



COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION  
REPUBLIC OF INDONESIA



# ANNUAL REPORT 2009





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Commission for the Supervision of Business Competition  
Republic of Indonesia**

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# FOREWORDS

**THE** year 2009 was signified by a growing awareness on the values of fair business competition. It is strengthened by the significant supports given by the stakeholders to KPPU. The government has so far given positive responses to the KPPU's performance. The government supports are reflected in the formulation of the economic and political policies which begin to be line with the implementation of Law Number 5 Year 1999. The government is expected to continuously internalize the values of fair business competition in every of its policy. This government supports cannot be separated from the intensive socialization conducted by KPPU in order to improve the awareness on the essence of Law Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition.

The supports to KPPU are also given by the judicial agencies. Within the period of 2000 to 2009, out of 52 Decisions of KPPU for which the objections are filed, 55% or 26 decisions are strengthened by the District Courts, Meanwhile, at the cassation level, 70% or 19 out of 27 cassation motions on the decisions of KPPU are strengthened by the Supreme Court.

The decisions of the Supreme Court which have strengthened the KPPU's decision and have permanent legal effects serve not only as a foundation for the execution of the cases, but also to increase the credibility of KPPU as a competition supervisory body in Indonesia. Such victory can also eliminate the public doubt on the credibility of KPPU, of which cannot also be separated from the growing awareness of the judicial agencies on the competition law.

In addition, KPPU has sustainably developed relations with some parties for their supports on the enforcement of business competition law. At the age of almost nine years, KPPU has developed cooperation with the Supreme Audit Agency (*Badan Pemeriksa Keuangan-BPK*), Government's Goods and Service Procurement Policy Institution (*Lembaga Kebijakan Pengadaan Barang dan Jasa Pemerintah-LKPP*), Indonesian National Police and some universities.

In respect of cooperation with international institutions, the year 2009 is one of the most significant years in improving the roles of KPPU at international level as well as in strengthening its position as the best business competition institution in the Southeast Asia. International recognition on KPPU has encouraged other countries to learn from Indonesia and find out the best practice to be applied in their countries.

Thanking to the experiences obtained within nine years after its establishment, KPPU hopes to be able to meet the agenda and challenges in the year 2010. Through well-planned and measured strategy and approach for the law enforcement, KPPU is optimistic that it will provide greater contributions to the public income saving which will in turn improve the welfare of the whole Indonesian people.

Chairman,

**Tresna P. Soemardi**



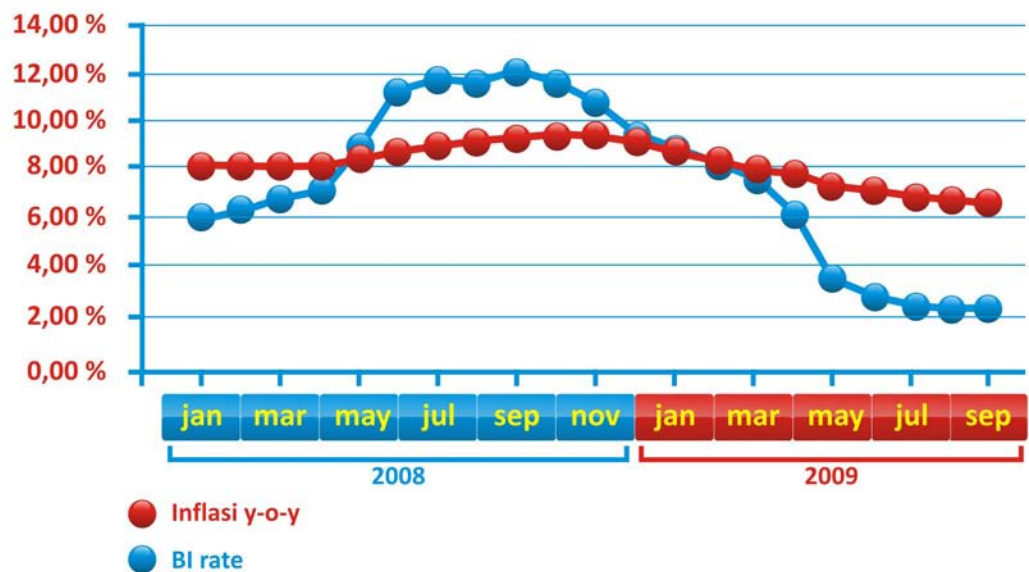
# Economic Outlook 2010





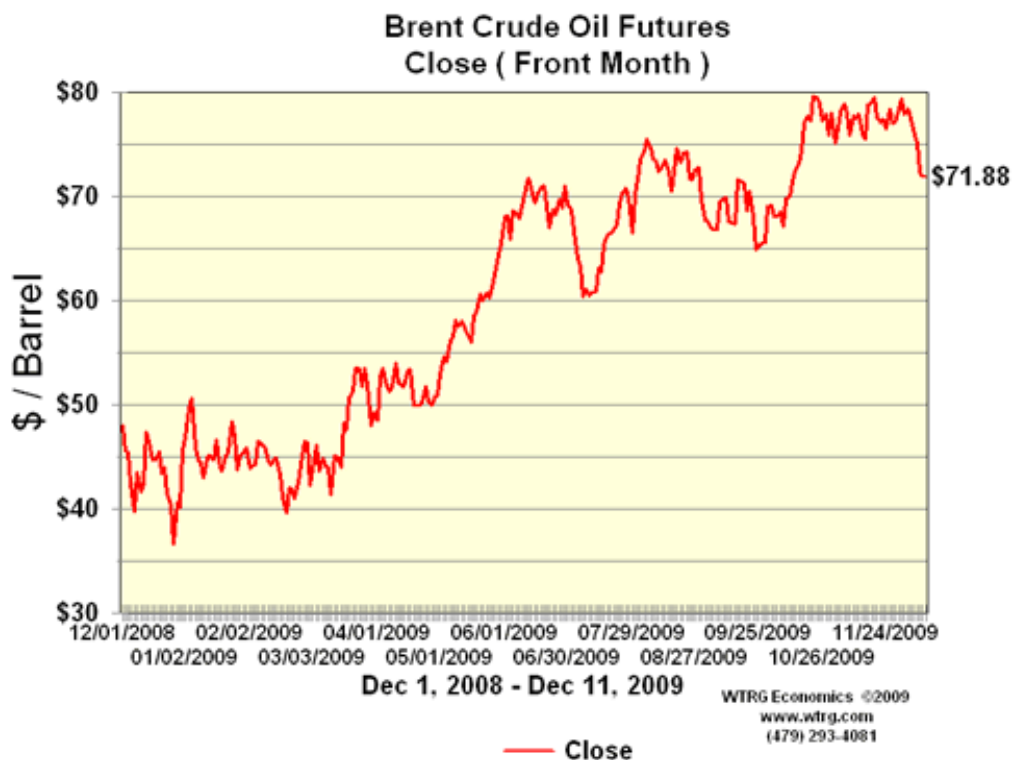
**THE** global financial crisis of 2008 was more or less still influential to the movement of national economy in 2009. In 2007, the growth of the world's economy was quite high, i.e. 5.2%. In 2008, however, the growth of the world's economy slowed down to be 3%, and in the second semester of 2009 it even fell down to negative level of -1.1%. After the third quarter of 2009, however, the world's economy began to move back from depression due to the global financial crisis.

The impact of global crisis to Indonesian economy can be seen from the GDP growth value in the fourth quarter of 2008 that contracted -3.65%. At that time, the inflation was also quite high, reaching its peak in September 2008 of 12.14%. That condition forced Bank Indonesia as the financial authority to peg a quite high BI rate of 9.5% in November and Desember 2008. Also at that time, the national reserve of Indonesia had a decrease of USD 7 billion up to the level of USD 50.18 in November 2008.



Source: Coordinating Minister for Economy of the Republic of Indonesia

Indonesian economy recovered regularly in 2009 as seen from the economic growth of 1.68% in the first quarter and 2.35% in the second quarter. The year-on-year inflation level that already reached two digits in early 2009 declined slowly down to 2.83% in September. This caused Bank Indonesia encouraged to reduce its BI rate to be 6.5 in September 2009. The national reserve also recovered and it was USD 62.28 in September 2009. Another quite significant factor was the decrease of the world's oil price that reached its lowest point of USD 38.45 per barrel, reducing fiscal pressure. Later, the government made use of this moment by reducing the price of subsidized oil fuels, namely low-octane gasoline, kerosene, and diesel oil for transportation. Meanwhile, in the first semester of 2009, the Jakarta Composite Index increased from Rp1,355 to Rp2,027 though there was a time it fell to its lowest level of Rp1,256 in March 2009.

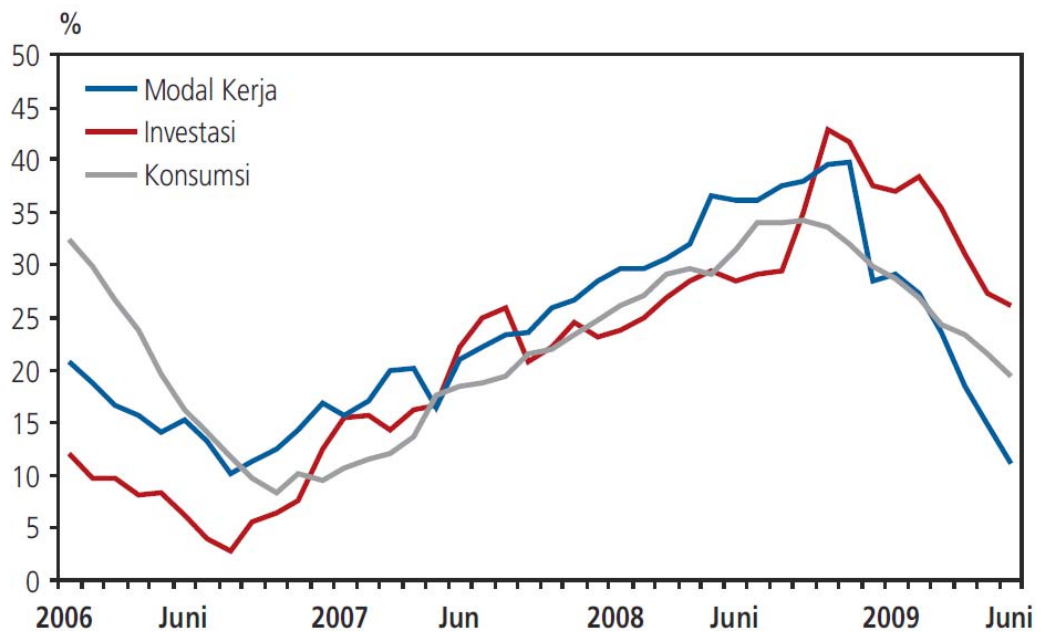


Source: [www.wtrg.com](http://www.wtrg.com)

### Financial Sector

In general, the global crisis of 2008 did not significantly affect financial sector of Indonesia. In banking sector itself, the recovery from global financial crisis of 2008 was quite clear. The people had perception that banks were still a quite good place to invest funds. The data of Bank Indonesia showed that 15 big banks still controlled 71% of the total industrial assets with the value of Rp1,759.5 trillion. There was also an increase in the amount of third parties' funds (whether in the form of saving, deposit, or giro) collected by banks from the public as high as 4.1% reaching Rp1,842.3 trillion. From the perspective of credit, however, the impact of 2008's crisis was still felt with the slow growth of credit in early 2009. This was caused by the reducing business actors' need for credit in real sector, still high credit interest rate, and banks that were still wary in extending their credit. Up to October 2009, the growth of new credit was 4.2%.





Source: Bank Indonesia, 2009

*Modal Kerja = Work Capital; Investasi = Investment;  
Konsumsi = Consumption; Juni = June*

### Real Sector

In real sector, business actors are getting ready to evaluate their performance this year and preparing themselves to enter the year of 2010. At the end of 2009, Indonesian economy was felt improving. From the perspective of supply, several economic sectors increased in 2009 compared to those in the previous year, though the rate was not better than that of the last year.

Improvement in the first and second quarters of 2009 was expected to be continued in the next quarters. Such main sectors that contributed to GDP as processing industry, agriculture, and trade were contributing positively to GDP of 2009. These main sectors were estimated to improve in the fourth quarter of 2009. Performance of other sectors kept growing positively as well. The sector of building and the sector of electricity, gas, and water, and the sector of transportation and communications had a high rate of growth compared to other sectors.

From the perspective of demand, this can be perceived in the growth of GDP of use in the third quarter of 2009, when there was an increase of 3.9% compared to that in the previous quarter. Meanwhile, compared to the third quarter of 2008, Indonesia's GDP in the third quarter of 2009 had an increase of 4.2%. In the fourth quarter of 2009, the household consumption was estimated to increase due to the thrust of seasonal factors just before the year end so that the GDP was presumably growing. Bank Indonesia estimated that the GDP of the fourth quarter of 2009 had a growth of 4.8% (yoy). During the years of 2008 and 2009, the growth of yoy GDP of use had an increase of 4.0 – 6.4%.

### Rate of y-o-y Growth of Gross Domestic Product by Business Field, 2008-2009 (Percent)

Business Field (1)	2008**				2009***	
	I	II	III	IV	I	II
	(2)	(3)	(4)	(5)	(6)	(7)
1. Agriculture, Animal Husbandry, Forestry and Fishery	6.32	4.80	3.43	4.74	5.19	2.39
2. Mining and Quarrying	(1.65)	(0.45)	2.11	2.07	2.43	2.39
3. Processing Industry	4.28	4.23	4.31	1.85	1.50	1.51
4. Electricity, Gas & Water	12.35	11.77	10.41	9.34	11.40	15.41
5. Construction	8.01	8.12	7.57	5.67	6.30	6.37
6. Trade, Hotels & Restaurants	6.87	8.11	8.42	5.55	0.52	(0.10)
7. Transportation and Communications	18.33	17.32	15.53	15.82	17.10	17.51
8. Finance, Real Estate & Company Services	8.34	8.66	8.60	7.42	6.27	5.35
9. Services	5.85	6.74	7.19	6.01	6.81	7.38
Gross Domestic Product	6.25	6.42	6.40	5.18	4.44	3.99
Non-Oil & Gas Gross Domestic Product;	6.74	6.86	6.90	5.60	4.83	4.40

Source: BPS

\*\* Very Temporary Figures

\*\*\* Very Very Temporary Figures

From the perspective of distribution, the biggest contributing components to GDP were private consumption and export. Unrecovered economy of Indonesia's trading partner countries from the crisis of 2008 reduced the contribution of export to GDP. Household consumption expenditures in 2009 were supported by the events of legislative general election, presidential and vice-presidential general election as well as improvement in the people's income. There was also improvement in the sector of investment, mainly due to the improvement of domestic demand and conducive climate for business after the general election.

From the perspective of export-import, the improvement of global economy after the crisis of 2008 gave its contribution to the increase of export. However, according to the data of the Central Bureau of Statistics (BPS) in the third quarter, the y-o-y Indonesian export was still recorded decreasing 8.2% from the previous year. The contribution of Indonesia's non-oil & gas export was still accelerated by such primary commodities as coal or crude palm oil (CPO). From the perspective of import, BPS's data showed a decline of -18,3% in the third quarter compared to that of the previous year. However, improvement in the people's purchasing power and the demand for raw materials and capital goods for production activities, particularly in industrial sector, contributed to the improvement of import.

#### Indonesia's Economic Prospects in 2010

In the World Economic Outlook 2009, IMF provides illustration of the world's economic contraction of 1.4% in 2009. This is influenced by the contraction of economy of developed countries, whereas developing countries will keep growing though it will not be as high as that in the previous year. However, the estimation that the global economy will recover in 2010 is reasonable. The impact of economic stimulus package provided by each country will presumably be felt in that year, resulting in the economic performance of developing countries to grow about 4%, whereas developed countries have 0% growth or no growth at all. Therefore, the world's economic growth in 2010 according to IMF version for that purpose is projected 2.5%.

The growth of Indonesia's GDP so far has enhanced optimism that the economy in 2010 can be better. This optimism is important as encouragement for economic players to achieved targets

that are already planned or to set better targets of achievement. In the Finance Bill of the State Budget, the government and Bank Indonesia has agreed on macro assumptions of 2010, i.e. economic growth level of 5%, inflation of 5%, 3-month Bank Indonesia Certificates of 6.5%, exchange rate of Rp10,000 per USD, oil price of USD 60, and oil lifting level of 0.960 million barrels per day. Those assumptions are based on the consideration of increasing activities of Indonesian economy in line with economic recovery from the storm of global financial crisis.

The recovery of Indonesian economy after the crisis of 2010 is presumably being perceived. It is expected that the economic growth can be achieved at a level higher than that in 2009. It is expected that the increase in the people's purchasing power will be realized in consumption as the stimulating machine for economic growth. In addition, the improvement of global economy is expected to rise the surplus of trading balance. From the perspective of investment, the government needs to make efforts to enhance the attractiveness of investment in regions. Meanwhile, the government's consumption is also expected to keep contributing significantly, among others with support for educational programs, bureaucratic reform, and the people's welfare.

Institutions	2009	2010
Bank Indonesia	3.5%	5.0%
Institute of International Finance	4.5%	5.5%
Indonesian Government	4.5%	5.5%
Asian Development Bank	4.3%	5.4%
World Bank	4.3%	5.4%
The Economist	4.2%	4.5%
International Monetary Fund	4.0%	4.8%
Ekonomist Faisal Basri	6.1%	4.7%

Based on the prediction of some institutions, Indonesian economy in 2009 would grow from 3.5 to 4.5%, whereas in 2010, in line with the recovery of Indonesian economy, the economy is predicted to grow from 4.5 to 5.5%.

Economic Sector	2010
Economic Sector	3.4 – 3.6%
Agriculture, Animal Husbandry and Forestry	0.4 - 1.6%
Mining and Quarrying	3.1 - 3.9%
Processing Industry	10.7 -11.2%
Electricity, Gas, and Water	6.9 - 7.2%
Construction	4.6 - 5.7%
Trade, Hotels & Restaurants	15.2 -16.6%
Transportation and Communications	6.5 - 6.9%
Finance, Real Estate and Company Services	6.5%
Services	5.4 - 5.9%

The growth of sectoral economy in 2010 will still be driven by the growth in the sector of electricity, gas, and water as well as transportation and communications. To that end, the government needs to pay attention to those sectors. KPPU can participate in its capacity to ensure the creation of fair business competition climate in those sectors.

Referring to one of the pillars of the National Medium Term Development Plan of 2010 – 2014, i.e. the strengthening of economic competitiveness, the roles and contribution of KPPU can be more synchronized with the government’s economic programs and policies. Competitiveness is one of the main indicators of the world’s economy reflecting how effective the management of economy and resources in each country is. In connection with that matter, the Indonesia’s competitiveness in 2009 rose a rank higher than that of 2008, being 54th out of 55 countries.

From the index of competitiveness that constitutes the composite of various parameters, there are some sub-parameters related to business competition. Those sub-parameters are competition intensity in domestic market, existence of dominant position and the effectiveness of law and policies on anti-unfair business competition. Indonesia’s rankings in terms of those three parameters are as follows:

Parameter	Ranks of 133 Countries	
	2008	2009
Intensity of Local competition	44	47
Extent of Market Dominance	28	34
Effectiveness of Antimonopoly Policy	29	30

Source: Processed from the Index of Competitiveness, 2008-2009

In terms of ranking, there was a little decline from 2008 to 2009. Overall, however, the majority of respondents and panel experts who are involved in the formulation of competitiveness index still put those three parameters in the category of competitive advantage. Therefore, it can be said that for the context of Indonesia, the competition is more intensive and the implementation of policies and law on competitiveness is relatively effective.

In connection with the improvement of competitiveness formulated by the National Development Planning Agency (BAPPENAS) as one of the pillars of the National Medium Term Development Plan of 2010 – 2014, there are several sub-activities as follows:

- Strengthening of manufacturing industry in line with the strengthening of agricultural and maritime development as well as development in other natural resources in line with regional potencies integratedly;
- Increasing development of science and technology;
- Accelerated development of infrastructures by intensifying cooperation between the government and the business world;
- Improvement of educational quality and relevance;
- Arrangement of economic institutions that stimulate public initiatives;
- Development of infrastructure network for transportation, post, and telematics;
- Increased utilization of renewable energy, particularly bioenergy, geothermal energy, water energy, wind energy, and solar energy for electricity;
- Development of water resources and development of housing and settlement;
- Maritime industry that covers sea transportation, maritime industry, fishery, marine tourism, energy and mineral resources to be developed in synergic, optimal, and sustainable manner.

Out of those points, there are several activities or programs that are very closely related to KPPU’s effort to encourage fair business competition climate in Indonesia. The manufacturing industry strengthening program is very closely related to KPPU’s effort to harmonize industrial

policies, particularly from the perspectives of upstream industry and downstream industry. High concentration on one of the segments (either upstream or downstream) will result in inefficient market and price so as to increase incentives for import. In a condition where the market is concentrated and the price is uncompetitive, it will be very expensive for Indonesia's economic players to conduct the activities of product further processing. In other words, it is easier to import raw materials or finished goods for end consumption. If the interconnection of upstream industry and downstream industry is very strong, then the added values from further processing of various manufacturing sector outputs will be enjoyed by economic players in Indonesia and will reduce demand for import goods, particularly half-finished and finished goods.

In addition to the strengthening of manufacturing industry, KPPU can also give contribution in the program of cooperation between the government and the business world in developing infrastructures. In this case, KPPU will optimize its advocacy function to smooth out the designing and implementation of public private partnership model, particularly in the process of operator selection through tender mechanism (competition for the market) as well as arrangement and fixing of quality and price standards. This is also related to economic institutions strengthening program by encouraging public participation. This program is also related to other programs, i.e. development of infrastructure networks for transportation, post and telecommunication as well as information.

