount for 001 Connection only available for Telkomsel Corp (one of subsidiary of Telekomunikasi Indonesia Corp.). In flash, this seems to be a discounted product. However in the other site, this was a mixed bundling strategy by a dominant business actor in international direct connection to control their consumer to use their cellular services. Obviously consumer will be benefit by this situation due to lower tariff for their connection although their choice was being limited into subscription from two telecommunication companies. Under this circumstance, other cellular operators (such as Excelcomindo Corp, Mandara Seluler Corp, and Lippo Telecom Corp) almost have no competitive advantage to brawl for this type of niche market. This occurs because their tariff will not be attractive, as no other variable cost drawn in this international connection considering they all use the same telecommunication network.

With regard to certain condition that there are only two licenses from the Government for international direct connection, hence this bundling strategy tends to have potency in breaching the Law No. 5/1999. Additionally, to prove whether this strategy is part of prohibited activities banned by the Law No. 5/1999, an examination needs to be embraced.

Bundling in cellular service and its handset

On September 2007, "Fren", a product of Mobile 8 Corp (a cellular telecommunication company) offered a packet (called Friendship) which consists of a Samsung headset and a Fren's number. This packet sold with amount of Rp 338,000, considering the market price of headset itself was Rp 1,100,000 and the value of Fren's voucher was Rp 38,000. Truly expressed by its packaging, hence

clearly that this bundling was one of Mobile 8 Corp's strategy in promoting their new product with an intention to stole market share (which extreme still low) from their competitor. So, it has been concluded that this packet was a mixed bundling that benefit the consumer as well as harmed the market.

This conclusion was due to an inelastic demand between CDMA technology and GSM technology that currently available in Indonesia. It's deemed relatively hard in drawing consumer to switch between both technologies accordingly. Therefore the prime target of this promotion was new costumers that have not yet become a cellular subscriber. We noted that today, there are still small number of CDMA's user due to their low sound and network quality. Hence we view that "Frenship" will become a breakthrough for con-

sumer with financial constraint to have an affordable handset with a current technology.

Conclusion

Generally, there were two motives in bundling. First is to increase sales by exploiting consumer surplus. Second is to exterminate the competitor. Indonesian competition law only involves with bundling that tend to exterminate the competitor. This behavior can be made by a dominant business actor using two ways, which is by fixing a predatory price and a tying sale. The Law No. 5/1999 do not regulated bundling explicitly. Nonetheless, bundling that violated fair business competition can be treated as prohibited activities banned by Article 20 on Predatory Pricing and Article 15 point (2) and (3) on Tying Sales.

Market studies in Indonesian competition agency

Country submission for OECD Competition Division Meeting
Paris, 9-13 June 2008

Introduction

Trade and industry sector in Indonesia have developed an up and down trend following world economy condition either in term of macro and micro economic. Under several recent and upcoming deregulation and privatisation policy by the government (as stated within economic policy development in Middle Term Development Planning of 2004-2009 and Roadmap for State-owned enterprises), hence competition issues between business actors or state-owned enterprises had been evolved. Conceptually, fair competition will promote innovation, efficiency, and productivity of business actor, thus will create a significant competitiveness. Therefore, the aforementioned will influences Indonesian economy positively, either in productivity and performance of related trade and industry or public welfare in general.

As a competition agency that being entrusted the supervision of the Law No. 5/1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, the Commission for the Supervision of Business Competition (hereafter refer to "KPPU") has the authority to create and maintain fair business competition between business actors. According to this law, KPPU has two main objectives, competition law enforcement and competition advocacy. In order to conduct this objectives optimally, KPPU is challenged to have comprehensive information on certain sectors/ industries in Indonesia. Moreover, KPPU also has to completely understand every aspect of trade and industry in Indonesia. Therefore, a market study will be very beneficial in waking this path.

Approaches in selecting markets to study

In defining appropriate market to study, KPPU

always uses three main criteria, which are: markets that treated as a strategic market and has significant contribution for economic development and people welfare; markets that highly concentrated; and markets that highly regulated. The selection will based on executive and legislatives proposal as well as our own initiative based on daily monitored issues. All stipulation on market study shall be determined through the Commission Assembly's consent, a formal meeting by Commissioners lead by Chairman of KPPU that perform a quorum.

During 2002-2007, KPPU had performed several market studies in transportation, oil and gas, electricity, pharmaceutical, finance, and retail sector. Considering characteristics and depth of analysis needed for each sector, hence sometime we need more than one time market study to understand competition issues in certain sector. Level of perceptive and competency on certain sector will affect the quality and accuracy of decision and policy takes by KPPU as they will be important for strengthening our institution in supporting its missions stated by the Law No. 5/1999.

Data and other information for the study

We obtained data and other information for market studies from several approaches, which are; desk study, researches published by other institutions (universities, business associations, mass media, and research institutions); acquire them from the third party; formal request to other institutions (government, business association, business actor, consumer representative, researcher, and NGO); field observation; and consultation with relevant experts.

