

Newsletter on Indonesian Competition Law and Policy

# kompetisia

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## THE APPOINTED KPPU COMMISSIONERS FOR THE 2012-2017 PERIOD



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Stepping into 2013, not only we feel the changes of year, but we also have high hopes for economic recovery of this country. And so does the KPPU which officially has just had new pioneers to undergo leadership roles over the next five years. Commissioners for the 2012-2017 period officially inaugurated by the President of the Republic of Indonesia are ready to take on variety of heavy duties for the welfare of the people. During the intended period, the KPPU has determined to focus their works on preventing any violations of business competition in five key sectors. What are they the five sectors? Check them out at the narrative told by the Chairman under What's New section.

Meanwhile, the KPPU shows its seriousness in enforcing and dissemination information on the competition law, one of which is through a cooperation with the Ministry of Justice and Human Rights. In the International section, the KPPU proves its existence as a host for CPLG (Competition Policy Law Group) Meeting. Beside that, there are reports related several visits by JFTC (Japan Fair Trade Commission) and the MyCC (Malaysia Competition Commission) to the Commission on capacity building matters.

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Cover Photo:  
KPPU Commissioners for the 2012-2017 Period.



## The Appointed KPPU Commissioners for the 2012-2017 Period

Approved in the plenary session by the House of Representatives on 11 December 2012, the Commissioner candidates have been officially on duty as Commissioner of KPPU for the 2012-2017 Period. The President through Presidential Decree number 112/P/2012 dated on 27 December 2012 has appointed nine (9) new Commissioners of KPPU as the following:

1. Ir. Muhammad Nawir Messi, M.Sc.;
2. Prof. Dr. Ir. Tresna Priyana Soemardi, S.E., M.S.;
3. Dr. Sukarmi, S.H., M.H.;
4. Dr. Syarkawi Rauf, S.E., M.E.;
5. Drs. Munrokhim Misanam,

6. M.A., Ec., Ph.D.;
6. Sdr. Saidah Sakwan, M.A.;
7. Sdr. R. Kurnia Sya'ranie, S.H., M.H.;
8. Dr. Drs. Chandra Setiawan, M.M.;
9. Sdr. Kamser Lumbanradja, M.B.A.

The nine Commissioners replaced the former Commissioners who were in office from 2006 to 2011 and were prolonged to 2012. Here is the list of the former Commissioners: 1. Dr. Ir. H. Ahmad Ramadhan Siregar, M.S.;

2. Sdr. Erwin Syahril, S.H.;
3. Dr. Ir. Benny Pasaribu, M.Ec.;
4. Ir. Dedie S. Martadisastra, S.E., M.M.;
5. Ir. M. Nawir Messi, M.Sc.;
6. Sdr. Yoyo Arifardhani, S.H.,

M.M., LL.M.; 7. Sdr. Didik Akhmadi, Ak., M.Com.; 8. Sdr. Sukarmi, S.H., M.H.; 9. Ir. H. Tadjuddin Noersaid; 10. Dr. Anna Maria Tri Anggraini, S.H., LL.M.; 11. Dr. Ir. Tresna Priyana Soemardi, S.E., M.S.

The new Commissioners come into the third arrangement of leadership since its first formation in 2001 based on the Law number 5/1999 concerning The Prohibition of Monopolistic Practices and Unfair Business Competition. Unlike other commissions or other higher institutions whose chairpersons and deputies are appointed through selection rounds by the House of Representatives Parliament and whose appointment is stipulated in presidential decrees, the leadership of KPPU is authorized to its members to choose among themselves their own chairperson and deputy. M. Nawir Messi and Saidah Sakwan were appointed as the chairperson and the vice respectively from 2013 to 2015. Both are the 13th pair of leadership since the establishment of the Commission 13 years ago. As stipulated in the Law No. 5/1999, at the explanation of article 31, verse (1) about The Prohibition of Monopolistic Practices and Unfair Business Competition, the chairperson and the vice of KPPU are indeed appointed from and by Commissioners. In a Commissioners Meeting led by Tresna P. Soemardi, and Syarkawi Rauf, all commissioner members in acclamation chose M. Nawir Messi. Interestingly, unlike the previous leadership period which lasted only one year, the current leadership period will last 2.5 years in accordance with the Commission Regulator number 03/Per/KPPU/2013 about Regulation on the Appointment of KPPU Chairperson and vice dated on 15 January 2013. It means that Nawir Messi will chair KPPU until 15 July 2015. ■