KPPU has several times provided recommendations and considerations to the government about the necessary separation of operator and regulator, particularly for sectors related to public services such as harbors, airports, and the like. By the separated functions, the entry barrier will be minimized, the opportunity for private sector will be more open, the function and quality of regulation will be better and more importantly, the function of supervision over and services to using consumers will be enhanced. In addition, KPPU has made coordination with the Ministry of Communications and Information and the Indonesian Broadcasting Commission (KPI), particularly related to the implementation of competition policies in broadcasting industry and ICT as well as the trend in convergence of regulations for the sector of ICT.

Through some sub-programs mentioned above, it is evident that KPPU's roles and contribution in the next five years will be more strategic. In order to have synchronization with government programs as outlined in the National Medium Term Development Plan of 2010-2014, KPPU will focus on several sectors of public services and infrastructures as well as the sector of highly concentrated manufacturing industry. In this case, KPPU will more optimize its function of advocacy and recommended considerations to achieve maximum results before using repressive function of law enforcement. Through KPPU's contribution, it is expected that there will be more significant improvement in the rank of Indonesia's competitiveness as measured in the competitiveness index formulated by the World Economic Forum. 🏆



# CHAPTER 1

Introduction







**AT** the end of 2009, as an indication of one decade of Law No.5 Year 1999, and nine years of duties of KPPU in the enforcement of competition law in Indonesia were marked by various KPPU's accomplishments and successes in an effort to realize a clean and fair KPPU business climate.

As mandated by laws and regulations, KPPU has the duties and authorities to carry out preventive and legal actions against violations of business competition law and to provide the recommendations and considerations to government and related state agencies. Despite of various constraints, KPPU has made various attempts to enforce competition law in Indonesia. Even, in the 9-year-old anniversary of KPPU, a United Nations Organization's agency under the name of IGE-UNCTAD (*United Nations Conference on Trade and Development*) has awarded and appreciated KPPU in recognition of its good performance in the implementation of competition policies and laws in Indonesia. KPPU was referred to as the reflection of "how a young and dynamic competition authority can be a model for other countries."

In the course of 9 years of law enforcement on business competition, KPPU noted that 84% of the total cases being currently handled are still dominated by tender conspiracies, especially on various tenders in governmental agencies in which these conspiracies contain huge potential chances for fostering collusion and corruption practices. In addition to tender conspiracies, there have been also cartels' unfair behaviors, abuses of dominant position, mergers and acquisitions, and other forms of conspiracy undertaken by business actors with an expectation to earn supernormal profits. Through these supernormal profits, business actors are able to set aside somewhat a large amount of fund as a fund potential to commit corrupt practices in order to maintain the status quo or even business expansion. Likewise, only the government officials will become stronger and richer from the gifts of related business actors. The policies and regulations are used to enrich themselves and maintain their powers. And it is so with the win-win principle that has become a vicious circle that is difficult to break.

Through the law enforcement, efforts for fair competition will promote the establishment of *level playing field*. The government policies and regulations will also pay more attention to accessibility, equal treatment and opportunities for business actors without any discrimination. The communities will certainly be more prosperous for they are capable of expenditure management or income saving and doing rational choices in the market. While the business is capable of increasingly growing great if the competition climate grows more and more fair because the competition will drive increased efficiency, productivity, and competitiveness. The business actors will keep profit-making at a reasonable and sustainable level. Furthermore, with profits at the reasonable level, the smaller the chances are for business actors to bribe relevant officials.


In doing some efforts to affirm commitments to promoting (a) increased awareness and behavior changes by the community and decision makers, (2) increased welfare improvement of the community; (3) *equality*, and (4) opportunity, in 2009 KPPU fixed a number of priority programs as parts of an effort to safeguard public interests in controlling strategic sectors with particular indications as follows:

1. Excessive unfair pricing.
2. Scarce supply of goods / services.
3. Low quality of public services undertaken by State-owned Enterprises (BUMN) with monopolistic rights or domination market shares of more than 50%.
4. Low competitiveness in provision of a concession/license and a monopoly right by the government, including the procurement of goods/services.

KPPU expected that, at the end of Year 2009, the priority program will provide slight significant changes in such strategic sectors as tariffs/prices in terms of tariff/price decreases, ongoing smooth supply and distribution, increasing quality of public services, and procurement of goods and services as well as more increasingly transparent and competitive business licensing.

In the meanwhile, the focus of supervision in 2009 was aimed at strategic economic sector that showed indications of monopolistic practices and or unfair business competition, such as infrastructure, energy, upstream and downstream oil and gas, transportation and logistics, public health services, agriculture sector including agro-industry, and Small and Medium Enterprises/SMEs (UKM).

To support the achievement of commitments and carry out its supervisory function, KPPU implement six activities in which measured performance (output) is generally increasing. These activities include:

1. Law enforcement
2. Industrial Assessment
3. Implementation of policy evaluation
4. Provision of recommendations and considerations
5. Dissemination and advocacy
6. Cooperation and coordination among national and international institutions 

# CHAPTER 2

Law Enforcement in Business Competition

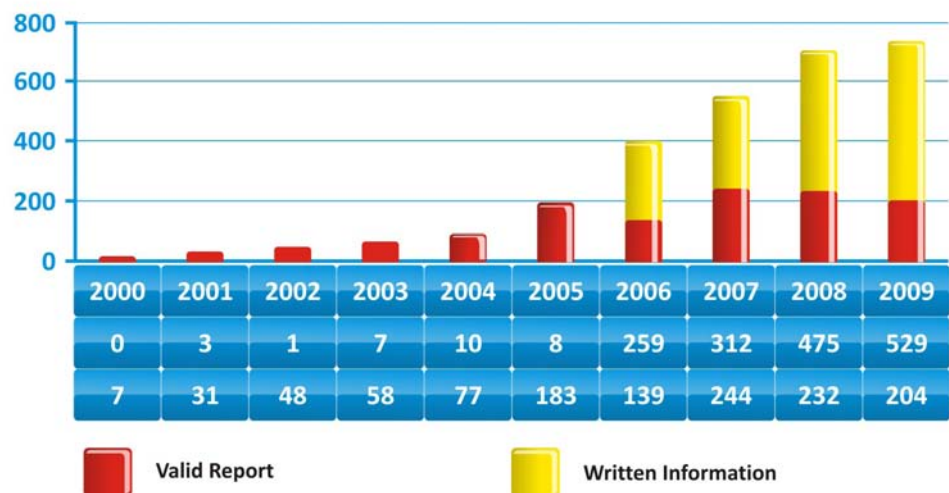




## 2.1 Report Handling

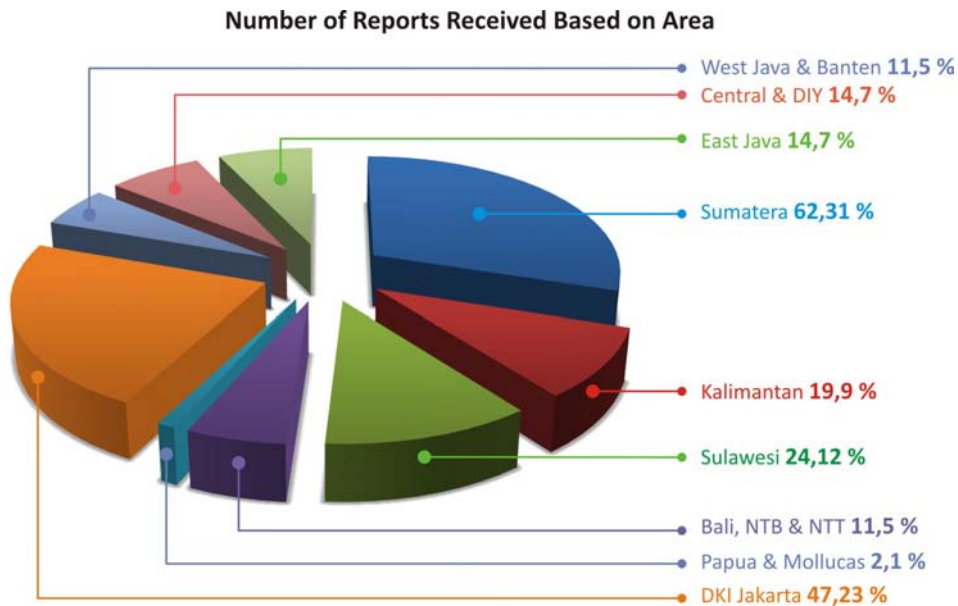
During 9 years since the establishment of KPPU, it has shown the activity outputs of increased law enforcement. In terms of report handling, KPPU received two kind of reports, namely written reports and written pieces of information, both numbering 2827. While as of December 2009, KPPU received 733 reports from various areas. The reports consisted of 204 written reports and 529 written pieces of information. There was an increase compared to last year reports with 707 reports.

**Number of Reports to KPPU 2000-2009**



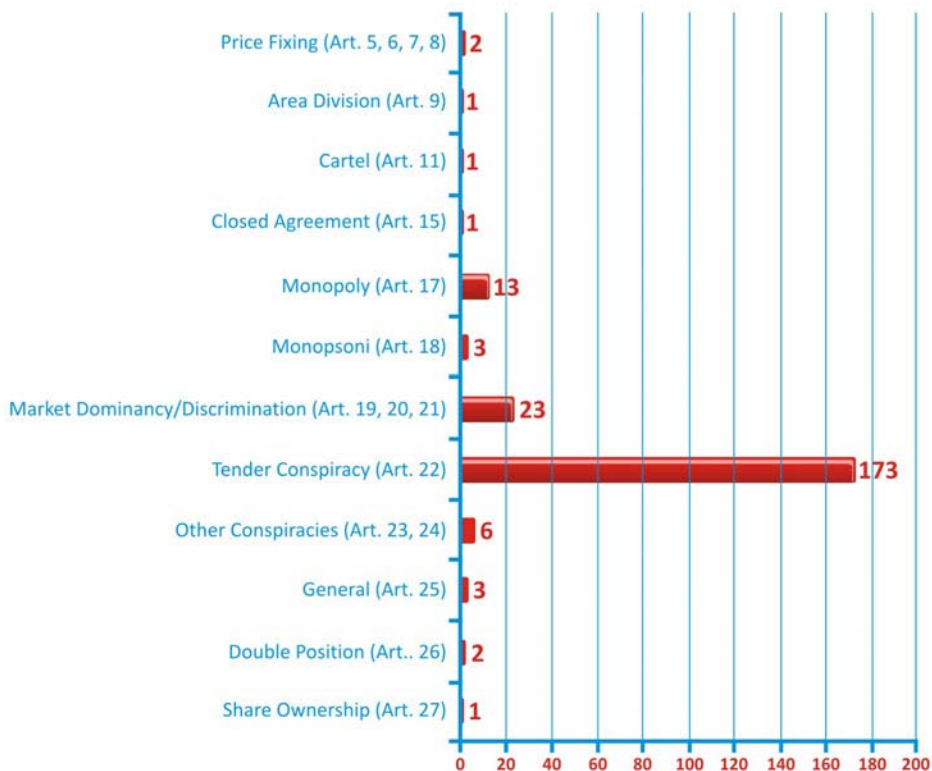
From the Table above, it appears that the number of written reports is less than that of last year, namely 232 reports. This is because people prefer to provide written information as shown by the amount of written information which increased compared to last Year.

In view of sources areas, most reports came from Sumatera, as shown in the following.



In view of types of reported alleged articles, the reports coming into KPPU were still dominated by those on tender conspiracy, namely 173 (84.8%) out of 204 written reports. In the last three years, the trends for types of reports have been increasingly diverse. This shows that the community has continued to understand that KPPU is not just an institution that oversees the tender conspiracy. This may be realized from the reports containing mergers, consolidations, acquisitions, share ownerships, double positions, monopsonies, closed agreements, and others.

### Variation of Assumed Violations Based on Article

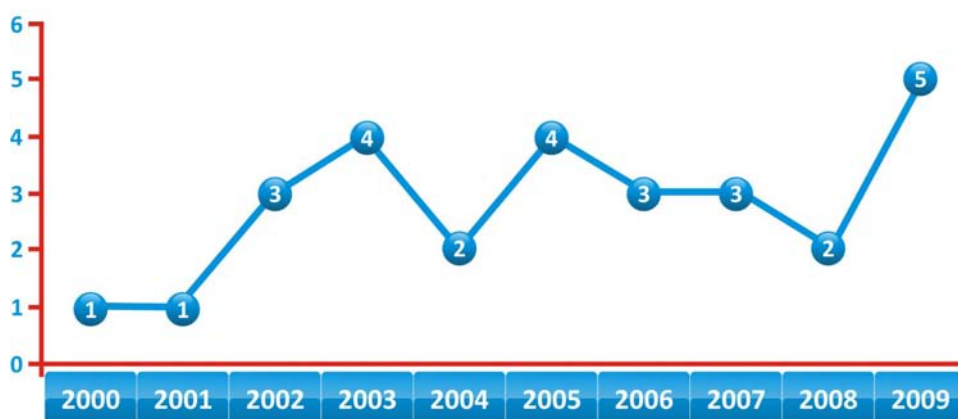


## 2.2 Case Handling

Meanwhile, in terms of case handling, during the period of January to December 2009, KPPU handled 35 cases which included 30 cases from public reports and 5 initiative cases.

The number of the initiative cases in 2009 increased somewhat significantly if compared to that in 2008. This is due to the fact that KPPU have had adequate human resources to conduct surveillance and research over existing competition issues.

**Initiative Case 2000-2009**



In terms of case handling for a period of 9 years, the case composition handled by KPPU showed that 85% of the cases were related to government procurement of goods and services. The cases on competition in procurement of goods and services are related to horizontal and vertical conspiracies. In some cases, the conspiracies occurred were the combinations of horizontal and vertical conspiracies.

Consistent law enforcement on the conspiracy issue of government goods/service procurement and various unfair competition issues has raised relevant parties' awareness to hold consultations and discussions with KPPU in order not to violate the provisions in Law No.5 Year 1999.

**Increased Community Awareness Through Consultations and Discussions in 2009**



Horizontal conspiracy is a conspiracy that takes place between business actors or goods & service providers and other competing business actors or goods & service providers. While vertical conspiracy is one that takes place between one or some of business actors or goods & service suppliers and a tender/bid committee or a goods & service user or a service owner/provider.

In 2009, 169 reports out of 201 reports (84%) of the number of reports handled by KPPU were reports on conspiracy cases, while the number of conspiracy cases in 2008 were 189 reports (79%) out of 230 reports. This indicates the community's high expectation for the roles of KPPU to handle tender conspiracy.

### 2.3 Decisions of KPPU

In 2009, KPPU announced the decisions for 30 cases, namely 26 cases of alleged tender conspiracy and 4 non-tender cases. The decisions are:

1. Case Number 34/KPPU-L/2008 regarding Alleged Violation against Article 22 of Law No.5 Year 1999 in connection with Conspiracy of Tender Process for Procurement of Goods and Services in Public Works Office (*Dinas Pekerjaan Umum*) of Kepahiang District, Bengkulu Province for Fiscal Year 2007
2. Case Number 38/KPPU-L/2008 regarding Alleged Violation against Article 22 of Law No.5 Year 1999 in connection with Tender for Improvement of Road Segment / Connecting Road between Beras Jiring and UPT Binangon, Muara Komam Subdistrict in Manpower and Transmigration Provincial Office of East Kalimantan, Fiscal Year 2007
3. Case Number 39/KPPU-L/2008 regarding Alleged Violation against Article 22 of Law No.5 Year 1999 in connection with Tender for Procurement of Visual Aids, Books for Intensive Study/Reference, and Multimedia Facility at Madiun Municipality Educational Office of Fiscal Year 2007
4. Case Number 41/KPPU-L/2008 regarding Alleged Violation against Law.5 Year 1999 in connection with Alleged Conspiracy on Procurement Tender of TVs, DVDs and antennas at Provincial Education Office of North Sumatera Fiscal Year 2007
5. Case Number 42/KPPU-L/2008 regarding Alleged Violation against Law. 5 Year 1999 in connection with Alleged Conspiracy in Tender for Procurement and Installation of Road Markings 55.000 Meters in Working Unit of Development on Traffic and Road Transportation of East Java Province, Fiscal Year 2007
6. Case Number 43/KPPU-L/2008 regarding Alleged Violation against Law No.5 Year 1999 related to Tender for Construction of Senior High School (SMU) / Vocational High School (SMK) with the Work Package of Rehabilitation of Vocational High School/SMK 4 in Jl. KH. Achmad Dahlan by Provincial Agency for Housing and Development for Samarinda Municipality, Fiscal Year 2007
7. Case Number 45/KPPU-L/2008 regarding Alleged Violation against Article 22 of Law No.5 Year 1999 in Tender for Procurement and/or Copying of Modules/ Books for Informal School Education in Provincial Office of Education and Culture of East Java, Fiscal Year 2007
8. Case Number 47/KPPU-L/2008 regarding Alleged Violation against Article 22 of Law No.5 Year 1999 in connection with Conspiracy in Project Tender for National Information Communication Technology Human Resources Development (NICT-HRD) Year 2007



9. Case Number 49/KPPU-L/2008 regarding Alleged Violation against Article 22 of Law No.5 Year 1999 in connection with Tender for Procurement of Medical Equipment called Polysomnograph (PSG) in Duren Sawit Hospital by DKI Jakarta Provincial Office of Health, Fiscal Year 2007
10. Case Number 53/KPPU-L/2008 regarding Alleged Violation against Article 9 of Law No.5 Year 1999 in connection with Regional Division Conducted by Indonesian Association of Electrical and Mechanical Contractors (*Asosiasi Kontraktor Listrik dan Mekanikal Indonesia/AKLI*).
11. Case Number 57/KPPU-L/2008 regarding Alleged Violation against Article 22 of Law No.5 Year 1999 in connection with Procurement for Material of MFO-ization Preparation for Machinery MAK 8M AK 453 NS: 26841 up to 26844 for Tenau Diesel-Fueled Electricity Generation (PLTD) of PT PLN (Persero), NTT Area, Kupang Branch, Year 2007
12. Case Number 58/KPPU-L/2008 regarding Alleged Violation against Article 22 of Law No. 5 Year 1999 in connection with Tender for Procurement of Service (Contract) of Construction for Agency for Riverine Area VI of Sumatra, Fiscal Year 2007
13. Case Number 60/KPPU-L/2008 regarding Alleged Violation against Article 22 of Law No.5 Year 1999 in connection with Tenders for Procurement of Pipes and Accessories at Tirta Raharja PDAM, Bandung District, Fiscal Year 2008
14. Case Number 62/KPPU-L/2008 regarding Alleged Violation against Article 22 of Law No.5 Year 1999 in connection with Tender for Procurement of Goods/ Services for SNVT Construction of Roads and Bridges in Sumbawa, Improvement Package for Sejongong Tetar Lunyuk Road, Fiscal Year 2008
15. Case Number 64/KPPU-L/2008 regarding Alleged Violation against Article 22 of Law No.5 Year 1999 on Tender for Procurement of Government Goods and Services, for Activities of Flood Control and River Improvement of Pontianak Municipality, Fiscal Year 2008
16. Case Number 65/KPPU-L/2008 regarding Alleged Violation against Article 15 paragraph (2), Article 17 paragraph (1) and Article 25 paragraph (1)a of Law No.5 Year 1999 in connection with Service Provisions for Check-In Counter Facilities at Juanda Airport in Surabaya
17. Case Number 66/KPPU-L/2008 regarding Alleged Violation against Article 22 of Law No. 5 Year 1999 in connection with Conspiracy in Tender Process for Development of Facilities and Infrastructures for National Sports Games (PON) XVII Year 2008, Package for Establishment of Hang Gliding Arena in District Agency for Public Works (*Dinas PU*) of Kutai Kartanegara District, Fiscal Year 2008
18. Case Number 67/KPPU-L/2008 regarding Alleged Violation against Article 22 of Law No. 5 Year 1999 in connection with Tender for Procurement and Installation of Road Traffic (*Lalu Lintas Jalan/LLJ*) Safety Facilities in Working Unit for Road Traffic and Transportation (*Lalu Lintas dan Angkutan Jalan/LLAJ*) of South Kalimantan, financed from 2007 State Budget

19. Case Number 01/KPPU-L/2009 regarding Alleged Conspiracy of Tender for Work of Micro- Hydro Power Plant, Solar Energy Power Plant, Wind Energy Power Plant for Fiscal Year 2008, the Directorate General of Electricity and Energy Uses under the Ministry of Energy and Mineral Resources
20. Case Number 02/KPPU-L/2009 regarding Alleged Violation against Law.5 Year 1999 in connection with Tender Conspiracy for Interior and Furniture Works for Construction of Riau Library Building, Office Building Construction Activity (Riau Multi-Year Library Building) within Provincial Agency for Settlement and Regional Infrastructure (*Dinas KimPrasWil*) in Riau Province, *Bidang Cipta Karya*, Fiscal Year 2008
21. Case Number 03/KPPU-L/2009 regarding Alleged Violation against Law. 5 Year 1999 in connection with Conspiracy for Tender of Periodic Maintenance Project of Crossing Road between Pinang City and South Tapanuli (Tapsel) Borders in Labuhan Batu District, Fiscal Year 2008
22. Case Number 04/KPPU-L/2009 regarding Alleged Violation against Article 22 of Law No. 5 Year 1999 in connection with Conspiracy of Tender for Cleaning Service and Arrangements within Building in Duri Damai (Package I-No:5453-XK) and Rumbai-Minas (Package II-No.5454-XK) within PT Chevron Pacific Indonesia
23. Case Number: 05/KPPU-L/2009 regarding Alleged Violation against Article 22 of Law No.5 Year 1999 on Tender for Activity of Event Organizer (EO) for National Skill Competition for Student (*Lomba Keterampilan Siswa/LKS*) of National Vocational High Schools (SMK), Provincial Educational Office of South Sulawesi, Fiscal Year 2008
24. Case Number: 06/KPPU-L/2009 regarding Alleged Conspiracy of Tender for Package of Replacement of Concrete Bridge in Padang Rejo A1 village, Concrete Casting of Tanah Mas Road, Talang Kelapa Subdistrict and Concrete Casting of Serasi II Road in Talang Kelapa Subdistrict of South Sumatra Province.
25. Case Number: 07/KPPU-L/2009 regarding Alleged Violation against Article 22 of Law No.5 Year 1999 in connection with Tender for Construction of Irrigation Dam Sei Lengan Phase I, Sei Lengan Subdistrict and for Construction of City Ring Road Phase I, Babalan Subdistrict, in Provincial Office
26. Case Number: 08/KPPU-L/2009 regarding Alleged Conspiracy for Tender of Procurement and Construction of Substation/Distribution Transformer, HUTM, and HUTR in North Sumatra at the Ministry of Energy and Mineral Resources, Directorate General of Electricity and Energy Uses, Working Unit of Rural Electricity, North Sumatera
27. Case Number: 09/KPPU-L/2009 regarding Alleged Violation against Monopolistic Practises and/or Unfair Business Competition for Acquisition for Alfa by PT Carrefour Indonesia
28. Case Number: 10/KPPU-L/2009 regarding Alleged Violation against Law.5 Year 1999 in connection with Fee (Commission) Arrangement for Sales of Flight Tickets to Sub-Agents by the Ticketing Agent Association (*Asosiasi Agen Ticketing/ASATIN*) in West Nusa Tenggara Province.