These data and information collection methods reveal their benefits and disadvantages based on

During 2002-2007, KPPU had performed several market studies in transportation, oil and gas, electricity, pharmaceutical, finance, and retail sector...

In Indonesia, we differentiated market study for law enforcement and competition advocacy process...

the source of documents. For example, data and information which come from business actor and business association tends to be subjective and being adjusted to certain condition that their considered. Data and information from researcher, academician, and university often too general and will need more in-depth analysis to use them. As data and information from the Government, frequently should be re-check due to several inconsistency between Government institution for certain type of data and information. Even primary data is affected by the sampling methods that used. To overcome this obstacle, KPPU always uses the overall methods and compare them to find reliable data and information. Anecdotal data and information was used in market study even more as one of our consideration.

Unique feature of market study

Market study done by a competition agency is hardly differing from other institutions, especially in the objectives and type of data required. Market study done by other institution is quite general, while a study done by competition agency is more specific and focus only on the competition aspect, like market structure, potency of abuse of dominant position, measurement of market power (buying/selling power), and defining relevant market. An aspect which only be handled by a competition agency. This unique feature gives quite a challenge for competition agency in supervising their competition law. Considering this specific condition, market study generally done in quite long period of observation, which is 5-10 month and extendable. Determination of timetable and milestone is specified at the beginning of activity and done in detail on steps need to be done.

All market studies are done by specific directorate in KPPU, the Directorate of Competition Policy, which carry out by more than 30 (thirty) staffs. Generally, one market study is held by a team that consists of five staffs, thus one staff usually hold more than two market studies at the same time. Considering this workload, KPPU allocates quite large funding to conduct a market study, especially to obtain data (through out research cooperation with the universities), field observation, and consultation with relevant experts.

Under specific characteristic of data needed by competition agency, there are only few researchers in Indonesia who's able to search for relevant data and information. Thus sometime cause financial resources allocated to acquire them didn't met our requirement. This is depending on the characteristic of observed industry/sector. Indonesian pharmaceutical industry considers as one of industry with limited public data and information.

Furthermore in deciding the best format in performing market study, we shall consider the quality of publicly available data and information as well as level of transparency by business actors.

Should these two factors are pledge consistent, then a market study must perform individually by competition agency to ensure institution credibility, decision objectivity, and reliability of data owned. However, this will also depend on allocated number of human resources, time, and industries observed. Recently, Indonesia is still doing this study in partial.

Market study and law enforcement

Market study is hoped to map industrial structure and identify several business actor's behaviour which related to the Law No. 5/1999. This study is expected as an input for KPPU in providing advice and recommendation to the Government or sector regulator and competition law enforcement process. Its also generally know in KPPU that result of market study shall be used as accompanying evidences in competition law enforcement. However, this result can not entirely used in competition law enforcement due to direct evidence through examination is still the main element for Indonesian competition law. Under which condition that result of market study is irrelevant with direct evidence within an examination, thus our decision will based on this direct evidence accordingly.

An ideal usage of market study's result is as assistance in defining relevant market, market structure, and indication to violation needed by an examination process. To formalize market study in one side will assure certainty and reliability of data and information produced, but in the other side will distress or agitate business activities if it's used vigorously. Moreover, this formalization can not be adopted in Indonesia considering presumption of innocence principle in our current law system.

Strategies for using market studies

Market study is defined as a useful instrument in competition law and policy enforcement. This study can easily gives industrial structure of trade and industry, especially on number of business actor, product diversification and differentiation, vertical integration, concentration ration, and or market power. This study also will able to identified and analyze indication on violation of competition law within certain sector; to identified and analyze Government's regulation in term of its competition values; and to measure market performance and its impact on fair competition.

In Indonesia, we differentiated market study for law enforcement and competition advocacy process. In competition advocacy process as well as for regulatory and legislative reform, we have specific study named "government's policy analysis". This study is aimed to supervise Government's existing and upcoming regulation in economic sector that has intention to associate with competition policy. Throughout this process, we will know in detail how far this policy will has impact on fair competi-

tion. If this study showed that certain Government's policy will open force of monopolistic practices and unfair business competition, thus KPPU will provide its advice and recommendation

to the respective Government. This advocacy is expected to guarantee fair business competition and public welfare in general.

Announcement

Effectively from July 2008, one of our team member from Kompetisia, Ms. Solihatun Kiptiyah, has been promoted to her new position as the Head of Representative Office in Surabaya, East Java. We believe she will improve KPPU's performance in the region through her strong leadership and idealism. Good luck, Soli!



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Directorate of Communication
Commission for the Supervision of Business Competition
Jl. Ir. H. Juanda No. 36, Jakarta, INDONESIA 10120
Tel: (62-21) 3507015/16/43
Fax: (62-21) 3507008
deswin@kppu.go.id