

## KOMISI PENGAWAS PERSAINGAN USAHA (KPPU)

Indonesia Competition Commission

### ANNUAL REPORT OF 2012

“Period for Strengthening the Economy through Business Competition”

## I. INTRODUCTION

As a state commission established since 2000 and having a commitment to develop laws and policies on business competition, the Business Competition Supervisory Commission (KPPU) has been working hard throughout 2012 in order to achieve the objective of the formulation of Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, namely increasing national efficiency in order to achieve the people’s welfare, to create a conducive business climate through the regulation of competition, prevention of monopolistic practices and unfair business competition and to create business effectiveness and efficiency.

One year under the leadership of Tadjuddin Noer Said (Chairperson) and Yoyo Arifardhani (Vice Chairperson), namely during 2011 – 2012, was a period in which the commitment of the previous leadership was still maintained in implementing the institutional plan and strategy in order to achieve the objectives of the law. In the context of this commitment, the Chairperson and Vice Chairperson of KPPU for the period of 2012 had stipulated 4 (four) priorities of supervision in;

- a. Strategic sectors related to the livelihood of the people at large;
- b. Business fields (industries) with high concentration;
- c. Price sensitive markets;
- d. Infrastructure and public services.

Institutionally, these supervision priorities have been implemented by optimizing internal and external coordination. Internal coordination focuses on the role of the secretariat in supporting the implementation of duties of the Commissioners through a number of systematic and coordinated activities, namely: (1) law enforcement, (2) provision of policy recommendations to the government (3) industrial study (4) socialization and advocacy (5) institutional strengthening and (6) domestic and international inter-institution cooperation and coordination.

These systematic and coordinated activities have been conducted by all Commissioners and the Secretariat led by the Secretary General. The Secretary General is in charge of 9 (nine) Bureaus and 6 Regional Representative Offices or *Kantor Perwakilan Daerah* (KPD). Those Bureaus are the Investigation Bureau, the Enforcement Bureau, the Study Bureau, the Policy Bureau, the Merger Bureau, the Public Relations and Legal Affairs Bureau, the Administration Bureau, the Financial Planning and Internal Supervision Bureau. Meanwhile, the Regional Representative Offices (KPD), which are also contributing to the performance of the Commission are KPD Medan, KPD Surabaya, KPD Batam, KPD Balikpapan, KPD Makassar and KPD Manado.

Several outputs of the internal institutional coordination are, among other things, as follows:

1. Completing technical regulations related to Government Regulation No. 57 Year 2010, namely the application of Regulation of the Business Competition Supervisory Commission (*Perkom*) Number 3 Year 2012 concerning the Second Amendment to the Commission’s Regulation Number 13 Year 2010 concerning the Implementing Guidelines on the Merger or Consolidation of Business Entities and Acquisition of Company Shares which May Lead to Monopolistic Practices and Unfair Business Competition;
2. Commission Regulation Number 4 Year 2012 concerning Guidelines on the Imposition of Fine for Delayed Notification of Merger or Consolidation of Business Entities and Acquisition of Company Shares;

3. Absorption of KPPU's budget up to 86.78%, which indicates a 5.78% increase compared to the period of 2011 budget year;
4. Meanwhile, the output of external coordination in the context of relationships among domestic intuitions are, among other things as follows:
  - a. The signing of cooperation agreement with North Sumatra University (*Universitas Sumatera Utara*) on advocacy including the dissemination of information for comprehension of the materials and substance of Law No. 5 Year 1999 as well as the provision of consultation services for improving comprehension on the Business Competition Law;
  - b. Pioneering institutional cooperation with the public relations department agencies and state commissions;
  - c. Promotion of cooperation with the Supreme Court in organizing workshops for improving common understanding of the competition law between KPPU and the court;
  - d. Cooperation with the Indonesian Journalists' Association or PWI (*Persatuan Wartawan Indonesia*) of Yogyakarta in workshops on fair competition;

These outputs of external coordination have also been reflected on the relationships between KPPU and international competition organizations or agencies, namely among other things;

1. KPPU's role as a speaker in international fora has been increasing. In 40 international fora of which KPPU is a participant, KPPU has been invited to become a speaker 42 times. Its contribution as a speaker has increased by 35.5% compared to the data of 2011;
2. With regard to KPPU's written contributions in many fora organized by international counterparts, KPPU has presented 79 papers. The papers were presented in various international institutions, such as the ASEAN Experts Group on Competition (AEGC), the Asia Pacific Economic Cooperation (APEC), the Organization for Economic Cooperation and Development (OECD), the World Trade Organization (WTO), the United Nations Conference on Trade and Development (UNCTAD) and various working partners of international business competition institutions. Although such number of papers did not meet the annual target of KPPU, the number indicated a significant increase, namely 25.4% compared to the number in 2011;
3. Consultations of foreign stakeholders to KPPU indicated a significant increase, namely 25 times or 127% compared to 11 consultations in 2011. Consultations have been conducted by a number of institutions in Asia and a number of institutions in the United States, Swiss and England. The topics inquired were mostly related to the implementation aspect of the business competition law and merger;
4. According to the record, audience indicated a decrease by 36% compared to 2011. In 2012, audiences were conducted only by 7 international working partners (in Japan, Swiss and Korea), which were related to researches conducted on business competition law and policies in Indonesia. Another factor could also cause the decrease, namely the shift in the behavior of foreign parties which preferred to invite KPPU experts to present the explanations in their country of origin. This has often happened in several ASEAN countries, particularly Lao PDR and Malaysia;
5. There was an adjustment in the number of CONFERENCES and WORKSHOPS held by KPPU in 2012 by 53.8% compared to the number in 2011. In 2012, KPPU facilitated 6 activities involving international working partners, namely *USFTC Workshop*, *ASEAN High Level Meeting*, *AEGC Work Group Meeting on Regional Core Competencies*, *UNCTAD Cartel Detection Manual Workshop*, *Workshop on the Economic of Merger Analysis*, and *OECD/KPC Reunion Day Events*. The *APEC Training Course on Competition Law and Policy* had to be cancelled due to lack of support from APEC for program implementation under the forum of Competition Policy and Law Group;
6. The national aspect related to the role of KPPU in various Indonesian international commitments also became the concern of KLN. The number was not different from that in the previous year, and this year KLN was active in 4 (four) Indonesian commitments with foreign states, including negotiation process of Indonesia EFTA-Comprehensive Partnership Agreement (IE-CEPA), negotiation of Indonesia-Korea Comprehensive Partnership Agreement (IK-CEPA), WTO Trade Policy Review Mechanism, and preparation of Indonesian Chairmanship of APEC in 2013;

According to the 2011 annual report of KPPU, KPPU was the *Chairman* in AEGC *Work Group on Regional Core Competencies* (RCC) which was intended to provide guidelines on core competencies for ASEAN countries in preparing for and developing their competition institutions. The guidelines were prepared as a follow-up to the *strategic planning meeting* of AEGC members recommending the need for a document indicating various *core competencies* as the states' reference in preparing and implementing their competition policies and law. Such recommendations were followed-up by the formation of a special work group in 2010, namely the *Work Group on Regional Core Competencies* (WG-RCC), in which Indonesia (in this matter KPPU) was trusted as the implementing Coordinator of the work group. As the Coordinator, Indonesia was responsible for coordinating the preparation of formulation of documents, including the preparation of framework, appointment of consultants, coordination of members, and facilitation of work group meetings. Such documents have been finalized during the last meeting in Bangkok on 28-29 November 2012 under the title: *Guidelines on Developing Core Competencies in Competition Policy and Law for ASEAN*. These Guidelines will be submitted for *endorsement* during the meeting of AEGC and ASEAN Economic Ministers Meeting in 2013.

The above-mentioned outputs and achievements indicate that the recognition of KPPU is relatively satisfactory to the 12 year old institution. The majority of achievement indicators indicates positive and increasing scores, so that it can be said that this institution has been in the right direction in communication its achievements and position in the international world. This is, of course, inseparable from the function and coordination of all internal-institutional functions of KPPU. For that purpose, good and intensive coordination still need to be maintained and to gain attention so that the development of foreign relationship will be increasingly strong and able to benefit KPPU and national interest in general.

## II. PERFORMANCE IN 2012

The following section elaborates KPPU's performance throughout the 2012 period which is divided into a number of areas;

### 2.1. LAW ENFORCEMENT

During the period of 2012 budget year, KPPU performed its duties and authority as the institution overseeing the implementation of Law Number 5 Year 1999. During such one-year period, KPPU received 302 written information and 212 written reports on alleged violations of Law 5 Year 1999.

NUMBER		Year 2012		
		Week IV December	Week V December	Total
Reports received		212	-	212
RECOMMENDATIONS	Investigation	54	3	57
	Initiative Case	4	-	4
	Filing	-	-	-
	Monitoring of Business Actors	-	-	-
	Termination of Report Handling	105	6	111
	Delegation to the Competition Policy Bureau	-	-	-
Reports in Follow-Up Process/Included in the Next Period		49	40	40

In 2012, KPPU issued decisions on 8 (eight) cases. All of the 8 cases were related to Article 22 of Law Number 5 Year 1999 concerning the prohibition of bid rigging.

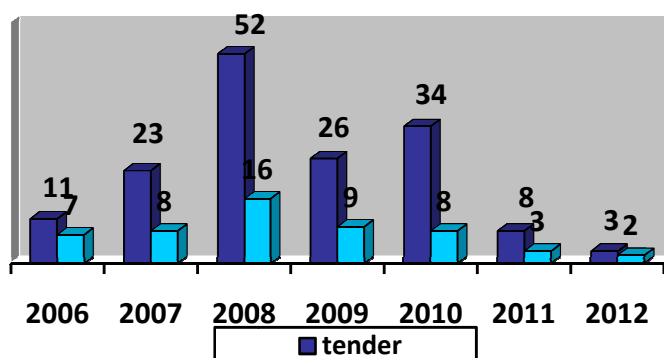
In addition to receiving reports from the community, KPPU also conducted supervision and research. Cases initiated by the research by KPPU rather than being based on reports from the community are called initiative cases. The details are as follows: during the period of 2006 – 2012, KPPU handled 216 cases, including 4 ongoing cases in 2012 and 190 reported cases and 22 initiative cases were decided upon.

Out of such 216 cases, KPPU has examined and passed 174 Decisions and 38 Stipulations consisting of 147 Decisions finding violations of Law Number 5 Year 1999 and 27 Decisions declaring that no violation occurred. Meanwhile, out of 38 Stipulations produced, 27 Stipulations did not indicate any violation of Law Number 5 Year 1999, and 11 Stipulations indicated changes in behavior.