29. Case Number: 11/KPPU-L/2009 regarding Alleged Violation against Article 22 of Law No.5 Year 1999 in connection with Tender for Work of Optimization of WTP (2x20) Liters/Second to 100 Liter/Second in UPT-AB Siak Subdistrict and Optimization of Water Management Installation UPT-AB of Mempura Subdistrict in Public Works Office for Settlement and Regional Infrastructure (*Dinas Pekerjaan Umum Kimpraswil*), Siak District, Riau Province, Fiscal Year 2008
30. Case Number: 13/KPPU-L/2009 regarding Alleged Violation against Article 22 of Law No.5 Year 1999 in connection with Tender for Renovation Implementation of Rindu B Building in H. Adam Malik Central General Hospital - Medan, Fiscal Year 2008

Accordingly, it is recorded that since its establishment, KPPU has announced 141 decisions on the cases it handled, as seen in the following graph:



#### 2.4 Monitoring of Decisions and Legal Actions

During 2000-2009, KPPU dealt with 205 alleged cases on unfair business competition. Out of this number, 141 cases were decisions by KPPU and 45 cases were discontinued. Out of 141 decisions made by KPPU, 52 decisions were objected by the parties and addressed to the Court of Law (*Pengadilan Negeri/PN*). At the Court of Law (*PN*) level, about 55% or 26 decisions of KPPU were strengthened. This was quite encouraging, because 70% or 19 out of 27 proposed appeals against the decision of KPPU were reinforced by the Supreme Court (*Mahkamah Agung/MA*). This showed that the Court of Law was of the the same opinion with KPPU on the truth in divulging of evidence, an investigation process that had met the *due process of law* and the dictum of imposed decision.

In connection with the Indonesian Supreme Court’s decision (Mahkamah Agung RI) that affirmed the Commission for the Supervision of Business Competition’s decision No.11/KPPU-I/2005 regarding Distribution of *Semen Gresik* conducted by the Consortium of Distributors of Semen Gresik region IV, on 5<sup>th</sup> February 2009, PT Semen Gresik (Persero) Tbk. already paid a fine as fixed by KPPU, i.e. Rp.1.000.000.000,- (one billion rupiahs).

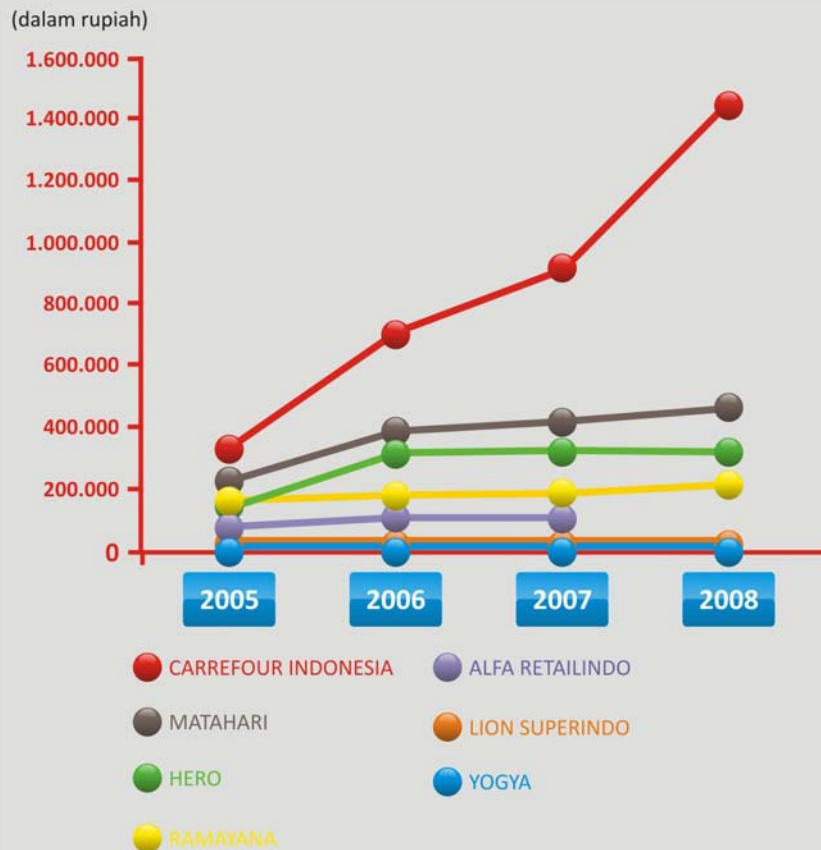
**DECISION OF CASE No 09/KPPU-L/2009  
REGARDING  
MONOPOLISTIC PRACTICE AND UNFAIR BUSINESS COMPETITION  
UPON THE ACQUISITION FOR PT. ALFA RETAILINDO**

**BY PT. CARREFOUR INDONESIA**

KPPU through the Commission Assembly (*Majelis Komisi*) consisting of Ir. Dedie S. Martadisastra, S.E., M.M., as the Chairman of the Commission; Prof. Dr. Tresna P. Soemardi, Dr. A.M. Tri Angraeni, S.H., M.H., Benny Pasaribu, Ph.D. and Prof. Dr. Ir. H. Ahmad Ramadhan Siregar, M.S each as a Member of the Commission, has supervised and decided the case of alleged violation against Article 17 paragraph (1), Article 20, Article 25 paragraph (1)a, and Article 28 paragraph (2) of Law No.5 Year 1999 in relation with Monopolistic Practices and Unfair Business Competition on the acquisition for PT. Alfa Retailindo (“the Alfa”) by PT. Carrefour Indonesia (“Carrefour”).

This case originated from public reports related to the Carrefour’s alleged monopoly through its acquisition for the Alfa in January 2008. After passing through a series of clarifications and examinations on these reports, in March 2009 KPPU decided that the Carrefour’s acquisition for the Alfa was a matter of competition and began undertaking measures of examination.

Based on pieces of evidence obtained during examination, the Carrefour’s market share knowingly increased by 57.99% (2008) after its previous acquisition for the Alfa by 46.30% (2007) on the upstream market of goods/service supplies that legally qualified for “monopoly” and “dominant position”. In complete details, the revenues from the upstream markets were as follows:



**The percentages of revenues may be found in the following table:  
Upstream Market Shares of Hypermarkets and Supermarkets  
in Indonesia Year 2005-2008**

Retailer	2005	2006	2007	2008
MATAHARI	22.53%	22.49%	21.14%	18.58%
CARREFOUR INDONESIA	32.49%	40.82%	46.30%	57.99%
RAMAYANA	16.46%	10.13%	9.52%	8.61%
HERO	15.82%	18.45%	16.40%	13.03%
ALFA RETAILINDO	9.21%	6.12%	4.79%	
YOGYA	0.31%	0.21%	0.23%	0.29%
LION SUPERINDO	3.19%	1.79%	1.62%	1.51%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Furthermore, examination results showed that the Carrefour's market domination and dominant position were misused towards suppliers by increasing and pushing the discounts of purchase prices of the suppliers' goods through schemes known as

"trading terms." After the acquisition for the Alfa, the reductions of trading terms to suppliers increased in a range of 13% and 20%. In addition, pieces of evidence were also found that the suppliers for the Alfa were forced to supply the Carrefour after the acquisition. The suppliers were powerless to resist increased price discounts because the suppliers' actual sales value in the Carrefour were slightly significant in order that the suppliers inevitably followed all of the Carrefour's wills although the reductions of trading terms have been increasingly burdensome towards suppliers.

Therefore, the Commission Assembly (*Majelis Komisi*) considered that there have been valid and convincing pieces of evidence that the Carrefour violated Article 17 paragraph (1) and Article 25 paragraph (1)a of Law No.5 Year 1999.

Related to the alleged violations of Article 20 of Law No.5 Year 1999 regarding selling with loss (*jual rugi*) undertaken by the Carrefour against traditional markets, the Commission Assembly could not perform an analysis due to the fact that the Supervising Team did not carry out further investigation on the matter.

In connection with the effectiveness of Article 28 of Law No.5 Year 1999, the Commission Assembly declared that all the factors/elements in Article 28 of Law No.5 Year 1999 were already fulfilled, but with the absence of Government Regulation until today which is a formal requirement for the effectiveness of Article 28 of Law No.5 Year 1999, then the Commission Assembly, for legal interests, can not affirm that the Carrefour Party has violated Article 28 paragraph (2) of Law Number 5 Year 1999;

Based on the facts and evidence obtained in the Commission Assembly Meeting, the Assembly decided the following:

- a. To affirm that PT. Carrefour Indonesia is legally and convincingly proved to have violated Article 17 paragraph (1) and Article 25 paragraph (1)a of Law Number 5 Year 1999;
- b. To affirm that PT. Carrefour Indonesia is not proved to have violated Article 20 and Article 28 paragraph (2) of Law Number 5 Year 1999;
- c. To order PT. Carrefour Indonesia to release all of its ownership in the PT. Alfa Retailindo, Tbk. to any party not affiliated with PT. Carrefour Indonesia at the latest one year after this decision has a fixed legal power;

To penalize the Reported Party, PT. Carrefour Indonesia, to pay a penalty of Rp.25,000,000,000.00 (twenty five billion rupiah) that shall be paid to the State Treasury Office (*Kas Negara*) as a penalty revenue for violation of business competition of the Ministry of Trade, Secretariat General for Task Unit of KPPU (*Departemen Perdagangan, Sekretariat Jenderal Satuan Kerja KPPU*) through a state-owned bank with an acceptance code 423 755 (Penalty Revenue for Violation against Business Competition / *Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha*);

### ***KPPU-RI Requested ASTRO to Immediately Implement the Supreme Court's Decision***

The Supreme Court of the Republic of Indonesia on 28<sup>th</sup> May 2009 rejected the Reported Party's request that comprised ESPN STAR Sports (ESPN) and All Asia Multimedia Networks, FZ-LLC (AAMN) and affirmed the decision of KPPU Number 03/KPPU-L/2008 (Decision on Astro). The Commission for the Supervision of Business Competition of the Republic of Indonesia (KPPU-RI) accepted such a Supreme Court's decision. This means that the facts and legal considerations as bases for decision-making by the Commission Assembly of KPPU were accurate and correct.

The Supreme Court's decision also confirmed that the examination process and decision making by KPPU was run professionally and independently based on a *due process of law*, as stipulated in Law No.5 Year 1999. Therefore, it was no longer appropriate if the Commission for the Supervision of Business Competition's decision was interrelated with other things outside the process and the case.

As it was understood, the decision on Astro issued by KPPU on 29<sup>th</sup> August 2008 has decided to:

- a. State that the Reported Party III: ESPN STAR Sports and the Reported Party IV: All Asia Multimedia Networks, FZ-LLC were proven legally and convincingly to have violated Article 16 of Law No.5 Year 1999;
- b. State that the Reported Party I: PT Direct Vision and the Reported Party II: Astro All Asia Networks Plc were not proven to have violated Article 16 of Law No.5 Year 1995;
- c. State that the Reported Party I: PT Direct Vision and the Reported Party II: Astro All Asia Networks Plc and the Reported Party IV: All Asia Multimedia Networks, FZ-LLC were not proven to have violated Article 19 paragraphs a and c of Law No.5 Year 1999;
- d. Declare the cancellation of an agreement between the Reported Party III: ESPN STAR Sports and the Reported Party IV: All Asia Multimedia Networks, FZ-LLC in connection with control and placement of broadcasting rights of 2007-2010 Barclays Premiere League or the Reported Party IV: All Asia Multimedia Networks, FZ-LLC shall revise the agreement with the Reported Party III: ESPN STAR Sports in connection with control and placement of Barclays Premier League broadcast rights of 2007-2010 season to be actualized by a competitive process among TV operators in Indonesia;
- e. Order the Reported Party IV: All-Asia Multimedia Networks, FZ-LLC to maintain and protect consumer interests in pay-TV in Indonesian while keep maintaining continual business relationships with PT Direct Vision, and not stopping the provision of all services to customers until legal settlements on the ownership status of PT Direct Vision;

The Reported Parties had made use of their rights for legal actions for Objection to the Commission for the Supervision of Business Competition's decision. But such legal actions were rejected by a Decision of the Central Jakarta District Court (*Putusan Pengadilan Negeri Jakarta Pusat*) which is currently confirmed with the issue of a Supreme Court's decision (*Putusan Kasasi MA*).

Thereby, it is irrelevant if still any Party questions the Decision of Astro with consumer protection efforts conducted by the Commission for the Supervision of Business Competition (KPPU-RI) as an effort to create a fair competition environment in the provision of pay-TV contents.

The Commission for the Supervision of Business Competition of the Republic of Indonesia (KPPU-RI) wishes to re-affirm that every decision taken always follows the process of case handling under the law as regulated in Law No.5 Year 1999 by always maintaining the professionalism, independence, and integrity. Like other state agencies, the Commission for the Supervision of Business Competition of the Republic of Indonesia (KPPU-RI) always wanted to show the best and measurable performance. But we realize also that achieving the performance is not easy due to various obstacles and challenges both from within and from outside.

Finally, by decision of the Supreme Court of the Republic of Indonesia, the decision of Astro has had a fixed legal power (*inkracht van gewijsde*). For this reason, the Commission for the Supervision of Business Competition of the Republic of Indonesia (KPPU-RI) requested the related parties to accept this decision as a legal truth and shall carry out the things ordered as put down in the Decision of the Supreme Court of the Republic of Indonesia.

This decision also represents a lesson for every business actor and all consumer institutions in Indonesia. In the future, a business actor shall consider customers' interests, since the business competition law in Indonesia was designed primarily to protect public interests and national efficiency in order to improve the welfare of Indonesian citizens.

## 2.5 Monitoring of Business Actors

In this year, KPPU completed 25 monitoring activities at the Central Commission for the Supervision of Business Competition (KPPU Pusat) - Jakarta and 10 monitoring activities conducted at the Regional Representative Offices (*Kantor Perwakilan Daerah/KPD*).

The monitoring activities by the Central Commission for the Supervision of Business Competition (KPPU Pusat) are as follows:

1. Monitoring of Alleged Pricing in Sales of Non-Subsidy Fuel;
2. Monitoring of Alleged Cartel and Pricing in Palm Oil Industry in Indonesia;
3. Monitoring of Alleged Monopolistic Practices in LPG Distribution;
4. Monitoring of Alleged Cartel Practices in Cement Marketing Procedures;
5. Monitoring of Alleged Monopolistic Practices in Central Java Power (Tanjung Jati B);
6. Monitoring of Alleged Monopolistic Practices in the Fixings of Airline Ticket Fares and Fuel Surcharge Tariffs;
7. Monitoring of Alleged Monopolistic Practices by the State-owned Electricity Enterprise (PLN) in Fuel Procurement;
8. Monitoring of Alleged Monopolistic Practices in Provision of Taxi Services in Semarang;
9. Monitoring of Alleged Monopolistic Practices in Provision of Taxi Services in Jakarta;
10. Monitoring of Alleged Monopolistic Practices in Fertilizer-Producing Industry;
11. Monitoring of Alleged Monopolistic Practices in Pharmaceutical Industry;
12. Monitoring of Alleged Monopolistic Practices in Beef Trading;
13. Monitoring of Alleged Monopolistic Practices in Soybean Industry in Indonesia;
14. Monitoring of Alleged Monopolistic Practices in Milk Processing Industries;
15. Monitoring of Alleged Monopolistic Practices in National Film Distribution;
16. Monitoring of Alleged Cartel and Area Division in Books Production in Indonesia;
17. Monitoring of Alleged Monopolistic and Discriminative Practices in Chlorine Industry in Indonesia;
18. Monitoring of Alleged Monopolistic Practices in Books Production in Indonesia;
19. Monitoring of Alleged Monopolistic Practices in Pulp & Paper Industry in Indonesia;
20. Monitoring of Alleged Monopolistic Practices Monitoring in Industry of Refined Sugar and Sugar for Consumption in Indonesia;
21. Monitoring of Alleged Monopolistic Practices in Poultry Breeding Industry (Day Old Chick/DOC);
22. Monitoring of Alleged Monopolistic Practices in Banking Industry in Indonesia;
23. Monitoring of Alleged Monopolistic Practices in Hypermarket Retailing Industry in Indonesia;
24. Monitoring of Alleged Monopolistic Practices in Arrangement of Jakarta Fair (*Pekan Raya Jakarta/PRJ*);
25. Monitoring of Alleged Monopolistic Practices in Tender for Senoro-Donggi.

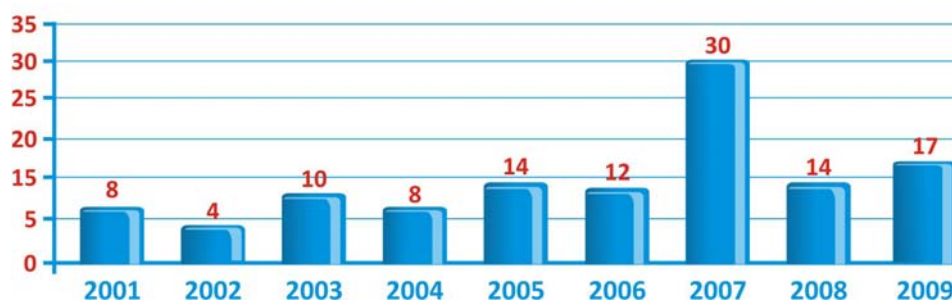


The monitoring actions by KPD are as follows:

1. Monitoring of Alleged Monopolistic Practices in Airport Taxi Service carried out by the Airport Taxi Cooperative (*Kopsidar*) at Hasanuddin Airport in Makassar;
2. Monitoring of Alleged Monopolistic Practices in Airport Taxi Service carried out by the Navy Primary Cooperative (Primer Koperasi Angkatan Laut / Primkopal) - Juanda at Juanda Airport in Surabaya;
3. Monitoring of Alleged Monopolistic Practices in Seaport Stevedoring of KPD Work Area Surabaya;
4. Monitoring of Alleged Monopolistic Practices in Seaport Stevedoring of KPD Work Area Medan;
5. Monitoring of Alleged Monopolistic Practices in Seaport Stevedoring of KPD Work Area Batam;
6. Monitoring of Alleged Monopolistic Practices in Seaport Stevedoring of KPD Work Area Balikpapan;
7. Monitoring of Alleged Monopolistic Practices in Seaport Stevedoring of KPD Work Area Makassar;
8. Monitoring of Alleged Monopolistic Practices in Coffee Processing Industry in North Sumatra, Nanggroe Aceh Darussalam and West Sumatra;
9. Monitoring of Alleged Monopolistic Practices in Distribution of Fertilizer in Eastern Indonesia;
10. Monitoring of Alleged Monopolistic Practices in the Bid for Development of Kepulauan Riau Province Capital Area on Pulau Dompak.

During the 2000 to 2009 period, the Commission for the Supervision of Business Competition of the Republic of Indonesia (KPPU-RI) carried out monitoring 117 times, as shown in the following graph:

**Monitoring of Business Actors**



### **Alleged Fuel Surcharge contrary to Law No.5 Year 1999**

*Fuel surcharge* is a new cost component in aviation industry that each consumer/passenger shall bear. The fuel surcharge is applied in an attempt to cover costs arising out of very significant increases of avtur price. The *fuel surcharge* amount for each airline varies, depending on the volume of avtur consumption and owned capacity for transporting passengers.

In the early of 2006, airlines began disclosing the need for compensation fee for the significant increases of avtur price. At such conditions, INACA proposed to the government that fuel surcharge should become a component of airline fare. However, in reality INACA decided by itself. Therefore, KPPU initiated to monitor INACA actions and to provide various inputs. The result was that INACA cancelled the fixing of the *fuel surcharge* amount and handed it to airlines. As the result of such a condition, the current pricing of avtur was fixed through “market mechanisms.”

From monitoring results obtained, the *fuel surcharge* prices have been continuing to rise, with the percentage increases not proportional to the percentage increases in avtur fuel prices. Each airline fixes a *fuel surcharge* amount by making its own calculations but not based on accurate calculations. The Government then undertook to coordinate for providing formulas for calculations of the *fuel surcharge amount*.

In progress, the *fuel surcharge* prices have been continuing to rise in line with increasing avtur prices. It will be peculiar when aviation fuel price decreases; in fact, the *fuel surcharge* prices are still imposed with rather high amounts. It would be better if the amount of *fuel surcharge* increase/decrease is equal to the amount of increase/decrease in disparity of surcharge prices. This shows that the *fuel surcharge* is a *fixed cost*, and does not constitute an element that may become an instrument of competition.

Considering that the trends of continuously increasing prices, there is an indication that the *fuel surcharge* has other functions, in addition to covering costs arising due to increasing avtur prices. This function is expected to cover other increasing expenses also and may also increase an airline’s revenues through exploitation of consumers.