KPPU Documentation

# Period to Re KPPU's Role



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M. Nawir Messi was again appointed the Chairman of the Commission for the 2012-2015 period, after the nine (9) new Commissioners had been officially inaugurated by President Susilo Bambang Yudhoyono at the end of December 2012. Many things have changed, especially the KPPU Strategic Plan for the next 5 years. M. Nawir Messi has named this Strategic Plan as a new vision of the Commission. This new vision, according to M. Nawir, is to manifest efficient and fair National Economic for the sake of People's Welfare. Through this vision, the Commission expects themselves to contribute to promoting economic growth of the country. To realize the vision the KKPU needs to build two aspects. The first aspect is economic efficiency which aims to encourage competitiveness. The second aspect is fair economic processes. Fairness in the economy, according to Nawir, has two aspects. First is a motivation to expand equal business opportunities because more business opportunities mean more equitable economic process. Second is a chance to grow to produce benefits that many people can enjoy, thus fairer economic environment can be created. These two factors encourage the Commission to prioritize law enforcement activities and competition-related policy making in any business sectors pertaining to public needs. Those five sectors are energy, financial services, infrastructure, public services, health, and other fields vulnerable against natural monopolies. "Natural monopoly could occur in any of the five

sectors, and it does not rule out other sectors," Messi added.

In the implementation, KPPU have started a pilot project in 7 provinces: DKI Jakarta, East Kalimantan, North Sumatra, South Sulawesi, Riau Islands, East Java and West Java. The seven provinces have been selected because they have contributed largely to the overall national economy. In those provinces KPPU will conduct monitoring for the five priority sectors. KPPU will also carry out intensive information dissemination to local governments to avert violation against the business competition law. In addition, KPPU will improve lawsuit initiatives, including capacity building for the law enforcement agencies, such as workshops for district court judges. To support its programs, KPPU needs an internal paradigm shift and a new spirit to accelerate its performance. Externally, KPPU needs to enhance cooperation with related stakeholders.

KPPU requires a reform by developing human resources through training and redesigning career system. Another challenge is to advocate the amendment of the Law No. 5/1999, especially in terms of aspects impeding law enforcement process, such as the authority to raid. Institutional issues also need to be addressed in the amendment because unclear status is not a small obstacle. Nonetheless, the most important is for KPPU to be a solid institution to be able to face whatever challenges. That is why KPPU decides to firstly focus on internal reforms. ■

## Four Merger Notifications in January 2013



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The Commission has received 4 reports on merger notifications in early 2013. Those notification reports are (1) the acquisition of PT. Jabal Nor's shares by PT. Anugrah Karya Raya on 4 January 2013, (2) the acquisition of Wyeth (Hong Kong) Holding Company Limited by Nestle SA on 11 January 2013, (3) the acquisition of PT Pembangunan Pustaka Parahiangan by PT Medco Power Indonesia on 11 January 2013 and (4) the acquisition of Medco Sarana Kalibaru by Puma Energy Pte. Ltd. on 22 January 2013. Acquisition notifications are now in the process of document examination. Based on the article 28 and 29 of Law No. 5/1999 on the Prohibition of Monopoly Practices and Unfair Business Competition, Government Regulation No. 57 of 2010 regarding the Merger of Business

Entities and the Acquisition of the Company Shares and the Commission Regulations No. 3 of 2012 about guidelines for merger implementation, within a maximum of 90 working days KPPU will check the documents and then proceed with an assessment. Document examination will include collection and clarification of documents or data related to the company's ownership structure, assets and turnovers. The company here refers to both the acquiring and acquired companies. The processes are held to determine whether (1) the threshold of this acquisition meets the minimum limit of Rp 2.5 trillion for the assets accumulation and Rp 5 trillion for the turnover accumulation (that exist in Indonesia), (2) both parties involved in the acquisition are affiliated, in a sense that they have interdependent relationship

or they are both under control of the same parent company, (3) the parties in acquisition process include "foreign merger", namely an acquisition involving two companies which both have subsidiary companies in Indonesia or one of them selling their products in Indonesia. If this analysis is met, then the Commission will conduct an assessment that covers the following aspects: market concentration, efficiency, potential for unfair competition behavior and bankruptcy rescue.

