THE COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION
OF THE REPUBLIC OF INDONESIA

To The New Era in Implementation of Business Competition

Annual Report
The Commission for the Supervision of Business Competition
of the Republic of Indonesia
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1

Introduction

THE Commission for the Supervision of Business Competition of the Republic of Indonesia (the "Commission") was established amidst the condition which was less conducive for the promotion of the implementation of fair business competition. The structure and attitudes of the business actors at the beginning phase of the enactment of Law Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition had become the basis for the establishment of the Commission, which was dominated by the conglomerations and monopolistic practices and was not supported by the genuine entrepreneurship spirit. The condition resulted in the vulnerable economic defense which in turn caused the marginalization of the community economy and poverty, economic gap and unemployment. In addition, it also caused the social and economic gap between the conglomerates and small and middle-scale entrepreneurs and informal sector were more serious. Consequently not all business actors were able to participate in the business opportunities and development.

In response to this condition, the people wish to improve and develop the economic conditions in accordance with Article 33 of 1945 Constitution in the development of fair economic system on the basis of fair competition principles.

The Commission as a supervisory institution thinks that such economic condition and the hope of the people have become special challenges in proving its participation to restore the economic condition which is pro to the people. The Commission uses this expectation to prove its independence from any intervention from any parties. It is absolutely required to assure the effectiveness of the supervision of business practices in Indonesia.

The Commission directly reports to the President and delivers its work performance to the House of Representative. The Commission's accountability is not only limited to the formal obligations, but also relates to much bigger moral accountability to the Indonesian people. Therefore, to account for its duties, the Commission always improves its internal capabilities and takes every efforts to provide contributions for the improvement of the people's welfare. So, the Commission works not only to impose punishment and col-

lect the fine and compensation as much as possible, but it exerts greater endeavors to create fair business climate with legal certainty in a bid that it can encourage better economy.

Future Challenges

In playing its role as a supervisory institution, the Commission carries out its function in enforcing the business competition law. The performance to be carried out by the Commission in the future includes the increase of the awareness and change of attitudes of business actors and decision makers as well as the improvement of the economic performance in the form of the people's welfare improvement.

In this context, the 2009 priority programs are strategic sectors with the following indicators:

1. There is a phenomena of price hike which shall be paid by consumers, where such raise can be categorized as unreasonable (*excessive*).
2. There is a scarcity of supply or supply hindrance resulting in an instability to the market.
3. There is monopolistic practices or misuse of the dominant position by business actors (especially Central/ Local Government-Owned Enterprise).
4. There is an allocated license or concession (monopolistic right) from the government which lacks of transparency and conducted through virtual tender

The measures to be taken by the Commission constitute the programmed and planned and measurable activities which include the following:

1. Industrial review
2. Implementation of policy evaluation
3. Socialization and advocacy
4. Suggestions and Consideration
5. Law enforcement
6. Inter-institutions Cooperation and coordination locally or internationally

The law enforcement efforts are not done with smooth process and without hindrances, but it shall be done by passing through stiff hills, let alone the issues on the business competition law is relatively new in this country. Within these eight years, the Commission have been actively performed its tasks and authorities. It is deemed necessary to evaluate in near future is the direct or indirect benefits of Law Number 5 Year 1999 which have been enjoyed by the business actors and public community.

The impacts of Law No. 5 Year 1999 are really benefited by the public (consumers) especially in the year of the implementation of business competition. With fair business competition among business actors, community will have a much better bargaining position. In consuming a product, thanking to a competition, there will be products with the best quality, fair price in various options. It is recorded that the impact of the Commission Decisions on the SMS Cartel is the discontinuation of the consumers loss which is accumulated in 4 years (2004-2008) in the amount of Rp. 2,827,700,000,000.00 (Rp 2.8 trillion). Such decision has succeeded in encouraging the decrease of the SMS rate of 40-60% which can improve the people's welfare through the income saving effect. In addition, as a part of the sanctions in term of fine and compensation in conjunction with the law enforcement, there is a potential state revenue in the sum of Rp 738,958,324,146.00 (Rp 738 billions), while the State Budget which is used is the sum of Rp 471,130,818,000.00 (Rp. 471 billion).

After having recorded some achievement in the year 2008, there are many challenges to be faced by the Commission in actualizing its vision and missions. The Commission is committed to strengthen its performance. Any problems arising will be used as a means for improvement. It is proven by some internal improvements and arrangements. The improvement of the internal code of conduct have been steadily promoted. The improvement of the vision and mission of the Commission is also done with an expectation that the integrity of the institution will be more established in holding and performing the mandate as given by the law in a bid to achieve fair business competition which will gradually improve the people's welfare.

The capacity building is faced with the oligopolic business constellation in the strategic commodity and prevention of monopolistic practices from business actors who are involved has shifted the strategy of implementation of the business competition which is more focus on monopolistic practices conducted by the business actors in the strategic sector and commodity and high market concentration. It becomes the top priority and agenda of the Commission in the future, so the capacity building and capabilities improvement in economic approach in every legal product is a must. This commitment has and will be proven as a new phase in the implementation of fair business competition.

CHAPTER

2

Business Competition Law Enforcement

Law enforcement is one of the two main tasks of the Commission. In this year, the Commission's decisions which are related to the Temasek's cross-ownership in the telecommunication service business and SMS cartel involving most of telecommunication operators in Indonesia have attracted the public attention. It indicates that the business competition law enforcement does not have to deal with a tender and all kinds of process thereof. The public has become more aware that the business competition law is enforced against business actors in a bid that they conduct business fairly for the sake of the people's welfare.

In the field of business competition law, cartel is considered as the most serious sin for the business actor as it will not only inflict a loss to the customers, but also damage the efficient allocation of the national resources.

In some cartel cases handled by the Commission, business actors have grounded its cartel attitudes to stabilize the price in the market. Price instability is triggered by the price war among the competing companies, so the companies endeavored to reach price fixing agreement, usually in the form of the minimum price agreement. Generally, this agreement are openly executed and signed by the participating business actors. They try to avoid price dumping under the reasons of to safeguard the survival of their business. The business actors do not realize that the price war or dumping indicate a competition situation which benefits the consumers and constitutes basic idea of business competition law. Business actors shall not avoid such situation, but being motivated to be more efficient and innovative, in order that they can win the market competition by offering the products with the lowest price, but with best quality.

In line with the introduction of the Law Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition and the roles of the Commission in supervising the business competition, the business actors start to realize the financial loss inflicted by the cartel.

The implementation of the law does not abruptly eliminate the cartel practice as the practice is still occurring. Therefore, the Commission is challenged to handle the cartel cases in the future, instead of focusing on the investigation

to find written evidence on the agreement as well as the analysis of the price movement and forms of communications among the competitors.

2.1 Report Handling

Since its establishment, the Commission have received 2,094 reports comprising of case reports and written reports in relation to the alleged violation of business competition law. From year to year, the number of the reports tend to increase. In 2008, there was a little decrease of the number of the reports as the community prefer to deliver their reports in writing. Despite of this fact, it does not reflect higher expectation and role of the community in supporting the performance of the Commission and higher awareness of the community on the existence and roles of the commission in supervising the business competition.

In the year 2008, the Commission received written information from the community totaling 475 persons, showing an increase of 163 reports from the year 2007.

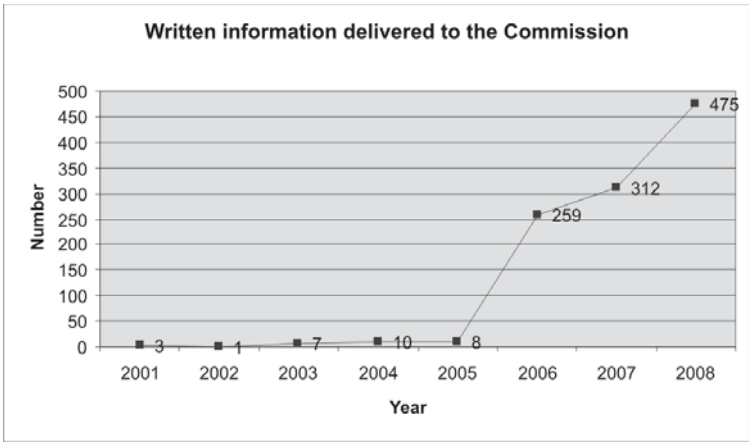

Figure 2.1 Number of Written Information delivered to the Commission

Meanwhile, for the case reports, the Commission received 232 reports. Out of these reports, 36 reports have entered the evidence collection phase, 23 reports entered the business actors monitoring, 97 reports entered into the Report Discontinuation Register, and 75 reports are being clarified and investigated.

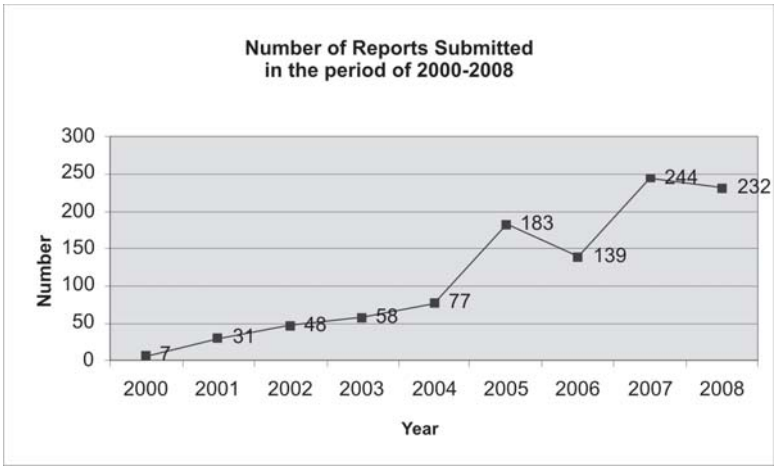

Figure 2.1 Number of Incoming Case Reports 2000-2008

No	Classification (Allegedly Violated Articles)	Number of Reports	Business Sector
1.	Report in respect of alleged cartel and boycott (Articles 10 and 11)	6	Cement and Automotive Industries, Manpower and O2 Tube Sales
2.	Report in respect of alleged Monopoly (Article 17)	13	Shipyard Industry, Manpower, Advertising, telecommunication
3.	Report in respect of alleged market control (Article 19)	18	Forestry, Construction, Animal Trade, Mining, Airline, Advertising
4.	Report in respect of alleged tender conspiracy (Article 22)	189	Government Goods and Service Procurement , Infrastructure, Health and Medical Equipments, Consultancy Services, Water Infrastructure
5.	Report in respect of alleged dominant position (Article 25)	5	Fishery, retail, airline, insurance
6.	Report in respect of Merger, Acquisition and Consolidation (Article 28)	2	Oil, shipping, and retail
7.	Report in respect of other alleged Prohibited Agreements (Articles 4,5,14 and 16)	4	O2 Tube sales, Insurance, Shipyard Industry
8.	Report in respect of other alleged prohibited activities. (Articles 23 and 24)	2	O2 Tube sales, Shipyard Industry

Table 2.1 Report Classification by Alleged Violations

2.2 Filing

Based on the list of evidence collection register of the year 2008, the total number of reports of the alleged violations which had entered the evidence collection phase was 90 reports. Out of these reports, 21 reports were not continued to the preliminary examination phase as no sufficient initial evidence found. However, there were 6 reports which were not continued to the Preliminary Examination, but followed up by the monitoring of the business actors.