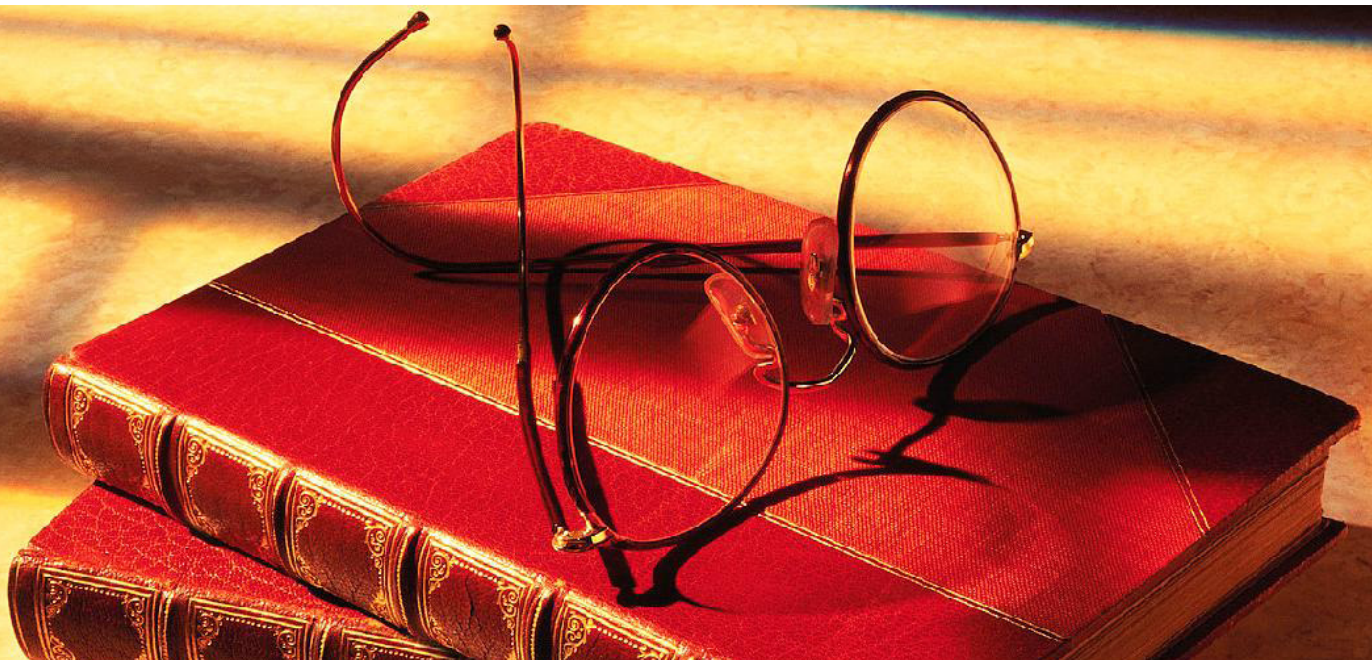
Some analysis results related to these allegations obtained by KPPU are as follows:

- The uses of *fuel surcharge* not for its actual uses.
- The trend of ever increasing *fuel surcharge* amounts, thus resulting in losses in the part of consumers and ticket-selling travel agents, also has disadvantaged these consumers and ticket-selling travel agents because the *fuel surcharge* amounts have much reduced fees/commissions that should be their own profits.

Therefore, KPPU seeks to take some actions, such as law enforcement, if it has been proven that there was a violation against Law No.5 Year 1999. In addition, KPPU will also provide the government with recommendations and considerations to participate in *fuel surcharge arrangements*.

# CHAPTER 3

Business Competition Policy and Strategic Industrial Sector





### 3.1 Harmonization of Business Competition Policies

As one of the important parts of business competition policy program, the continuous policy harmonization has become an integral part of the Commission for the Supervision of Business Competition (*Komisi Pengawasan Persaingan Usaha/KPPU*), considering that, through such a policy harmonization, the internalization of competition values in every governmental policy can be easily executed.

In 2009, the policy harmonization program could be properly implemented, considering that there have been increasingly good relationships established by some regulating agencies, both Governmental institutions and independent regulators. In the records prepared by KPPU in 2009, good relationships had been increasingly made among several agencies which are, among others:

1. The Coordinating Ministry for Economic Sector
2. The Ministry of Commerce
3. The Ministry of Industry
4. The Ministry of Public Works
5. The Ministry of Finance
6. The Ministry of Energy and Mineral Resources
7. The Ministry of Transportation
8. The Ministry of Agriculture
9. The State Ministry of State-owned Enterprises (*BUMN*)
10. The Ministry of Justice & Human Rights
11. The Ministry of Marine Affairs & Fisheries
12. The Ministry of Communications and Information
13. The Indonesian Telecommunications Regulating Body (*BRTI*)
14. The Downstream Regulating Agency for Oil and Gas (*BPH Migas*)
15. The Executing Agency for Oil and Gas Management (*BP Migas*)
16. The Indonesian Broadcasting Commission (*KPI*)

Through such good relationships, it was found that the recommendations and considerations delivered by KPPU were always responded well by those institutions/ departments even if the responses were not furnished directly from the letters sent by KPPU. Various recommendations and considerations already accompanied by position papers on issues during the discussions of recommendations and considerations submitted by KPPU has always become the materials for considerations and references of a variety of agencies and institutions in formulating their policies that they will issue in the future. Thereby, the internalization of business competition values takes place automatically.

This, for example, was revealed from various discussions with the Government agencies that performed them. The Institute for Goods/Service Procurement Policy (*Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah/LKPP*), for example, in fact has always considered the recommendations of KPPU in relation with the Government goods/service procurement policy and construction services that were already delivered by KPPU. The same thing was also applicable in the Ministry of Home Affairs (*DepDagri*) that had always considered the recommendations of KPPU, when the Ministry of Home Affairs tried to fix the procurement processes of goods and services for procurement of residential documents.

As well, the presence of KPPU has been always considered important by various regulators who have been implementing competition in the sectors that it has already regulated. For instance, it occurs in such the telecommunications sector where KPPU has constantly been coordinating with the Indonesian Telecommunications Regulating Body (BRTI). Within the Indonesian Telecommunications Regulating Body (BRTI), the issue on tariff competitions which threaten the service qualities has turned to be a hot debate in the midst of prohibitions through competition principles to set a minimum limit.

In this telecommunications sector, KPPU has been undertaking an intensive coordination with some relevant local governments in connection with the implementation of joint tower use policy in which the establishments of joint towers have been much deviating from efficiency principles as the original purposes of the policy. KPPU keeps echoing the need for considering implementing fair competition principles as put down in the policy, especially after the emergence of a policy that appoints a particular business actor by getting rid of existing business actors and possessing hundreds of telecommunications towers. A number of intensive coordinations have been performed with, among others, several Regional Governments (PemDa). While at the central level, KPPU has been also coordinating with the Ministry of Communications and Information, the Ministry of Home Affairs and the Ministry of Public Works to find various solutions, in order that, in the national level, uniform policies may be produced that originate in the presence of efficiency-oriented joint tower management.

In the meanwhile, in the aviation sector, the Department of Transportation through the Directorate General of Air Transportation (*DepHub through DitJen Perhubungan Udara*), has been undertaking out intensive coordinations associated with a recommendation by KPPU in which the tariff policy shall accommodate fuel

surcharge in existing ticket tariff fixing/pricing; thus the tariffs to come will not be calculated as formerly applied in an airline that unilaterally set the fuel surcharge amount that, in fact in the tariff policy implementation, covered the costs caused solely by a fuel price increase.

In the retail sector, KPPU has also been undertaking harmonization with several Government agencies which are, among others, the Ministry of Trade, the Secretariat of Vice President, and the Secretary of State. KPPU elucidated its findings in the retail industry through a number of policy evaluations and law enforcement.

In 2009, KPPU specifically also coordinated with government agencies in connection with regulation issues in East Java province on the Standardization of Duck Feathers which in fact has been a barrier for business actors to expand their businesses. After carrying out coordinations with the involvement of several agencies, including the Ministry of Home Affairs, the Ministry of Trade, the Ministry of Industry and the East Java Government, and after KPPU had provided the Government of East Java with recommendations and consideration, the regulation was finally revoked.

Other harmonization process that was also performed by KPPU in 2009 was related to the implementation of a networked stations system in Indonesian television industry. In this case, KPPU was asked to take part in overseeing unfair business competition issues that may arise in the industry, in consideration of some dominations of television companies operated by only some certain business actors.

In 2009, KPPU noted a very important moment in its institutional role. Through Law No. 20 Year 2008 concerning Micro, Small and Medium Enterprises, KPPU has been given an authority to supervise the implementation of partnership as stipulated in such a law. The rules for supervision will be regulated in a Government regulation.

Overall, it may be concluded that the development of harmonization of competition policy has been improving. Several government agencies and other regulatory agencies has increasingly understood the roles of KPPU and strategic values of business competition as an instrument of the Indonesian economy.

### **3.2 Suggestions and Considerations provided to the Government**

One of the activities that is also essentially a part of competition policy harmonization is the provision of suggestions and considerations to the Government.

In line with the increasingly improved understanding towards the roles of KPPU and strategic values of business competition in Indonesian economic system, especially in sectors that apply competition as a tool to manage it, the provision process for suggestions and considerations has become easier to undertake. The Government and regulatory agencies have given better and better appreciations, considering that in the suggestions and considerations submitted by KPPU, the position papers that fully discuss the problems in the perspective of business competition continue to be included and provide solutions so that the sector management models are in line with the competition principles as regulated in Law No. 5 Year 1999 and culminate in

the sector management improvement with the final results being low prices/tariffs, the increased quality of services/products and the creation of national economic efficiency.

Based on the analyses made by KPPU, overall the whole suggestions and considerations by KPPU (until 2009 there were 76 suggestions and considerations) were responded positively by the Government, even the responses to the suggestions of KPPU were just implemented after a certain period of time. In various meetings with Government agencies and independent regulating agencies, it was revealed that the results of such analyses by KPPU had also become references for Government agencies and independent regulatory agencies in formulating their policies.

In 2009, KPPU provided 12 suggestions and considerations to the Government which consists of:

#### **1. Recommendations and Considerations in Industrial Liquefied Petroleum Gas (LPG)**

In this letter containing suggestions and considerations in order to improve the performance of Liquefied Petroleum Gas (LPG) Industries, KPPU suggested the Government:

1. To firmly and clearly establish a policy for Liquefied Petroleum Gas (LPG) particularly related to the decision for Liquefied Petroleum Gas (LPG) as a subsidized product and a non-subsidized product. The Government shall also be resolute to determine whether or not to let the Liquefied Petroleum Gas (LPG) follow the market mechanism.
2. To conduct tight monitoring towards the Liquefied Petroleum Gas (LPG) (especially the subsidized LPG) distribution to customers. The Governments shall ensure smooth distribution so as to ensure availability of LPG supply to end customers as well as a guarantee for a reasonable selling price for customers.
3. To define formulae for selling prices and the highest retail prices (HET) for all types of LPG products. Through such formulae and highest retail prices (HET), the price fixing process will become transparent and also will protect customers against exploitations by way of excessive pricing.
4. To rethink energy conversion concepts with more considerations on the availability of LPG supply, by prioritizing the domestic supply than imports. But if the government considers that LPG is the best choice, it is necessary to anticipate in order to avoid a heavy dependence on imports and improve infrastructure to ensure LPG availability.

Regarding the suggestions and considerations, the Government has been responsive by accommodating several of them which are, among others, the fixing of the highest retail price and that of a transparent tariff formula in the LPG industry.



## **2. Recommendations and Considerations on Policy for Duck Feathers Trading System Standardization in East Java Province.**

KPPU specifically has been observing the standardization policies on duck feathers trading system governed by decree of the Head of East Java Animal Husbandry Agency (*Kepala Dinas Peternakan*), considering that this regulation in effect becomes an entry barrier for development efforts in shuttlecock-producing industry in East Java.

Regarding the policies above, KPPU gives recommendations and considerations for the following essential things:

1. The standardization policy on duck feathers trading system in East Java has been distorting fair competition in East Java shuttlecock-producing industry. In the long term, it is doubtful whether this policy could inhibit the shuttlecock industrial growth in contributing to East Java economy.
2. Considering the negative impacts of standardization policy on duck feathers trade regulations for business competition and economy in East Java, KPPU suggested that the East Java Provincial Government revoke such a policy. Subsequently, greater opportunities are open for business actors, both producing importers and general importers, to undertake importation of raw materials for duck feather shuttlecock production, but they shall be in compliance with technical rules and importation procedures required by the Government.

Regarding the suggestions of KPPU above, the East Java Government later revised the intended regulation. At the central level, the Ministry of Industry supported such suggestions.

## **3. Recommendations and Considerations on Joint Tower Use Policy in Makassar**

In these Recommendations and Considerations, KPPU has conveyed some important points related to Joint Tower Use Policy which, among others, are as follows:

1. It is not necessary to restrict business actors in tower provision only for tower-constructing companies.
2. To prevent a certain telecommunications operator's exclusive monopoly over certain points/areas for telecommunications towers, the Makassar municipality government has required each provider of telecommunications tower to apply the open access principle in which the tower shall be used jointly by all telecommunications operators.
3. In case the government intends to limit the points of joint towers on the basis of spatial use policy, then:

- The determination of these points shall meet the technical needs of all telecommunications operators in serving the people's rights in obtaining access to telecommunications. Such a determination may be done through an independent technical review of which the information is openly accessible to all tower providers
- At a point where there has been a telecommunications tower, it is recommended that the existing tower shall be maintained as long as it meets with technical aspects by keeping on applying the open access principle.
- At a point where there has not been a telecommunications tower yet, a selection process shall necessarily be performed to determine a winner for management rights of a tower location. This process is done through a tender for a license to obtain the management rights by observing the fair competition principles and applicable laws and regulations.
- To avoid the potential monopolistic practices in managing telecommunication towers in Makassar municipality, it is worth considering not selecting a winner that controls the whole points in Makassar.
- The government is advised to set a maximum limit of rental rates, minimum service quality and agreement requirements.

Until recently, the solutions to the issue of Joint Tower Use Policy in Makassar have been conducive.

#### **4. Recommendations and Considerations related to Policie on Cocoa Industry**

Observing the cocoa industry growth which had been rather troubled, KPPU carried out a policy evaluation in the industry. Some problems in the industry emerged in relation with uncompetitive domestic industries which then affected the losses of processing industries that did not get supplies and the more increasing growth of cocoa trade with no better added values.

Based on the analysis results, KPPU gives recommendations and considerations for the following essentials.

1. Government shall prepare a grand design for a comprehensive cocoa industrial policy to accommodate the management of all aspects of cocoa-producing industry, from agricultural cultivation, processing industry to trading.
2. A policy among related bodies and institutions is required to set the priorities of Indonesian cocoa industry growth in order that the management will not be partial anymore but more comprehensive and get to the existing core problems of the cocoa industry.

3. KPPU shall recommend the Government to revise such a protective policy and empowers national business actors in which this action aims at increasing an exporter's ability to compete in the face of exporters who make use of foreign capital investment/PMA. Through such a policy, there will be a synergy between agriculture sector and cocoa-processing mills so that in turn it hopefully will increase the community welfare as a whole.

In a meeting with the Ministry of Agriculture, it was revealed that they have been always considering the suggestions and considerations of KPPU in an effort to organize the cocoa industry.

## 5. Recommendations and Considerations on Joint Tower Use Policy in Badung District

Considering the factual conditions in Badung District in which to undertake the arrangement of telecommunications towers with the concept of joint telecommunications tower that has been deviating from the fair business competition principles, KPPU shall carry out research and recognize potential inefficiency and unfair business competition based on policies through a process for overthrowing a few existing towers based solely on an agreement to give a business actor an exclusive right.

Regarding these conditions, KPPU gives recommendations and considerations with the following essentials.

1. Improve the essences of arrangement on the uses of a joint tower as stipulated in Badung District Regulation No.6 Year 2008. Some required essences of arrangement are:
  - a. The management of a tower within a location of mapping which has been already occupied by existing business actors must be run by existing business actor(s) in order to avoid economic inefficiencies. This is in accordance with Joint Ministerial Regulation (*Peraturan Bersama Menteri*), namely the Minister of Home Affairs (No.18 Year 1999), the Minister of Public Works (No.07/PRT/M/2009), the Minister of Communications and Informatics (MenKomInfo) (No.19/PER/M.KOMINFO/03/2009), and the Capital Investment Coordinating Board (BKPM) (No.3/P/2009) concerning Guideline for Joint Development and Use of Telecommunications Tower (*Pedoman Pembangunan dan Penggunaan Bersama Menara Telekomunikasi*), and regulation of the Minister of Communications and Information No.02/PER/M.KOMINFO/3/2008 concerning Guideline for Joint Development and Uses of Telecommunications Towers.
  - b. Given the management model that tends to lead to a monopoly/oligopoly, the municipality government as the regulator should

intervene to protect against the abuse of monopoly/oligopoly power by a tower operator towards telecom operators. Intervention may be exerted in terms of:

1. **Tariff**

If there is only one business actor that provides a joint tower, then the tariff shall be fixed by the Government. But if there are more than one business actors, the Government intervention is exerted only to the maximum limit of tariff. This is to be done to avoid exploitation of customers by a tower provider.

2. **Service Quality**

The Government should set minimum standards of service quality in this industry in order to prevent the abuse of monopoly/oligopoly power by the tower provider.

3. **Terms of Agreement**

The Government shall examine the process and contents of an agreement between a tower operator and a telecom operator in order to avoid a discriminatory process that may create any barrier to entry and other requirements that reflect the existence of abuse of monopoly/oligopoly power.

- a. In case, the specified minimum performance standards are not achieved, the Municipal Government is liable for revoking the issued license for the management of a telecommunications tower, then undertakes subsequent re-tendering process for a license in order to gain more capable business actors in the management of a joint tower.

2. Revoke Article 10 paragraphs 2 and 5 and Article 14 in the cooperation agreement between the Government of Badung District and PT Bali Tower Sentra (PT. BTS) because Article 10 paragraphs 2 and 5 and Article 14 are not subject to the fair business competition principles. This is intended that the addition of joint telecommunications tower locations will not automatically be given to PT. BTS, but can also be arranged by other tower providers as long as they comply with applicable rules and regulations.

3. By noticing the revised items on the contents of such arrangements, the Badung District Government can immediately revoke the exclusive right of PT Bali Tower Sentra (PT. BTS) and allow the existing telecommunications tower and other tower providers to become joint operators of telecommunications towers in Badung as long as they comply with applicable laws and regulations.

Regarding these considerations and suggestions, the Badung District Government remains determined to implement the rules and regulations that it has already made.

## 6. Recommendations and Considerations on Taxi Tariff Fixing Policy and City Transportation Licensing Permit

Based on an analysis of development of taxi management and city transportation, KPPU found several problems associated with business competition. Many performances of public transportation and taxis are more intensively caused by not implementing the fair competition principles within the transportation industry.

By observing such conditions, KPPU gives recommendations and considerations for the following essentials in which the Government shall:

1. Optimize its role in the city transportation management through law enforcement efforts against violators of regulations in relation with licensing mechanisms, evaluations and sanctions on business actors (both individuals and business entities) so that the performance of public transportation will continue to improve, especially regarding the service quality.
2. Apply the fair competition principles in selecting city transport vehicles by promoting management competence.
3. Be expected to adopt a policy to prepare uniform standardizations for different policies across districts/provinces, by giving emphasis on policies to:
  - a. Set the maximum limit of policy in taxi fares, in which this is more intended to protect customers from taxi operators' exploitation, and to revoke the minimum limit of tariff policy that will potentially hinder business actors that may offer taxi rates affordable by community.
  - b. Set a minimum standard of taxi service quality with strict enforcement against any violator.
  - c. Expressly prohibit **ORGANDA** (*Organisasi Angkutan Darat = Land Transportation Agency under the Ministry of Transportation*) to set tariffs, because such an action will create a cartel that is contrary to the fair business competition principles as stipulated in Law No. 5 Year 1999.

Towards these recommendations and considerations, the Government has not responded yet, but in many occasions, the Department of Transportation through the Directorate General of Land Transportation (*DitJen HubDa*) already explained that, in the Draft Regulation (RPP) related to the implementation of new Law of Traffic and Highway Transportation, will pay attention to the recommendations and considerations of KPPU.

## 1. Recommendations and Considerations on Fuel Surcharge Policy

By looking at the fuel surcharge prices that continue to increase significantly, KPPU then recognized that one of the main problems has been the absence of policies related to fuel surcharge. Submitting a certain price for fuel surcharge to the market mechanism shall violate the principles for fuel surcharge enactment in which a certain amount of the fuel surcharge may be determined considering that the fuel surcharge is a cost component merely used to cover the increase of avtur fuel cost.

Therefore, through an airline industry analysis, especially in relation with fuel surcharge, KPPU gives recommendations and considerations for the following essentials.

1. Arrange the consistent enactment of fuel surcharge by using standard formulas in order that a reasonable value of fuel surcharge that each airline should have may be identified. With such a formula, the Government can obtain a certain value of the fuel surcharge from each airline which forms a basis for the prosecution of business actors unequivocally that apply fuel surcharges not in line with its purposes. In relation with this, the Government needs to recalculate the real value of fuel surcharge currently applicable in every airline, based on the actual facts of the airline, in order to impose such a value with strict punishment for violators.
2. Review the currently applicable tariff policy (maximum limit of tariff) already determined through the basic calculation of avtur price at Rp.2,700/liter. The tariff policy was changed by applying a basic calculation of avture actual price. Through the new tariff, the fuel surcharge as a tariff component can be eliminated. Nevertheless, to anticipate a significant increase in avtur price, the government should also adjust the fuel surcharge as in paragraph 1.

The Government has responded to these suggestions from KPPU by revising the policies related to airline tariffs.

## 2. Recommendations and Considerations on Stabilization Policy for Cooking Oil Price

In the course of a certain period of time ago, the development of cooking oil industry was very depressing with the very significant price increases. This appears ironic considering that Indonesia has been the largest country in producing crude palm oil (CPO) as the main raw material for cooking oil production.