For 2012, KPPU did not issue any stipulation on case termination but it handled and decided upon 3 (three) tender cases and 2 (two) non-tender cases namely cases of delayed notification of merger. Thus, in this year 2012, for the first time KPPU handled merger cases due to negligence to give merger notification by business actors as regulated in Government Regulation Number 57 Year 2010 as the implementation of Articles 28 and 29 of Law Number 5 Year 1999.

To put the number of cases in percentage, these 2 (two) merger cases constitute 1 % of all the 216 cases handled by KPPU.

Composition of these cases can also be seen in the following diagram:



The diagram above indicates that viewed from the aspect of substance of violated articles, 157 or 73% of 216 cases or KPPU Decision are related to bid rigging in the procurement of goods and services.

In relation to these KPPU decisions, pursuant to the provisions of Article 44 and Article 45 of Law Number 5 Year 1999, a number of business actors filed Objections to the District Court and in fact, due to dissatisfaction about the District Court decisions; the reported business actors also filed appeals to the Supreme Court (MA).

In relation to this legal action, up to 2012, objections were filed by business actors against 93 KPPU decisions with the District Court and appeals were filed against 76 District Court Decisions with the Supreme Court. At the District Court level, 58% or 54 out of 93 KPPU decisions were confirmed and 35 decisions were cancelled while 4 decisions were being processed.

At the Supreme Court (MA) level, out of 76 appeals against District Court decisions, 71% or 54 KPPU decisions were confirmed and the remaining 29% or 14 decisions were cancelled while 8 decisions were being processed.

The high percentage of KPPU decisions confirmed at the District Court and the Supreme Court levels indicate that the District Court and the Supreme Court share the opinion of KPPU on the true substantiation, examination process having met the due process of law and the dictums passed by KPPU.

In addition, although it is not the main objective of law enforcement, imposition of sanctions in the handling of cases in KPPU has contributed revenues to the State. Data shows that up to 2012, the amount of pecuniary sanction having permanent legal force totaled Rp217,736,753,457.00 (*two hundred and seventeen billion seven hundred and thirty-six million seven hundred and fifty-three thousand, four hundred and fifty-seven rupiah*). Out of the imposed fine, the total amount of fine payment imposed throughout 2012 was Rp58,747,262,790.00 (*fifty-eight billion seven hundred and forty-seven million two hundred and sixty-two thousand seven hundred and ninety rupiah*), with the payment already made reaching the value of Rp9,407,343,460.00 (*nine billion four hundred and seven million three hundred and forty-three thousand four hundred and sixty rupiah*). Therefore, the fine not yet paid totals Rp49,339,919,330.00 (*forty-nine billion three hundred and thirty-nine million nine hundred and nineteen thousand three hundred and thirty rupiah*). The total amount of fine imposed a breakdown of 47 decisions and 145 incoming reports to KPPU.

## **2.2. INDUSTRIAL AND TRADE STUDIES**

As in the previous year, business competition study program in 2012 was closely related to the activities of study, analysis as well as collection of data and information. For budget year 2012, the focus of the business competition study program was the transportation-logistic sector, particularly for the logistics management in airport and port areas, mapping of domestic container shipping market structure and mapping of agricultural commodity distribution channel (rice and corn). In addition to study activities, KPPU also conducted activities of analysis of the relevant market and market behavior which, in 2012, were focused on the telecommunication service sector and behavior in concentrated market.

Still in the same program, KPPU has also put in efforts to measure the competition index as a follow-up to the previous year. To strengthen the data base and information, KPP has also developed cooperation with the Central Statistics Bureau (BPS) to process the statistics of industry and export-import as well as the survey for gathering the database of product and commodity prices in several cities in Indonesia.

### **2.2.1. Activities of Business Competition Study in the Industries and Trade Sectors**

As we know, logistics and transportation costs in Indonesia become an obstacle considered significant for business actors alleged to have contributed to the high economic costs. With the condition as the starting point, the focus of study activities in 2012 was stipulated for the efforts to identify obstacles of competition in the transportation-logistic sector. These study activities were subsequently divided into 4 sub-sectors separately, namely logistic management at airport areas, logistic management at port areas, mapping of domestic container shipping market structure and mapping of rice and corn commodity distribution channel.

Based on the data obtained, KPPU can map the condition of market structure at airports surveyed which indicate that on the average, such airports have a high concentration. This high concentration has been due to the licensing factor and limited airport land area as well as relatively high capital requirement. Only a small number of business actors can obtain business permits and operate in airport environment being required to be sterile for the aviation safety reasons. Under such conditions, the options for service providers are very limited, not to mention the existing model of cooperation among warehouse management-airlines-forwarder which, on the one hand, may reduce transaction costs while, on the other hand, it limits the alternatives for service users to choose. This condition is

subsequently reflected in the high level of market concentration for airport logistic services, particularly for locations becoming KPPU's survey points.

As a follow-up to these findings, KPPU will conduct a further analysis, particularly of the operational model of airport logistics applicable daily, the aspect of *entry barrier* as well as concession granting system for business actors and also the mechanism for stipulating tariffs related to logistic services in airport areas. Through such analysis, KPPU expects to be able to identify the point or node which becomes a competition barrier so as to lead to high economic cost for logistics in airport areas.

For transportation and logistics in water areas, the results of survey of the logistic system of ports and container shipping indicate no difference. The management of container terminal of container cargo operator is controlled by 5 business actors respectively controlling 35%, 22%, 21%, 12% and 10%. The performance is relatively comparable from one terminal to another. For Makassar Port, only 2 terminal operators have market shares of 32% and 68%. Meanwhile, in Tanjung Perak Port, the biggest market shares, in order, are 45%, 28%, 22 % and 5%. It can be said that most of container terminal operators in Indonesia are still or constitute companies affiliated with Port State-Owned Enterprises in Indonesia.

Such control also has an impact on the logistic system where one Port State-Owned Enterprise becomes the grantor of concessions to business actors wishing to become providers of the relevant services such as loading-unloading, forwarder, warehouse and container stacking and transportation. This form of cooperation through concession has reaped many pros and cons in the field, especially from the relevant business actors. Information is also obtained that Port State-Owned Enterprises as port business entities will develop an integrated logistic unit intended for reducing the costs of port logistics. However, on the other hand, such vertical integration has the potential to decrease business opportunities for the relevant port service providers still in operation.

Based on the results of research, information is also obtained that the actual condition of port regulators is yet to be optimal. Domination by port business entities, integration of the aviation information system with port management as well as shortcomings in the port authorities have made it difficult for the regulators to optimally perform their duties and functions as regulated in the laws and regulations on aviation and ports in particular.

In relation to the research on commodities, particularly rice and corn, there are several conclusions from the viewpoint of business competition, in can be identified that for the level of farmers and retail vendors, the market structure is perfect competition. Meanwhile, for the level of large trader and mill, the market structure is oligopolistic. Such pattern occurs in South Sulawesi, Jakarta and East Java. Vertical integration is potential to occur because every large trader also has a rice mill and produce a certain rice brand. In every survey area, it is identified that potential stacking of rice is conducted by rice mills and warehouses for speculation when rice prices rise.

Conclusions can be drawn that for the farmer level, there is almost no potential of unfair business competition. Potentials of unfair business competition may occur at the level of middlemen and mills with the market structure which tends to be oligopolistic, so that vertical integration, horizontal integration as well as cartel may occur. In relation to rice prices, the highest margin occurs in the Provinces of South Sulawesi, DKI Jakarta, and East Java at the level of large trader and rice prices in the Main Rice Market of Cipinang in DKI Jakarta constitute the rice price barometer at the national level.

### **2.2.2. Analysis of Business Actors in Concentration Markets and Relevant Market Survey**

The purpose of business actor analysis is to elaborate several strategies of business actors in the concentrated condition of the market structure. One of the strategies being the focus this year is price fixing strategy by business actors in industries have a concentrated market share such as the Non-subsidized Oil Fuel industry.

By using the statistics methodology analyzing indications of connection in price fixing among fellow business actors, it is found that there is a high correlation among the three prices of non-subsidized Oil Fuel in Indonesia and MOPS (*Mean Platts of Singapore*) and also there is a long-term correlation and mutual influence among the prices of such providers.

Another strategy of business actors being the focus of analysis is particularly product differentiation through brand forms. Initially, a brand is a name or symbol that serves as a differentiator between products or services from a company with its competitors. However, along with the development of the industry and increasing competition, brand has become the most crucial thing for a business. Brand proliferation strategy is one of the strategies used by large companies to market their products where there is a variety of brands for each of the company's products based on their characteristics or attributes. This strategy may lead to the perception that the company monopolizes the sale by providing a variety of products, so that other competitors, especially small companies face difficulties (entry barrier) in entering the market. This strategy is used for some products such as instant noodles that have a lot of flavors. Based on the analysis of brand proliferation using the Multi Dimensional Scaling (MDS) method, it is seen that the instant noodle market has been occupied by the proliferation of 2 (two) brands of the market leaders. The market is open only in areas with low perceived quality and perceived price. However, it is perceived that there is still a condition of entry barrier, especially on the scale of investment, development of distribution channels and the high cost of branding to introduce a particular product or brand to consumers.

Relevant market analysis becomes an activity which cannot be separated from a business competition case. Analysis of the relevant market constitutes a concept implemented to define the size of the market for a product/service. This market size becomes important because it can identify the extent of control of a certain product in the market by a business actor or a number of business actors. To know the stages of relevant market analysis, a case study of relevant market analysis on whether GSM and CDMA markets in the telecommunication structure exist in the same relevant market, using the *critical loss analysis* method.

Determination of a GSM and CDMA relevant market depends on two main factors. First, increased price of credit of all CDMA operators or no longer using Cellular Phones. This research indicates that if the price increase is below 30%, then GSM and CDMA have not been in one market because more consumers would still prefer using CDMA. GSM signal which is better than CDMA constitutes the main structure why consumers use GSM despite its increased credit price. The second is profit margin of GSM operators. Higher profit margin indicates that GSM providers are still categorized low so that business expansion conducted is still categorized high, so that the reinvested profit share is still big. The current profit margin has not made GSM to CDMA to exist in one market. However, if the profit margin is above 32%, then GSM and CDMA would exist in one market. KPPU will formulate the method used in the relevant market mapping to be further proposed to be one of the standard methods for KPPU.