The number of the reports which entered the Preliminary Examination were 55. While the remaining 8 reports are being clarified and examined.

2.3 Case Handling

The number of cases handled by the Commission during the year 2008 is 88, consisting of 84 complaint reports and 4 initiative reports. The initiative cases are the ones which arise from the results of the monitoring of the business actors, not based on the complaint report. These four initiative cases handled by the Commission are as follows:

1. Case Number 28/KPPU-I/2007 regarding Alleged Violation of Law Number 5 Year 1999 in respect of Unfair Business Competition in the Taxi Services in Batam in the form of Market Dominance by Hindering Certain Business Actors and Conduct Discriminative Practices committed by Area Management and Taxi Business Actors;
2. Case Number 31/KPPU-I/2007 regarding Alleged Violation of Article 19 Point (d) of Law Number 5 Year 1999 in respect of the Implementation of Tender for 1 Unit of Jack-Up Drilling Rig With Top Drive administered by CNOOC;
3. Case Number 10/KPPU-I/2008 regarding Alleged Violation of Article 19 point (d) in respect of Discrimi-

natory Practice in the Appointment of Distributor of the Subsidized Fertilizer in Sragen Regency by PT Petrokimia Gresik;

4. Case Number 32/KPPU-I/2008 regarding Alleged Violation of Article 5 paragraph (1) of Law Number 5 Year 1999 in respect of Price Fixing/All In Rate in the Sea Cargo Transportation (EMKL) at Sorong Seaport, West Irian.

Out of 88 cases handled, 71 cases consist of the alleged violation of Article 22 regarding tender conspiracy and the remaining 17 cases are the non-tender cases. The classification of the cases based on the alleged violations of articles is illustrated in the following figure:

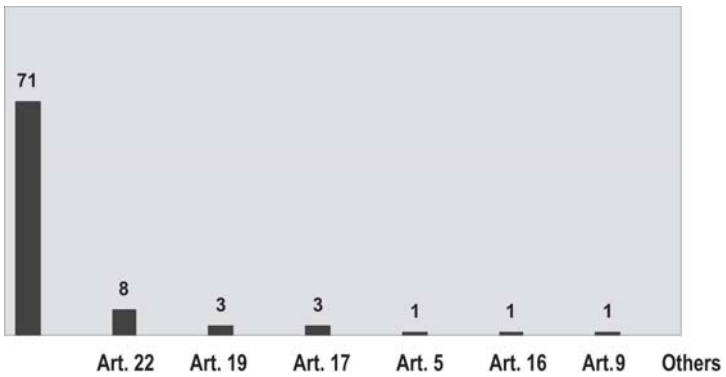

Figure 2.2 Case Classification by Allegedly Violated Articles

The following graph illustrates the development of cases handled by the Commission since its establishment in 2000 until the end of 2008:

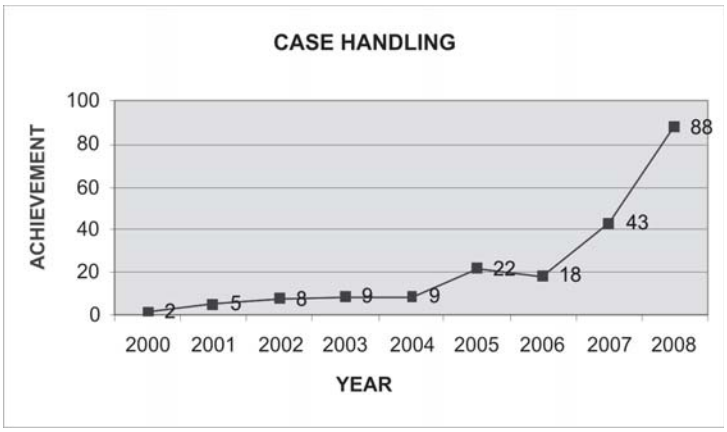

Figure 2.3 Case Handling in the period of 2000-2008

2.4 Commission's Decisions

In the year 2008, the Commission has read out 50 Decisions of the Cases handled, as follows:

1. Decision on Case No. **10/KPPU-**L/2007 concerning Further Working Procurement Tender for Construction/Relocation of Ratu Zalecha Martapura Regional Public Hospital in South Kalimantan in the Fiscal Year 2006.
2. Decision on Case No. 11/KPPU-L/2007 concerning Working Tender for Maccope-Labessi Street Betterment in Soppeng Regency, South Sulawesi in the Year 2006.
3. Decision on Case No. 12/KPPU-L/2007 concerning Tender on Puskesmas Medical Equipment Support Procurement in Non DR DAK Activity at Sukabumi Regency Health Office, Sukabumi Regency, in the Fiscal Year of 2006.

4. Decision on Case No. 13/KPPU-L/2007 concerning Procurement of polybagged Palm Oil Seeds at the Plantation Office of South Kalimantan Province.
5. Decision on Case No. 14/KPPU-L/2007 concerning Tender for Multi Years Works in Siak Regency, Riau Province.
6. Decision on Case No. 15/KPPU-L/2007 concerning Tender for Mall Construction in Prabumulih City.
7. Decision on Case No. 16/KPPU-L/2007 concerning Tender for Procurement of Complete Tablet Fertilizer (PMLT), Herbicide, and Rubber Seeds at Plantation Office of Banjar Regency, South Kalimantan.
8. Decision on Case No. 17/KPPU-L/2007 concerning Share Sales of PT Dharmala Sakti Sejahtera Tbk at PT Asuransi Jiwa Manulife Indonesia.
9. Decision on Case No. 18/KPPU-L/2007 concerning Tender for Procurement of Education TVs and their accessories at the Education Office of North Sumatra Province.
10. Decision on Case No. 19/KPPU-L/2007 concerning Market Domination and Conspiracy conducted by EMI Music South East Asia, EMI Indonesia, Arnel Affandy, S.H, Dewa 19, and Iwan Sastrawijaya.
11. Decision on Case No. 20/KPPU-L/2007 concerning Procurement of Medical Equipment at Brebes Regional Hospital.
12. Decision on Case No. 21/KPPU-L/2007 concerning Tender for Procurement of *Polyvinyl Chloride* (PVC) and High Density Polyethylene (HDPE) Pipes by the Committee for Procurement of Goods/ Services of Certain Non Vertical Work Unit (SNVT) of the Development of Water Supply Management Performance Riau Islands Province.
13. Decision on Case No. 22/KPPU-L/2007 concerning Alleged Monopolistic Practice of Cargo Services at Hasanuddin Airport, Makassar – South Sulawesi.
14. Decision on Case No. 23/KPPU-L/2007 concerning Alleged Conspiracy in the Reconstruction of Melawai Market, Blok M.
15. Decision on Case No. 24/KPPU-L/2007 concerning Tender for Road Betterment at Public Work Office, Highways Division, Banyuasin Regency.
16. Decision on Case No. 26/KPPU-L/2007 concerning SMS Cartel.
17. Decision on Case No. 28/KPPU-L/2007 concerning Taxi Service in Batam Conducted by Taxi Service Provider and Area Management.
18. Decision on Case No. 29/KPPU-L/2007 concerning Tender for Contracting Service Work Number 6021/1801/35/2007 City's Hotmix Road Construction Package, at Public Work Office, Cilacap Regency.
19. Decision on Case No. 30/KPPU-L/2007 concerning General Tender for Sanggau Road Construction and Maintenance at the Area Settlement and Infrastructure Office (Kimpraswil) of Sanggau Regency, West Kalimantan.
20. Decision on Case No. 31/KPPU-L/2007 concerning COSL.
21. Decision on Case No. 01/KPPU-L/2008 concerning Tender for Medical Equipment, Family Planning at BP Dr. Soeselo Regional Hospital, Tegal Regency.
22. Decision on Case No. 02/KPPU-L/2008 concerning Granting of the Outdoor Advertisement Board Management Rights at Juanda International Airport, Surabaya.
23. Decision on Case No. 03/KPPU-L/2008 concerning Broadcasting Rights of Premier League, England, the period of 2007-2010.
24. Decision on Case No. 04/KPPU-L/2008 concerning Tender for Procurement and Installation of *O2 Analyzer System*, O2, CO2/O2 and Opacity Measurement, Unit 3 and Unit 4, Belawan, PT. PLN (Persero) Power Plant, Northern Part of Sumatra, Belawan Power Plant Sector.
25. Decision on Case No. 05/KPPU-L/2008 concerning Tender for Expansion of Tax Office Building, Goods and Service Procurement Project, Main Tax Office (Madya), Batam.
26. Decision on Case No. **06/KPPU-L/2008 concerning Tender for Main Collecting Road Widening toward the Batam Center Industrial Area.**
27. Decision on Case No. 07/KPPU-L/2008 concerning Tender for Contracting Service Procurement at Highways and Public Work Office, North Jakarta Municipality.