The efforts already undertaken by the Government through price stabilization policies have been, among others, the Domestic Market Obligation (DMO) policy, the progressive Export Tax (*Pajak Ekspor*) and the Government-borne Value Added Tax/VAT (*PPN-DTP*) and the MINYAKITA policy program.

However, in its development, it was obviously found that the government interventions in the input side through a Domestic Market Obligation (DMO) policy and a progressive Export Tax (*Pajak Ekspor*) policy have been incapable of lowering oil prices in the domestic market. Meanwhile, the governmental intervention through a policy on the output side, namely the Government-borne VAT (PPN-DTP) and the MINYAKITA policy program, has been incapable of lowering cooking oil prices in the domestic market.

KPPU has discovered a unique phenomenon, namely the reducing prices of outputs that do not balance with the decreasing prices of inputs (asymmetric price transmission/APT) in which the cooking oil price as the output should have followed the input price of crude palm oil (CPO). The asymmetric price transmission/APT impacts on the widening margin between the input price of crude palm oil (CPO) and the output price of cooking oil in domestic market.

Considering these conditions, KPPU gives recommendations and considerations for the following essentials.

1. The Government needs to facilitate a policy that encourages business actors to increase their utilization of installed plant capacity progressively and at the same time enhance the competitive power of CPO derivative products in world markets.
2. An effort to stabilize the cooking oil price may be done indirectly by encouraging a competition climate in the CPO trading in domestic market. Therefore, the government must improve its CPO input market institutions in the domestic market through a policy of revitalizing commodity time bourses in the domestic market.

### **3. Recommendations and Considerations on Tally Policy Implementation**

Based on the case handling process within the tally industry, KPPU found several facts which, among others, are:

1. Cartel practices that persisted through the division of operation areas and the tariff fixing through an agreement between a business actor as service provider and tally service users
2. Cartel practices were facilitated through the Minister of Transportation Decree (KepMenhub) No. 15 Year 2007 on Tally Implementation and Exploitation in Seaports (*Penyelenggaraan dan Pengusahaan Tally di Pelabuhan*)
3. The area division was also facilitated by a policy through the Decree of Tanjung Priok Port Administrator (*AdPel Tanjung Priok*)

Regarding these findings, KPPU gives recommendations and considerations with the following essentials that advise the Government to:

1. Revise the Minister of Transportation's Decree No. 15 Year 2007 by eliminating the word "asosiasi" (association) in order that the tariff setting is fully subject to transactions between a business actor as a provider and a service user.
2. Revoke the Tanjung Priok Seaport Administrator's Decrees No.AT.575/3/6/AD-TPK.08 and No.AT.575/7/13/AD.TPK-09. The business actors of tally should be let free to offer services to service users in any area within Tanjung Priok Seaport.
3. Set limits on tariffs and minimum quality of service to avoid exploitation over customers through excessive tariff and low quality service.

Until recently, the position of the Government has been unclear, but the implementation of tally activities is still pending due to customers' solid objections.

#### **4. Recommendations and Considerations on Tender Process for Consulting Services for Jakarta Mass Rapid Transit (MRT) System Project**

KPPU received a report in connection with the implementation of tender for Consulting Services for Jakarta Mass Rapid Transit (MRT) System Project. From the research conducted, it was indicated that there was a vertical collusion between the bidders and the bid committee. Regarding such an indication, KPPU provided the Department of Transportation with recommendations and considerations as follows:

1. Avoid those prohibited things as expressly put down in the rules and regulations on procurement of goods and services of the Government.
2. Carry out procurement for goods and services in effective, efficient, transparent and indiscriminative manners pursuant to applicable rules and regulations.

#### **5. Recommendations and Considerations on Land Transportation Policy**

Based on a progress analysis on the road transport industry after the enforcement of new Road Traffic and Transportation Act, KPPU found several problems in the competition perspective. In the implementation of Bus Rapid Transit/BRT or Busway, its underlying rules have not specifically been regulating its implementations. As a result, since then problems have been arising such as delays in the implementation of Bus Rapid Transit or Busway, the appointment of an operator currently in trouble, the tariff fixing that have been inciting controversies or overlapping routes. For the procurement of Bus Rapid Transit/BRT or Busway, the Local Governments have different rules where some rules are potential to violate the fair competition principles.

In the meantime, in relation with the operation of city transport terminals, the existing policy is to open up opportunities for private sector to get involved in



the operation of city transportation terminals. With such an action, It is hoped that it shall improve the performance of terminal operation. But unfortunately it seems that such a hope has not been achieved yet.

In observing such conditions, KPPU gives recommendations and considerations for the following essentials that the Government shall:

1. Set a policy on the implementation of Bus Rapid Transit/BRT or Busway in all parts of Indonesia with reference to the fair competition principles. Through the policy, the Bus Rapid Transit/BRT or Busway will be expected to become an alternative for affordable transportation with satisfactory service quality.
2. Set a policy on private sector involvement in the bus terminal management and thus this action will be a reference for other regions that wish to implement it. This is implemented in an effort to boost the performance of terminals as public facilities and can be actualized without any private business actor's monopolistic practices in the terminal management.

Regarding these recommendations and considerations, the Government through the Directorate General of Land Transportation (*DitJen HubDa - DepHub*) stated that this suggestion would be one of considerations in the preparation of a new Draft Government Regulation (RPP).

#### **6. The Recommendations and Considerations on Draft Government Regulation (RPP) concerning Partnership from Law No.20 Year 2008 concerning Micro, Small and Medium Enterprises**

In Article 36 of Law No.20 Year 2008, KPPU expressly has a duty to supervise the implementation of partnership in an orderly and organized manner as stipulated in the Law. In this case, KPPU considers it important to perceive the existence of regulations that govern partnership monitoring by KPPU. To that end, KPPU suggested that the partnership monitoring be also legalized through a Regulation of KPPU. To accommodate this, in the Draft Government Regulation (RPP) concerning Partnership, we propose that the RPP shall contain clauses stating that the implementation of supervision over Partnership shall be carried out by KPPU and that supervision procedures will be further regulated in the Regulation of KPPU.

In connection with the Draft Government Regulation (RPP), administrative sanctions that regulate in detail the implementation of partnership by taking the handling procedures for a competition case in KPPU today, KPPU is of opinion that the arrangements for giving sanctions to the business actors are also regulated in the Regulation of KPPU. Therefore, it is expected that, in the Draft Government Regulation (RPP), the Partnership in the settlement of a legal case will be further regulated in the Regulation of KPPU.

Regarding the recommendations by KPPU, the Government is currently preparing a Draft Government Regulation (RPP) by considering the existing inputs in the related recommendations and considerations of KPPU.

## **7. Recommendations and Considerations on Policy Implementation Advice from the Law on Minerals and Coal**

Several Articles in Law No. 4 Year 2009 concerning Minerals and Coal have potential constraints against business actors' involvement nationwide. Such constraints include, among others, the restriction policy of a minimum area for exploration and divestment obligation after five years of productive operations. Some other rules in the Law are the fixing of annual production amount/quantity for each commodity in each province, the priorities for state-owned enterprises or region-owned enterprises for a Special Mining Permit Area (*Wilayah Ijin Usaha Pertambangan Khusus/WIUPK*), the obligation for using the local and/or national mining services, the bans against the involvement of a company's affiliates and the rules concerning limitations of a maximum area for mining operations; also new problems are potential to arise if these are not regulated in good regulatory structures.

In order that the arrangements for implementation of Law No.4 Year 2009 are in line with Law No.5 Year 1999, KPPU gives recommendations and considerations for the following essentials.

1. The Government is advised to be careful in setting a minimum area limitation by taking into account the geographical conditions of each area/region.
2. The divestment process is recommended to be performed through a process consistent with the fair competition principles through an open bidding.
3. In relation with the bans against involvement of a company's affiliates, KPPU suggested that the arrangements are made in consideration with the available companies that provide supporting competitive services by keeping on upholding fair competition.
4. For conditions of involvement of local/national companies, KPPU suggested that local/national companies involved shall have capabilities and competence in their fields in order that, through this action, high-cost economy in the mining industry will not emerge.
5. In relation with the production scale setting policy by the Government, KPPU suggested that the process shall be conducted with close coordinations between regional government and business actors in order that industrial production scale determination can be properly conducted with due regard to economic values for business actors and product availability in the field, so there will not be any product scarcity.
6. Towards the arrangements that give priority to state-owned enterprises / region-owned enterprises (BUMN/BUMD) for a Special Mining Permit

Area (*Wilayah Ijin Usaha Pertambangan Khusus/WIUPK*), KPPU suggested that those designated enterprises were state-owned enterprises / region-owned enterprises (BUMN/BUMD) that have competence in the mining management and thus exploration/exploitation would be optimum.

Until recently, there have not been any official government responses in connection with the recommendations and considerations of KPPU.

## **8. Recommendations and Consideration on Policies for Batam Free Trade Zone**

KPPU recognizes that there are regulations or policies that impact on business competition in the implementation of Free Trade Zone in Batam, Bintan, and Karimun (BBK). In some circumstances, these policies are potentially in conflict with the fair business competition principles as stipulated in Law No.5 / 1999.

Considering these conditions, KPPU gives the Government the recommendations and considerations for the following essentials.

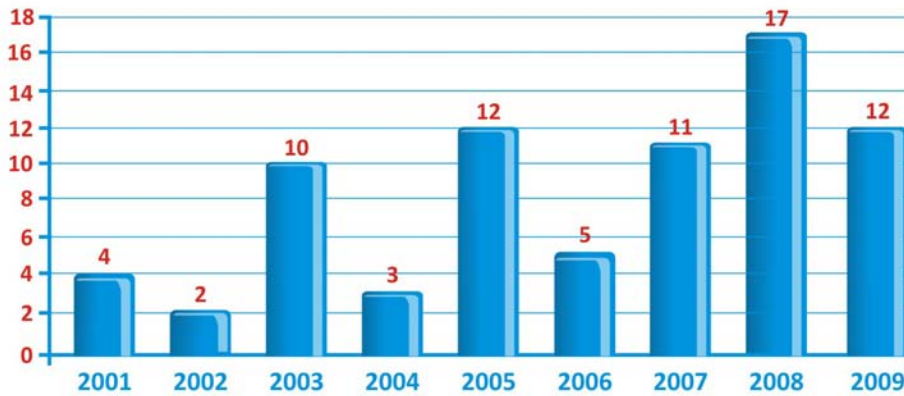
1. The Government, Zone Council and Management Agency for Batam, Bintan, and Karimun Free Trade Zone (BBK-FTZ) shall prepare a road map and an action plan or the comprehensive implementation concept for the Batam, Bintan, and Karimun Free Trade Zone (BBK-FTZ). This concept shall explain the implementation of the BBK-FTZ, whether the BBK-FTZ area is designated as a commercial area or an industrial area that underpins the production sector.
2. Revise the contents of Regulation of the Minister of Finance No.45/PMK.03/2009, Regulation of the Minister of Finance Number No.46/PMK.03/2009 and Regulation of the Minister of Finance No.47/PMK.03/2009 particularly on arrangement on Master List, because, as previously described, the Master List is considered to be a source of ineffectiveness for FTZ application. However, the Master List hinders the main purpose of FTZ implementation.
3. Synchronize some policies and regulations that potentially create Monopoly Practices and or unfair business competition as prohibited under Law No.5 of 1999 which contains, among others, potential cartel pricing, quota arrangements and division of territory, abuse of dominant position, price fixing and abuse of monopoly position

Until recently, there have not been any official government response in connection with recommendations and considerations.

Overall, the recommendations and considerations of KPPU were responded properly by the Government. In 2009, it was known that suggestions that were not responded directly by the government still got attention and became references for the Government in issuing policies in the economic sector.

The progress of recommendations and considerations by KPPU towards the Government Policies in the 2001-2009 period may be seen in the table below. The fluctuation of the recommendations and considerations is a reflection of a condition that policy problems also fluctuate. Not every government policy causes problems in view of the competition perspective.

### Progress of KPPU's Recommendations and Considerations



The progress of sectors that act as targets of recommendations and considerations of KPPU is seen in the table below.

Year	# of Recommendations	Industry
2001	4	Energy, land transportation, aviation
2002	2	Food and beverages, land transportation
2003	10	Port, banking, airlines, movies, electricity, carbon black, retail, farm
2004	3	Sugar, shipping, valuable documents
2005	12	Procurement of goods and services, insurance, telecommunications, electricity, Indonesian workers, agricultural
2006	5	Appraisal services, printing, salt, medical equipment
2007	11	Retail, information technology, retail, management of hajj pilgrimage, books, postage, agro-industry, sea transportation, construction services, land transportation
2008	17	Port, oil and gas, transportation, broadcasting, detergents, retail, mining, telecommunications
2009	12	LPG, farming, telecommunications, cocoa, ground transportation, cooking oil, fuel surcharge, plantations, ports, Small and Medium Enterprises

### 3.3 Business Competition Index

The competition indexing activities are efforts of KPPU to obtain adequate indicators associated with the effective competition progress in Indonesia. Hopefully, through the index, it can be plainly viewed whether the competition in a sector has been farther than before or vice versa. Similarly, as a whole it will be seen whether or not

the competitions in all sectors work properly. Whether the competition conditions are good or bad as reflected in one number will be the input and feedback for KPPU in formulating programs aimed at improving the competition conditions in Indonesia.

Business competition index is a number generated based on research. The number range is 1 to 6 with number 1 indicating a poor competitive condition, while number 6 indicating the best competitive condition. This range was firstly used in 2009 as a correction of the range in 2004 using a 1-to-4 range. In 2008, the competition index for airline industry showed the number 2.61 that indicated that the companies involved in the airline sector have been fairly competing.

Based on 2009 survey results, the competition index showed that the business competition conditions in the airline sector and the telecommunications sector in 2009 were:

- Airline industry was classified into a competitive category;
- Likewise, the telecommunications industry was classified into a competitive category;
- Although, in view of the structure, the airline industry competitive index is higher, but overall, the telecommunications industry has a competitive level fairly better than the airline industry.

### 3.4 Evaluation of Government Policies

One of activity sources that would result in recommendations and considerations of KPPU for the Government was implemented through a government policy evaluation. During the period of January-December 2009, KPPU completed 18 policy evaluation programs. Following is the evaluation of those policies.

No	Sector / Commodity	Focus of policy evaluation
1	Sugar	Decision Letter No.527/MPP/2004 concerning Import Commercial Procedures ( <i>Tata Niaga Impor</i> ) is the policy underlying this study. In addition, the progress in sugar commodity, especially related to the price has been one of the primary concerns in this evaluation.
2	Flour Industry	Reenactment of mandatory SNI for wheat flour in relation with fortification issue in 2008. Later, the development in the industry keep being observed primarily related to the structure of the industry in recent years when new investments have started to enter.
3	Fishing Industry	Regulation of the Minister of Marine Affairs and Fisheries No.05/2008 on Catch Fishery Enterprises which requires the associated recommendations as part of licensing requirements. The evaluation was done to measure the impacts of the regulation on business competition.

No	Sector / Commodity	Focus of policy evaluation
4	Pharmaceuticals	Regulation of the Minister of Health ( <i>Permenkes</i> ) No.1010 Year 2008 on Medicine Registration which requires the registration of any drug/medicine should only be done by a manufacturer. The evaluation was done in order to identify the impacts of competition policy on business climate.
5	Land Transportation	A Government policy that provides the private sector with the management of land transportation modes. The evaluation was done in order to identify the competition policy impacts on the business competition.
6	Land Transportation Insurance	The inland transportation insurance monopoly by PT. Jasa Raharja was based on the Decree of Minister of Revenue, Finance, and Supervision of the Republic of Indonesia (BAPN) ( <i>SK Menteri Urusan Pendapatan, Pembiayaan, dan Pengawasan RI</i> ) dated 30 <sup>th</sup> March 1965. Some activities were conducted to evaluate the regulations of business competition.
7	Cooking oil	The existence of a phenomenon of decline in input prices of cooking oil industry that does not respond in proportion to the decline in oil prices. In addition, the evaluation was conducted to assess the effectiveness of price stabilization policy by the government and its impact on business competition.
8	Minerals and Coal	Enforce Law No.4 Year 2009 on Mineral and Coal Mining as replacement of Law No.11 Year 1967. Activities were conducted to identify linkages of the Law with business competition aspect.
9	Related government procurement in relation with private management	Evaluation for government policy in delivering rights of government asset management to private parties. In this case, the evaluation was focused on seaport management as stipulated in Law No.17 Year 2008 concerning Shipping.
10	Retail Industry	Implement the Market Policy, namely Presidential Regulation ( <i>PerPres</i> ) No.112/2007 and Decree of Minister of Trade ( <i>PerMendag</i> ) No. 53/2008 especially in regional levels, where a regional government has its own authority to regulate the retail sector in its region in which to include issues of zoning, permits, and opening hours.
11	LPG Industry	Analyze the regulation of the Minister of Energy and Mineral Resources for LPG Commercial Procedures based on the business competition perspective.
12	Fishery	Analyze cluster fisheries industries and HP3 and policies as contained in Law No. 27 Year 2004.
13	Shipping	Analyze Government Regulation No.61/2009 on Seaport Management based on the business competition perspective.

No	Sector / Commodity	Focus of policy evaluation
14	Upstream Supporting Industry Oil and Gas	Map the upstream supporting industries of oil and gas and analyze policies related to tenders for procurement of goods and services listed in the first revised KKKS No. 007/2009.
15	Promotional Cost	Analyze PMK No.104/2008 and their impacts on tobacco- and pharmaceutical-producing companies.
16	Cost Recovery	Observe the policy developments related to cost recovery, namely PP Cost Recovery and analyze the control over cost recovery undertaken by KKKS.
17	Livestock and Poultry	Analyze Livestock Law in which this indicates one-sided stance for certain business actors and harms small business actors. The study also analyzes whether or not there are other trade barriers in this Law.
18	Automotive Industry	Map the automotive industry and monitor the development of automotive industrial policy.

### 3.5 Study on Industry and Trade

During the 2000-2009 period, KPPU conducted 30 studies in industry and trade. The industries studied were the strategic ones associated with business competition issues and or the ones with potentials for unfair business competition.

In 2009, KPPU completed 5 (five) assessments, namely:

Assessment on Positions and Roles of State-owned Enterprises (SoE) in Indonesian Economy

Assessment on Financing and Insurance

Assessment on Health Services

Assessment on Electricity

Assessment on Business Competition Positions in Indonesian Economy



The outlines of assessment results conducted by KPPU may be described as follows:

**a. Assessment of Industry and Trade for Financing (Multifinance)**

Based on data of financial reports and those of industries in aggregate, it is known that the financial service industry structure is an oligopoly in which the top 10 companies have been controlling more than 50 market shares of financing turnover nationwide. The structure of financial service industry is also marked by a phenomenon of integration between financing companies and banking companies as fund providers (through channeling scheme) and also automotive companies. The most obvious integration is the ownership pattern in which a related financing company is the subsidiary from a parent company engaged in an automotive or banking service. Thus, an integrated financing company has relatively competitive advantages in terms of accesses to cheap funds and assurance for supplies of automotive products compared to an unintegrated financing company.

The results of survey and processed data showed that the spread between the cost of fund of the financing industry with an effective interest rate for loans reached a range of 11% - 15%, a significant range since it is to be borne by customers directly. Besides this, the impacts of integration patterns between financing companies and automotive companies are consistent with field findings where the majority of automotive customers use financing services from an integrated company or a company with a single ownership. Another feature of the financing pattern is also seen where there are several dealers that enter joint funding with more than one financing company.

In general, the interest cost offered by a dealer with more than one financing company is relatively cheaper than another dealer that only enters into a cooperation with one financing company. Although seemingly there is a positive side, but if analyzed more intensely, patterns and variations of the financing schemes offered by the dealers are identical. It does not reflect the real competition among financing companies, especially in terms of financing schemes and patterns. In other words, a customer when purchasing an automotive vehicle still faces constraints of limited alternative options of financing services and possible high interest costs to be paid.

**b. Assessment on Trade and Industry regarding Position and Role of State-owned Enterprises/SoE (BUMN) in Indonesian Economy**

The Government or State was instrumental in an effort to ensure that community welfare be achieved within state goals in accordance with outlines in Article 33 of 1945 Constitution which states that public welfare is the primary goal. In another word, the State ensures a very vital role in implementing a policy or taking any intervention or action required to achieve the noble purpose of creating the social welfare at its best. In carrying out these efforts, the government undertakes the role by acting as a spearhead in the



implementation of economic policies and market stabilizing efforts. Besides, the Government or State orders by law to establish various business entities in order to achieve the intended goals for prosperity. The intended business entity is the existing state-owned enterprise due to various factors (historical, need or business factors) depending on needs when it was established.

A state-owned enterprise/SoE (BUMN) is often within a spotlight target due to its dualistic functions and roles either it becomes a spearhead to get economic benefits and benefits the country or it focuses on public services? This contradiction becomes complicated because at the same time its contribution to public welfare, competitive pressures and inconsistent government policies will make a State-owned Enterprise not function as it is expected.

Under these circumstances, Law No.5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition is enforced and provides both good opportunities and threats to State-owned Enterprises that have not been accustomed to competition for improving their performance. Law No.5 Year 1999, which provides clear exceptions, clearly limits on which State-owned Enterprises (SoE) that deserve exceptions from this Law. Therefore, there are not any reasons or other ways to determine clearly and unequivocally the functions of current State-owned Enterprises (SoE) either to enter a competitive market or to perform a public service function. When the two functions operates at the same time, the roles of government should be very vital in determining policies with consistency on how the treatments or policies for State-owned Enterprises (SoE) are to be applied.

The establishment of State-owned Enterprises/SoE (BUMN) has positive impacts in terms of workforce employment. If compared with the number of employees absorbed in the large-scale companies in Economic Census in Year 2006 numbering approximately 5 million workers, the number of workers in State-owned Enterprises (SoE) (793 099) was relatively large (15.90%). In the last five years (2003 - 2007), the revenues of State-owned Enterprises turned to become 97.3% or a 19.5% annual growth. In 2003 the revenues of new 140 State-owned Enterprises reached Rp.376,2 trillion. Then the revenues grew by 30.0% into Rp.489.3 trillion in 2004. The revenues of State-owned Enterprises continued enjoying a high growth in 2005 and reached 25.0% to Rp.611,6 trillion. But in 2006, the revenue growth decreased and reached only 3.4%, so the State-owned Enterprises (SoE) revenue in 2007 added up to Rp.742.5 trillion.