### **2.2.3. Processing of Data and Information**

As an effort to develop an information structure related to the data of economic structure required for KPPU, KPPU cooperates with BPS in the survey including collection and processing of data related to the trade industry sector, export and import as well as price movements of specific commodities and products. In relation to the processing of industrial and trade data, provision of data of big and medium business actors up to the individual level of company and also provision of export-import data according to the code of *Harmonized System* (HS), purpose/origin of sectors, ports and provinces. This data is provided in the form of *softcopy* and *hardcopy* containing raw data of the large and medium sectors and export-import including also the company's directory. In addition to data provision, export-import trade data is also synchronized with primary data where the synchronization

process is conducted by BPS and KPPU. This synchronization is aimed at unifying market data and export-import trade data using different classification standards. To support this activity, KPPU holds trainings on the processing of data of large and medium business actors and initial stage export-import (data access, basic processing, and parameter identification). Training participants are internal employees of KPPU with Resource Persons, Instructors and Moderators from BPS Team.

In addition, efforts are also made for collecting data of leading sector in a number of regions. Survey to several strategic regions is conducted to collect data and information on potential structure and leading sectors as well as the condition and behavior of business actors in them. This survey is conducted by coordination and discussion with the regional government agencies such as the Central Statistics Board, Service Office of Industry and Trade, Regional Capital Investment Coordinating Board or by conducting a survey of direct leading sectors. Regions surveyed are, among other things; Bandung City, West Java Province, Central Java Province, East Java Province, South Sumatra Province, North Sumatra Province, East Kalimantan Province, Bali Province, Special Region of Yogyakarta, Riau Islands (Batam), West Nusa Tenggara, and Solo City. Discussions are held with expert lecturers from the faculty of economy and industrial engineering to give inputs on the research methodology of the relevant survey, use of formula for the formulation and determination of leading sectors.

In addition of analysis of industry and trade data, KPPU also conducts a specific survey of the prices of commodities and products. The survey is conducted periodically every week at the same survey location or point. In conducting surveys in the regions of Bandung, Surabaya, Balikpapan, Makassar and Medan, KPPU has cooperated with the personnel of BPS of the Republic of Indonesia, particularly enumerators in each city, while for Jakarta Areas; it is conducted by KPPU personnel themselves. In collecting data and information related to commodity prices, the Team has also conducted direct surveys to the markets in strategic areas and also conducted coordination and discussion with agencies such as the Central Statistics Board, Service Offices of Industry and Trade in regions. Regions already surveyed are, among other things; Central Java Province, South Sumatra Province, East Kalimantan Province, Bali Province, Special Region of Yogyakarta, Riau Islands (Batam), West Nusa Tenggara and Solo City.

Based on survey results, KPPU will process the data in the form of tabulation and simple descriptive and trend analysis to monitor the movements of prices as well as to identify any anomaly in price movements either as a series or cross section. If any anomaly is found, a further analysis will be conducted to deeply study the form or potentials causing such anomaly, especially from the perspective of business competition.

#### **2.2.4. Preparation of Business Competition Index**

One of the activities in the business competition program is the preparation of business competition index which describes at which point the current business competition in Indonesia is. The higher such index, the higher the success of competition is to become an instrument of Indonesian economy, and vice versa. The activities of preparing business competition index have been conducted since 2009 in the aviation and telecommunication sectors. In its development, the business competition index activity continues to be developed. In 2012, the measurement of the business competition index was conducted in the sectors of aviation, telecommunication, banking and cement industry. This activity was conducted by self-management with third parties, namely the Institute for Economic and Social Research of the Faculty of Economy of Indonesia University (*Lembaga Penyelidikan Ekonomi dan Masyarakat Fakultas Ekonomi Universitas Indonesia* (LPEM FEUI)).

During the preparation process of the Competition Index, the team from KPPU together with the team from LPEM FEUI collected primary data required to identify the actual condition in the field as an effort to identify the factors affecting business competition. The model of primary data collection was



made by inviting several competent resource persons in the economic sector and conducting field observation in several targeted regions.

The business competition index of the telecommunication structure in 2012 as a whole tended to increase to become 4.76 from 4.73 in 2011. Therefore, there was an increase in the level of competition in the telecommunication service structure. The indexes related to the quality, service, signal and network in 2012 showed an increase. Meanwhile, indexes related to the price variable in 2012 showed a decrease. Based on these results, consumer satisfaction with respect to the quality of services provided by the *providers* increased from the previous year. Every telecommunication company seemed to put in efforts to provide better services so that in general, there was no significant difference in quality among telecommunication companies. Price no longer became the main factor in choosing cellular communication provider service companies.

The business competition index of the aviation sector in 2012 decreased compared to the previous year. In 2012, the competition index of the aviation sector was 4.58 while in 2011 it was 4.64. Therefore, there was a decrease of competition index in the aviation service industry. Index decrease was much affected by the price and quality indexes. There was an indication that the price offered by airlines increasingly lacked variations in the eyes of consumers and also that alternative options of aviation in certain routes decreased following non-operation of several airlines.

Meanwhile, the competition index for cement structure business was quite high, namely 4.15. This index decreased from by 0.37 from 4.52 in 2011. Therefore, there was a decrease in the competition indicator in the cement industry. Such index decrease might have been due to the strong perception of quality and the increasingly less varied price factor. There was an indication that the increased number of business actor did not significantly affect the *brand image* of the consumers because of the strong factor of loyalty and perception of quality of certain cement product brands.

Through such competition index preparation, KPPU will continue to monitor the dynamics of business competition climate in several strategic business sectors in Indonesia. Such monitoring will become a form of *feedback* for KPPU, especially to assess to what extent the business competition climate has changed in Indonesia, as well as an early warning system against the potential of deteriorating business competition climate in certain economic sectors.

### **2.3. MONITORING AND SUPERVISION OF BUSINESS ACTORS**

In addition to receiving reports from the community, KPPU also conducts supervision and research. While a reported case comes from written report received from the community, an initiative case comes from research and supervision.

Commission Regulation No.1 Year 2010 has regulated 2 (two) business actor monitoring activities, namely (i) Research, which is aimed at obtaining preliminary evidence of alleged violation by a business actor for the purpose of an initiative case, and (ii) Supervision, which is aimed at supervising the behavior of dominant business actors for the purpose of prevention. In line with this matter, Commission Regulation Number 4 Year 2010 regulates that monitoring activities conducted by the Monitoring and Supervision Division are focused on supervision, while those conducted by the initiative case Division are more focused on research activities.

The purpose of research as well as supervision of such sectors is to map the business structure and the pattern of behavior emerging in competition among business actors.

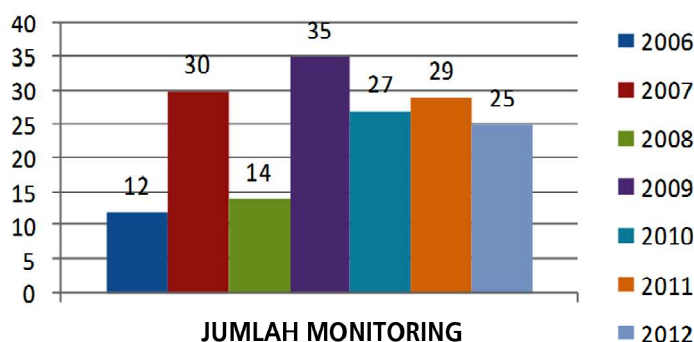
It is necessary to be noted that business sectors becoming the objects of research and supervision are those meeting the criteria as regulated in Commission Regulation No. 1 year 2010 concerning Case Handling Procedures, namely:

- a. 1 (one) Business Actor or one group of Business Actors having a market share of more than 50% (fifty percent);
- b. 2 or 3 Business Actors or Business Groups having a market share of more than 75% (seventy-five percent); and/or
- c. Potentially violating the law.

KPPU prioritizes supervision on highly concentrated markets, particularly in the public service sector and this infrastructure is intended for increasingly optimize these market resources and outcomes for the welfare of the community.

Meanwhile, the method of supervision and information gathering used in this activity is collecting data of written and non-written information from the community, particularly business actors.

Throughout 2012, KPPU had and has been in the process of implementing 25 monitoring activities (research and monitoring), implemented both by the KPPU Head Office and by the KPPU Regional Office. If we take supervision conducted since 2006 – 2012 into account, KPPU had conducted 172 monitoring and supervision activities in 6 (six) years. The number of monitoring activities of business actors conducted by KPPU within this 6-year period are as follows:



## 2.4. HARMONIZATION AND EVALUATION OF POLICIES

### 2.4.1. Harmonization of Policies

In the framework of harmonization of policies and/or regulations, KPPU has been actively involved in conducting activities of inter-ministry discussions held to discuss Draft Law concerning the Procurement of Goods and Services (*RUU PB*), development of competition policies in ASEAN, and Draft Government Regulation (*RPP*) on the supervision of partnership agreement (Partnership RPP).

In this framework, KPPU has also gained the trust of the government and the legislative body with the granting of new duties and authority beyond competition supervision as regulated in Law No. 5/1999. These duties and authority are regulated in Law No. 20 Year 2008 concerning Micro, Small and Medium Businesses in relation to the supervision of partnership agreement implementation.

KPPU also participated in the formulation of laws and regulations, namely, among other things, the formulation of the Draft Law concerning the Procurement of Goods and Services and Government Regulation on Partnership Agreement. In addition, KPPU has actively become a *leading institution* in the implementation of the international commitment on *Competition Policy Chapter* and become the resource person in a number of domestic and international forums, namely;

1. Organizer of *the Second ASEAN High Level Meeting on Competition (AHLMC)* held in Yogyakarta on July 2012;
2. Organizing a Focus Group Discussions (FGD) with the relevant Ministries and agencies to discuss policies in:

- The pharmaceutical sector
  - Indonesian National Standard (SNI) for water meter
  - Procurement of goods/services in State-Owned Enterprises (BUMN)
  - People's livestock
3. Serving as a partner for the Ministry for the Economy in giving assistance to improve the economy in Indonesia. One of the activities regularly attended by KPPU was *Focus Group Discussion* (FGD) ;
  4. *Leading institution* in the commitment on *competition policy* in:
    - AEC Blueprint
    - IAP APEC
  5. Member of the national team in the Indonesia-Korea *Joint Study Group* (JSG)
  6. *Leading Regional Review Meeting on Aid for Trade*
  7. *FGD on Patent Law* with the discussion topic of *Patent Law and Access to Medicines, Patent Law and Technology Transfer and Patent Law and Competition*.

#### 2.4.2. Suggestions and Considerations

One of KPPU's duties is to provide suggestions and considerations to the Government related to policies considered potentially leading to monopolistic practices and unfair business competition. KPPU has currently been maintaining relationships with a number of relevant agencies which are sector regulators, namely in the framework of policy harmonization. Harmonization is the most effective step, to internalize competition values into government policies. A good understanding of the government as sector regulator will pave the way for the implementation of competition policies.