28. Decision on Case No. 09/KPPU-L/2008 concerning General Tender for Hajj Give Away Procurement at PT. Garuda Indonesia.
29. Decision on Case No. 10/KPPU-L/2008 concerning Appointment of Subsidized Fertilizer Distributor for the Products of PT. Petrokimia Gresik at the Area of Sragen Regency.
30. Decision on Case No. 11/KPPU-L/2008 concerning Water Supply Management by PT. Adhya Tirta Batam.
31. Decision on Case No. **12/KPPU-L/2008 concerning Tender for Government Structure and Infrastructure Construction Program, Construction of Official Houses of the Regent and Vice Regent Humbang Hasundutan in the fiscal year of 2007**
32. Decision on Case No. 13/KPPU-L/2008 concerning Tender for Construction of Medical Polytechnic Building of Medan.
33. Decision on Case No. 15/KPPU-L/2008 concerning Procurement of Medical Equipment, Family Planning at Buleleng Regency Regional Hospital, Singaraja, Bali.
34. Decision on Case No. 17/KPPU-L/2008 concerning Tender for Procurement of Fire Extinguisher Equipment, Balikpapan City.
35. Decision on Case No. 18/KPPU-L/2008 concerning Tender for Procurement of 6 (Six) Units of Gamma Ray Container Scanners at the Directorate General of Customs and Excise.
36. Decision on Case No. 19/KPPU-L/2008 concerning Tender for Construction of Fish Center (PPI) Tanrusampe, Phase III, Road and Jetty Construction Work, Marine and Fishery Office of Jeneponto Regency.
37. Decision on Case No. 20/KPPU-L/2008 concerning Tender for Contraception at Family Planning Coordinating Board of Central Java Province.
38. Decision on Case No. 22/KPPU-L/2008 concerning Tender for Medical Equipment and Supply, Local Budget, Health Office of Central Bangka Regency.
39. Decision on Case No. 23/KPPU-L/2008 concerning Tender for Renovation and Development of Distribution Pipe of Water Supply Company, Tirta Siak Pekanbaru.
40. Decision on Case No. 25/KPPU-L/2008 concerning Tender for Procurement of Odor Neutralizing Chemicals.
41. Decision on Case No. 26/KPPU-L/2008 concerning Procurement of Goods and Service for Masic Medical Service, Medical Equipment, Health and Family Planning for In-Patient Care Installation (IRNA), Intensive Care Unit (ICU) and Radiology Installation at Prof. Dr. Sulianti Saroso Infectious Disease Hospital.
42. Decision on Case No. 28/KPPU-L/2008 concerning Tender for Contracting Service Procurement, Local Budget Activity, Public Work Office of Brebes Regency.
43. Decision on Case No. 27/KPPU-L/2008 concerning Tender for Procurement of Construction of Buildings of Offices, Agencies and Boards at Kupang Regency.
44. Decision on Case No. 31/KPPU-L/2008 concerning Tender for Electricity Coordination and Development Activity, Metering and Arrangement Work of LPJU at Salatiga City.
45. Decision on Case No. 30/KPPU-L/2008 concerning Tender for Procurement of Medical Equipment at Health and Social Welfare Office of Natuna Regency, Riau Islands.
46. Decision on Case No. 32/KPPU-I/2008 concerning Agreement on All-In Rate of Sea Cargo Transportation (EMKL) at Sorong Seaport.
47. Decision on Case No. 33/KPPU-L/2008 concerning Tender for Procurement and Installation of Village Solar Power Plants (PLTS) in Bengkalis Regency, Riau Province.
48. Decision on Case No. 37/KPPU-L/2008 concerning Tender for Road Betterment of Sumbawa Regency, Sekokat-Mbawi Road Construction Package, Settlement and Area Infrastructure Office of West Nusatenggara Province.
49. Decision on Case No. 44/KPPU-L/2008 concerning Tender for Procurement of Daily Official Dress at the Secretariat of Karanganyar Regency.
50. Decision on Case No. 46/KPPU-L/2008 concerning Procurement of Laboratory Equipment on Economics and Collective Equipment on Economics, Humanity and Agriculture at Andalas University.

2.5 Decision Monitoring and Litigation

In line with the increased number of the Commission's decisions, the objection process to the decisions in the year 2008 showed an increasing number as well. At the district court, for example, the Commission faced 21 objection cases to its decision. At the cassation level, there are 9 cases which are in the cassation process at the Supreme Court.

In addition, there are two decisions of the Commission for which the Judicial Review have been requested, i.e. the Commission's Decision No. 02/KPPU-L/2006 concerning Direct Appointment of the Pertamina's Logo and the Decision No. 13/KPPU-L/2005 concerning Tender for Medical Equipments at Cibinong Hospital.

During the year 2008, eight Decisions of the Commission were strengthened by the District Courts. It indicates that the competition law has been understood better by the judges who decide the cases the District Courts. The recapitulation of the results of the objection process to the Commission's decision is illustrated in the table 2 below:

	Supreme Court	District Courts
Commission's Decisions strengtened	4	8
Commission's Decisions not strengtened	4	5

Table 2.2 Matrix of Results of Objection Process to Commission's Decisions in the year 2008

In addition to the objection process to the Commission's decisions, there are some other lawsuit cases against the Commission filed by some parties, namely:

1. Lawsuit Case on the unlawful act filed by the FSP BUMN Bersatu (The Commission's Decision No. 07/KPPU-L/2007);
2. Lawsuit Case on the unlawful act filed by PT Fajar Jaya (The Reported Party in the Case No. 45/KPPU-L/2008);
3. Lawsuit Case on the unlawful act filed by PT Damata Sentra Niaga (The Reported Party in the Case No. 39/KPPU-L/2008).

In the lawsuit case filed by FSP BUMN bersatu, the Commission won the case by the District Court.

The cassation cases on the Commission's decision as decided by the Supreme Court in the year 2008 are as follows:

1. Cassation on the Commission's Decision No. 04/KPPU-L/2005 concerning Tender for Illegal Sugar (Strengthened by the Supreme Court);
2. Cassation on the Commission's Decision No. 06/KPPU-L/2005 concerning Tender Conspiracy on Multi-Years Project at the Public Works Office of Riau (Not Strengthened by the Supreme Court);
3. Cassation on the Commission's Decision No. 08/KPPU-L/2005 concerning Procurement of Survey Service for Imported Sugar by PT. Sucofindo and PT. Surveyor Indonesia (Not Strengthened by the Supreme Court);
4. Cassation on the Commission's Decision No. 11/KPPU-L/2005 concerning Distribution of Cements produced by Semen Gresik (Strengthened by the Supreme Court);
5. Cassation on the Commission's Decision No. 13/KPPU-L/2005 concerning Tender for Medical Equipment at Cibinong Hospital (Strengthened by the Supreme Court);
6. Cassation on the Commission's Decision No. 19/KPPU-L/2005 concerning Tender for Procurement of

Gamma Ray Container Scanner at the Batu Ampar Seaport, Batam (Not Strengthened by the Supreme Court);

7. Cassation on the Commission's Decision 03/KPPU-L/2006 concerning CIS-RISI (Not Strengthened by the Supreme Court);
8. Cassation on the Commission's Decision 07/KPPU-L/2007 concerning Temasek Business Group (Strengthened by the Supreme Court).

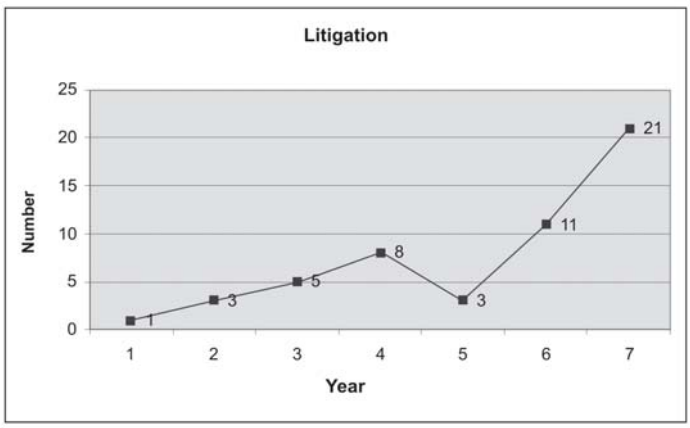

Figure 2.3 Litigation Implementation in the period of 2004-2008

As of 2008, the Commission has imposed the fine in the sum of Rp 540,809,494,090.00, compensation in the sum of Rp 414,691,129,987.00, and conditional fine in the sum of Rp 45,000,000,000.00. The details of fine, compensation and conditional fine imposed by the Commission are illustrated in the table below:

Year	Fine	Compensation	Conditional Fine	Total/Year
2000	0	0	0	0
2001	0	0	0	0
2002	43.500.000.000	228.000.000.000	1.000.000.000	272.500.000.000
2003	21.000.000.000	0	7.000.000.000	28.000.000.000
2004	63.270.000.000	182.159.233.800	0	245.429.233.800
2005	29.600.000.000	0	14.000.000.000	43.600.000.000
2006	14.500.000.000	127.146.667	3.000.000.000	17.627.146.667
2007	349.505.000.000	4.404.749.520	20.000.000.000	373.909.749.520
2008	19.434.494.090	0	0	19.434.494.090
Total	540.809.494.090	414.691.129.987	45.000.000.000	1.000.500.624.077

2.6 Monitoring of Business Actors

One of the activities in relation to the enforcement of competition law is the monitoring of business actors. The monitoring is done to clarify whether or not a violation has occurred. As of December 2008, the Commission has conducted 14 monitoring activities as follows:

1. Monitoring of the Alleged Cartel and Market Domination in the CPO and Frying Oil Industry by Wilmar Group, PT Smart Tbk., PT Musim Mas, Permata Hijau Sawit Group, PT Asian Agri, PT Salim Ivomas, PT Perkebunan Nusantara I, PT Perkebunan Nusantara III, PT Perkebunan Nusantara V, PT Perkebunan Nusantara VI and PT Astra Agro Lestari. The monitoring has followed by the production of the monitoring resume and discontinued at the evidence collection phase;