Out of the 139 State-owned Enterprises still in operation today, only a few State-owned Enterprises obtained large revenues. In fact, 10 large State-owned Enterprises had very dominant revenues out of total revenues of all State-owned Enterprises. They were capable of generating more than 80.0% of total revenues of all State-owned Enterprises. The biggest revenue contributor in 2006 and in 2007 was PT. Pertamina (State-owned Oil Producing Company), then followed by PT. Perusahaan Listrik Negara/PLN (State-owned Electricity Company) and PT. Telekomunikasi Indonesia, Tbk (State-owned

Telecommunications Company). The profits of State-owned Enterprises have significance for the government, because such profits have been contributing to government revenues. The roles of the State-owned Enterprises (SoEs) become more important if they can give big profits to Indonesian revenues. Good financial performance was shown again by the large State-owned Enterprises in Indonesia. In 2006 and 2007, PT Pertamina, the largest state-owned company that earned the largest income, was capable of contributing 35.6% of the total profits of all State-owned Enterprises in 2006 and 33.7% of the total profits of all State-owned Enterprises in 2007. Other State-owned Enterprises also contributing to the total revenues of all State-owned Enterprises were PT. Telekomunikasi Indonesia Tbk, PT. Aneka Tambang Tbk and PT. Bank Rakyat Indonesia Tbk. In 2006, the ten largest State-owned Enterprises were capable of contributing 84.2% of the total profits of all State-owned Enterprises. Meanwhile, in 2007, their percentage was slightly reduced to about 80.0%.

The total assets of State-owned Enterprises grew high enough, namely 41.1% during 2003 - 2007 or grew about 8.0% per annum. The highest asset growth was in 2006, reaching 11.2%. While in 2007, the total assets of State-owned Enterprises (SOEs) grew 9.5% from Rp1,447 trillion in 2006 to Rp1,584 trillion in 2007. The relationship between nominal Gross Domestic Product/GDP (Produk Domestik Bruto/PDB) and the total assets of all State-owned Enterprises indicated that the growth of nominal Gross Domestic Product/GDP (PDB) was in the same direction as the growth of State-owned Enterprises' assets. This indicates the correlation and contribution of State-owned Enterprises (SOEs) to Gross Domestic Product/GDP (PDB). The dividends of State-owned Enterprises during 2003-2007 grew slightly high. In this period, the dividends of State-owned Enterprises recorded as state revenues grew approximately 169%. The revenue of the highest dividend in 2007 reached Rp.21.89 trillion in which the group of State-owned Enterprises that contributed the highest dividend was engaged in Mining, reaching at Rp 12.54 trillion in 2007.

The State-owned Enterprises have also become a target of prejudice because of policies that lack of consistency, their uncompetitive performances and also frequent misuses of their concessions by not referring to the fair competition principles. Hopefully, with the roles of KPPU in the enforcement of Law No.5/1999, the synergy of consistent policies and the clear roles of State-owned Enterprises will be able to improve the performance and abilities of such State-owned Enterprises to compete in both domestic and global competitive markets. Such are the roles of State-owned Enterprises (SOEs) in national economy when viewed from legal analyses, regulations and their arrangements in Business Competition Laws. The legal bases as the efforts to improve the performance of State-owned Enterprises (SOEs) and ascertain their roles in Indonesian economy are very suitable. Currently, the required things are clear platforms or the policy determination for State-owned

Enterprises in taking part in global competition. In that way, the objectives and expectations of the State-owned Enterprises can be measured and at the same time become inspirations to improve the performance of State-owned Enterprises to turn to be much better.

**c. Assessment on Industry and Trade for Electricity Sector**

In connection with the supplies and demands for electricity, the infrastructures and power generating plants currently in operation are only capable of providing an electricity reserve of 27% or below the minimum reserve standard being 30%. This condition is completely insufficient to sustain the present electricity demand, let alone to provide electricity supplies for next five years projected to grow about 7% per annum. Consequently, in case when a minor disorder such as a damage of one generation set or a transmission substation, it will cause disruption of significant electricity supply in the form of alternating power blackouts.

To fulfill the potential excess demand, in 2010, it has been scheduled for an additional generating capacity, especially PLN and IPP with a capacity of 2600 MW in which its construction has been underway. In addition, some projects are still under commitments with a total capacity of about 3,280 MW and the projects still under planning have a capacity of 3230 MW. Except for the ongoing projects in which the IPP portion reached 72%, the composition of PLN power generation and IPP in this case is relatively balanced in which PLN is 45% and IPP is 55%. However, a potential imbalance between supply and demand still cannot be overcome with additional generating sets. It is predicted that by 2010, with the dependence on committed and ongoing generating projects only, the fulfillment of the required supply will only reach at 64%.

The composition of PLN power-generating plants is dominated by vapor-generated power plants (PLTU) and gas-generated power plants (PLTG) and their market shares reached 41.78% and 39.68% respectively. For power-generating plants outside JAMALI, the majority of power generation are the diesel-generated power plants (PLTD), followed by the vapor-generated power plants/VGPPs (PLTU) and the gas-generated power plants (PLTG). Therefore, the power generation cost for JAMALI system is relatively cheaper since the primary energy inputs rely on natural supplies, while for power-generating plants outside JAMALI, the generation cost is relatively more expensive because it relies on fuel prices, particularly diesel oil price. This is reflected in an efficiency parameter, in which the efficiency ratio of Paiton VGPP (PLTU) and the shrinkage level or loss ratio of JAMALI transmission-distribution networks are still within tolerance thresholds.

The structure of electricity industry in Indonesia has a vertical integration pattern from transmission and distribution networks to the retail level. The competition may be slightly seen at the generation level, where several IPPs have been in operation to supply PLN electricity network for both JAMALI system and off-grid network. In terms of the generating composition, PLN

generating capacity is still relatively dominant. For example, for JAMALI system, power generating plants operated by PLN and those operated by two PLN subsidiaries engaged in power generation, namely PJB and Indonesia Power, had a total installed capacity of 16,281 MW or with a portion reaching at  $\pm$  83%. This portion is very significant if compared to the IPP portion of merely 3,334 MW or less than 16% of its portion against the total installed capacity.

In relation with regulatory analyses, with the launching of Law No.30 Year 2009, the impacts of the Law on changes of electricity structures have not been identified yet. This needs further elaboration, especially regarding the impacts and implementation of regulations and policies on electricity performance.

**d. Assessment on Industry and Trade for Health Care Services**

Based on data and information obtained, it was found that the customers' bargaining power in small healthcare industry was low. This is due to several things as follows:

1. Information asymmetry and customer's ignorance of medical technical knowledge made the customer incapable to determine the most profitable products and services for him,
2. Some business actors in health service industry tended to integrate both vertically and horizontally,
3. Today's market structure tended to create a big power in social insurance. Policies and mechanisms on the social insurance relatively opened opportunities for both price and service discriminations. On the other hand, the members' dependency level on the social insurance was very high,
4. The amount of health service supply was smaller than the demand for health service.

As well, a customer's low bargaining power was also caused by the poor availability of health service substitutions. Even if health care substitutes are available, a hospital management tended to offer customers choices. Then the bargaining power of a health service supplier was bigger. The amount of health service supply in Indonesia was still smaller than the health service needs, and there was asymmetric information. A health service product did not compete with another health service product, Suppliers of health services (hospitals, doctors and insurance companies/agencies) tended to integrate vertically with medicine-producing companies and medical supporting services.

In the bargaining side, a customer's bargaining power can also be influenced by entry barriers against business people to enter the healthcare industry in

Indonesia. PBF and medical supplies companies, that were engaged in business with an economy of big scale with product differentiation, needed a large capital to compete; the hindrances from the incumbent PBF with substantial resources were financial incentives. This may cause the intensity of competitive health care industry to be relatively low although the number of hospitals, insurance companies and large pharmaceutical companies is numerous owing to information asymmetry, vertical integration and some suppliers having big market powers. In addition, people tend to find it difficult to differentiate the excellencies of a hospital and of a pharmaceutical company.

In the future, it is recommended that there will be laws that govern highest retail prices (HET) for medicines, the supervision over vertical integration through health services in order to avoid tied-in sales that potentially give rise to price discriminations. In addition, it is preferable to make arrangements in order that there will be no price discrimination for the same input. This also is potential to lead to a service discrimination

**e. Assessment on Industry and Trade for Business Competition Positions in Indonesian Economy**

The national economic system has a paradigm leading to economic improvements to achieve equal welfare for all community members. The paradigm of national economic system consists of two principles: (i) togetherness, justice, and usefulness, and (ii) growth and equality. The economic system is composed of several elements that interact with one another to form an economy (an economic life). In view of the components that shape it, the economic system may be defined as a set of economic units or economic actors who, through a specific work mechanism, interact with one another in order that, to a certain extent, they form a consistent work arrangement. Based on the 1945 Constitution, at least there are four central elements in the national economic system, namely the community welfare, the ownership of resources, a mechanism for economic activity implementation, economic actors and regulations.

The mechanism for economic implementation in the national economic system is a democratic planning, thereby the management of business competition should be prepared on the basis of this mechanism and thus the business competition runs within the bounds of propriety or fairness. Fair competition is the implementation of national economic mechanism. Meanwhile, the national economic mechanism is not based on market mechanism or centralized planning, but through a democratic planning mechanism. Business competition design should have been prepared according to the nature of products made, the level of natural resources uses, and intensity of capital uses and technological applications. The results of mapping for the natures and characters of a product made through a production activity are referred to as strategic sector and non-strategic sector with each's business scale.

Competition design may be organized based on three principles. The first principle is protection for the community, particularly in relation with inefficiencies in strategic sectors. In this respect, the settings of tariffs or prices for products and services in strategic sectors are becoming very important. At least, the tariff or price fixing for products shall be subject to the Government's approvals. The second principle is the fulfillment of all basic needs of the community both in quantity and in quality. Competition that will lead to product scarcity or too high a price volatility must be avoided. To avoid product scarcity or uncontrollable price fluctuation, any transaction in the international market (exports and imports) must be given an approval by the Government. The last principle is that governance of business competition in strategic sectors shall be regulated by using a mutually shared prosperity principle. For that reason, the management of business competition in the strategic sector must put good corporate governance into action.

In the future, the roles of business competition will become very strategic in the national economic system. However, with the increasing technology advancement and complicated business manners, the business competition have become a very complicated and sophisticated problem. Basically, the increased competition intensity among business actors has given impacts on increased business uncertainty, such as tariff or price competition. In turn, the increased business uncertainty encourages the business actors to establish business cooperation networks as an effort to minimize business failure risks. The actions of these business actors are likely to cause an increase in transaction costs that might be charged to customers.

Therefore, the business competition management in the future will require institutional strengthening in terms of regulations and cooperations with other institutions.

### **3.6 Analysis on Business Actors's Strategies**

One of the efforts performed by KPPU to detect potential violations through the business actors' conducts was carried out through the strategic analyses used by the business actors. In 2009, KPPU scheduled to hold two major activities for the strategic analyses for the business actors with a dominance-related strategy and a bundling strategy in Information, Communication & Technology (ICT). The determination of two themes was made by considering the increasing number of business actors who applied the two strategies, both associated with a dominant position and a bundling position. It is necessary to be anticipated considering that the two strategies had two impact sides, namely the positive side because it might increase efficiency and customer's welfare, and the negative side where it could adversely impact the competitive climate (lessening competition). The following are the backgrounds and focuses of strategic analyses:

Based on the analyses already made, the following things were obtained:

**a. Business Actor's Strategies in a competition perspective focusing on Dominant Position;**

The dominant position concept is universal. The dominant position is essentially related to the absence of pressure faced by the business actors, namely suppliers, competitors and customers. This absence has caused the related business actors to perform a variety of strategies that may exploit customers and turn to become exclusive of competitors. In its implementation, especially as set forth in various literatures of competition law in a number of countries including UNCTAD and other multilateral institutions, there have been variations, especially in determining a dominant position threshold and a behavior that is categorized as a dominant position abuse. Variation in the fixing of such a threshold indicates that the assessment on the dominant position abuse should consider various factors, primarily those related to market structure and efficiency principles. In other words, the assessment of a dominant position tended to be a rule of reason.

Although there are variations in definition, the assessment methodology on dominant position abuse is relatively uniform. The first stage is the determination of a relevant market and then the presence or absence of a dominant position using the applicable market threshold. The investigation was continued by analyzing a strategy which was allegedly a form of dominant position abuse. The strategy analysis was made in detail and on a case-by-case basis, considering that some of these strategies are also efficiency enhancing.

In Indonesia, the three industrial sectors, namely cement production, telecommunications, and instant noodles, have long been thought to have dominant positions. At least, in terms of market share, where the three largest business actors in cement production and telecommunications have been leaders with a total market share reaching more than 75%. For instant noodle production, a business actor has a dominant position with a market share of more than 50%, even though there has been a declining trend in market share with the presence of fairly aggressive new competitors in the market.

Survey analysis was focused on wheat flour industry that has conformed to the market share criteria and has controlled raw materials (vertical integration) and access to capital resources. The survey results supported allegations regarding the existence of the dominant position in flour producing industry. Dominant business actors have been practising a product differentiation strategy by overflowing markets with diverse variants of wheat flour products based on designations and use segments. This kind of strategy is theoretically known as brand proliferation. Through this strategy, it was evident that the demands became inelastic since customers turned to be very dependent on their own brands, and there would be no significant entry barriers. The survey results showed that prices and supplies tended to be stable, thereby this condition strengthened more intensely the inelasticity of demand for wheat flour products of the concerned company. One of the interesting findings was that even if there were price fluctuations (particularly increased prices), the customers tended to state that those fluctuations were still tolerable. In this case, there were not

any significant data obtained yet to support the alleged exploitative abuses. There are still debates about the pros and cons regarding the profleration brand strategy, particularly its impacts on competition. Still, it cannot be concluded whether the implementation of these strategies in the wheat flour industry has been reducing competition, because the entry barriers in the respective industry were relatively high due to regulatory barriers.

**b. Analysis on business actors' strategies in the perspective of business competition focusing on tying and bundling in ICT**

Principally, the bundling strategy is a marketing strategy generally practised in information technology and telecommunications. In the bundling strategy for telecommunications in Indonesia, most activities are performed in terms of joint marketing between telecommunications equipment producing companies and a telecommunications service provider. The request of a telecommunications equipment producing company only makes a telecommunications service provider the distributor of its products. In such cases as iPhone and Telkomsel packages in which currently iPhone sales are only done by Telkomsel and in fact no exclusivity is put forth in the agreement between Apple and SingTel. The Apple's cooperation with telecommunications service providers have been based on the business-to-business conditions so it is still possible for business telecommunications service providers to cooperate with the Apple. The absence of customer's lock-ins has been making the switching cost more and more decreasing that in turn may create barriers for customers to switch to another service provider. This in turn will not impact on the competition in the telecommunications sector. Also, it is known that there has been not any subsidy from the service provider for an existing handset, so this is a real marketing strategy only.

In the meanwhile, for the bundling between a netbook and an operating system, it had been revealed that the bundling strategy initiation between a netbook and an operating system was backed up by customers' consistent demands. Most customers had evaluated that the netbook sold with an operating system was more attractive if compared to the netbook sold without an operating system. Currently, most computers users in Indonesia are using Microsoft operating system. Since they have been already quite familiar with the Microsoft operating system, they prefer a netbook with the Microsoft operating system installed in it. Thus, the bundling strategy has been giving more positive impacts for customers. In addition, Microsoft has never set forth any exclusive trading terms and conditions that expressly contain a prohibition for a manufacturer and a netbook user to use any other non-Microsoft operating system. Thus, opportunities for Microsoft competitors are still available to get into the netbook operating system market in Indonesia. Based on the above results, it is noticeable that, in the bundling practice for both cases above, a potential anti-competition that might lead to the violation of Law No.5/1999 has not been found yet.



### 3.7 Formulation of Draft Guidelines for Implementation of Law No. 5 Year 1999

Article 35 paragraph f of Law No. 5 Year 1999 assigns KPPU to formulate a guideline and or a publication related to the Law, including the Commission's Regulation to provide legal assurance for a business actor in conducting its business strategy. This Regulation, pursuant to Law No.10 Year 2004 on Establishment of Legislation (*Pembentukan Peraturan Perundang-undangan*), is a binding one, a characteristic *mutatis mutandis* thing that become a strong legal basis for the enforcement of the Commission's Regulation regarding other implementation guidelines.

For the creation of equal interpretations of Articles in Law No.5 Year 1999, KPPU has arranged a series of the Commission's Regulations related to a guideline for such Articles. Besides having imposed a guideline for Article 22 concerning Tender Conspiracy Prohibition and a guideline for Article 47 concerning Administrative Sanctions, KPPU has completed 9 guidelines in 2009 for the implementation of Law No. 5/1999, namely:

#### a. Guideline for Article 1 paragraph 10 on Relevant Market

This was stipulated in Regulation of KPPU of the Republic of Indonesia No. 3 Year 2009 on Guidelines for Implementation of Article 1 paragraph 10 on Relevant Market pursuant to Law No.5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition by KPPU

#### b. Guideline for Article 50 paragraph a concerning Exclusion of Law (*Pengecualian Perundang-Undangan*)

This was stipulated in Decree of KPPU No.253/KPPU/KEP/VII/2008 concerning Guideline for Implementation of Provision of Article 50 paragraph a of Law No.5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

#### c. Guideline for Article 50 paragraph b concerning Intellectual Property Rights (HAKI)

This was stipulated in Regulation of KPPU of the Republic of Indonesia No.2 Year 2009 on Guideline for Exclusion of Implementation of Law No.5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition towards any Agreement related to Intellectual Property Rights (*HAKI*).

#### d. Guideline for Article 50 paragraph b concerning Franchising

This was stipulated in Decree of KPPU No.252 Year 2008 on Guideline for Implementation of Provision of Article 50 paragraph b of Law No. 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

**e. Guideline for Article 51 on State-owned Enterprise (BUMN) Monopoly**

This was stipulated in decree of KPPU No.89/KPPU/Kep/III/2009 on Guideline for Implementation of Provision of Article 51 of Law No. 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

**f. Guideline for Pre-Notification of Merger**

This was stipulated in Regulation of KPPU of the Republic of Indonesia No.1 Year 2009 concerning Pre-Notification of Merger, Fusion, and Takeover.

Among the regulations issued by the Commission, the Article Guideline that elucidates the Merger Pre-Notification Program has received fairly significant responses and appreciations from the public, since the guideline gives certainty to business actors who will undertake a merger. Meanwhile, the government regulations that shall govern it are still being prepared by authorized bodies/agencies.

In addition, the Commission is currently preparing 4 draft guidelines for socialization in order to get feedbacks and public inputs through KPPU's website. The draft guidelines include a draft guideline for double position possession, case handling, lost selling, and price discrimination in which the guidelines are expected to be enacted in the early of 2010.

Basically, the guideline for implementation of Law No. 5/1999 is an effort made by KPPU to provide legal assurance and public awareness about business practices in order that the behavior changes of the business actors depend not only on the prosecution or punishment from KPPU. This holds an implication that for KPPU, the ultimate goal shall be the all people's optimum welfare; accordingly if a business sector can be made more efficient through advocacy, then law enforcement becomes an agenda which serves a forewarning in nature. 🏆

# CHAPTER 4

Improvement of Business Competition Values





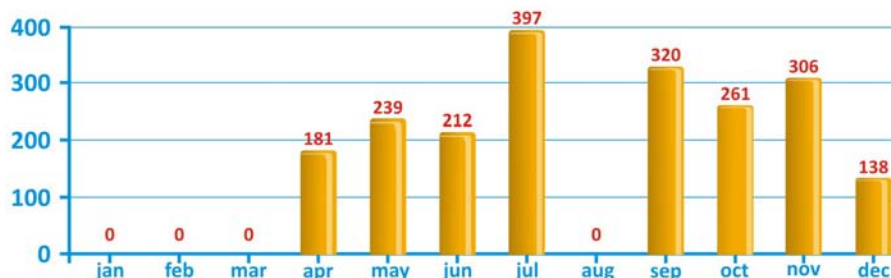
#### 4.1 Socialization of Business Competition

In order to enhance the understandings of stakeholders including government, business actors, academics, journalists, legal practitioners and the community in general, KPPU organized a number of socialization and advocacy activities. During 2009, the socialization activities were more intensively conducted compared to the previous year. 78 activities were noted, in terms of socialization that included improvement of mass media networks (forums of journalists), development in national competition forum, socialization together with the parliament and the government, socialization of business competition in regional level, preparation of contents of advocacy materials, intensive socialization in the media, joint socialization with jurists, joint socialization with public institutions, discussion forums held at Regional Representative Office, and seminars on business competitions at regional level.



Throughout this year, it was noted that 2054 participants took part in various activities conducted by KPPU. Participants included journalists, academics, business actors, the government, the parliament, judges, and the community.

**Number of Participants in Socialization Activities in 2009**



**a. Increased public awareness through intense consultations, socializations, and discussions**

Even though actions were already performed as a series of strategic measures such as institutional strengthening, socialization, regulatory assessment and development of institutional cooperations that run simultaneously with law enforcement and recommendation submissions, the implementation of Law No.5 Year 1999 for 10 years will be accepted in several different views and perspectives, especially from stakeholders. Survey results from *Pusat Studi Hukum dan Kebijakan/PSHK* (Center for Law and Policy Studies) above, under the financing of GTZ, indicated that there were 83% of 300 respondents who knew Law No.5 Year 1999 with various levels of understanding on the contents of Law No.5 Year 1999.

In relation to the above, KPPU will maximize 293 employees to work harder in undertaking the messages of Laws and Regulations for the community's benefits. The actions to be taken are, among others, intensification of advocacy and empowerment of 5 representative regional offices in Surabaya, Medan, Balikpapan, Batam and Makassar.