In the perspective of competition policy, it should be understood that KPPU's duties are limited to competition only, while, on the contrary, the sector regulator has an extremely big role including declaring a sector open or closed for competition (entry and exit of new business actors).

KPPU is facing a big challenge because of the misunderstanding that KPPU tends to become an obstruction to Government programs in regulating a sector. On the contrary, competition and Government programs share the ultimate objective, namely the people's welfare. Under certain conditions, distortion of the market mechanism or competition may occur for certain considerations. However, the ultimate objective must be the welfare of the community rather than the profit for a certain group of business actors.

The challenge of harmonization of policies in the future is very big considering the increasingly numerous sectors changing their management model from monopoly into competition. At same time as the commencement of the second period of KPPU's leadership, several Laws regulating such management change were created, such as the Laws on railway, ports, airports, management of bus terminals as well as on the electricity sector.

Unfortunately, however, in the development of some sectors, such as the port and airport sectors, the involvement of private business actors has created increasingly poor service conditions and increasing tariffs rather than encouraging improvement. There has even been an impression that openness of is just similar to transferring the right of monopoly from the State to the private sector.

KPPU views that this condition is caused by improper implementation. The sectors initially under natural monopoly and having no replacement alternative cannot be fully separated from the market mechanism. For that purpose, the involvement of the regulator is required considering the fact that in the sectors there are limited areas which make competition tend to be limited.

This condition will become a formidable challenge to KPPU in encouraging the regulator to play its role in an optimal portion so that sector management by encouraging the private sector in it can create an efficient sector and lead to the creation of welfare of the community.

Another matter requiring attention is related to the duty of giving suggestions and considerations which do not bind the Government or the regulator itself. There is no consequence to the Government if it does not implement KPPU's suggestions. The government or sector regulator may, by its political considerations, ignore KPPU's suggestions if it views that such suggestions are incorrect, although from the competition perspective they can encourage the creation of efficiency and effectiveness of sector management.

This condition becomes a challenge to KPPU. KPPU must be able to prove to the public that every suggestion given is an option which the Government must take if it wants sector management to improve.

Every suggestion or consideration given must have a strong basis provided in a proper background paper which can explain the strategic value of a suggestion so that the Government becomes aware of the importance of implementation of the suggestion to encourage the creation of the sector management which is efficient and which leads to the welfare of the community.

To promote fair competition among business actors, throughout the budget year of 2012 KPPU also issued 9 (nine) suggestions and considerations to the government, namely:

1. Suggestions and Considerations of KPPU in relation to the Tender for Samboja Seaport Construction Works in KutaiKartanegara Regency, East Kalimantan Province of Budget Year 2009;
2. Suggestions and Considerations of KPPU in relation to the Tender for Samboja Seaport Construction Works in KutaiKartanegara Regency, East Kalimantan Province of Budget Year 2009;
3. Suggestions and Considerations in relation to the Tender for Samboja Seaport Construction Works, Integrated Port Construction in Kota Bangun District in the Accompanying Work Package of Activities of Construction of Integrated Ports of the Service Office of Transportation of KutaiKartanegara Regency, East Kalimantan Province of Budget Year 2009;
4. Suggestions and Considerations related to the Provision of Electricity for Business Customers (B-3) and Industries (I-2, I-3, and I-4) for the period of January 2010 up to June 2010 in Java and Bali Areas;
5. Suggestions and Considerations of KPPU in relation to the Policies on the Provision of Insurance for Indonesian Migrant Workers (TKI) to the Chairperson of Commission VI of the People's Legislative Assembly of the Republic of Indonesia (DPR RI), with carbon copies to the Chairperson of Commission IX of DPR RI, the President of the Republic of Indonesia, the Minister of Manpower and Transmigration of the Republic of Indonesia;
6. Suggestions and Considerations of KPPU in relation to the Procurement of Food for Detainees and Convicts in the Correctional Institution Class II A of Pekanbaru to the Minister of Law and Human Rights of the Republic of Indonesia;
7. Coordination with taxi stakeholders in Batam on September 17, 2012 concerning the monopolistic practices in taxi business in Hang Nadim Airport, Batam attended by the Service Office of Transportation of Batam City, Hang Nadim Port Authority, BP Batam, Academicians from Batam International University as well as taxi business actors of Batam, such as *TaksiBarelang* and Silver Cab;
8. Coordination with the Ministry of Micro, Small and Medium Enterprises concerning the preparation of Draft Government Regulation concerning Partnership Law;
9. Letter of suggestion related to the activities of *EKP RumpuTlaut*, Regional Representative Office (KPD) of KPPU of Manado.

These suggestions have completed the number of suggestions of KPPU during the period of 2006 – 2012 totaling 11 suggestions and considerations to the Government. Out of the total number of such suggestions given by KPPU, 78 % gained a positive response from the Government in the form of, (1) making policies according to the suggestions (2) postponing the implementation of policies and

(3)revoking policies which, according to KPPU, are inconsistent with the principle of fair business competition pursuant to Law No.5/1999

#### **2.4.2. Specific Achievements**

In 2012, 4 activities were targeted and conducted with regard to the advocacy of suggestions and considerations of KPPU to the government, namely regulated agent, retail, port as well as oil and gas activities. Suggestions and considerations were given by KPPU for aforementioned four activities. In order to gather information on its effectiveness and implementation, KPPU held discussions with the policy-makers related to the sectors. Particularly for the regulated agent, KPPU also coordinated with the Ombudsman of the Republic of Indonesia and also the relevant ministries. The submission of the letter of suggestions and considerations of KPPU was confirmed by the suggestions of the Ombudsman of the Republic of Indonesia to the Minister of Transportation in Letter Number 0014/REK/0341.2012/PD-02/VI/2012, where one of the suggestions given to the Minister of Transportation was to implement the recommendation of KPPU Number 167/K/VIII/2011 dated August 18, 2011.

In addition to such activities, KPPU also has conducted activities and made efforts to participate and to play a direct role in implementing the values of fair business competition, among other things by coordination and direct involvement in the preparation of a number of draft policies of the government and also by conducting advocacy to the stakeholders in several sectors in order to reach a common perception in relation to the aforementioned sectors and business competition. During the budget year 2012, KPPU conveyed 9 (nine) suggestions and considerations.

#### **2.5. MERGER, CONSOLIDATION AND ACQUISITION**

To further implement the mandate of Articles 28 and 29 of Law Number 5 Year 1999, on July 20, 2010, the Government has issued Government Regulation Number 57 Year 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Shares which May Lead to the Occurrence of Monopolistic Practices and Unfair Business Competition, hereinafter referred to as merger and acquisition.

In broad outlines, the substance of Government Regulation Number 57 Year 2010 regulates 4 (four) matters, namely the method for assessing merger and acquisition leading to monopolistic practices and unfair business practices, value limit of notification, as well as consultation and notification procedures.

For KPPU, the issuance of this Government Regulation has completed the legal instruments required to exercise the authority and to assess the merger and consolidation of business entities and share acquisition leading to the occurrence of monopolistic practices and unfair business competition.

In order to fulfill the need for technical regulations from this Government Regulation No. 57 Year 2010, KPPU has issued a number of implementing regulations, namely;

- a. Commission Regulation No. 10 Year 2010 concerning Notification Form
- b. Commission Regulation No. 11 Year 2010 concerning Consultation;
- c. KPPU Regulation Number 10 Year 2011 concerning the Amendment to Regulation of the Business Competition Supervisory Commission Number 13 Year 2010 concerning the Implementing Guidelines on Merger or Consolidation of Business Entities and Acquisition of Company Shares which May Lead to the Occurrence of Monopolistic Practices and Unfair Business Competition;
- d. KPPU Regulation Number 3 Year 2012 concerning the Second Amendment to Regulation of the Business Competition Supervisory Commission Number 13 Year 2010 concerning the Implementing Guidelines on Merger or Consolidation of Business Entities and Acquisition of

Company Shares which May Lead to the Occurrence of Monopolistic Practices and Unfair Business Competition;

- e. KPPU Regulation Number 4 Year 2012 concerning Guidelines on the Imposition of Fine for Delayed Notification of Merger or Consolidation of Business Entities and Acquisition of Company Shares.

The response from business actors in relation to the application of this Government Regulation Number 57 Year 2010 is relatively good as reflected from the increasing number of business actors conducting Consultation before and/or giving Notification after, performing merger, consolidation and acquisition of company shares.

The following data shows the increase in the Number Consultations and Notification of Merger throughout 2012 :

<b>MERGER</b>	<b>YEAR</b>			
	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>CONSULTATION</b>	<b>0</b>	<b>1</b>	<b>4</b>	<b>2</b>
<b>NOTIFICATION</b>	<b>1</b>	<b>3</b>	<b>44</b>	<b>35</b>

Consultation and Notification of Merger by business actors have been indicating a positive development. In 2009, the Merger Bureau received 1 Merger Notification. In 2010, the number of Consultation and Notification increased by 1 Consultation and 3 Merger Notification. Increased number of Consultations and Notifications was significant in 2011, namely 4 Consultation and 44 Notifications. Throughout 2012, KPPU received 7 Consultations and 78 Notifications.

The increasing number of business actors conducting Consultations and giving Notifications before and/or after conducting merger indicates that the response of business actors in relation to the application of Government Regulation 57 Year 2010 is relatively good.

Based on the category of status of business actors as regulated by Commission Regulations, the obligation to give notification not only applies to domestic business actors but also binds foreign business actors if the merger conducted falls under the category of foreign merger having a direct impact on Indonesian market. Foreign mergers required to be Notified are:

1. Merger, consolidation and acquisition conducted outside Indonesian jurisdiction;
2. Those having a direct impact on Indonesian market, namely that:
  - a. All the parties performing the merger, consolidation and acquisition conduct business activities in Indonesia, both directly and indirectly;
  - b. Only one party involved the merger, consolidation and acquisition conducts business activities in Indonesia but involving other parties in the merger, consolidation and acquisition which conduct sale in Indonesia; or
  - c. Only one party performing the merger, consolidation and acquisition conducts business activities in Indonesia and the other parties performing the merger, consolidation and acquisition do not conduct business activities in Indonesia but they have sister companies with business activities in Indonesia.
3. Merger, consolidation and acquisition meeting the value limit; and
4. Merger, consolidation and acquisition between non-affiliated companies.