2. Monitoring of the Alleged predatory pricing and vertical integration in the nail and nail wire industry by PT Ispat Wire Products. Until now, it has been entered the Advanced Examination Phase;
3. Monitoring of the Alleged Cartel in the Trade and Distribution of Soybean by PT Gerbang Cahaya Utama, PT Cargill Indonesia, PT Sekawan Makmur and PT Teluk Intan. The monitoring has followed by the production of the monitoring resume and discontinued at the evidence collection phase;
4. Monitoring of the Alleged Violation of Law Number 5 Year 1999 in the Acquisition of PT Alfa Retailindo Tbk by PT Carrefour Indonesia. It is now in the evidence collection phase;
5. Monitoring of Alleged Abuse of Dominant Position conducted by PT Nusantara Sejahtera Raya (21 Groups) in the field of film industry in Indonesia. The monitoring was discontinued and not followed up to the evidence collection phase;
6. Monitoring of the Cross Ownership in the Indonesian Broadcasting Industry conducted by MNC Group, Para Group and Bakrie Group. It is still in the monitoring phase;
7. Monitoring of Alleged Cartel and Abuse Of Dominant Position in the Price Fixing of Warehouse Service Rate at Soekarno-Hatta Airport conducted by PT Angkasa Pura II, Garuda Indonesia, Jasa Angkasa Semesta, Gapura Angkasa, Unex Inti Indonesia, Wahana Dirgantara, Darma Bandar Mandala. The monitoring was discontinued and not followed up to the evidence collection phase;
8. Monitoring of Alleged Monopolistic Practice and Discrimination in the Chlor Industry in Indonesia conducted by PT Tjiwi Kimia, Tbk. It is still in the monitoring phase;
9. Monitoring of the Alleged Discrimination in the Reparation and Recondition of the Gas Turbine of PT PLN (Persero) conducted by PT PLN (Persero), Service & Production Service Unit of Citarum and an PT Kidang Kencana Sakti. The monitoring was discontinued and not followed up to the evidence collection phase;
10. Monitoring of Alleged Dominant Position in the Construction of Block A of Tanah Abang Market by PT Priamanaya Djan Internasional and PD Pasar Jaya. It is still in the monitoring phase;
11. Monitoring of Alleged Market Domination of Household Pesticide (Non-Coil) in Indonesia conducted by PT. Johnson Home Hygiene Products and PT SC Johnson & Son Indonesia Ltd. The monitoring was discontinued and not followed up to the evidence collection phase;
12. Monitoring of Alleged Abuse of Dominant Position in the Warehouse Utilization at Soekarno-Hatta Seaport, Makassar by PT Pelindo IV. The monitoring was discontinued and not followed up to the evidence collection phase;
13. Monitoring of Alleged Oligopoly, Price Fixing and Discrimination in the Distribution of Wheat Powder at the Eastern Part of Indonesia. It is still in the Monitoring Phase;
14. Monitoring of Alleged Monopolistic Practice conducted by PT Makassar Satu Indonesia in the Management of Telecommunication Towers at the South Sulawesi Area.

Below is the graph on the number of monitoring of business actors carried out by the Commission in the period of 2001-2008:

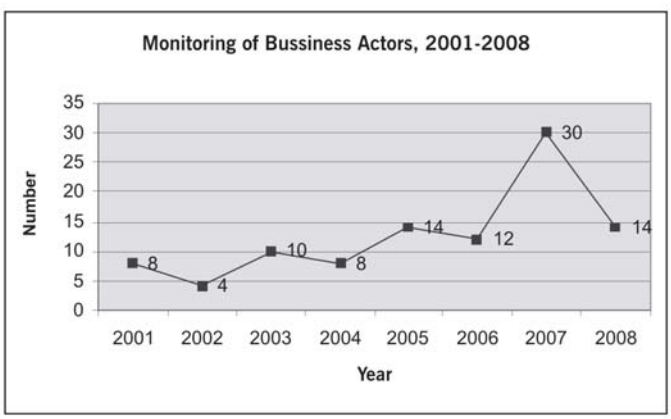

Figure 2.3 Implementation of Business Actors Monitoring in the Period of 2001-2008

SMS Rate Cartel (2007)

Telecommunication services including SMS require an interconnection among the telecommunication operators in order to assure a smooth communication process among the subscribers. In conducting the interconnection cooperation, the operators also agree on the SMS rates to be paid by each consumers.

This fact arises after the Commission examined nine cellular operators in Indonesia which have allegedly agreed on the off-net SMS price fixing in the period of 2004 until April 1st, 2008. The operators which have been allegedly committed the violations are PT Excelkomindo Pratama,Tbk, PT Telekomunikasi Selular, PT Indosat,Tbk, PT Telkom,Tbk, PT Huchison CP Telecommunication, PT Bakrie Telecom, PT Mobile-8 Telecom,Tbk, PT Smart Telecom, and PT Natrindo Telepon Seluler.

In the period of 2004 – 2007, the cellular telecommunication industry was marked by the entry of some new operators. However, the SMS rate which was applicable for the Off-Net SMS service remained to be within the range of Rp 250-350,-. During this period, the Commission found some clauses on the SMS price fixing which provided that the rate should not lower than Rp 250,- and such provision was included in the Interconnection Cooperation Agreement entered into by and among the operators as set out in the Matrix Clause.

Then BRTI (Badan Regulasi Telekomunikasi Indonesia/Indonesian Telecommunication Regulatory Body) met with the Indonesian Cellular Telephone Association (ATSI) in June 2007. They come to an agreement to ask all members of the association to annul the SMS price fixing agreement. Such request was followed by the operators, but the Commission saw no significant change to the Off-Net SMS rate. In 2007, the SMS rate still did not change until April 2008 when the basic Off Net SMS rate was lowered in the market.

Then the Commission found the fact that the financial loss suffered by the subscribers which was calculated based on the balance of the total revenue earned in the cartel and the Off-net SMS competitive rate at least reaches Rp 2,827,700,000,000.-

Based this data and fact, the Commission finally decides that PT Excelkomindo Pratama, Tbk., PT Telekomunikasi Selular, PT Telekomunikasi Indonesia, Tbk., PT Bakrie Telecom, PT Mobile-8 Telecom, Tbk., PT Smart Telecom are proven to violated Article 5 of Law Number 5 Year 1999 and are punished to pay the fine in the specified amount. Meanwhile, the Commission is in the opinion that the Operator Smart is not yet feasible to be imposed with the fine.

CHAPTER

3

Business Competition Policy and Strategic Industrial Sector

POLICY harmonization to government is one of determinant factor from the success of applying business competition law in Indonesia, as well as is a means for the Commission to communicate the competition policy issues to government, which issues some economic policies that having potential for not in compliance with Act Number 5 of 1999.

This task implementation aims to establish cooperation with various government institutes as effort of internalizing business competition values into government policy. Through this cooperation, the government may be expected to use substantially the Act No. 5/1999 as judgment input to define each policy in economic sector. This harmonization task consists of three sub tasks, i.e.: (1) Creation of Competition Policy Coordination System, (2) Evaluation of Government Policy, and (3) Provision of Advice and Judgment to the Government.

Sub task implementation of Creating Competition Policy Coordination System aims to form standard coordination mechanism between competition policy with the Commission, government institute, and other related regulator institutes. While, Government Policy Evaluation activities are addressed evaluating government policy in business competition perspective. Ultimately, task of Advice and Judgment Provision to Government is one of the Commission's main tasks and this activity is a follow up from some other activity results of the Commission such as Business Actor Monitoring, Case Handling, Assessment of Industry and Trade Sector, and Evaluation of Government Policy.

In practice, provision of advice and judgment to government continues to evolve, either from the facet of sector observed until to government response. In 2008, there were 9 (nine) Commission's judgment advice responded and implemented effectively by government, the fact is delightful progress in effort of policy harmonization to government.

Policy evaluation and impact analysis the Commission performs a long as 2008 including Government regulation in various sectors, i.e.: Modern retail sector, road transport, flight industry, milk industry, media industry, agriculture sector, national energy sector, forest product industry, down-

stream oil and gas industry, voyage industry, fertilizer industry, electricity power sector, and procurement of goods and service.

3.1 Harmonization of Competition Policy

As part of policy harmonization program, the Commission has actively involved in various policy discussion to sectoral government/regulator. In general, result expected from those various discussions is enhancement of communication and coordination intensity between the Commission and regulator and/or technical department. Following is policy discussion table the Commission has performed during the period of 2008 along with related institute and brief information concerning discussion theme.

No	Implementation Date	Government Institute	Meeting Subject
1	May 23, 2008	Regulatory Agency for Oil and Natural Gas Downstream	Discussed regulation of Regulatory Agency for Oil and Natural Gas Downstream concerning with supplying and distribution of flight Refinery Fuel particularly related to business competition issues.
2	March 14 and March 27, 2008 July 14, 2008	Ministry of Information and Communication	Discussed about cross -ownership of broadcasting service organization. Discussed about media in general and advertising regulation.
3	July 2008	Coordinating Minister for the Economy	The Commission presented about policy of oil and gas downstream industry in Indonesia.
4	May 2008 July 4-5, 2008	Regulatory Agency of Indonesian Telecommunicati on	MoU between the Commission and BRTI in case of competition supervisory in telecommunication sector. Formulation of Competition *Guideline* in Telecommunication Sector.
5	July 2008	Ministry of Transportation	Government response over the Commission's advice in harbor sector.

3.2 Advice and Judgment to Government

As in the previous year, this function of providing advice and judgment to government is one of the strategic Commission's main tasks for the implementation of competition policy in Indonesia. Provision of advice and judgment is a continuation process from some activities previously, such as assessment of business competition in industrial and trade sector, discussion of policy with the government and/or activity of policy evaluation and impact of business competition. In 2008 the Commission submitted some advices and judgments to government/technical government. Those advices and judgments can be read in Appendix 2.

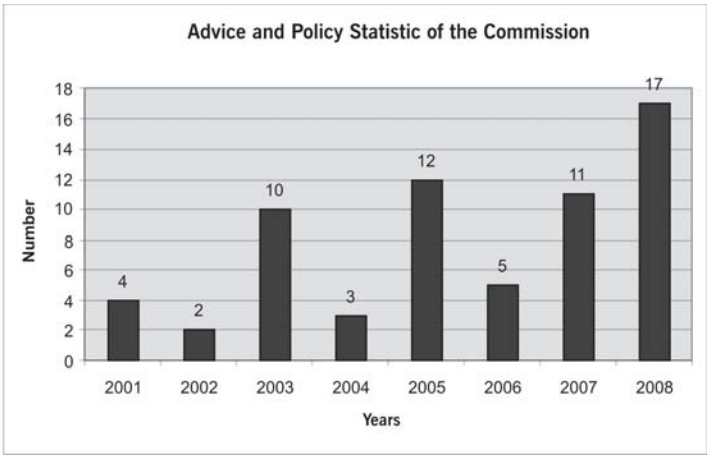

Figure 3.1 Total advice and judgment in the period of 2001-2008

Year	Total Advice	Industry
2001	4	Energy, road transport, air flight
2002	2	Food and beverage, road transport
2003	10	Harbor, banking, air flight, film, electricity power, black carbon, retail, animal husbandry
2004	3	Sugar, voyage, worthwhile document
2005	12	procurement of goods and service, insurance, telecommunication, electricity power, Indonesia n labor, agriculture
2006	5	appraiser service, printing, salt, health equipment
2007	11	Retail, information technology, retail, pilgrimage (hajj) performance, book, post, agro industry, shipping, construction service, road transport
2008	10	Harbor, oil and natural gas, transportation, broadcasting, detergent, retail, mining, telecommunication

Table 3.1 Sector Given Advice

3.3 Competition Index

Business competition index is the quantity value measuring business competition inter-company in any industry. In this assessment, a hundred consumers from air flight service gave business competition index according to their perception. Scale of score ranges from 1-4. Score 1 indicates any monopoly, while score 4 indicates perfect competition. In general, business competition index of air transport sector, based on consumer perception is 2.61. This score indicates that companies found in air flight sector are enough competitive.