For KPPU, those four merger notifications complement 79 merger notifications received since the issuance of Government Regulation 57/2010 on 20 July 2010. Assessed from business sector, the acquisition of Wyeth (Hongkong) Holding Company Limited by Nestle S.A. is the 24th acquisition in the processing and livestock related business. "Three other acquisitions complete 26 notifications on energy and mining business that, in fact, dominates the merger notification in KPPU with 32.9% share," said A. Junaidi, the Head of Public Relations and Legal Bureau of KPPU. The data shows that from the 79 merger notifications, 7 or 9% coming from the financial services business, 23 or 29% from the processing, farming and retail, 12 or 15.2% from information and communications, 26 or 32.9% from the mining and energy, and 11 or 13.9% from property. ■

## No Re-assessment for Merger with Consultation

KPPU through the letters number 03/K/I/2013 and 04/K/I/2013, both dated on January 31, 2013, announced that they will not re-assess the notifications of the acquired shares from PT Indo Sukses Lestari Makmur and Eastern Star Resources by PT Minamas Gemilang and Vale International Holdings GMBH, respectively as the two companies had consulted KPPU prior to the acquisitions, during which the Commission conveyed to them its opinions about their moves. The opinion refers to that of KPPU Opinion No. A20112 concerning the acquired shares from PT Indo Sukses Lestari Makmur by PT Minamas Gemilang on 17 April 2012, and the KPPU Opinion No. A20411 concerning the shares acquisition of Eastern Star Resources Pty Ltd by Vale Austria Holdings GmbH on 10 January 2012. In both opinion letters, the Commission declared that it did not find any alleged monopolistic practices or unfair business competition in the process of the two acquisitions.

As known, a consultation is an assessment of the proposed merger or acquisition as regulated by the Government Regulation No. 57/2010 and expressed in the form of the Commission Opinion. However, despite of having consultations and assessments from the Commission, the related companies are obliged to provide notification letter within 30 business days after the acquisition finishes to comply to the Article 28 jo 29 of Law No. 5 of 1999. Since there is consultation proceeding the notification, in accordance with Regulation No. 57/2010 jo Perkom No. 3/2013, the Commission will not conduct a re-assessment, unless the data is changed or market condition is considered material such as follow:

- Decreasing numbers of business players in the related market with high concentration level (spectrum 2) causes significant decline of competition level marked by the changes of HHI value to more than 500;

- Changes in policy planning post-Merger, Consolidation and Acquisition; or
- HHI value of post-Merger, Consolidation and Acquisition Consultancy is under 1800 but during the time of notification, it is above 1800.

Significant changes did not occur in this notification, and thereby the Commission issued a non-reassessment letter.

Currently, the Commission has recorded 8 consultations since the enforcement of Regulation No.57/2010 on 20 July 2010, in which 2011, with 4 consultations, is recorded as the year with the highest number of consultation. While in January 2013, there was only one consultation. Consultation here refers to a formal consultation procedure through form filling and assessment process as set by Commission regulator No.11 year 2010. ■



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## KPPU - JICA Seminar: Competition, Efficiency, and Productivity

KPPU in cooperation with the Japan International Cooperation Agency (JICA), LP3E Padjadjaran University held a seminar titled “Business Competition, Efficiency, and Productivity” at Hilton Hotel in Bandung (28/2). This seminar aimed to provide an overview on the competition measurement in the performance of industrial sectors. By measuring the performance and the competition in the industrial sectors, it is expected that the positive contribution of business competition and the roles of competition watchdog in creating healthy competition and optimal contribution to accelerate national industrial performance is recognized. In particular, the seminar aimed to disseminate the results of the undertaken studies and to find inputs for the assessment methods and outcome measurement.

KPPU Chairmain Nawir Messi said in his opening speech that the seminar was an attempt to answer people’s concerns on the impacts or contribution of business competition towards economic development. Nawir Messi expected the discussions in this seminar would bring benefits in the development of competition policies in Indonesia.

The first presentation in the seminar underlined the relationship between business competition, efficiency and long-term productivity. Some of the highlighted issues included the different contexts of productivity, determinants of efficiency and productivity growth, technology and innovation related aspects, and effects of competition. The discussion presented Haryo Aswicahyono, Ph.D (CSIS) and Dr. Supriyadi

(Coordinating Ministry for Economic Affairs) as speakers, and was moderated by Taufik Ariyanto (Head of the Research Bureau, KPPU).