However, domestic mergers still dominate the number of mergers conducted through Consultation and Notification. The following is the pie chart describing the percentage of the number of Consultations and Notifications by domestic and foreign business actors:

<b>MERGER</b>	<b>NUMBER OF MERGER</b>	<b>NUMBER OF MERGER (%)</b>
INDONESIAN (DOMESTIC)	52	66.67
FOREIGN - INDONESIAN	13	16.67
FOREIGN – FOREIGN	13	16.67
<b>TOTAL</b>	<b>78</b>	<b>100.00</b>

Viewed from the type of business, there are 5 (five) industries of the business actors conducting Consultation and Notification, namely:

1. Financial Service and Insurance Industry;
2. Processing, Livestock, Modern Retail, Transportation, Plantation Industries;
3. Information and Communication Industry;
4. Mining, Oil and Gas, Construction and Energy Industries; and
5. Oil and Gas Industry.

Based on the aforementioned categories of industry, dominant industries conducting Consultations and Notifications are Mining, Oil and Gas, Construction and Energy. The percentage of each industry category is as follows:

<b>Categories of Industry Giving Notification of Merger, Consolidation and Acquisition</b>			
<b>No</b>	<b>Industry Category</b>	<b>Number of Mergers</b>	<b>%</b>
1.	Financial Service and Insurance	7	9
2.	Processing, Livestock, Modern Retail, Transportation and Plantation Industries	23	29
3.	Information and Communication	12	15,2
4.	Mining, Oil and Gas, Construction and Energy	26	32,9
5.	Property	11	13,9
Total Merger		79	100

Based on the consultation and Notification by business actors, KPPU conducts an assessment in order to provide recommendations on the Commission's opinion related to the existence or non-existence of any alleged monopolistic practices and business competition. The assessment is conducted for the purpose of assessing whether a merger can result in monopolistic practices and/or unfair business competition. The matters analyzed in the assessment process are as follows:

- a. Market Concentration;
- b. Market Entry Barrier;
- c. Potential Anti-Competition Behavior;
- d. Efficiency; and/or
- e. Bankruptcy.

KPPU conducted 13 assessments of Consultations and 117 Assessments of Notifications during the period of 2009 up to 2012. The following is the list of the number of Assessments for the period of 2009 up to October 2012:

<b>Assessments</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>TOTAL</b>
<b>Assessments of Consultations</b>	1	1	4	7	13
<b>Assessment of Notifications</b>	-	3	36	78	117

## **2.6. INTER-INSTITUTION COOPERATION AND COORDINATION**

### **2.6.1. Improvement of Institutional Relationship as well as the Role of KPPU in Domestic Cooperation**

To develop an integrated competition justice system and competition policies, KPPU coordinated and cooperated with law enforcement agencies, ministries and regional governments including formal cooperation in the form of Memorandum of Understanding. The results of institutional coordination and cooperation conducted by KPPU throughout 2012 are as follows:

- a. Signing of cooperation with North Sumatra University (*Universitas Sumatera Utara*) in the field of advocacy which covers dissemination of information for the comprehension of the materials and substance of Law No. 5 Year 1999 as well as the provision of consultation for the comprehension of Business Competition Law;
- b. KPPU became the host in the institutional cooperation with the public relations of State institutions and other State commissions;
- c. Increase of cooperation with the Supreme Court in holding workshops for improving a shared comprehension of the competition law between KPPU and the courts;
- d. Cooperation with the Indonesian Journalists' Association (PWI (*Persatuan Wartawan Indonesia*)) of Yogyakarta in a workshop on fair competition;
- e. Cooperation with the Central Statistics Board in settling the issue of soybean price control;

### **2.6.2. Improvement of Institutional Relationship as well as the Role of KPPU in International Cooperation**

The United Nations acknowledges that the Indonesian Business Competition Supervisory Commission is the most active competition agency in Southeast Asia and an example of how a young competition and dynamic competition authority can be a model for other countries. This was expressly stated by the United Nations Conference on Trade and Development (UNCTAD) in the peer review session on the implementation of Indonesian competition law and policies in Geneva in July 2009.

In a session in the international conference commemorating the 10<sup>th</sup> Anniversary of KPPU (the Indonesian Conference on Competition Law and Policy), the Korea Fair Trade Commission and the Japan Fair Trade Commission stated that KPPU was the most dynamic business competition agency in the world. At the level of Organization for Economic Cooperation and Development (OECD), KPPU has been appointed 3 (three) times to become a regular observer (in 2008-2009; 2010-2011; and 2012-2013) in the OECD Competition Committee. Such status is the highest membership status for non-OECD states.

Furthermore, the international world is also increasingly interested in the development in the implementation of the business competition law and policies in Indonesia. The matter is indicated by the increasing number of KPPU's contributions as a speaker in a variety of regional and international activities. Statistics show an increased number of KPPU's contribution as a speaker in a variety of international and regional fora.



In addition, as part of the efforts of increasing the international world's comprehension of the implementation of the business competition law and policies, KPPU had already been invited to become a speaker for 42 time in 40 activities attended in 2012. The number of contributions as a speaker increased by 35.5% compared to the number in 2011.

KPPU was also the *Chairman* in the AEGC *Work Group on Regional Core Competencies* (RCC) aimed at providing core competencies for ASEAN states in preparing for and developing their competition agencies. The preparation of such guidelines was a follow-up to the strategic planning meeting among AEGC members which recommended the need for a document indicating various core competencies as the State's reference in preparing and implementing their competition policies and law. Such recommendation was followed-up by the formation of a special work group in 2010, namely the Work Group on Regional Core Competencies (WG-RCC), with Indonesia (in this case KPPU) being trusted as the Coordinator for the work implementation of the group. As the Coordinator, Indonesia was responsible for coordinating the preparation for the formulation of documents, including the preparation of framework, appointment of consultants, coordination of members, and facilitation of agreements in various work group meetings. This document was already finalized at the last meeting in Bangkok on November 28-29, 2012, and was entitled: *Guidelines on Developing Core Competencies in Competition Policy and Law for ASEAN*. These guidelines will be submitted for endorsement at the AEGC and ASEAN Economic Ministers Meeting in 2013.

Such various outputs and achievements mentioned above indicate that the recognition of KPPU is relatively satisfactory to the 12 year old institution. The achievement indicators in these international relationship and cooperation indicate a positive value, so that it can be said that this institution has been in the right direction in communicating its achievements and position in the international world.

The following table shows the development of KPPU's participation at various activities at the international level during the period of Budget Year 2012:

No	Indicator	Year 2010	Year 2011	Year 2012*
1	Consultation	8	11	25
2	Audience	8	11	7
3	Conferences/Workshops in Indonesia	12	13	6
4	Involvement in the commitment of the Indonesian Government	1	4	4
5	Written contribution	16	63	79

## 2.7. LEGAL INSTRUMENTS

As a business competition law enforcement institution, KPPU absolutely needs supporting legal instruments to optimize the implementation of its duties and the exercise of its authority. Therefore, efforts to strengthen legal instruments required by KPPU continue to be made. The intended legal instruments are in the form of both external and internal legal instruments.

Details of activities which has been conducted by KPPU in maximizing the products of internal as well as external legal instruments are as follows:

### 2.7.1. Preparation and Development of Internal Regulations

In this sub-activity, KPPU has prepared the Standard Operational Procedure (SOP) for the Officials of Information and Documentation Management which has been indeed mandated by Law Number 14 Year 2008 concerning Transparency of Public Information. To support the effectiveness of this regulation, KPPU has also formed the structure of Public Information Management Officials or *Pejabat Pengelola Informasi Publik* (PPID).

#### 2.7.2. Evaluation and Consultation on Legal drafting of the Laws and Regulations of the Commission

At the Secretariat level, KPPU has the mechanism for evaluation and consultation on legal drafting of the Commission's regulatory products. This is conducted to achieve the administrative order of the official script system in KPPU. Meanwhile, to further increase the efficiency of the evaluation of this script system, KPPU has attended a training on legal drafting in Yogyakarta organized by the Education and Training Center of the Laboratory of Law Faculty of the Indonesian Islamic University.

#### 2.7.3. Legal Assistance and Consultation Related to Legal Disputes between KPPU and External Parties

In addition to performing litigation related to its decisions, KPPU also conducts internal consultation and defense of legal interests in sessions held not for passing decisions. In 2012, KPPU received an invitation from the Constitutional Court and became "a party required to give its statements" with respect to the review of Article 18 paragraph (1) and Article 34 paragraph (4) of Law No. 32 year 2002 concerning Broadcasting. In addition, in 2012, KPPU is facing 1 (one) complaint of tort at the District Court of Central Jakarta filed by the Respondent in the case of bid rigging in progress in KPPU.

#### 2.7.4. Preparation and Development of Guidelines on the Articles of Law No. 5 Year 1999

Various developments in the business strategies applied by business actors should gain the attention of KPPU as the business competition supervisory authority. As a business competition supervisory authority, KPPU has the authority to make the implementing guidelines of Law No. 5 Year 1999 which can be used as a reference both for KPPU to handle cases as well as for competition law stakeholders to reach a common view in interpreting the articles in Law No. 5 Year 1999.

In 2012, KPPU prepared and developed 5 (five) Guidelines on the Articles of Law No. 5 Year 1999. Whereas such guidelines consist of Guidelines on Article 4 (Oligopoly), Guidelines on Article 16 (Agreements with Foreign Parties), Guidelines on Article 9 (Division of Areas), Guidelines on Trade Associations, and Guidelines on Investigation Manual.

### **2.8. DISSEMINATION OF INFORMATION AND ADVOCACY**

In order to enhance the comprehension of the government, business actors, academicians, journalists, law practitioners, and the general public, KPPU has conducted a variety of dissemination of information and advocacy activities. Throughout the period of 2012 31 activities have been recorded, in the form of dissemination of information covering development of the mass media (journalists' forum) dissemination of information with public institutions, dissemination of information with the parliament and the government, development of competition forum at the national level, dissemination of information with judges, dissemination of information with the relevant institutions, and dissemination of information with academicians. The number of dissemination of information and advocacy activities in 2012 increased compared to the number in 2011 with 29 activities being recorded. These are, of course, the achievements of dissemination of information in KPPU which have been successfully implemented in almost all regions in Indonesia.

In all the dissemination of information and advocacy activities performed throughout 2012, there were 1,490 participants taking part in giving ideas and recommendations to KPPU. They included the circles

of journalists, academicians, business actors, the government, the parliament, judges and the general public.