Consumers value that amount of company which longer more and more, indicates the higher competition in air transport service. Air transport companies also compete in service quality. Competition in service quality is a positive matter for the consumer. Through business competition, consumer can enjoy better service. Companies which less competitive in price are shown by relative low index score (2.25) compared with other factor (total company: 2.82; service quality: 2.76).

Above information is quite vital and it can only be obtained through direct survey against respondent perception. When index compiled based on secondary data, then arrangement of index is only based on price. In fact, price is not the most important factor of business competition in this sector.

Business competition index in this phase can be made as indicator of competition, but it only bases on respondent perception. There is not yet comparison with other sector makes this current index score is not yet enough made as reference for the Commission to examine a certain sector against unhealthy competition performed.

Compilation of business competition needs to develop in two aspects. Firstly, compilation of perception index for other sector. It is necessary to perform as inter-sector comparison. The more business sector surveyed the more structure of business competition seen in Indonesia. Thus, the Commission may use the index as a reference to presuppose any sector performs unhealthy business competition. Second, perception index needs to combine with non-perception index. It means that compilation of business competition is also performed by analyzing company's data, either financial or non-financial data. On-perception data can be obtained from available resources (e.g. Central Bureau of Statistic), or direct requested to the company. Combination of perception and non-perception index requires weight for each question offered to the respondent.

3.4 Technical Guidance of Advice and Judgment

Based on Act Number 5 of 1999 particularly in Article 35 paragraph e, mentioned that task of the Commission is to provide advice and judgment against the government policy related to monopoly practice and unhealthy business competition. Hence, in this activity Technical Guidance in the creation of advice and judgment is made.

The Commission's Advice and judgment is made on the basis of the government policy which has potency or even already not in compliance with the spirit of Act Number 5 of 1999. Source of evaluated policy can be existing law and regulation in various government levels, draft of Bill that is still in discussion process or the government policy such as decree, circular letter, exhortation, and etc.

Compilation of advice and judgment requires scrutinizing process and accurate analysis. During the time the Commission has not yet own definite procedure concerning compilation of advice and judgment to the government. Thus, it needs a procedure of compiling efficient, effective, and transparent advice and judgment to the government so that accurate output can be resulted.

This compilation of Advice and Judgment Technical Guidance aims to provide internal guide for the Commission in compiling advice and judgment to the government, becomes standard procedure in the process of arranging advice and judgment to the government, and assures validity, accuracy level, reliability in the process of compiling advice and judgment to the government.

The government policy which has potency not in compliance with the spirit of Act Number 5 of 1999 needs to evaluate in the first place either in task of Evaluating the Government Activity or Harmonization activity of Competition Policy. The government policy evaluation consists of two functions, i.e. Preliminary Analysis and Secondary Analysis. Preliminary analysis is carried out to analyze potency of business competition impediment as a result of any policy. Meanwhile, secondary analysis is the process of analysis to see impact and policy on business competition.

3.5 Technical Guidance of Regulatory Impact Analysis

Regulatory Impact Analysis is an activity of analysis toward regulation supposed may result in impact against business competition. Impact Analysis of regulatory/policy against business can be focused in some following parameters:

a. Impact of regulation toward price and production. Regulation/policy will impact negative against competition climate when results in price escalation and/or declining of production level (volume) in the market;
b. Impact of regulation toward product and quality variation. Regulation/policy will impact negative against competition climate when results in reduction or restriction against variation and quality of product in the market;
c. Regulation Impact against efficiency of business actor. Regulation/policy will have negative impact against competition climate when reducing level of capability of business actor to enhance efficiency;
d. Regulation Impact against innovation. Regulation/policy will have negative impact against competition when resulting in declining of restriction of space for business actor to implement product innovation;

The process of Regulation Impact Analysis carried out through two phases, i.e. Preliminary and Secondary Analysis. In implementing Preliminary Analysis toward any regulation, it must focus on the following criteria:

1. Regulation/policy which becomes object of analysis has or will have restricted amount of business actor in the market;
2. Regulation/policy which becomes object of analysis has or will have restricted capability of business actor to compete healthily;

3. Regulation/policy which becomes object of analysis has or will restricted capability of business actor to compete healthily;

When analyzed regulation is deemed to have met with preliminary analysis criteria then Regulation Impact Analysis will enter Secondary Analysis phase. Secondary Phase Analysis of any regulation/policy will be focused toward:

1. Impact of regulation/policy application toward existed business actor in the market;
2. Impact of regulation/policy application toward potential business actor;
3. Impact of regulation/policy application toward price and output;
4. Impact of regulation/policy application toward quality and availability of goods and service alternatives;
5. Impact of regulation/policy application against innovation;
6. Impact of regulation/policy application against industrial and/or market growth;
7. Impact of regulation/policy application against related market;

3.6 Evaluation of Impact and Assessment of Business Competition Policy

In 2008, the Commission carried out activity of Impact Evaluation and Assessment on Competition Policy as many as 15 packages; those themes of activity can be read in Appendix 3.

In the period of January to December 2008, the Commission has undertaken some evaluation activities, such as *Focus Group Discussion* (FGD) with source person and/or related party, field survey mostly discussion with actors in the region, analysis toward related literature, data, and information gathered.

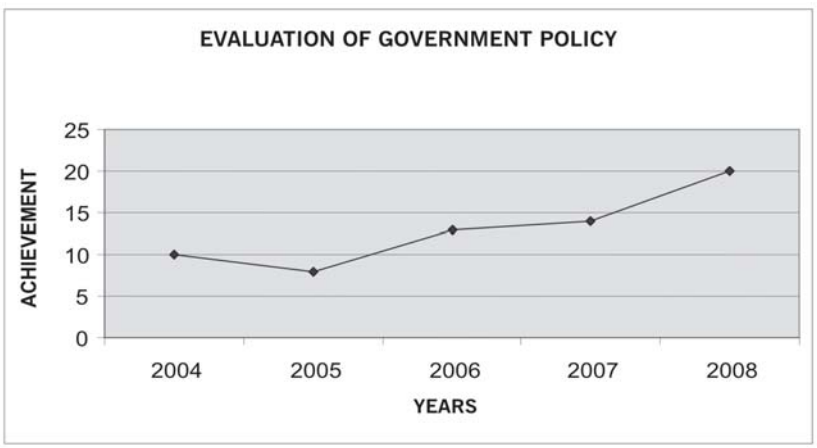

Figure 3.4 Evaluation of Government Policy during the period of 2004 - 2008

3.7 Evaluation of Local Government Policy

1. **Evaluation of Local Government Policy in East Kalimantan Province, South Kalimantan Province, and West Kalimantan Province In Retail Industry**

   Based on Presidential Regulation Number 112 of 2007, Local Government was given big authority mainly including three aspects, i.e. zoning (arrangement of traditional and modern market), licensing and open hour of traditional and modern market. Through provision of the authority then retail sector in each regions grows or not will rely on policy each Local Government makes. Hence, in this activity it would evaluate how far the rule implemented in the region especially in Kalimantan.

Result of assessment indicated that Presidential Regulation Number 12 of 2007 did not yet provide impact for the continuity of retail sector in Kalimantan. This proven by the unimplemented Presidential Regulation Number 112/2007 in each region, meanwhile local party tends to wait the issuance first of implementing regulation (operational guidelines) from the Presidential Regulation. Policy related to retail sector in Kalimantan tends to be sporadic policy. Some Local Regulations related to retail sector more regulate technical issues such as retribution and arrangement of sidewalk trader, not for arrangement of traditional and modern market. One of retail sector uniqueness in Kalimantan is application of Combined Market. Policy of creating combined market in Kalimantan Island made for more bring up the arrangement of traditional and modern market. However, this policy has varying effect in each region. Balikpapan is the only city which is success in applying combined market policy. While other cities such as Samarinda and Banjarmasin much encounter barrier in implementing combined market in their each region.

2. Evaluation of Local Government Policy in Nanggroe Aceh Darussalam Province, North Sumatera Province and West Sumatera Province Related to Procurement of Goods and Service.

Focus on this activity is to carry out impact analysis from providing authority the Central Government undertakes to the local government in a framework of local autonomy in business competition perspective. Procurement of goods and service in Nanggroe Aceh Darussalam Province, North, and West Sumatera in general refers to Presidential Decree of Republic of Indonesia Number 80 of 2003 and its amendments concerning Operational Guidelines of Government Goods/Service Procurement.

The present of regulations the local government creates in the interest of local income enhancement without regarding real condition in the field whether those regulations create competitive business actor or otherwise create less innovative and creative business actor because there is a chance of conspiracy to arrange a winner of goods/service procurement through collusive practices between business actor who has no qualification but protected by regulation and committee person (goods/service user) who owns corruptive mental.

In order to create competitive business actor in the interest of building health business world and reaching people welfare, awareness and cooperation from all related parties either in Central Government, Regional Government, Association of Business Actor or Business Actors themselves are needed.

Based on the above analysis then the Commission provides recommendation toward local regulations which indeed not supports healthy competition climate in the interest of people prosperity for being reviewed even revoked if no creation of competitive business actor felt to be prepared for healthy competing in global era will only create ineffectiveness and inefficiency for the government and no competitive spirit for business actors. The present of assessment against local regulations which encumber business world expected will lessen high cost so that healthier business competition will be created.

3. Evaluation of Local Government Policy in East Java and East Nusa Tenggara Provinces in Fertilizer Industry

Scarcity of fertilizer becomes primary focus in this assessment. Subsidized fertilizer scarcity often occurs at growing season and price at retailer level exceeds Highest Retail Price (HRP) which the government has decided by Rp. 60.000.00 per 50 kgs Urea. Some policies have regulated in association with procurement and distribution of fertilizer, such as East Java Governor Regulation Number 17 of 2008 concerning Demand and Distribution and Highest Retail Price (HRP) of Subsidized Fertilizer for Agriculture Sector in East Java Province for 2008 Budget Year, Minister Regulation Number 66/Permentan/OT.140/12/2006 concerning Demand and Subsidized Fertilizer HRP for Agriculture Sector in East Java Province for 2007 Budget Year, Trade Minister Regulation Number 3 of 2006 concerning Procurement and Distribution of Subsidized Fertilizer for Agriculture Sector along with entire amendments and Trade Minister Regulation Number 21 of 2008 concerning Procurement and Distribution of Subsidized Fertilizer for Agriculture Sector.