In the second session, Dr. Maman Setiawan, Dr. Andi Fahmi, Rolly R. Purnomo (BAPPENAS), and Munrokhim Misanam (KPPU Commissioner) revealed the research findings on the impacts of business competition towards sectoral performance of various big industries in Indonesia. Empirical evidence shows that competition affects efficiency and productivity of the industries. The seminar was attended by representatives from a number of government agencies, such as the Ministry of Trade, Ministry of Industry, Coordinating Ministry for Economic Affairs, Bappenas, Bappeda, BKPM, West Java Provincial office on Industry and Commerce Department (*Disperindag Jawa Barat*), Bank Indonesia, and Padjadjaran University. ■



Photo: KPPU Documentation





KPPU Documentation

## APEC: An Urgent Call to Strengthen Asia Pacific Cooperation

KPPU hosted CPLG (Competition Policy Law Group) Meeting held on 3 to 4 February 2013. Held at the Ballroom of the Ritz Carlton Hotel in Jakarta, the meeting was attended by 21 APEC members, namely Australia, Brunei Darussalam, Canada, Chile, the People's Republic of China, Hong Kong, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Chinese Taipei, Thailand, USA, and Vietnam.

On the first day of CPLG Meeting

the participants discussed Progress Report on CPLG Projects in 2012, the New Project for 2013, Terms of Reference of Competition Policy and Law Group, Dialogue with the EC Chair and Coordinator of FotC on Competition Policy and Roundtable Discussion on International Enforcement Cooperation.

On the occasion, the Head of Public Relations and Legal Bureau of KPPU, Ahmad Junaidi explained the APEC's idea of achievement for 2013 agenda, i.e. the strengthening of Asia Pacific cooperation as the driver

of global growth by achieving goals and encouraging the connectivity of the APEC's economic areas. In achieving this cooperation goal, APEC opens a multilateral trading system (by reducing barriers to trade and investment), increase trade and investment liberalization in the Asia Pacific, besides intensifying the Asia Pacific joint development. As the host of the 2013 APEC Summit, Indonesia also emphasized on addressing maritime issues (blue economy) as the priority considering its status a maritime economy. ■

## The Development of Competition Law in Indonesia

On the second day of the CPLG Meeting, 4 February 2013, some APEC delegates presented Updates and Progress on Competition Law during the session of Economic Reports and Presentations. Speakers were from Australia, Brunei Darussalam, Chile, China, Indonesia, Japan, Malaysia, Russia, Chinese Taipei, Thailand, and USA.

In the presentation, the APEC economic delegates explained some issues regarding the introduction of competition laws and competition policies, the enforcement of those laws and polices, as well as some relevance cases.

KPPU, in their presentation reported recent developments in Indonesian Competition Law. From 2006 to 2012 KPPU issued 173 decisions in which

56% or 97 decisions were related to bid-rigging, while 76 decisions related to price fixing, control of supply, and the abuse of dominant position. Fraud related to bid-rigging caused the state to lose Rp 8.6 trillion or USD 886.6 million, consisting of Rp 6.6 trillion or USD \$ 680 from the state budget and the rest from local government budgets.

The economy also applies a regulation concerning delays in merger notification made by one or more business entities. The Commission Decree No. 4 Year 2012 regarding guidelines to the delay in merger notification stipulates that the notification should be received by the Commission no later than 30 days after the merger. The fine for the delay is Rp 1 billion (USD 100,000) per day and up to a maximum of Rp 25 billion. ■

## Competition Policies in Each Jurisdiction Needs to be Maintained

On January 7 and March 8, 2013, ASEAN Secretariat supported by German International Cooperation (GIZ) organized ASEAN Experts Group on Competition (AEGC) Capacity Building Workshop for AEGC Members in Ho Chi Minh City, Vietnam. The theme brought up in the workshop was 'Enhancing ASEAN's Participation in International Cooperation on Competition Policy'.

ASEAN Secretariat and GIZ invited many experts from a variety of institutions, such as Dr. R Ian McEwin (Competition Consultants, Asia LLP), Prof. Mark A. Williams (The Hong Kong Polytechnic University), Ms. Hilary Jennings (Head of Global Relations, Competition Division, OECD), Mr. Manuel Sebastiao (President of the Portuguese Competition Authority), Mr. Yukinari Sugiyama (Director in International Affairs Division, JFTC), and Ms. Kumala Dawar (The Graduate Institute, Switzerland).

The brought up discussions offered the participants some information pertaining to global business, international cooperation for competition, the global development of competition law, and myriad aspects of competition law in the Free Trade Agreement (FTA) conducted at bilateral and multilateral levels.

It was reported that hardcore cartel activities had increasingly globalized and touched all aspects of the economy. To handle those cross-border anti-competitive activities, it is necessary to build cooperation and coordination mechanisms, which can be attained by information sharing,

either public or confidential in nature, depending on the agreement between both parties. However, information sharing does not suffice to deal with globalized anti-competitive activities. For example, the practices should be tackled by cooperation between authorized business competitions overseas. In fact, Dr. Ian McEwin suggested the formation of a supranational body to address cross-border anticompetitive conducts that appear in the ASEAN region. However, the ASEAN Economic Community Blueprint does not specify that ASEAN will establish a supranational body, and instead opting more consensus-based problem solving.