In outline, activities of dissemination of information and advocacy of KPPU are divided into a number of activities, namely:

a. Consultation and Audience

Efforts for increasing the people's awareness of the creation of fair business competition have been made not only by dissemination of information activities in regions. People's awareness can also be increased through assistance of information to the public in the form of consultation and audience to the stakeholders. Consultation and audience conducted constitute the initiative of the stakeholders concerned with business competition. The stakeholders come from business actors, academicians, lawyers, the government and the general public. Other efforts to enforce business competition law in the community are made by giving information in the forum initiated by the stakeholders, in which KPPU participates by giving information related to the business competition world.

b. Intensity of Coverage in the Media

To enforce business competition law, KPPU cooperates with the media to socialize the business competition law and the existence of KPPU as the institution performing the mandate of law enforcement. Various activities conducted by KPPU gained the attention of the mass media, both printed and electronic media (radio, television, and the internet). Coverage on KPPU –along with the activities conducted– through the printed media at the central as well as regional level indicate that KPPU has gained sufficient attention from the media circles. This is very helpful in the mission of KPPU for the community to internalize business competition values.

## **2.9. INSTITUTIONAL DEVELOPMENT**

The institutional development of KPPU in 2012 was still hampered by the same issue of institutional status. The issue of institutional status of KPPU was an obstacle for the Secretariat in optimizing the duties and functions mandated by Law No. 5 year 1999.

In 2012, KPPU coordinated with the Ministry of Trade, Ministry of Finance, Ministry of Administrative Reform and Bureaucratic Reform and Cabinet Secretary to propose to the President to put the Presidential Regulation concerning KPPU Secretariat into force. It is expected that this Presidential Regulation will give clarity of echelon structuring and ranks of personnel of KPPU Secretariat.

## **2.10. PROFESSIONALISM, INTEGRITY AND COMPETENCY OF HUMAN RESOURCES**

Human resource in an organization constitutes an asset which must be kept, maintained and whose value must be increased. This also applies to KPPU, especially with the very specific characteristic of KPPU's function, namely enforcement of competition law and provision of advocacy to the government and the public. Therefore, KPPU's human resource management must be performed to the best possible extent in order to perform its duties and works well and optimally.

From the beginning of its establishment, KPPU has always endeavored to become a competition law enforcement institution which applies the principles of professionalism, integrity and competence of the personnel. The principle of professionalism applied by KPPU means that all the works are performed and completed by Human Resources (HR) with proper capability and expertise in order to gain optimum results.

### **2.10.1. Regulations on Personnel Management**

Within the period of the last one year, there have been a number of Decisions and Regulations related to the principal regulations on personnel, namely:

- a. Decision of the Commission stipulating the Groups of Positions, Classes of Positions and Names of Positions within the Purview of KPPU Secretariat through Letter of Decision of the Business Competition Supervisory Commission Number 47/KPPU/KEP/I/2010;
- b. The Commission's Regulation regulating the Promotion of the Rotation and Transfer of Personnel of KPPU Secretariat, namely through Regulation of the Business Competition Supervisory Commission Number 8 Year 2010;
- c. The Commission's Regulation regulating the Pension of Personnel, namely through Regulation of the Business Competition Supervisory Commission Number 12 Year 2010.

Several regulations related to the principles of personnel management which are being in the process of preparation finalization are regulations on Personnel Career System and Performance Management System. Meanwhile, other regulations which need to be further completed are, among other things Provisions or guidelines in the implementation of policies of planning, recruitment, selection and placement of personnel; and Provisions regulating the personnel remuneration stipulation system.

### **2.11.2. Increase of Discipline**

Increase of personnel discipline continues to be enforced by conducting supervision and reminder through memorandums and warning letters. KPPU has improved a number of internal provisions, among other things:

- a. The Commission's Regulation concerning KPPU's Code of Conduct, issued through Letter of Decision (SK) No.22/KPPU/KEP/I/2009;
- b. The Commission's Regulation concerning Work Group, issued through Letter of Decision (SK) No. 29/ KPPU/KEP/II/2009;
- c. The Commission's Regulation concerning Commission Rules of Procedure, issued through Letter of Decision (SK) No. 37/KPPU/KEP/II/2009;
- d. Rules of Procedure and guidance on discipline of personnel of the Business Competition Supervisory Commission as regulated in Decision Number 97/KEP/KPPU/ XII/2003;
- e. Evaluation of personnel's performance as regulated in Decision of KPPU Number 174/ Kep/KPPU/XI/2006 concerning the Provisions on the Annual Evaluation of Performance of Personnel of the Secretariat of the Business Competition Supervisory Commission.

## **2.11. REMUNERATION**

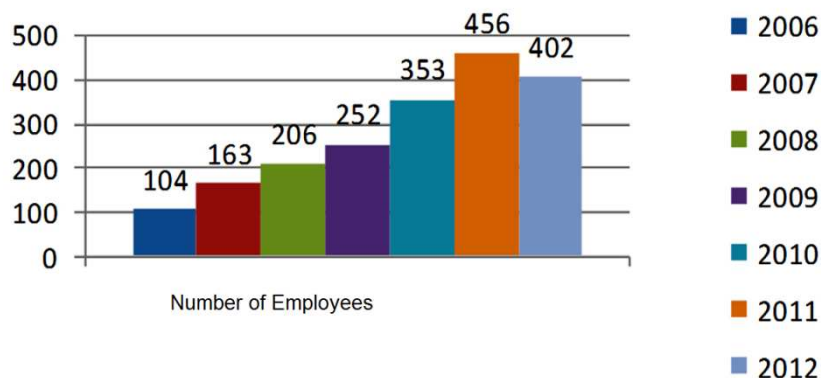
In relation to the remuneration or honorarium given to KPPU Members, it turns out that the amount of honorarium received by KPPU Members is at the lowest strata compared to the amount of honorarium received by the members of other Commissions such as the Corruption Eradication Commission (KPK) and the General Election Commission (KPU). This should gain reasonable attention from the government, in this respect the Ministry of Administrative Reform (*Menpan*), considering the fact that KPPU Members have the highest authority compared to other commissions such as KPK or KPU. It can be said that such authority of KPPU is extremely extensive because it does not only prepare prosecutions (like KPK) but also passes decisions (like the court).

In addition, in view of the extremely strategic roles and functions of KPPU for the national economy, optimum support from the secretariat together with all the elements of the secretariat is, of course, required. Therefore, it is the obligation of the government to care about the fate of the personnel of KPPU Secretariat who currently have not had any clear status.

Such honorarium increase cannot be given to all elements of the personnel in KPPU Secretariat, but it has been given only to personnel with the position of Division Head and staff. The leaders at the position level of Bureau Head and Secretary General have not received any increased honorarium.

## 2.12. COMPOSITION OF KPPU'S PERSONNEL

With the increase in the activities and authority held by KPPU, adequate human resources are, of course, required in order to be able to give optimum support. Therefore, the number of KPPU's personnel required has increased from year to year.



In 2012, the total number of personnel was 402, consisting of 337 permanent personnel (133 of which being investigators) and 65 non-permanent personnel. The statistic shows that the personnel with graduate (S1) education level are the greatest in number, being 51% or approximately 205 personnel. Most of the personnel with this graduate (S1) education level are positioned to perform the technical function of law enforcement as structural officials. Meanwhile, personnel with Senior High School/equivalent education level are mostly contract personnel, such as room boys, cleaning service personnel, security guards and technicians.

Whereas civil servants employed in KPPU were 25 (twenty-five) persons and 12 (twelve) persons are now left. Such shortage of Civil Servants has been due to the fact that such civil servants have entered pension age and some civil servants choose to go back to the parent agency, as well as difficulties to recruit civil servants from other agencies/institutions. KPPU has endeavored to obtain civil servants from various agencies/institutions to be seconded/employed in KPPU, but the number of civil servants required has not been reached

## 2.13. TRAININGS WHICH HAVE BEEN CONDUCTED

KPPU always endeavors to realize professional human resources based on competency and having high integrity. A variety of strategies and policies for improving human resources have been made, among other things by preparing the analysis of human resource requirement, personnel recruitment according to the needs of the organization, enforcement of personnel code of conduct, as well as technical education and training for personnel.

Throughout 2012, KPPU has organized 32 trainings for improving the competency of human resources and facilitated a number of trainings at the domestic and international levels. In general, education and training or workshops have increased along with the increasing number of KPPU's personnel.

## 2.14. BUDGET

As mandated in Article 37 of Law Number 5 Year 1999, operational financing for KPPU's activities is borne by the State Revenues and Expenditures Budget (APBN) and other sources allowed by applicable laws and regulations. By referring to such provision, every year, KPPU always receives budget allocations for financing all its activities.

In 2012, KPPU received a budget of Rp113,938,916,000.- (*on hundred and thirteen billion nine hundred and thirty-eight million nine hundred and sixteen thousand rupiah*) which decreased by 37.16%. Meanwhile, budget absorption in 2012 was Rp98,871,696,284 or 86.78% which increased by 0.46 % of the budget of the 2011 period.

As a follow-up to the recommendation of the Ministry of Administrative Reform and Bureaucratic Reform in relation to the results of assessment of the Performance Accountability Report of the Business Competition Supervisory Commission (KPPU) Budget Year 2011, for improving the Performance Accountability System in KPPU as well as synergizing it with the National Medium-Term Development Plan (RPJMN) of 2010-2014, then in 2012, KPPU prepared the Strategic Plan of Adjustment Year 2013 – 2015 stipulated by Regulation of the Business Competition Supervisory Commission Number 7 Year 2012 dated December 12, 2012.

As an institution entrusted by the State Revenues and Expenditures Budget APBN to optimize the budget, in 2012, KPPU increased transparency and the quality of the business process of financial administration and increased the achievement of budget absorption.

For the purpose of increasing transparency and quality of this business process of financial administration, KPPU Secretariat has applied the SMM ISO 9001:2008 Document standard and the Initiative of SMM ISO 9001:2008 Application in the budget management process. The application of this budget management standard is important because KPPU itself once received the predicate of Unqualified Opinion in 2011, whereby KPPU was declared to have had healthy and accountable financial management system. This proves that KPPU supports credible, accelerated and professional bureaucratic reform.

## 2.15. NON-TAX STATE REVENUES

One of the objectives of KPPU in conducting supervision and enforcement of competition law is to increase the national economic efficiency (Article 3 sub-article a of Law Number 5 Year 1999). In implementing law enforcement, in addition to ordering discontinuation of certain unfair business competition behaviors, KPPU also imposes sanctions of fine and damages to the perpetrators.