Fertilizer scarcity that occurs mostly caused by subsidized fertilizer distribution mechanism delivered to the business actor (distributor and retailer) with profit-oriented solely without effective control is accompanied. It makes no subsidized fertilizer distribution run well where the business actor seeks a chance to gain as big as profit. Therefore, recommendation given is to apply closed distribution. Thus, subsidized fertilizer is only sold to subsidy recipient or can be distributed through farmer institutions where the recipient and total demand are already clear. This farmer institution is also expected to be reaffirmed in order to produce system that runs on time and reinforces farmer bargaining power.

4. Evaluation of Local Government Policy in Sulawesi Islands, Maluku, and Papua Related to Telecommunication Tower

In line with more strict of competition inter-celluar operator, then existence of BTS antenna becomes most important. However, rapid activity of telecommunication tower (BTS) development day after day is hard to control and tends to create tower forest in any region, so that it removes aesthetics and harmony of city planning, and inefficiency of investment. In order to solve the problem, many local governments then make arrangement of telecommunication tower together in their regions. In spite of relying on spirit to keep aesthetics and create efficiency, however, in the progress, those some local regulations exactly have potency to result in exclusiveness of telecommunication tower development and management together. Some local regulations are also assumed to contrary with Communication and Information Minister Regulation Number 02/PER/M.KOMINFO/3/2008 Concerning Guideline of Development and Utilization of Telecommunication Mutual-Tower.

By viewing some arrangements of telecommunication tower in various regions, the Commission highlights issues related to mapping (determination of point) mutual-tower, technical planning, and determination of working partner. The Commission views that philosophically, this policy of mutual-tower benefits not only for the region but also to the cellular operators. One of indicators for this success mutual-tower policy is emergence of various facilities and efficiencies in developing telecommunication network.

Related to mutual-tower policy, the Commission has sent three letters of advice and judgment to Local Government, i.e. Makassar, Palu, and Yogyakarta. These letters of advice and judgment are type of Commission's advocacy upon issues emerge in policy arrangement of mutual-power telecommunication in the region. The mutual-tower policy in any area results in the tower grid plays a role as *essential facility*. As a result of this condition, then monopoly or management by any business actor in certain area becomes unavoidable. In this case, then utilization of healthy business competition principles becomes a necessity so that the mutual-tower policy can act optimum. In broad outline, those principles are determination of mutual-tower management operator through *competition for the market*, non-discriminative act in management of mutual-tower, and attitude of bringing up efficiency.

5. Evaluation of Local Government in Bangka Belitung Province In Tin Industry

Decree of Trade Ministry revokes tin status as strategic commodity and categorizes as free commodity to export through Trade Minister Decree Number 146/MPP/Kep/4/1999 triggers massive exploitation in Bangka Belitung. Total TI miner who operates is much more through establishment of private smelter. Several years after issuance of the regulation that followed by enactment of Government Regulation Number 75 of 2001 concerning implementation of Act Number 11 of 2007 concerning Mining Basic Provision. This Government Regulation delegates authority of providing license to the region in the form of Mining Power.

The Regional Government in Bangka Belitung issues some related Local Regulations such as Local Regulation Number 6 of 2001 Concerning Public Mining Management, Local Regulation Number 20 of 2001 Concerning Determination and Arrangement of Strategic Commodity Trade Management and Local Regu-

lation Number 21 of 2001 Concerning Public Mining Tax and Other Secondary Mineral. Those Local Regulations are part of regional effort to optimize its local income and to increase investment in tin mining sector.

Viewing on uncontrolled tin exploitation in Bangka and no benefit present in the form of national income received from tin mining itself, then government through Ministry of Trade issues ban of inter-island tin sand trading. Through Trade Minister Regulation Number 19/M-DAG/PER/4/2007, tin seed can be only commercialized inter-island by holder of Working Contract (WC) or holder of Exploitation Mining Power as owner of Cooperation Agreement Letter to holder of Processing and Refinement Mining Power (MP). In addition, inter-island tin trading can be only destined to location of MP holder or WC holder or Processing and Refinement MP Holder. Each inter-island tin seed trading is obliged first to obtain Approval Letter of Intern-Island Tin Seed Trading (ALITST).

Further step for increasing competitive power and tin quality exported, government through Ministry of Trade also issues the policy of Trade Minister Regulation Number 04/M-Dag/Per/1/2007. Besides tin ingot export must be carried out by registered tin exporter, it also must qualify minimum tim metal content (Sn) by 99.85 %. During the time countries such as Thailand, Malaysia and Singapore enjoy profit from reprocess ingot tin exported from Indonesia for being upgraded its content conforms to world standard.

3.8 Assessment of Industry and Trade Sector

In 2008 there are three studies the Commission analyzes, i.e.:

1. **Assessment of Pharmacy Industry focused on mapping and analyzing competition issues in pharmacy product distribution channel;**

Pharmacy industry is a strategic sector for the national economics matters viewed from potency of domestic market development. Pharmacy industry also plays vital role for enhancement of health and social welfare.

Pharmacy industrial performance marked by a phenomenon of drugs price which relative high in Indonesia compared with price of similar product in some other countries. It is an initial indication from the potency of unhealthy business competition in pertinent industry.

Focus of Assessment:

1. Undertake analysis and mapping against pattern and pharmacy industry distribution channel in Indonesia;
2. Identify the profile of pharmacy industrial business actor related to vertical distribution channel, starting from main producer-distributor until to sub-distributor level (Pharmacy Wholesaler);
3. Analyze behavior of pharmacy industrial business actor in Indonesia related to management and system of pharmacy product distribution;

Analysis of Pattern and Channel of Distribution

Ethical drug products are distributed through four channels i.e. through detailmen, seminar, and specific magazine/medical journal and through medical representative. Medical representative (Med rep) associates direct with a doctor as prescription writer.

There are three vital component involved in distribution of pharmacy product, i.e.: end user, producer, and intermediary company including Pharmacy Wholesaler (PW) and drug store/pharmacy. Distribution of pharmacy product in Indonesia is performed by Pharmacy Wholesaler (PW). Theoretically, distribution of product through special industry will be more efficient due to using economic scale and amount of widespread branch network. Pharmacy producer distributes its product through single main distributor that commonly has spe-

cific association with producer (residing in one group of ownership).

Market Strategy

In general producer carries out market activity including: (i) introduction of product/advertising through mass media and (ii) education or introduction of product to a doctor via detailmen.

Each product of drug has therapy function and specific characteristic that only a doctor knows it. People who know nothing about type of illness suffered and awareness of drug use results in promotion of ethical drug product introduction is not emphasized to people directly.

Price Determination Strategy

Because pharmacy product as strategic commodity and dominates width people necessities of life, in case of product distribution to a distant and remote area, no end user is burdened so that price of all products defined are similar by producer for all Indonesian territories.

Despite between pharmacy producer and WP is two different business entities; nevertheless, through mechanism of HJD and HNA arrangement, pharmacy producer can make arrangement and supervision of pharmacy product price until to retailer level (pharmacy).

Analysis of Distribution Channel Business Competition

In context of business competition, method and pattern of distribution channel tends to restrict intra-brand competition pattern. It can be seen through producer capacity to control supply/logistic and level of price in each line of distribution.

By lessening intra-brand competition level, pharmacy producer owns power to control selling price until to consumer level. In situation of limited intra-brand competition, then distribution cost portion is completely controlled by producer. Through assumption of fixed distributor margin or using price cap pattern, then drug price in Indonesia is more defined at manufacture level (manufacture selling price).

Recommendation

1. It needs to perform monitoring of business actor, for product of amlodipine hypertension therapy class and antibiotic of cefadroxil class due to high concentration ratio and price range from pertinent product. Oligopoly practice is supposed to have occurred either in the form of price determination or arrangement toward output;
2. It needs to perform specific analysis concerning vertical integration strategy made by pharmacy producer in order to identify how far the form of integration has impact against competition climate in downstream sector (Pharmacy Wholesaler and pharmacy) or related (Hospital or clinic);
3. It is necessary to analyze through policy evaluation activity against Health Minister Regulation Number 1010 of 2008 concerning Drug Product Registration in order to know how far the policy has impact toward business competition climate in pharmacy sector;
4. Institution arrangement in pharmacy sector is necessary to assess for solving the problem of information imbalance between doctor, medical representative and patient. Balancing of information performed through health insurance program, and through providing a pharmacist authority to recommend use of prescription drug in the range of patient affordability;
5. It needs regulation toward generic drug price in general logo such as price restriction i.e. price cap (upper limit) because there is no effectual significant difference clinically (refers on BA/BE test) between non logo generic drug and generic drug with logo. Off patent drug must become generic drug so that presence of generic drug with brand that price still approaches patent price should be further assessed;

INDONESIAN PHARMACY GRID

Total Indonesian people is relative big (more than 200 million people) followed by level of expenditure for health that is still relative low (as many as $5/capita/year compared with $12 in Malaysia and $40 in Singapore) is an indication the big of pharmacy market potency in Indonesia.

Clarkson's study (1996) indicated that pharmacy industry is one of the most profit industries. The pharmacy industrial profit is in fourth rank after industry of *software*, petroleum, and food. Compared with average of industry, the pharmacy company profit is bigger i.e. 13,27% compared with average 10,19%. Mechanism of gaining this profit influenced by characteristic of pharmacy industry, which will affect drugs price. Barrier to enter into the pharmacy industry is carried out in various types: (1) regulation of drugs; right of patent; and (30 distribution system.

First barrier to enter into the pharmacy industry is the most strict regulation aspect in the pharmacy industry. The process of drugs testing in the United State of America (including in period 1) by Food and Drug Administration (FDA) takes place longest, it may occur until 15 years in the most complex process.
Second barrier factor is right of patent given by the government for the pharmacy industry that succeeds to invent new drug. The pharmacy industry enjoys monopoly era, where only a drug manufacture that owns right to sell and produce drug because applicable right of patent is for 17 years until 25 years. After a drug expires right of patent, other companies can produce similar drug. Right of patent reflects capitalist system that keeps in order that capital continues to develop and able to perform further activities, including undertaking further drug research.