The development of competition law and policy will accelerate if more and more countries adopting competition laws and establishing authorized business competition watchdogs. In addition, several international organizations such as the IMF, OECD, and World Bank have helped promoting the adoption of competition laws in their working agenda. Unfortunately, until now there has not been any international standard for competition laws. Despite being pursued through the Havana Charter and WTO during the Doha negotiations, institutional efforts to adopt multilateral treaties for effective business competition by way of law enforcement mechanisms have not been successful.

As a consequence of the absence of international standards for business competition, now there is a lack of law convergence and competition procedures in each jurisdiction. The achievable objectives in the competition law become different.

Similarly are the roles, functions, and authority of the business competition authorities.

To reduce those inconsistencies, other efforts have been made, for example by holding International Competition Network (ICN) whose missions is to advocate the adoption of standards and procedures for business competition policy at a higher level, and to formulate a proposal for more convergent procedures and substances so that international cooperation can effectively be facilitated.

ASEAN member countries which have joined ICN are Indonesia, Malaysia, Singapore, Thailand, Vietnam, and the Philippines. In addition, bilateral and multilateral cooperation is still necessary along with variety of seminars, workshops, forums, conferences, consultations, hearings, and so forth that aim to promote competition law.

The workshop concluded that with a variety of activities to tackle cross-border anticompetitive conducts, but without any reference of international standards, an international treaty for business competition is difficult to be realized. Moreover, reaching consensus in the international negotiations is difficult, while there are many interests from different stakeholders, and the level of politicization on this issue is still low compared to other international trade issues such as food, financial, and oil. At least, there are two things to be maintained, namely the presence of competition policies in each jurisdiction, though different as it may, and mutual cooperation among business competition authorities. ■



Photo: KPPU Documentation

## Courtesy Visit of Japan Fair Trade Commission to KPPU

Japan Fair Trade Commission (JFTC) paid a courtesy visit to KPPU (31/01). The meeting was held in order to improve the cooperation between JFTC and KPPU. JFTC delegations were Yukinari Sugiyama, Akari Yamamoto, and Daisuke Takato. They were accompanied by Masakazo Okumura (Embassy of Japan), and Tomoyuki Sho (JICA). KPPU was represented by Commissioner Kamser Lumbanradja, Tresna P. Soemardi, and Munrokhim Misanam. Also present were Secretary General of the Commission, Lilik Gani, accompanied by Ahmad Junaidi (Head of Public Relations and Law Bureau), Mohammad Reza (Chief of Investigation Bureau), and Taufik Ariyanto (Head of Assessment Bureau) of the secretariat.

During the meeting, they mainly discussed progress of capacity building cooperation between the two parties. The cooperation between KPPU and JFTC itself has been sealed since 2002. ■

## KPPU and MyCC Meeting



KPPU received a visit from Malaysia Competition Commission (MyCC) at the KPPU Building on February 14 and 15, 2013. Present in the Study Visit were Tan Sri Dato 'Seri Siti Norma Yaakob as the chairman of MyCC, accompanied by MyCC Commissioner and CEO along with the chief of the Division. The purpose of the two-day visit was to increase the cooperation and to study KPPU's work pattern as the pioneer of competition institution in the Southeast Asia region. On the first day KPPU shared with the counterpart its experience on investigation, case handling, examination and litigation. On the second day KPPU delivered their experiences in economic research and policy assessment. ■



## Cooperation on Data Access of Legal Bodies Administration System

KPPU entered a Memorandum of Understanding (MoU) with the Ministry of Justice and Human Rights on Friday (15/02) in the sidelines of the 2013 National Working Meeting (Rakernas) of Justice and Human Rights Ministry at the Vice Presidential Palace. The MoU serves to mark collaboration regarding Data Access of Legal Bodies Administration System (SABH), and it is organized to set up a cooperative framework to define steps for accessing data of SABH. KPPU chairperson M. Nawir Messi signed the agreement with Minister of Justice and Human Rights Amir Syamsuddin as witnessed by Vice President Boediono. Also present in the event were Jero Wacik (Minister of Energy), Agung Laksono (Coordinating Minister for People's Welfare), Gamawan Fauzi (Minister of Domestic Affairs), Sharif Cicip Sutarjo (Minister of Maritime and Fisheries), Timur Pradopo (Chief of National Police), Basrief Arief (Attorney General) and the senior leaders of other state agencies. ■

Photo: KPPU Documentation



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