During the budget period of 2012, the value of Non-Tax State Revenues (PNBP) successfully reached from various decisions passed by KPPU was Rp8,327,343,460.- (*eight billion three hundred and twenty-seven three hundred and forty-three thousand four hundred and sixty rupiah*). Sanctions of fine and damages are the *ultimumremedium* and do not become the main goal of KPPU's law enforcement KPPU. However, sanctions of money payment by business actors also contribute to the state finances. Following its establishment until 2012, KPPU has contributed Rp161,613,358,367 (*one hundred and sixty-one billion six hundred and thirteen million three hundred and fifty-eight thousand three hundred and sixty-seven rupiah*) as the non-tax state revenues (PNBP) of the total State Revenues and Expenditures Budgets (APBN) which have been used by KPPU for 12 (twelve) years in the amount of 490.268 Billion.

### **III. CHALLENGES AND AGENDA FOR 2013**

In the previous description, KPPU during the second period (2006-2012) has optimally sought to enhance its role as the institution entrusted to maintain fair business competition as an instrument of the Indonesian Economy and Law as regulated in Law Number 5 Year 1999.

Various significant progresses have been achieved during this second period. A number of major cases having an impact on the increased economic efficiency have been handled, for example in the case of cross-ownership and cartel in the telecommunication industry, the case of fuel surcharge in the aviation industry, and cooking oil cartel. The relationship between KPPU and the Government has run well through coordination and harmonization of policies, including the comprehension of KPPU's role and position in the Indonesian legal system. Even for creating a more broadly shared comprehension among the judges on the enforcement of the competition law, KPPU has, in collaboration with the Supreme Court, conducted dissemination of information jointly.

Also during this period, KPPU cooperated with the Center for the Reporting and Analysis of Financial Transactions (PPATK), the Audit Board (BPK) and the Police of the Republic of Indonesia (POLRI), in relation to the role of the police in handling competition cases as regulated in Law Number 5 Year 1999.

However, the road forward which must be taken by KPPU in the next period is still one full with challenges and obstacles. Challenges and obstacles will come not only from the parties not having understood the existence and actions of KPPU, but also due to the complexity of the economic sector development which is extremely dynamic and which changes any time. KPPU's success in conducting early detection of any such challenges and obstacles can facilitate the efforts of creating successful enhancement of KPPU's roles in the future.

In this second period, KPPU itself is facing various challenges and obstacles which can be described as follows:

#### **1. Obstacles to Realizing Competition as One of the Pillars of the Indonesian Economic System**

The presence of Law No 5 Year 1999 in the Indonesian economic system should be understood as an official statement of the State that Indonesia has accommodated the values of fair business competition as one of the pillars of its economic system. Therefore, all regulatory aspects in Indonesian economy should accommodate the values of fair business competition.

However, in practice, not many people are aware of the matter, including the legislative making the laws and the Government as the regulator in formulating regulations on the Indonesian economic system. Factual conditions have shown that the Long-Term Development Plan (RPJP) of the Government, which becomes the grand framework of the economic development of Indonesia, competition is placed only as part of a mission to strengthen the development of the domestic economy with global orientation and competitive edge. Competition is not where it should be placed as a system of values which must become the spirit of the overall economic policies as a pillar of fiscal and macroeconomic policies.

As a result of such conditions, fair business competition does not get the role and function as expected as a value system that will be the soul of any economic policy that emerges. No wonder then many economic policies ignore the values of fair competition in it, and even the substance of its regulation is inconsistent with the principles of fair business competition.

Competition should become a part whose existence must always be considered by the Government when issuing a regulation in the economic sectors, both at macro and micro levels, which could

potentially affect competition within it. This step can only be taken if the Government is fully aware of the strategic values of fair business competition for economic sectors.

The biggest obstacle the implementation of competition as a pillar of Indonesia's economy is at this stage. In fact, the government does not seem to have seen the urgency of the KPPU's involvement and the value of competition in the economic system of Indonesia.

## **2. Structural Obstacles in the Competition Law in the Framework of Indonesian Law**

As a positive law, the enactment of Law Number 5 Year 1999 brings the consequence of commitment of all legal subjects to comply with and of law enforcement officers to enforce it. At the technical level, this second condition is not running well because of different comprehension and interpretation leading to weak coordination of law enforcement. Different interpretations of sufficient preliminary evidence constitute an example of obstructed handling of criminal acts in a competition case even though the case has been decided upon in a final and binding decision (*inkracht van gewijsde*). It is ironic because in fact, in the framework of Indonesian law, the preparation of Law Number 5 Year 1999 has involved a variety of stakeholders. Through such involvement, relevant stakeholders should be fully aware that there are indeed new characteristics of decisions and substantiation in the existing legal system as normative facts which must be accepted legally for being the rule of law.

Within this framework, KPPU thanks the Supreme Court which in a responsive manner supported KPPU in enforcing the Law through consistent interpretation of the law through permanent jurisprudence and application of objection procedural law to fill the vacuum of procedural law in the Law so that implementation issues will not continue and can be facilitated within the available legal framework.

However, although it has been passed through, the process carries an important message that the coordination across law enforcement agencies is badly needed to jointly build a system of competition law in Indonesia. Each institution whose roles are regulated in Law Number 5 Year 1999 should be early to know exactly its role and subsequent coordination with KPPU to ensure optimal implementation. In this case, a pattern of relationships among such agencies must be developed, which leads to facilitated implementation of competition law to the best possible extent, for example in relation to the improvement of the competition handling procedural law, inter-agency relations procedures and so on.

The big challenge for KPPU in the period ahead is how to encourage all law enforcement officers whose roles have been defined in Law Number 5 Year 1999, to make a standard pattern of relationship between KPPU and such relevant agencies, for the desired implementation of the competition law.

## **3. Competition Culture which Has Not Been Formed**

For several decades, Indonesia emphasized the importance of togetherness and mutual aid. However, in its development, it was found to have negative aspect particularly in the development of the economic sector. In fact, cooperation and mutual aid then distorted economic development to be enjoyed only by a group of entrepreneurs having access to power.

This becomes a picture of how the overall Indonesian economy was managed. The crisis then proved that the model only benefited a group of people and also led to the fragility of the economic fundamentals because the economy was managed through a high-cost economy. Not surprisingly, at that time, monopolistic practices and unfair business competition were common practices of business actors.



The picture of KPPU's handling of cases for twelve years showed similar cases. KPPU cases were dominated by bid-rigging cases in the procurement of goods and services of the Government, while the procurement of goods and services of the Government constitutes the engine of growth of the Indonesian economy. This becomes an indication that the culture of conspiracy is very strong while the culture of fair competition is at the lowest point. In relation to this issue, the culture of competition difficulties will continue to be the obstacle to KPPU in the next few years until it is resolved.

#### **4. Incomplete Authority of KPPU**

The *modus operandi* of monopolistic practices and unfair business competition is now becoming more complex and modern. KPPU has become a variable which has been considered by business actors to be avoided and watched, thus preventing monopolistic practices from being detected.

In the effort to address the increasingly complex and modern *modus*, KPPU should have instruments to combat it, among other things through its authority to conduct search and interception. Only in this way hard evidence can be obtained. Unfortunately, until now KPPU has not had the authority to conduct search and interception.

This becomes a very strong obstacle to KPPU, especially in the problems of substantiation which becomes one of the main law enforcement duties of KPPU.

#### **5. Sector Regulator Not Performing Its Functions Completely**

In relation to the KPPU's recommendations and considerations to the Government, the Government will become a very decisive factor. The government which is responsive and which implements KPPU's recommendations will improve sector management and will make it very easy to implement fair business competition.

On the contrary, sector regulator which tends to be unresponsive and generally categorized as a regulator not performing its main duties will make sector management very poor and will make it very difficult to implement fair business competition in the sector.

#### **6. Internal obstacles**

In addition to relatively various obstacles as described above, obstacles also occur in KPPU internally, which actually become an obstacle with extraordinary effectiveness to KPPU's performance as a whole. Several internal obstacles identified are:

##### **a. Institutional Status Issue**

The institutional status of KPPU Secretariat until now becomes an issue not yet solved. This discourse has taken more than 10 years, and until now it still becomes the main problem for the staff of KPPU Secretariat.

As a result of this condition, KPPU's performance as a whole will be greatly affected. Uncertain future becomes a scary ghost to the Secretariat staff. It is not surprising that the high turnover of the secretariat staff has colored the work climate in KPPU. This has a great impact on the working spirit of human resources in KPPU as a whole. If this is ignored, the work culture will become less good and will degrade the overall performance.

High turnover will cause KPPU to have no reliable staff because by the passage of time, reliable staff will find agencies providing more guarantee for their future.

b. Limited Human Resources

KPPU until not has had approximately 300 Secretariat staff. However, if viewed further, approximately 200 staffs engage in core works of KPPU. Of course, with the vast areas with very great number of business actors and business sectors, such number of human resources is still relatively inadequate.

For that purpose, a proportional study is required to fulfill the minimum need of KPPU in conducting its activities. Through such fulfillment, KPPU is expected to be able to increase its performance.

By considering the journey of KPPU along with such obstacles, improvement of KPPU's roles and functions in the Indonesian economic and legal systems in 2013 must be more optimal. A number of agendas becoming KPPU's priorities in 2013 are:

**1. Improving Business Competition Policies in the National Economic System**

The presence of Law No. 5 Year 1999 has confirmed to us all that Indonesia has stipulated fair business competition as one of the pillars of the Indonesian economy. In its journey, KPPU has recorded some successes as an instrument in implementing Indonesia's economic management sector performance we should be proud of as shown by the two main indicators of efficient tariff or product price and availability of products/services in the market. Aviation and telecommunication sectors are the most significant examples of such success.

However, in the course of its development, it is perceived that the role of business competition as an economic instrument has not been optimal. To ensure the achievement of this matter as a goal of Law Number 5 Year 1999, our recommendations are as follows:

**a. Stipulation of the Grand Framework of Competition Policies in Indonesia**

After two periods of KPPU took place, KPPU has been able to see and analyze that one relatively fundamental shortcoming related to the role and function of fair business competition as an economic instrument of Indonesia is the unavailability of any reference for such role and function. In this case, a grand frame fork of business competition in Indonesia is required, to become the direction of how and in what manner fair business competition will be implemented in the Indonesian economic system.

This condition greatly affects the Indonesian economic system since, however, with the availability of a documented guidance on the matter, all policy makers in the Indonesian economy, both macro-economy and micro-economy, will consider and accommodate it in the policies issued. This effect is very effective in forcing policy makers to accommodate fair business competition in the business process of every economic sector. Policies accommodating fair business competition which will in turn force all stakeholders in the economic sector to accommodate business competition in their business processes will have a far more significant impact than law enforcement the process of which is performed case by case. The systemic effect of the implementation of fair business competition is more felt through regulation.