**b. Intensity of News Dissemination by the Commission for the Supervision of Business Competition through Media**

To enforce business competition laws, KPPU collaborated with the media to socialize the business competition laws and the presence of KPPU as an institution to implement law enforcement. Various activities undertaken by KPPU have got media coverage, both printed and electronic (radio, television and internet) media. The news dissemination on KPPU -and the activities carried out- through printed media indicates that KPPU has got the attention of personnel involved in the media. It is very helpful for the Commission for the Supervision of Business Competition's mission to internalize the business competition values within the community.

**Intensity of the KPPU's News Dissemination Through Media in 2009**



### c. Legal Matters on Business Competition

In view of advocacy aspect, in addition to disseminating information and assistance on public information, KPPU also has published "*Buku Ajar Hukum Persaingan*" ("Textbook on Competition Law") that is expected to be an academic reference for universities throughout Indonesia, particularly in the Law School/Faculty in each university as part of efforts to create a national generation with an awareness of fair competition. In order to disseminate fair competition laws and principles to the public, KPPU also regularly published a monthly publication of Newsletter "Kompetisia" in Indonesian and English versions, bi-monthly magazine "Kompetisi", and the Scientific Journal of Business Competition (*Jurnal Ilmiah Persaingan Usaha*) published every semester in addition to Daily updates that may be accessed via the Commission for the Supervision of Business Competition's official website. All of these publications have made it easier for the community to have accesses to knowing performance in progress and provide KPPU with reports.

## 4.2 Domestic Cooperation

In addition to actively participating internationally, KPPU also consistently tries to form, implement, and develop cooperations with relevant government institutions. In contrast with international cooperations, domestic cooperations are focused on efforts to improve primary functions of KPPU in law enforcement, provision of advice and recommendations, and also assistance in institutional strengthening. Those efforts are made through various arrangements of cooperation and formal meetings with the government and state high institutions/bodies.

In order to improve good relations with the government, KPPU had already held several hearings with the Chairman of the People's Deliberation Assembly/MPR, the House of Representatives/DPR, and the Financial Auditing Agency (BPK). The meeting was held to introduce the Commission for the Supervision of Business Competition's performance and also explore possible formal cooperation with certain institutions. In addition to hearings, during 2009 KPPU also attended three Hearing Meetings with the Commission VI of the House of Representatives in discussing various things ranging from the Commission for the Supervision of Business Competition's performance to its budget.

In order to support law enforcement functions in business competition, KPPU formulated some cooperations with other law enforcing agencies, the government and other institutions. Such cooperations included cooperations with the State Financial Auditing Agency (BPK), Policy Institute for Government Procurement of Goods and Services (LKPP), the Police, and universities.

In this context, from the viewpoint of technical instruments and enforcement, there are some agendas that currently still need attentions from Law No.5 Year 1999 concerning the Commission for the Supervision of Business Competition's limited authorities in terms of evidence seizure, weakness of the Commission for the Supervision of Business Competition's institutional status and the absence of government regulation (PP) on merger, acquisition and consolidation in accordance with Articles 28 and 29 of Law No.5 Year 1999. In addition, the reason why criminal sanctions have not been applied in Article 48 of Law No. 5 Year 1999 was its enforcement that should be conducted by other law enforcing agencies especially the police.

To overcome this problem, KPPU shall undertake 2 things. The first is to build cooperation and coordination through an MOU with the Police and other law enforcing agencies. The second is to encourage the amendment of Law No.5 Year 1999 primarily to strengthen the authority, judicial procedures and institutional position of KPPU in order that its roles can be more optimal.

In the context of the preparation of the Government Regulation on Merger, KPPU has been coordinating with the Ministry of Justice and Human Rights and related agencies, and is presently preparing the Government Regulation (PP) that is expected to be soon issued by the President of the Republic of Indonesia. But, while anticipating the Government Regulation (PP), KPPU has published Perkom 1 Year 2009 about Pre-notification of Merger, Fusion and Acquisition.

### 4.3 Cooperation with Overseas Parties

In 2009, KPPU took part in 35 international events which comprised 13 meetings and 22 trainings or workshops. This number increased 40% from that in year 2008 to be 25 international events.

In terms of number, KPPU assigned 86 delegates to actively participate in international activities, of whom 24 delegates (28%) were invited as speakers. The number of delegates increased by 35% from that in 2008 with 63 delegates of which 20 delegates were invited as speakers.

In terms of level of delegation, most of delegates were grouped in the senior level (51%), 41% of them were delegates in the leadership level (the Commission's Members and the Head of Secretariat), and 8% of them were delegates in the entry-level staff level. This composition was increased at the leadership level if compared to that in year 2008. In 2008, 25% of the delegations are in the leadership level, 67% of them are in the senior level, and 5% of them at the entry level

The following descriptions are KPPU's participations in international events in 2007 until 2009.

	Tahun 2007 Year			Jumlah Total
	2007	2008	2009	Number
Number of activities	30	25	35	90
Number of delegates	95	63	86	244
Speaker	21	20	24	65
Participant	74	43	62	179
Category of delegation				
Leader level	41	16	35	92
Senior level	46	42	44	132
Initial staff level	8	5	7	21



In terms of cooperation with international institutions, year 2009 was significant in enhancing KPPU's international roles in the world and also strengthened its position as the best institution in business competition in the Southeast Asia.

The beginning of the year was initiated with the appreciations of Asian and Pacific countries as members of the Asia Pacific Economic Cooperation (APEC) on the peer review of Individual Action Plan (IAP) prepared by Indonesia in a series of high-level meetings in February 2009. In the peer review, KPPU played very active roles and maintained an international evaluation on the Chapter on Competition Policy. Those review results showed that the competition policy in Indonesia had run well and in line with the Bogor Goals set as a primary goal of APEC to achieve in 2020.

By the middle of 2009 (on 14<sup>th</sup> May 2009), KPPU received the visit of Chairman of Korea Fair Trade Commission (KFTC), Mr. Yong-Ho Baek. In a bilateral meeting, the KFTC is accompanied by representatives of Korean Embassy received directly by Mr. Benny Pasaribu, the Chairman of KPPU, who was accompanied by the Commissioner's Members and Director of KPPU.

The bilateral meeting between the two institutions discussed several key agenda which delivered, among others, latest developments on competition law and policy, discussion on competition law and policy, discussion on law enforcement on business competition cases, experience sharing between two institutions: KPPU and the KFTC, cooperation enhancement, and initiative for further collaborations.

With such cooperation, it was expected that communication and coordination in the implementation of competition law and policy may become better in both countries. This may be attained through several activities through periodic meetings or discussions to share knowledge and information of some substantial issues, arrangements of workshops, seminars and staff exchanges.

On the other side, the high recognition of KPPU has invited other countries to learn from Indonesia and explore the best practices to be applied in those countries. In the middle of this year (11<sup>th</sup> June 2009), KPPU got an honor to receive the visit of the Afghan delegates who were policy makers, academics, community leaders in Afghanistan, and elected candidates who would occupy important positions in the Afghan economy. The visit as part of *"Rising Stars Exchange Program"* by the International Republican Institute was designed to increase the candidates' knowledge on economic policy that might help them in formulating better policies in their countries. With these visits, it was expected that KPPU could give inputs and knowledge about best practices of competition policy and implementation of competition law in developing countries.

In addition to various achievements above, KPPU also plays an active role in report preparation under the coordination of the Indonesian government, among others, in the World Bank's assessment on governance institutions in Indonesia arranged by the Ministry of Finance, in preparation of peer review reports of OECD Policy Investment Framework under the coordination of the Coordinating Ministry for Economic Affairs; and Knowledge Sharing Program under the coordination of Fiscal Policy Agency, the Ministry of Finance.

Starting from July 2009, KPPU again followed the peer review related to competition law and policy at a United Nations agency, namely the United Nations Conference on Trade and Development (UNCTAD). In such a trial, Indonesia was evaluated to be successful and consistent in the implementation of competition law and policy, and, even from all countries evaluated, the peer review for Indonesia was the best in terms of implementation and report contents once made by the UNCTAD in various developing countries. The idea was presented on the closing of *The Tenth UNCTAD Intergovernmental Group of Experts* held in Geneva on 8<sup>th</sup> July 2009.

In a whole, the peer review is considered not only to provide the best recommendations for the implementation of competition law and policy in Indonesia, but also to become a promotional activity for all competition agencies while increasing the international recognition of KPPU and enforcement of competition law and policy in Indonesia. The results of this review would be transformed into various forms of technical assistance in supporting and overcoming the outlined challenges. It was expected that these results can also be disseminated to various stakeholders to show the amount of the world's countries supports for the success of Indonesia in the implementation of competition law and policy.

KPPU's existence as the most outstanding institution for business competition in the Southeast Asia was reinforced by trusts awarded by an all-Southeast Asia competition agency, namely the ASEAN Expert Group on Competition (AEGC) to KPPU to host three opening activities for the agency. The three activities included AEGC First Regional Workshop on Guidelines, The First Workshop on AEGC Handbook on Competition Law and Policy, and The First AEGC High-Level Policy Dialogue. These three activities are held in June, August, and December 2009 in several major cities in Indonesia, including Bali, Yogyakarta and Medan.

These three activities represent the ASEAN Expert Group on Competition/AEGC's main activities in support of the achievement of its main objectives to formulate the guidelines as a reference for the ASEAN countries in introducing competition policy in their national economies; the Handbook of the ASEAN competition agencies used as a reference for potential investors in the ASEAN; and forum discussions among leaders of competition agencies in the ASEAN. The trust from the ASEAN Expert Group on Competition/AEGC's member countries for KPPU as the first host in each activity above indicated international recognition for Indonesia as a country with best business competition law enforcement in the ASEAN. 🏆

### Special Report for Peer Review of Indonesia on the Tenth UNCTAD Intergovernmental Group of Expert Meeting

Indonesia was evaluated to be successful and consistent in implementation of competition law and policy. In fact, from all countries evaluated, the peer review for Indonesia was the best in terms of implementation and report contents ever made by the UNCTAD (*United Nations Conference on Trade and Development*) in various developing countries. The idea was presented on the closing of *The Tenth UNCTAD Intergovernmental Group of Experts* held in Geneva on 8<sup>th</sup> July 2009.

United Nations Conference on Trade and Development (UNCTAD) is part of the United Nations Organization (UNO) that focuses on the exchange of knowledge in support of the development of various countries. *Intergovernmental meeting* is the main one which plays an important role in decision-making. Especially for competition policy, the *intergovernmental group of experts on competition policy and law* is an association of various world competition institutions. In the annual meeting, the latest issues were discussed to find the best solution in dealing with the problem. In addition to exchanging information, this meeting also always *reviewed* various institutions of competition (especially those from developing countries) to determine the status of implementation and provide recommendations for improvements and technical assistance needed for supporting such recommendations.

The UNCTAD Peer Review of Conditional Law and Policy is a voluntary evaluation carried out by the UNCTAD on the implementation of competition law and policy in a country. This evaluation is very different from one made by the World Trade Organization (WTO) and the Organization of Economic Cooperation and Development (OECD). The UNCTAD'S evaluation is intended especially for competition institutions in developing countries and it is non-coercive. Such an evaluation is intended to enhance experience exchange and best practices and to assess requirements for capacity building and technical assistance needed to develop a business competition agency.

A *peer review* requires a fairly long procedure, especially in preparing the *review* report. The report was prepared by an independent consultant based on inputs of the *reviewed* country. Data and information are obtained from relevant competition agencies and are pursuant to consultations with sectoral regulators, the government, consumer protecting agency, business actors, and academics. Each progress of the report is always consulted with the competition agencies to get inputs and approvals. In the *review* process for Indonesia, the report was compiled by Prof. Elizabeth Farina (ex-Chairman of the Brazilian competition agency) and independent input from the Office of the Coordinating Ministry for Economic Affairs, District Court, the Supreme Court, the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi/KPK*), the Consumers Protection Agency Foundation (YLKI), Indonesian Chamber of Commerce and Industry (*KADIN Indonesia*) and Faisal Basri as the representative of academics.

The *peer review* on Indonesia was conducted in *the Tenth Intergovernmental Group of Experts (IgE) Meeting* held at United Nations Headquarters in Geneva, 7-9 July 2009. The process review in the trial was implemented through several stages, i.e. report submission by independent consultants, responses from reviewed countries, discussions with countries participating through a variety of previously submitted questions, and recommendations for appropriate technical assistance suitable for the *reviewed* country.

In her report, Prof. Elizabeth Farina stated that Indonesia has experienced positive developments in business competition, both in case handling and in business competition policy. KPPU was seen as a relatively new competition agency, but with a very rapid and significant growth in overseeing the implementation of competition law and policy in Indonesia. The number of cases handled is relatively few, but always increase. Most of the cases handled are those in procurement, so

KPPU often coordinates with the Corruption Eradication Commission (KPK) on cases related to corruption in procurement. In terms of competition advocacy, the number of recommendations and considerations delivered and positively responded from the government is also increasing. This shows the increasingly better awareness of policy makers on the importance of fair business competition. Publications are also conducted intensively through such various means as magazine, brochure, *website*, and so forth. For international level, *website* and monthly *newsletter* in English language are considered to provide significant promotion media to inform the world of Indonesian competition law and policy. On other law enforcement side, KPPU also has been making good progresses along with the high number of decisions won in District Court and the Supreme Court.

Nevertheless, Indonesia still face some challenges, particularly those related to the weaknesses of Law No.5 Year 1999. The weaknesses include the purposes of *multiple objectives of laws and regulations*, namely protection of public interests, consumer's welfare, efficiency, and equalization of business opportunities for small-, medium- and large-scale business actors. The *multiple objectives* in the laws are considered to be capable of leading to conflicts among those goals and less-focused objectives of Law No.5 Year 1999. Also it is worthy of attention on position of a competition law which is in parallel with other laws (i.e. criminal law, civil law, and commercial law), exceptions that need deep discussions, and problem of definition of an Article. The definition of an Article provided is sometimes too broad and sometimes too narrow, and does not yet provide clarity on the meaning of a terminology in Law No.5 of 1999. One is the *per se illegal* and *rule of reason* approach that sometimes differs from the approach currently in use in business competition law.

Therefore, Dr. Farina suggested a few things that need corrections in the execution of Indonesian competition law. These include high number of commission members, high number of procurement-related cases than other cases, low amount of fines paid by business actors, application of business merger rules, and need for evaluation of some Articles in the Law. The maximum limit for sanctions required by Law No.5 Year 1999 is also considered too small to eradicate anti-competitive practices commonly done by big business actors who have large capitals. Therefore it needs a certain standard of sanction sufficient enough to replace losses and give deterrent effects. The same thing was perceived by the panelists and participants of the Meeting on the reports submitted.

In the completion of the report, KPPU also added the latest competition progress not yet included in reports, especially concerning the strengthening of competition law instruments, improvement of budget systems, internal regulations, and efforts to cooperate with the State Financial Auditing Agency (BPK) and the Indonesian Police. The report was well received by various member countries in line with various interesting comments and further questions made. These comments were generally associated with KPPU's effort to control mergers and acquisitions, effectiveness of a sanction exertion, process of case handling and objection to the court, institutional independence associated with big political influence, relevance of competition policy with sectoral policies, and advocacy strategy carried out by KPPU.

Overall, it is considered that the *peer review* not only provides best recommendations for the implementation of competition law and policy in Indonesia, but also it may be considered as a promotional activity to all competition institutions while increasing international recognition of KPPU and enforcement of competition law and policy in Indonesia. The *review* will later be transformed into various forms of technical assistance to support and overcome the challenges outlined. The results of this *review* were expected to be also disseminated to various *stakeholders* to show the great international supports for the Indonesia's success in the implementation of competition law and policy.

#### *Related Activities*

Still in a series of activities in the same meeting, KPPU's Chairman also got an opportunity to present materials on the relationship between competition policy and law at the session of *Roundtable on the Relationship between Industrial and Competition Policies in Promoting Economic Development*. In addition to KPPU, some competition law experts from France, Brazil, Thailand and the United States also expressed their views on respective core materials.

KPPU's Chairman, Dr. Benny Pasaribu, said that, during this time, industrial policy and competition policy have tended to be in conflict with each other and frequently led to conflicts. Yet, in practice, these policies have different goals, i.e. the industrial policy to encourage certain industries in order to allocate its *resources* optimally, and competition policies to encourage efficiency and productivity in achieving the community's prosperity. Both these policies have the same ultimate goal: to promote economic growth in achieving living standards.

Various instruments of industrial policy, in particular protection, are often used by a country in building its industries. This has proved to be successful in some countries, like Japan with its steel and automotive industries; Korea with its conglomerate industries; China with its export areas/regions; Taiwan with its small-size and medium-size enterprises; the USA with its steel and agricultural industries; and German and French with their agricultural industries. Often, other industrial policy tools such as tariff instruments, tax incentives, local content requirements and granting of monopoly rights and concessions to certain business actors are also provided. For example, in overcoming the 2008 economic crisis, protection instruments become the main choice, including advanced countries like the USA with its *"the Buy American"*, Canada with a boycott policy against the American products, and Australia with a particular policy preference in certain procurements. To overcome contradictions between the two policies, some recommendations were discussed in the meeting. KPPU recommended a particular economic model that may applied in assisting the government to set the focuses of industrial policy and competition policy to achieve optimal results. Furthermore, coordinations between these two policies, either through a mediating agency or through an official cooperation between the two responsible agencies, are also important in harmonizing the two policies. Policy advocacy is also given a priority to ensure that the protection does not interfere with business competition extensively. For this reason, the business competition agency is expected to provide the best solutions in preventing the protection.

## The First AEGC Workshop on Regional Guideline and Efforts to Create the Business Competition Climate in the ASEAN Region

As stated in the *ASEAN Economic Community (AEC) Blueprint*, the ASEAN Member States (AMSs) have agreed to implement competition law and policy in their respective countries in 2015. As one of the efforts to achieve this goal, the ASEAN Member States (AMSs) incorporated in the ASEAN Experts Group on Competition (AEGC) agreed to jointly prepare *Regional Guideline and Regional Handbook on Competition Policy*.

### The First Workshop on Regional Guideline on Competition Policy and Law in ASEAN for Business

*Regional Guideline* is a guideline/manual for the ASEAN Member States (AMSs) in order to understand the competition law and policy based on *best practices* from other countries that have effected competition law, including Indonesia. This *Regional Guideline* is expected to help all the ASEAN Member States/AMSs in their efforts to formulate, implement and enforce the competition law and policy effectively in each State.

As part of its activities in preparation of the *Regional Guideline*, the ASEAN Expert Group on Competition (AEGC), in collaboration with InWent (*German Capacity Building International*) and the Indonesian KPPU (*the Commission for Supervision of Business Competition*) held the *1<sup>st</sup> Workshop of the Work Group on Developing Regional Guidelines on Competition Policy* (“WG Guidelines”) on 30<sup>th</sup>-31<sup>st</sup> July 2009 in Bali, Indonesia. *The workshop* was held in order that the AEGC’s member countries could review and revise the draft *Regional Guidelines* previously prepared by Singapore, as the chairman of the *Work Group on Developing Regional Guidelines on Competition Policy* (“WG Guidelines”). The meeting was attended by delegates from such AEGC’s member countries as Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam, and also representatives from the ASEAN Secretariat and experts from Europe Fergano Fratini. These experts were appointed by InWent to assist AMSs in formulating the concepts and contents of the *Regional Guidelines*. The two-day workshop was chaired by Mr. Ow Yong Tuck Leong from the *Competition Commission of Singapore* (CCS), in his capacity as the *Chairman of WG Guidelines*.

As the host of the *workshop*, KPPU’s chairman Dr. Benny Pasaribu, in his opening address, reiterated his hope that the *Regional Guidelines on Competition Policy* could assist in increasing the ASEAN Member States/AMSs’ understanding on the importance of implementation of competition law and policy to create fair competitions in economy across the states within the ASEAN area.

KPPU’s Chairman also hoped that *Regional Guideline* could encourage the AMSs that have not applied competition law that they would soon ratify the competition law. As for a State that has already applied a competition law, like Indonesia, the *Regional Guideline* is expected to assist the efforts of law enforcement and competition policy in Indonesia in order that these will get better than they are now.

The *Regional Guideline* itself is a general guideline for the ASEAN Member States (AMSs) to be capable of introducing, implementing and developing competition policy and law in each State, in accordance with legal characteristics and economic conditions in each of the ASEAN Member States (AMSs). For this reason, this *Guideline* serves as a reference and is not binding. Periodically, the ASEAN Expert Group on Competition (AEGC) conducts *reviews* and *updates* of the *Guideline* contents in order to reflect each change and development in competition law and policy in the ASEAN and the whole world. With its implementation among AMSs, the *Regional Guideline* is expected to help actualize economic integration in the ASEAN region. Economic integration with a fair business competition and a conducive business environment will attract investors and promote economic growth in the ASEAN region. Increased cooperation among AMSs through the implementation of competition law and policy also enhances economic efficiency and business competition level among countries in the ASEAN region.

In the workshop, all delegates discussed in detail (*chapter by chapter*) the materials in the *Guideline*. KPPU expressed its view that the *regional Guidelines* should also be coordinated and disseminated to the relevant Government agencies, such as Office of the Ministry of Economic Affairs, the Ministry of Trade, the Ministry of Industry, the Ministry of Laws and Legislations, and the Capital Investment Coordinating Board (BKPM), for competition policy issues are in the hands of competition agencies and also of the Government's authority and responsibility. KPPU also has reviewed that there is an overlapping in the uses of terms 'competition law' and 'competition policy' ('*hukum persaingan*' dan '*kebijakan persaingan*') in the *Guideline*, even though the two terms are very different from each other. Some other terms of which their definitions are still deemed ambiguous in the *Guideline* are between '*Merger and Acquisition*', '*Concentration*', '*exemption*' and '*exclusion*', and between '*Market Power*' and '*dominant position*'.