Third barrier to enter is distribution network system and marketing of the most complex pharmacy industry. Network of distribution and marketing system have interesting attribute i.e. using *detailing* concept where Pharmacy Company through distributor network undertakes face to face approach with a doctor who practices at hospital or private practice.
Definition of *Patent*, Generic and *Branded* Drug

Drug is internationally only divided into 2 parts namely patent and generic drug. **Patent drug** is drug that newly invented based on research and owns patent duration that relies on type of drug. According to Act Number 14 of 2001 valid time of patent in Indonesia is 20 years.
After duration of patent drug expires, it will then be called as **generic drug** (*generic = name of its efficacious substance*). Well, this generic drug is also splitted into two namely generic with logo and branded generic.

Generic drug with logo which more commonly called only 'generic drug' is drug using its name of efficacious substance and the pharmacy company's logo that produces it on drug packing, while 'branded generic drug' which more commonly called 'branded drug' is generic drug given trade mark by the pharmacy company that produces it.

Price of Generic and Branded Drug

Followings are comparison samples of *branded generic* drug price compared with its price of patent.

Therapy Class	Drug price		
	Highest (Rp)	Lowest (Rp)	Patent (Rp)
Amoxicillin	2,475	259	1,940
Ciprofloxacin	18,535	218	18,535
Cefixime	14,500	2,177	13,733
Cefotaxime	214,200	8,750	214,200
Amlodipine	5,500	2,300	5,500
Ranitidine	4,759	180	4,759
Mefenamic Acid	1,612	100	1,612
Cllavulanic Acid	10,883	4,332	10,883
Levofloxacin	27,800	1,104	27,800

Source: Information of Commisison's source person

From above samples in fact that *branded generic* is still allowed to sell at price level over price of *patent/original* product. In practice, such strategy does not make product sold at the premium price being not competitive in market. Volume of drug product sold at the premium price for certain therapy class even exceeds volume of *patent/originator* drug sale, which is in a similar therapy class. Otherwise, drug at lowest selling price, does not always put the drug as one at best sale volume.

Trend for market segment reinforcement in some therapy classes by *branded generic* drug occurs not as a result of any superiority from aspect of drug selling price for market dominating product. It implicitly indicates that **non-price competition characteristic** is found in *branded generic* drug that owns vital role in effort of market domination carried out by each drug producer.

Decision of buying drug by pharmacy consumer particularly *ethical* drug is in doctor's hand, despite end consumer from drug is patient. The patient has absolutely no choice except buys drug branded the doctor has prescribed it.

In the pharmacy industry especially *ethical* drug, effort of "advertisement" exactly undertaken toward decision maker to determines drug in any treatment, i.e. a doctor. A doctor prescribes *ethical* drug with a certain branded to the patient because any *benefit* gained from each producer. Competition inter-producer exactly occurs in providing financial/non-financial *benefit* to a doctor as determinant of drug prescription volume given to the patient. It results in mechanism of competition in *ethical* drug becomes less maximum.

It resulted in patient commonly does not understand the significance of generic drug, *branded generic*, and patent drug (*asymmetric information* condition) so that no opportunity opens for them to ask a doctor in giving generic drug prescription.

Article 61 paragraph 3 of Government Regulation Number 72 of 1998 concerning Pharmacy Preparation and Health Equipment Safety says:

In the interest of health service, ***replacement*** *of the pharmacy preparation delivery in the form of* ***drug based on doctor's prescription with its equivalent as generic drug****, can be performed by* ***doctor's***

approval that issues a prescription *and conducted by regarding economy capacity of health service recipient*.

In practice a pharmacist is most rare to change drug a doctor prescribes it to a generic drug and replacement of any prescription must obtain a doctor's consent.

In other side as a result of the Government policy that extremely stresses generic drug price then this value of generic drug sale increasingly decline. It also makes no economic incentive for producer, distributor, or pharmacist to sell generic drugs.

The increase of raw material price by more or less 50%, causes generic drug market increasingly uninteresting. Generic drug producer lowers total *volume* of the production. As a result, supply decreases because any limitation in satisfying need of generic drug. BUMN (State-Owned Company) that during the time becomes generic drug producer has lowered its total production, for example:
Indofarma & Kimia Farma with their generic drug production declines: 20 – 30%.
Dexa Medica with generic drug production declines: 40%
Phapros with generic drug production declines: 60%.

Recommendation

During the time the Government's policy that regulates generic drug price and generic drug price control is threefold from *branded generic* drug only performed in a means of Government's health service. The Government does not absolutely regulate *branded generic* drug price, but only regulates Highest Retail Price (HRP) labeling and drug content.

Total huge drug producer should indicate adequate high competition level. However, this huge amount even encumbers health consumer by imposing high price. It resulted in by high promotion cost the consumer performs to make unethical cooperation with any doctor.

Based on existing law and regulation function and authority of a pharmacist can replace drug brand the doctor prescribes provided that pertinent doctor's approval is obtained, but in the practice a pharmacist is unafraid to change, or even recommends drug brand substitution a Doctor has prescribed with equal therapy class drug but with different brand.

In the interest of solving the above mentioned problems the Government needs to define upper limit price from *branded generic* drugs according to Act, with maximum thrice from generic drug price. Structure of generic drug price that already properly calculated also must be corrected in order that able to give incentive for generic drug producer.

The Government also better to increase education for health consumer's right in obtaining treatment information transparency (a patient knows about prescription content/prescription is easily read by a patient in order to avoid *asymmetric information*) particularly concerning drug option prescribed and given right reserved by law and regulation for choosing drug brand based on prescription with affordable price.

Law and regulation to protect the consumers from unethical practice also required; it is better to provide a pharmacist authority to change professionally drug "brand" a doctor prescribes provided that must be cheaper with quality, *safety* and efficacy can be responsible for and must be upon a patient's request.

In order to rationalize drug price it needs to develop *parallel import* policy to develop competitive climate toward *originator* drugs derives from Foreign Capital Investment (FCI). During the time, *originator* drugs always becomes reference for Domestic Capital Investment (DCI) in price formation of *branded generic* drugs. Accordingly, if there is any competition to FCI's production drugs, then FCI's drug price will tend to decline and furthermore, it will pressure *branded generic* prices the DCI produces.

Existing problems in the pharmacy industry today resulted in by industrial policy relies on *brand competition*. In order to solve it, the pharmacy industrial policy must be focused to *generic substitution* approach, as occurred in some countries.
Drug classification that consists of patent, *branded generic* and generic, must be changed into only patent and generic.

Source: Competitive Magazine, XIII Edition)

2. Assessment of Oil and Natural Gas focused on mapping and analyzing competition issues in business activity of oil and natural gas sector in upstream level;

Oil and natural gas sector is one of sectors having vital role in Indonesia's economy. However, role of oil and natural gas in the creation of Indonesia's GDP growth tends to indicate decline pattern from time to time in spite of continuing to increase in value. Application of Act Number 22 of 2001 concerning Oil and Natural Gas on 23 November 2001 and the Government Regulation Number 42 of 2002 dated 16 July 2002 concerning Implementing Board of Upstream Business Activity for Oil and Natural Gas changes institute that undertakes supervision and management of Cooperation Contract activity or *Production Sharing Contract* that previously done by PERTAMINA (State Oil Company) replaced by Implementing Board of Upstream Business Activity for Oil and Natural Gas (BP MIGAS). In the present of change, then performance in the sector of oil and natural gas upstream is expected to increase.

Activities of oil and natural gas upstream industry in Indonesia consist of two types, i.e. exploration and exploitation activities, where they are carried out by two types of business actor, namely core business and supporting business. Each of the core business has inherent linkage in case of associating with production process in oil and natural gas industry. Meanwhile, if viewed from timeline basis, activities of oil and natural gas upstream industry comprise three phases. Business activities on pre-KKS phase is data collection undertaken to define working areas and then offering of them to the companies that involves in oil and natural gas upstream industry through bidding process will be carried out. Phase of KKS business undertaken after signing the cooperation contract. In this phase activities of exploration performed in order to know any reserve of oil or gas resources in a working area. While post-KKS phase is the one of oil and natural gas exploitation in a working area.

In activities of upstream oil and natural gas business, approach of *competition for the market* is more used, it is because domination over production output is owned by State and business actor only acts as a contractor who is assigned to perform production activities in the industry. Hence, violation potency to Act Number 5 that occurs within the industry is in the form of tender conspiracy. From three phases of activity in upstream oil and natural gas industry, i.e. pre-KKS, KKS, and post-KKS are performed through bidding process namely selection of cooperation contract and supporting industry in each phase of activity. In order to lower the violation potency, BP Migas issued the Procedure Guideline Number 007/PTK/VI/2004 concerning Supply Chain Management of Cooperation Contract from BP MIGAS and its amendment decree that regulates recruitment process carried out by cooperation contractor.

Assessment team considers that task performed by the BP MIGAS is extremely vital, while approach power of supervision is limited so that contractor involvement is more dominant. Accordingly, effort of confirming the function of BP MIGAS and making job relation clear between BP Migas and contractor so that BP MIGAS institution is stronger needs to undertake. As an industry with most specific characteristic, then it sometimes results in *barrier to entry* in the procurement of goods/service. Therefore, it is better made assessment and guideline about procurement of the specific goods/service.

In other side, the team also perceives that there is no grand strategy in this industry. Dualism of interest is found here, between increasing revenue in oil and natural gas industry and interest of securing domestic industry. *Local content* rules that are too forced even worried to result in emergence of inefficiency in the national oil and natural gas industry. Ultimately, this will bring about inefficiency in the national oil and natural gas industry that in turn it will disappear national opportunity to gain higher income. Hence, it needs a grand strategy of national oil and natural gas industry related to long term target that is willing to achieve. The Grand Strategy as well as to affirm vision and mission of developing the national oil and natural gas industry, whether to create multiplier effect for the supporting sector or to enlarge foreign exchange income.

In condition where local supporting industry is unable to satisfy the need of upstream oil and natural gas industry, then each business actor must develop principle of economic democracy, which considers public interest and increases national efficiency. Effort of empowering local supporting industry must not become *entry barrier* which then reduces national efficiency and impedes development of national oil and natural gas industry.