In this case, it is deemed very urgent for Indonesia to immediately have a grand framework of the direction of business competition policies as an instrument/pillar of economic policies in addition to macroeconomic and fiscal policies. In this case, Indonesia's economic policy makers, both macro and micro, should be able to formulate the matter. At the macro level, the National Development Planning Board (*Bappenas*) and the Ministry of Economy can clearly and explicitly incorporate the element of business competition as part of the macro policies. Meanwhile at the micro level, technical ministries

should also be able to internalize the competition policies in the sector policies considered to potentially affect competition in the market.

#### **b. Formation of Competition Implementation Coordination Mechanism as an Economic Instrument**

Another highly urgent matter to be materialized is the availability of a mechanism of relationship between KPPU and economic policy makers so as to reach a synergy of roles and functions between KPPU and both macroeconomic and microeconomic policy makers. Through this mechanism, every policy design which has been implemented can be consulted with KPPU in order to obtain an analysis of KPPU of the implementation of such policies in the competition perspective.

This mechanism becomes vitally important to be applied, considering the duties and functions of KPPU which are limited within the scope of competition only. In fact, in a number of sectors, competition will not be able to encourage sector performance without being accompanied by the enhancement of the performance of the sector regulator. Even sometimes, the role of the regulator is far more decisive in determining sector performance than competition. Therefore, the synergy, by prioritizing the roles and functions of KPPU and sector regulator, becomes a very important part to be implemented in order to excellently implementing the sector management.

#### **c. Strengthening the Role of KPPU as the Giver of Inputs for Competition Policies**

One of the roles of KPPU which also shows good development is the emergence of recognition of KPPU in relation to the giving of recommendations to the Government. The tendency of the Government's treatment of the policy recommendations of KPPU is increasingly improving, where some recommendations are immediately followed by the Government and can encourage the improvement of sector performance. Nevertheless, some recommendations tend to be ignored by the government probably because the Government has other considerations for reasons which are political in nature.

In relation to this matter, as previously conveyed, it is recommended for KPPU of the next period to create a mechanism agreed upon by KPPU and the government both for sector regulator and for development of policies in general which are often developed by *Bappenas* and the Ministry of Economy. Through this standard mechanism, the discussion of policy recommendations given by KPPU to the government can be institutionalized.

### **2. Improving the Status of Competition Law in Indonesian Legal System**

If we look at the development of the structuring of the existence of competition law in Indonesia, we will see that the central role of KPPU in the efforts to find its position in the Indonesian legal system seems to be very prominent. Whereas in an ideal situation, when a law applies, then the agency the existence of roles and functions of which is mentioned in the aforementioned law should become the initiator to work together in building the implementation of the law.

In this case, considering the fact that KPPU has the duty to enforce the competition law, the relevant agency related to the duties and authority of KPPU should be the initiator to accommodate KPPU in the Indonesian legal system. However, the facts then show that in its early development, KPPU in fact, had more initiatives. KPPU was very lucky because in the initial conditions, the Supreme Court gave great support to accommodate the role and functions of KPPU in the Indonesian legal system. This was evidenced by the immediate formulation of the procedural law for handling legal cases of KPPU in Indonesian court.

The Supreme Court and other law enforcement agencies are greatly needed by KPPU for implementing all its duties authority as properly as possible. This is intended for strengthening the position of KPPU in the Indonesian legal system.

In this case, the urgency for KPPU to create a mechanism of coordination of dissemination of information with the Supreme Court and coordination of law enforcement with other law enforcement agencies such as the police is greatly needed by KPPU. This is especially related to the efforts of enhancing the roles of KPPU in the Indonesian legal system amidst the complex development of the Indonesian business and economic law.

### **3. Strengthening KPPU as the Center of Excellence for the Implementation of Competition in the Economic System of Developing Countries**

As a relatively very young competition institution, KPPU has received the recognition from many parties with respect to its success in encouraging the Indonesian economic system. This recognition has come in various forms ranging from awards from international institutions, developed countries as well as by becoming a comparative study destination for developing countries desiring to accommodate fair business competition in their economic system as well as to form competition supervisory institutions.

In a variety of international fora, the recognition has emerged in the form of beginning to use best practices for competition cases in Indonesia, KPPU's commissioners being used as resource persons and in any other ways.

The progress of implementation of the principles of business competition in the Indonesian economic system has encouraged advanced countries and international institutions to make KPPU as the center of excellence for the implementation fair business competition in an economic system. Fair business competition which has been accommodated within the period of 10 years by the Indonesian economic system is considered very appropriate to be made as a role model for development of competition in developing countries.

In relation to such appreciation, it is suggested that KPPU should continue to promote its excellence in implementing the principles of fair business practices so that KPPU's competency will continue to serve as the place to learn for other developing countries. Nevertheless, such success will promote the image of Indonesian economy as a whole because in Indonesian market there is a guarantee that business competition is protected by Law Number 5 Year 1999 properly implemented by business actors in this country.

### **4. Supplementing the Instrument of Authority of KPPU as Competition Law Enforcement Institution**

In the second period, KPPU has, through its duties and authority, endeavored as optimally as possible to optimize its roles and functions in enforcing the competition law. The achievements in this 2<sup>nd</sup> period make us proud enough of the emergence of cases with significant impacts being directly felt by the community. The example is the handling of cases in the telecommunication sector.

In its development, however, KPPU views that competition cases have developed to be increasingly complex. In addition, KPPU has found the fact that business actors which become its objects have considered KPPU as one of the factors which must be avoided. Therefore, the modes of violation of Law Number 5 Year 1999 have developed in such a manner that they cannot be easily identified by KPPU.

In relation to the matter, it is seen that the urgency for strengthening KPPU's role as competition law enforcement institution supplements the authority of KPPU as possessed by similar institutions in a number of states. For example, authority to search for obtaining various documents and other legal evidence, including, without limitation, clear process of execution of KPPU's decisions.

To strengthen this position, one of the solutions is to amend Law Number 5 Year 1999 with the grand framework of strengthening KPPU's position as a competition law enforcement institution.

## **5. Institutional Strengthening of KPPU**

One of the most crucial issues in the development process of KPPU for almost 10 years is the institutional issue, in which the institutional status of KPPU, particularly its Secretariat, has not been clear until now.

In the developing discourse, the status of KPPU's personnel was initially expected to be similar to the status of the personnel of the Corruption Eradication Commission (KPK), as they have a separate and independent human resource management which accommodates the model of modern human resource management. However, many discussions intensively conducted with the Government have always faced a deadlock due to disharmony of the personnel system in Law Number 5 Year 1999 and in the State Personnel Law, so that amendment to Law Number 5 Year 1999 becomes the solution.

Considering the important role of the secretariat, KPPU recommends that this issue is positioned at the top priority in KPPU's work programs in the next period.

## **6. Strengthening of KPPU through the Capacity Building of its Human Resources**

The complexity of competition cases increases rapidly along with the development of business and economy. Competition cases committed with easily identified modes have been left far behind by business actors. With the increasingly sophisticated communication and information facilities, the modes have become more difficult to be identified.

Considering such conditions, it becomes urgent for KPPU to continuously develop investigation and economic analysis capabilities to able to obtain legal evidence. Similarly, for giving recommendations and considerations to the Government, a comprehensive analysis related to the policies presented is required. Similarly, high competency is required for analyzing merger and acquisition in conducting an analysis of the impacts of merger and acquisition on the competition among business actors.

Considering such requirements, it is recommended that KPPU in the next period should continue to strengthen the capability and competency of its human resources by providing trainings required, equipped with the provision of *best practices* with respect to the trend of competition cases throughout Indonesia.

## **7. Building a National Perception of Fair Business Competition**

Law Number 5 year 1999 constitutes the foundation for policies (regulation) and the national competition law. As a Law intended for increasing the efficiency of national business and economy, the implementation of this Law requires the support and participation of all components of the community including, without limitation, business actors. This participation will emerge if there is a common awareness of the importance of fair business competition for their prosperity.

Therefore, KPPU needs to position itself as an institution advocating public awareness, in addition to being a law enforcement institution and the provider of policy recommendations, especially that Law Number 5 Year 1999 regulates that this Law has been formulated with the objective of preventing

monopolistic practices and unfair business competition. With due observance of the importance of the efforts for and the creation of public awareness, KPPU recommends this issue to become one of the work priorities of KPPU in the upcoming period.

#### **IV. CONCLUSION**

This 2012 KPPU's Annual Report constitutes a part of the accountability of KPPU's performance as a state institution by complying with Presidential Instruction Number 7 Year 1999 concerning accountability of performance of government agencies as a form of accountability for the implementation of duties in accordance with the vision and mission of KPPU.

This report is prepared as a facility for controlling and assessing performance for the purpose of materializing good governance and clean government as well as serving as a feedback in the planning and implementation of activities in the next period. The successes or failures in reaching the target of absorption in 2012 will be, of course, become the parameter to improve KPPU's performance in the next year.

In the future, the priorities of case handling in 2013 will be focused on antitrust-like cases such as cartel, abuse of dominant position, price fixing, etc. The handling of vertical tender cases can be delegated to investigators so that limited resources of KPPU may be allocated to handle and analyze antitrust cases.

The issues, challenges and obstacles faced by KPPU in performing its duties become the stimulus to work better. This is reflected from the results of case handling, in which it has produced a number of important decisions which are relatively beneficial for the community and the emergence of awareness among business actors to do business fairly, as well as other relevant matters.

The deliverables of the works performed are certainly not easy to be achieved, as they required hard work, full spirit and responsibility as well as were closely related to the support and assistance from various parties. The support from the Government and the People's Legislative Assembly as well as the Supreme Court will increasingly strengthen other stakeholders of KPPU in implementing the mandate of Law Number 5 Year 1999. The support from other stakeholders of KPPU, namely among other things, business actors who with their awareness understand and comply with Law Number 5 Year 1999 will greatly facilitate KPPU's duties.

Similarly, the technical, operational and administrative support from all files and ranks as well as elements of KPPU Secretariat, which has given their support from all aspects, can be felt by all KPPU members since non-existence of KPPU Secretariat will not allow for uninterrupted implementation of KPPU's duties and authority.

Therefore, the existence and status of KPPU Secretariat as well as the existing resources must be strengthened in order to provide more support for uninterrupted implementation of KPPU's duties and authority in the future so as to realize the vision of KPPU to become an effective and credible business supervisory institution for improving people's prosperity.

It is expected that this 2012 KPPU's Performance Report provides a complete description of the achievements, challenges, and obstacles in its implementation, as well as the recommendations for the implementation of KPPU's duties in the upcoming period, with the expectation that KPPU's performance, will improve and the people will become more prosperous.

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