In that meeting, the AEGC's members also put forth a proposal related to the guideline structure in the *Regional Guideline* that should be divided into 3 sections, namely a section that accommodates inputs from a country that has applied competition law and policy (Indonesia, Singapore, Thailand, and Vietnam), a section currently preparing competition law and policy (Malaysia, Philippines, and Cambodia), and a section in which the countries have not yet prepared business competition law and policy (Lao PDR, Brunei Darussalam, and Myanmar).

In conclusion, all delegates agreed that the results of this workshop will be taken and discussed further in 2<sup>nd</sup> *Workshop of WG Guidelines* to be held on 29<sup>th</sup> to 30<sup>th</sup> September 2009 in Manila, the Philippines, then be circulated to each member of the *working group*. Furthermore, the AEGC hopes that experts can immediately repair and complete information that apparently lacks in the *Regional Guidelines*, based on inputs from all *workshop participants*.

#### **The First Workshop on Handbook on Competition Policy and Law in ASEAN for Business**

In the decade of 2010s, the ASEAN as a regional entity consisting of countries in the Southeast Asia area will actualize the existence of an area that applies free trade, where in the *free trade area* (FTA), the flows of goods and services will freely cross the boundaries and laws of a country. For this reason, it is necessary to have *fair economic* principles of which one of its elements is *fair competition* in order to support the FTA. Subsequently, the FTA will be used optimally by all countries in the region.

Yet, until recently the *competition policy and law* that have been commonly applicable in the region has not been established. Even not all countries in the region have *competition laws*. Consequently, producing a generally accepted rule of law in the region requires a time-consuming process and synchronization in making appropriate and acceptable rules, and have optimal benefits for all members of ASEAN.

Therefore, the ASEAN Secretariat as an ASEAN organizational entity follows it up by preparing *competition policy and law* generally accepted in the Southeast Asian region in which KPPU as the Government of Indonesia's representative and the first watchdog for business competition in the Southeast Asia has been appointed by the ASEAN Secretariat to organize the first *workshop* in *drafting* a handbook for guideline to *Competition Policy and Law* in the ASEAN Region that aims at becoming a starting point for the implementation of *fair competition* to be effected in the Southeast Asia region in the anticipation of countdown for a *free trade area* in the region.

The *workshop* held at Hotel Hyatt Yogyakarta on 18<sup>th</sup> to 19<sup>th</sup> August 2009 was the first that aimed at introducing the basic principles in fair competition implementation and various information extracting from each country in the Southeast Asia related to the *fair competition* implementation in each respective country.

The *workshop* facilitated by the ASEAN Secretariat in conjunction with InWent (a German international donor agency) was attended by delegates from the competition watchdogs of the Southeast Asian countries, representatives from the ASEAN Secretariat and *experts* from Fratini Vergano (an economic consulting agent of the European Union). Those series of workshops began with introductions to the

basic principles of business competition in establishment of the *guidelines on competition policy*, in which the *handbook* acts as a basic guideline to identification, implementation, enforcement of business competition law and advocacy of general business competition in the Southeast Asia. In this session, it was explained that *fair competition* has been one of basic elements in the actualization of a healthy and tough economy in order that in the future business actors in a country as prime movers of economy will have enough strength and independence to deal with certain circumstances. In addition, with the existence of a healthy economy, people's prosperity in a country in general would be more realistic to be actualized.

A review on each country that has not applied a competition law is performed by extracting information and analysis on agencies responsible for business competition supervision and their authorities, methods used in performing business competition supervision and enforcement of fair competition rules. To follow up information analysis results gathered from the workshop, the experts will conduct further studies of analysis in the country. In addition to extracting further data, those experts will also perform an analysis of socio-economic conditions of the country. The results of analysis will be used as considerations in the preparation of a draft competition policy to be used in the Southeast Asia in general. This analysis is needed in order to facilitate the synchronization of a draft handbook that it will be more appropriate and acceptable by all countries of the Southeast Asia.

There are a lot of inputs related to information summarized in a review of countries that have already applied competition laws, especially from Indonesian delegation. This is an anticipation for misinterpretation of information obtained in the analysis of conditions of Indonesia as a country that has been making use of a comprehensive competition law. Henceforth, Indonesia (in this case KPPU) will send the latest updates of some rules and manuals for the implementation of competition law already performed by KPPU.

In the workshop, it was agreed that the next phase of the workshop series is further research on the implementation of competition law related to culture and economic conditions in each country, that will then be synchronized in order to prepare an initial drafting of handbook adjustable to each country's conditions in which the drafting results will be followed up again in subsequent meetings.

The sequence of such *handbook* drafting process in its preparation from the beginning to the final stage and its implementation should be closely supervised considering that the *handbook* is a rule overarching the *fair competition* principles as an instrument for the *free trade* implementation in the Southeast Asia and also that the economic conditions of the region's countries are not evenly distributed, even there are economic disparity and prosperity levels that correlate to mobile economic resources among those countries. What shall be considered in implementing fair competition ideals are fair competition principles, where the law and regulations currently enacted give all countries opportunities to take advantage of free trade situation in the Southeast Asia region, based on capabilities and mobility of economic resources of the respective country. This means that fair competition principles not only can provide all countries in the region equal treatments but also apply those principles in practice.

Nevertheless, with such a *workshop* that aims at preparing fair competition regulations for all countries within the ASEAN region, there will be growing optimism in a vast area with a comparatively high economic mobility with entities that support a strong economic system. Consequently, a prosperous community in the Southeast Asia region may in general come into a reality, since the goal of fair competition implementation is to get into reality community's economic rights, both in a country and in the region.

The emphasis on a fair and just competition is due to the implementation of a *free trade area* that allows all economic resources that cross the boundaries of regions and countries, thereby there will be greater competitions in economy for business actors who, during this time, have been facing local competition in the jurisdiction of a country. If the fair competition principle gets an insignificant portion, it is feared that many economic institutions will be eroded in an increasingly tough competition, and of course that involves a community's survival as a driving force for such economic institutions.



# CHAPTER 5

Development of Institutional Strengthening





### 5.1 Increased Absorption of Budget

Related to KPPU's position as a supervising agency for laws and regulations, independent budget items separate from other departments are necessary for KPPU. Since 2001, KPPU has been a working unit under the Ministry of Industry and Trade in which automatically KPPU's tasks are financed from the State Budget (APBN) and other allowed sources in accordance with statutory regulations by distributing to the budget of the Ministry of Industry and Trade. As a consequence of the separation of the Ministry of Industry and Trade, since 2005, KPPU has been one of budget working units in the Secretariat General of the Ministry of Trade. Therefore, KPPU has a budget unit incorporated into the Ministry of Trade in the Republic of Indonesia.

In accordance with the Regulation of the Minister of Finance No.59/PMK.06/2005 on Accounting and Financial Reporting Systems of the Government and Regulation of the Directorate General of Treasury No.PER-24/PB/2006 on Implementation of Financial Report Preparation of a State Ministry/Institution in which each Working Unit is obliged to implement carry out accounting and budgetary accountability to be consolidated with the Ministry of Trade. But since 2000, KPPU has been making some efforts to separate a budget portion from the Ministry of Trade to improve KPPU's budget management performance.

In its efforts to get a budget portion, KPPU has proposed a request for its own budget unit code separate from the Ministry of Trade. And pursuant to a letter from the Minister of Finance No.S-256/MK.2/2009 dated 19<sup>th</sup> June 2009, KPPU's request for its own budget portion code starting from Fiscal Year 2010 with a BA number 108 has been approved.

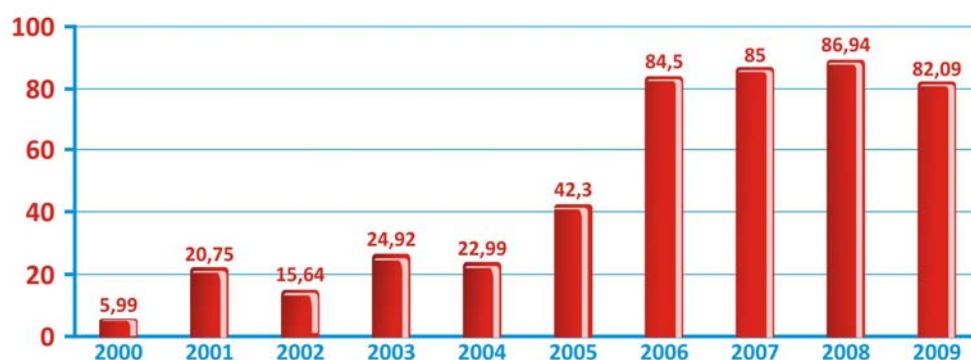
To follow up the above, KPPU has established a team of preparation for budget unit separation and has also invited resource persons in order to collect information related to the preparation of KPPU's Budget Division. The resource persons invited to prepare KPPU's budget unit were from the Financial Bureau (*Biro Keuangan*) of the Ministry of Trade, General Affairs Bureau of the Ministry of Trade, Planning Bureau of the Ministry of Trade, Inspector General of cq. 3<sup>rd</sup> Inspector of the Ministry of Trade, Directorate for Accounting

and Reporting of the Ministry of Finance and the Directorate General for State Property, the Ministry of Finance. Based on discussions for KPPU's budget unit preparation, the pieces of information on measures of separation procedures of KPPU's budget unit from the Department of Trade and a separate budget management system were produced.

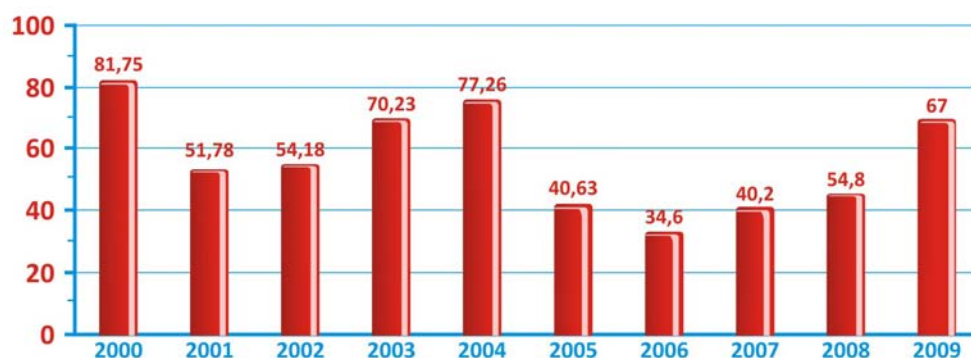
With the actual separation of KPPU from the Ministry of Trade, KPPU as an independent agency can carry out its own better budget management that may impact on smooth operations of KPPU's activities so that KPPU's vision and mission may be undertaken in line with desired needs and set times.

KPPU's budget amount in 2009 decreased from that in 2008. KPPU's 2009 total budget was Rp.82,089,300,000,- (eighty-two billion, eighty-nine million, three hundred thousand Rupiah) or decreased around 5.85% from the 2008 Budget which amounted to Rp.86,939,983,000,- (eighty-six billion, nine hundred and thirty nine million, nine hundred and eighty-three thousand Rupiah). However, the absorption in 2009 got a significant increase in which the 2009 absorption rate reached about 67% or Rp. 55,465,645,951. Table 2 shows increased annual budget absorptions. Until recently, several attempts by KPPU have been made to enhance an efficient and optimal realization. Out of some of KPPU's efforts, an effort has evidently given a result, namely the issuance of Letter of the Minister of Finance Number S-470/MK.02/2009 as of 7<sup>th</sup> August 2009 regarding Honorary Fee Increase for KPPU's Secretariat, in which in its letter an honorary fee increase for KPPU's Secretariat staff was approved that effectively started in August 2009.

**Budget Allocated**  
(budget in billion)



Percentage



## 5.2 Improved Discipline

In institutional field, KPPU has successfully completed a number of internal regulations, which include, among others, the issues of the Commission's Regulation regarding the the Commission for the Supervision of Business Competition's Code of Ethics, Working Groups, and Rules of Procedure for the Commission. This Code of Ethics was issued through Decree No.22/KPPU/KEP/I/2009, while the Working Group and the Rules of Procedure were regulated according to provisions of Decision Letter No.29/KPPU/KEP/II/2009 and Decision Letter No.37/KPPU/KEP/II/2009.

Disciplinary rules and guidance for staff of KPPU were regulated in Decree No.97/KEP/KPPU/XII/2003. Improved disciplines for the staff continue to be enforced in a way to monitor and remind them through memorandums and warnings. The Disciplinary Rules that govern the Commission were included in Decision No. 37/KPPU/KEP/II/2009 regarding the Code of Conducts of KPPU. Evaluations on the performance of staff were regulated in Decision No.174/Kep/KPPU/XI/2006 regarding Provisions for Assessment on Annual Performance of Secretariat Staff of the Commission for the Supervision of Business Competition (*Ketentuan Penilaian Evaluasi Kinerja Tahunan Pegawai Sekretariat KPPU*).

## 5.3 Increased Remuneration

In terms of remuneration, in fact the amounts of remuneration received by KPPU's members are the lowest if compared to such other Commissioners as the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi/KPK*) and the General Election Commission/ KPU). It deserves attentions from the Ministry of State Official Empowerment (*MenPAN*), considering that KPPU members have the greatest authorities for making appeals (such as KPK) and making decisions (such as Court of Law).

In addition, considering KPPU's roles and functions very strategic for national economy, it is liable for the government to pay attention to the future of KPPU's Secretariat staff. KPPU always tries to increase honorary fees consistent with certain levels of staff needs, but due to several obstacles to be faced, improvement was just actually made in August 2009 through KPPU's Decree No.201.1/KPPU/Kep/VIII/2009 for the positions of Section Head (*Kepala Seksi*) and down under. Currently, KPPU is trying to increase the honorary fees for certain positions ranging from Bureau Chief level to Commissioner level. Along with the enactment of Decree No. 88/KPPU/KEP/III/2009 on Organization and Administration of the Secretariat of KPPU, KPPU issued Decree No.195.1/KPPU/Kep/VIII/2009 regarding Nomenclature Equivalence of Position of KPPU's Secretariat and Determination of Honorary Fee Amount (*Penyetaraan Nomenklatur Jabatan Sekretariat Komisi Pengawas Persaingan Usaha dan Penetapan Besaran Honorarium*).

## 5.4 Improved Quality of Human Resources

In support of increased capacity of internal and external resources, KPPU enhances efforts to increase human resource capacity in KPPU and external parties such as academics and judges through workshops. These activities include the arrangements of Merger Control Workshop, Validation Workshop on Training for the Trainers, and the International Lecture from Canadian competition agencies.

When the issuance of Guideline on Pre-Merger Notification on 13<sup>th</sup> May 2009, at the same time KPPU cooperated with UNCTAD (*United Nations Conference on Trade and Development*) and GTZ to hold Merger Control Workshop on 14<sup>th</sup> – 15<sup>th</sup> May 2009 to increase the understanding on internal resources in recognizing, anticipating and socializing the Guideline. The workshop also attended by representatives of several government agencies was directed as a means of socialization for KPPU staff internally and also externally as a means of experience exchange concerning the best practices of merger rules in other countries. Through the workshop, it is expected that KPPU's internal resources are ready to handle and implement Merger Pre-notification and evaluation processes on merger and acquisition plans that will be performed by business actors, and are able to conduct assessment on mergers and acquisitions previously done.

Still in a series of activities in the same month, KPPU held a “Validation Workshop on Training of Trainers (ToT) for the Competition Manual” on 18<sup>th</sup> to 20<sup>th</sup> May 2009 to discuss the competition manual as the main material in training competition trainers. The workshop was attended by internal senior staff and various leading university academics of some backgrounds on Legal Studies. An this workshop was the first step to achieve an ultimate goal required by KPPU, i.e. to graduate trainers with competency in law and policy of Indonesian business competition. In the future, these trainers are expected not only to be KPPU's extended hands (representatives) in an effort to socialize business competition law and policy among stakeholders, but also to act as KPPU's partners to conduct internalization of competition principles into all community levels.

The third activity was a public lecture by two international experts, i.e. Andre Brantz and Robert Lancop from the Canadian Competition Authority on the implementation of competition laws in Canada and its comparison with the implementation of competition law in Indonesia. The workshop was held on 12<sup>th</sup> to 15<sup>th</sup> August 2009 and attended by researchers, management and leaders of the Commission. It was intended to absorb knowledge from overseas regarding legal framework for business competition law (especially regarding cartels, market powers and its misuses, and business merger) through various theories and case studies once handled by Canadian business competition agency.

In addition, KPPU also remained consistent to provide scholarships for staff who wish to continue Masters-level (S2) education both in Indonesia and overseas.

## 5.5 Organizational Development that Continues to be in line with needs

In performing its duties and functions, KPPU was assisted by the Secretariat. Therefore, under the Law No.5 Year 1999 and Presidential Decree No. 75 Year 1999 jo. Perpres No.80 Year 2008, KPPU established a Secretariat KPPU's Decree that was amended several times, with the last amendment through Decree No.88/Kep/KPPU/III/2009 KPPU.


## 5.6 Career Position

Career prospects for the staff of KPPU were regulated in Decree No.163/KPPU/KEP/XI/2006 regarding the General Guidance for Career Management of KPPU's Staff (*Pedoman Umum Pengelolaan Karir Pegawai KPPU*).

## 5.7 Increased Comfortable Working Conditions

KPPU's building at Jl. Ir. Juanda No.36 Jakarta has been occupied by KPPU for ± 8 Years. In line with KPPU's institutional development, the needs for adequate infrastructure also increase. For that purpose, in 2008 KPPU added the building area by using the former KPK's building located next to KPPU's building. To add to convenience level in working and to create conducive conditions for working environment, KPPU made renovations in 2009 by building, among others, additional rooms for investigators in 1<sup>st</sup> floor of KPPU's building. Moreover, in order to advance relations between KPPU and community, KPPU added a press room in 1<sup>st</sup> floor that will serve as a special room for parties particularly the press wishing to know either more about KPPU or the latest information on KPPU's activities.

## 5.8 Possession of its own budget separate from the Ministry of Trade's budget

Presidential Decree (*PerPres*) No.80 Year 2008 decided that KPPU has its own budget, after 9 years during which KPPU's budget was under the Ministry of Trade. Having its own budget items means that KPPU reserves the right to manage and account for the uses of its budget without involving the Ministry of Trade anymore. However, the Presidential Decree (*PerPres*) is still waiting for an approval from the Ministry of Finance for its effective operations, in order that KPPU in Fiscal Year 2009 was still under the Ministry of Trade and only in 2010 KPPU can manage its own budget independently. 





# CHAPTER 6

Agenda and Challenges in 2010





**ON** the eve of Year 2010, KPPU will give priority to the following:

1. Strategic Cases related to Community's Basic Needs

Law No.5 Year 1999 basically is not concerned much about dominance, a monopoly associated with market structure as long as it neither hinders business competition nor reduces economic efficiency and community welfare. Being a supervising institution established by regulations, KPPU always gives a priority to supervision over the creation of high market concentration resulting in market power that potentially encourages monopolistic practices and unfair business competition, especially those involving strategic commodity markets and influencing inflation within the community.

In the future, to support this law enforcement priorities, the Commission shall provide more chances for research and studies with a *Structure, Conduct, Performance (SCP) approach*, so that economic analysis approach will become more dominant and initiative cases will increase. In this respect, it is noteworthy that the Commission are not in the anti-dominant position, but will act resolutely if a concentrated market structure is abused by dominant business actors.

2. Abolition of power abuses by goods/service procurement officials in tender conspiracy.

Much evidence reveals that horizontal conspiracy in the goods and service procurement is much due to conditioning by a procurement committee or even top officials either directly or indirectly who intervene in the selection of a tender/bid winner. By observing this, KPPU recognizes the importance for reducing tender conspiracy to minimize conditioning staged by relevant authorities due to the fact that until recently KPPU has only provided recommendations for disciplining employees to give deterrent effects as a part of law enforcement.

KPPU observes that such public officials as a District Head/Regent or a tender committee is considered an official performing public services as long as he does not go beyond his

duties and authorities as put down in the applicable laws and regulations. Thus, in the process of determining a tender winner that shall be neutral, any related official who conditions and facilitates a conspiracy is considered that at that very time he or she does not perform his public tasks anymore.

*De facto* this has made such a public official position to act as a business actor carrying out economic activities as regulated in Article 1 of paragraph 5 Law No.5 Year 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition (*Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat*) stating that “a business actor is any individual or business entity, whether a legal body or not a legal body which is established and domiciled or conducting activities within a legal jurisdiction.” Thus, it is possible to impose a sanction to such a business actor like other business actors as stipulated in Article 47 that includes: an order to stop any activity proved to cause a monopolistic practice and or an unfair business competition and/or harm the community; the fixing of compensation payment and the imposing of fine amounting at least to Rp.1 billion and a maximum of Rp.25 billion.

3. Needs for strengthening material law (*hukum substansi*), procedural law (*hukum acara*), and KPPU’s law enforcement integration into a system of competition law enforcement with other law enforcing bodies/parties.

To overcome this challenge, KPPU shall undertake two things. The first is to build a cooperation and coordination in terms of an MoU with the Indonesian Police and other law enforcing agencies/bodies. The second is to encourage the amendment of Law No.5 Year 1999, especially in order to further empower KPPU in terms of, among others, KPPU’s institutional and authority strengthening and procedural law arrangement.

From now on, through law enforcement strategies and approaches, we believe that the Commission of whom we are proud and love will provide greater contribution for increased community’s *income* saving, thereby increasing all Indonesian people’s prosperity.

Finally, on behalf of KPPU and all KPPU’s staff, we sincerely express our thanks and appreciations to all stakeholders of KPPU: leaders in the government, the legislative, the judiciary, and all their respective staff, and to all business corporations and non-government organizations for all the attentions, encouragements, and cooperation provided until this very time for KPPU’s advancements. In particular, to the leaders and the media reporters, we also express our very deep appreciations and thanks for the supports and cooperation in the course of the time shared. I believe that all successes achievements already made by KPPU have been the contributions of ours and all KPPU’s stakeholders. From this time forth, may God the Almighty abundantly bless all stakeholders who so far have given KPPU good attentions and cooperation. 🙏









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