Developing Oil and Natural Gas Sector fromView Point of Business Competition

Competition is not peculiar thing in the development of oil and natural gas sector, even this sector has close linkage with competition particularly in the emergence of law of competition. It started since Standard Oil Company established in 1870 by John D Rockefeller who merged oil and natural gas shareholders in the form of “trust” and became the biggest company through large economic scale. This type of monopoly triggers the present of other trust that also undertakes monopoly practice. The formed trust is a means that negates competition inter-business actor. This type then urges enactment of Anti Trust Law in the form of Sherman Antitrust Act (1890) as law of competition that bans various anti-competition practices.

In the progress, after through various demands, then Standard Oil Trust divided and created many new companies involved in separate industrial segment each other (unbundling). This advancement follows to influence various changes of oil and natural gas structure in various countries including Indonesia.

Competition Policy of Oil and Natural Gas in Indonesia

Competition policy in Indonesia marked by legalization of Act Number 22/2001 concerning Oil and Natural Gas that changes Act Number 8/1971 where participation of private in industry starts to open, and change of PERTAMINA’s role from the only sole business actor in this sector. This change is not only triggered from various reasons of efficiency but also effort of maximizing oil and natural gas sector management that may provide as big as possible welfare for the people.

In upstream side, course of competition policy has opened big opportunity for business actor. This is more resulted in the characteristic of high technology upstream industry, and needs high capital, as

well. Moreover, the more decline of total national oil and natural gas sector production, so that new investments in oil and natural gas upstream side are more required. Similarly in downstream side, upstream market opening, is expected to cause more options and improvement of quality that end in advancement of efficiency from downstream side.

However, this type of paradigm change is not immediately received, it shown by the present of effort to make revision of Act Number 22/2001 because it considered too liberal and impartial to national interest. This dissention of opinion ends at the present of Constitution Law Court Decree against Oil and Natural Gas Act by revoking Article that becomes the basis required for enactment of business competition mechanism.

This revocation has indirect biased course of competition policy in oil and natural gas sector where in one hand the government makes decision to open the market, but at the same time to take over price control function that makes no competition in this sector occurs. However, in other hand, despite the government owns right to determine course of people-protecting policy, uncertainty to do business is necessary guaranteed so that opportunity for potential business actor who wants to enter is ensured.

Effect of oil and natural gas competition policy

Change of course for oil and natural gas competition policy has impact on business climate of oil and natural gas sector for upstream and downstream. In side of oil and natural gas upstream, change of policy contained in Act Number 22/2001 considered less provides added value either in the national oil and natural gas industry or upstream sector business climate becomes interesting because investment process becomes more bureaucratic, tax imposition in spite of not yet in production, and contraries with the principle of Production Sharing Contract.

In the side of oil and natural gas downstream, policy change of course makes increase of downstream business actor, so that increases various types of selection, create competitive price, and better service to the consumer. As illustration, for distribution side of Unsubsidized Oil Fuel, on July 2006, competition between Pertamina, Shell, and Petronas related to their adequate competitive price has occurred.

In addition to the side of price, competition occurs in the form of service quality by Petronas and Shell such as any service addition of car cleaning, minimarket, and favourable and transparent Oil Fuel Pump, which then this concept also performed by Pertamina as effort of competition.

This circumstance almost can not be found today on Subsidy Refined Fuel Oil (SRFO), besides due to magnitude of difference between SRFO and Non-SRFO as a result of world oil price increase, also due to Non-SRFO considered less interesting because 70% Refined Fuel Oil (RFO) consumption in Indonesia still in the form of SRFO.

Interesting case also can be seen at Liquid Petroleum Gas (LPG) sub-sector, where almost no new business actor found to enter into the market. As known that LPG is gas of production result from oil or gas refinery, which vital component is the liquefied propane gas (C3H8) and butane (C4H10). In the processing industry there are two large group of LPG processing market, i.e. yield of LPG processing by Production Sharing Contract (KPS) oil and natural gas refinery (distributed for export) and domestic market are fully managed by PT. Pertamina (either derive from import, own production yield, or some derive from KPS yield).

As a consequence of the circumstance, no competition found in effort of supplying processing yield LPG into the market. In addition, existence of subsidy issue by PT. Pertamina in the processing of 12kg LPG also results in objection from new busines actor to enter.

Special for LPG, a policy the government takes is considered inefficient yet to apply in the long term. It is because in the beginning of LPG policy started, LPG market segmentation is middle consumer above often encounters inadequacy of the LPG resources. However, through a policy that enforces energy conversion into LPG, it automatically results in reliance of energy in import side. Thus, it will not astonish when today this trend of LPG import value tends to increase.

Price Determination Issue by Actor of Business

Based on Constitution Law Court verdict as previously, there is an opinion states that price of all RFO and its secondary must be enacted by the Government. However, the fact indicates that Government only decided price of RFO categorized as SRFO that addressed to non-industry consumer such as Premium, Diesel Fuel, and Kerosene. Meanwhile, there are some types of non-SRFO (such as kerosene, industrial diesel fuel, and high octant RFO), while decision of price performed by Pertamina.

In this case, inconsistence of regulation in determination of oil and natural gas price is found. When referring to Act Number 22 of 2001, definition of RFO is explicitly and clearly described as RFO is fuel oil that derives from and/or processed from Natural Oil. While, definition of natural gas is natural process product such as hydrocarbon that in pressure condition and atmosphere temperature in the form of gas phase obtained from mining process of Oil and Natural Gas. Based on these two definitions, then through Constitution Law Court verdict that returns decision of price to the Government, it must decide entire price of RFO and Natural Gas.

Conclusion

Due to change of policy toward competition in oil and natural gas industry, stimulates business actor for more conducts efficiency and improvement either from operational or from marketing aspects. In principle, competition is not frightening thing, but more than stimulation of making improvement for enhancement of oil and natural gas industrial performance.

The Commission itself supports every measure the government arranges in this industry, despite factual condition indeed indicates type of existing policy has not yet fully encouraged competition so that may impact on business climate in oil and natural gas sector. Accordingly, the Commission encourages the government may define more actual measure concerning stage of developing oil and natural gas industry by consistently considering business competition as one of instruments in ensuring opportunity to engage in business for each actor of business and commonly creates market efficiency. Harmonization inter each institute envolved in the policy of oil and natural gas industry remains to need in effort of formulating better policy and ultimately can create people prosperity in general.

(Source: Competitive Magazine, XII Edition)

3. Assessment of Transportation-Logistic Industry focusing on mapping and analysis of logistic sector business competition for some strategic commodities in Indonesia;

Logistic sector plays vital role in the national development and enhancement of trading competitive power in a country. Logistic system that well and effective implemented can result in distribution channel of goods, service, and information from departure point to consumer point becomes more efficient. Otherwise, bad logistic system can lessen incentive and value of trade.

Arrangement of logistic sector increasingly puts government attention, especially since Indonesia and ASEAN countries signed the *Asean Sectoral Integration Protocol for the Logistic Services Sector* on August 2007. The agreement ended on fully integration and liberation from logistic service sector within the Asean[1].

Currently, the government is formulating the policy in national logistic sector in the interest of harmonization with regional and international agreement, because current regulation is not deemed comprehensively. In other words, the Government expects occurrence of logistic sector transformation in Indonesia becomes more efficient and effective system through policy facilitation.

In line with the respect, the Commission then performs comprehensive assessment in order to map competition level in logistic industrial sector, including therein related to factors that influence logistic industry development, and course of the Government policy in regulating pertinent sector.

Specifically, various issues that become target of assessment are as follows:

a. Identify link and segmentation of business related to logistic sector, along with identification of business actor and domination of market on pertinent business segments,
b. Identify and analyze business actor's behavior in logistic industry sector,
c. Analyze performance of logistic industrial sector through parameter of cost, quantity, time, and location,
d. Analyze course of government policy in logistic industrial sector and potency of impact toward creation of business climate in domestic logistic business sector,
e. Analyze management system for logistic industrial sector based on *best practice approach* in other countries.

Based on result of assessment undertaken, some aspects related to business and trade of national logistic sector can be identified as follows:

Business link and segmentation of logistic sector mostly strong associated with definition of logistic sector itself. Until now there is not yet consensus between various parties involved in business and trade of logistic sector in Indonesia concerning logistic definition and need of arrangement. Logistic definition can be defined based on scope of activities or commodities transported. Based on scope of activity, business of logistic may include activity of raw material procurement, raw material warehouse, finished goods warehouse, finished goods marketing and customer handling. Scope of activities requires several vital basic facilities, i.e. warehouse, transportation infrastructure and information technology.

Need of regulation concerning logistic as separate regulation still also becomes debate in many groups of people. In one hand, they have opinion that logistic is not necessary to regulate in separate regulation because from the scope of activities arrangement in accordance with related sector has been performed, e.g. warehouse by Ministry of Trade, Transportation by Ministry of Transportation, data and information by Ministry of Communication and Information. In other hand, no regulation of integrated logistic found to results in any

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[1] Bisnis Indonesia, 22 Oktober 2007, article : Masukan Soal Liberalisme Logistik Segera Disampaikan

opportunity for certain parties to use the slot of regulation for conducting activity that inflicts other party, e.g. trailler company becomes road transport without applicable procedure because it uses a flag of logistic company.

From scope of service owned, logistic company may include several types of the following company: Container, Courier, Freight Forwarding, Packaging, Rail Transport, Road Transport, Shipping, Storage, Tanker and Warehouse. Total logistic company in Indonesia based on service coverage is 3,808 (in 2006) including domestic and foreign companies. Service coverage of the logistic company has reached inter-continental coverage, except Africa.

From location of activity, most business actor of logistic service concentrate in large cities, particularly cities that are already equipped with various adequate infrastructure such as harbor, road, telecommunication, and other supporting means. Existing fact indicates that logistic company within Java reaches 75% from total available company (in 2005).
Some inputs as recommendation to the government in association with arrangement of logistic sector are:

a. Market definition. **The present of clear logistic definition and agreed by all parties either in national or regional level required to determine market restriction and area of obvious game from each parties. Currently, unclearness particularly occurs on definition of logistic in association with scope of activity and need of handling in each department.**

b. Regulation. **Regulation that administers business and trade of current logistic sector spreads in various Ministries, e.g. Ministry of Transportation, Ministry of Trade, and Ministry of Communication and Information. The present of regulation from various different institutes has potency on the occurrence of inefficiency and ineffectiveness in the application, e.g. in association with license and tax. Synchronization of regulation will encourage healthy and dynamic business climate through formation of separate regulation or revision of existing regulation.**

c. Institution. **The consequence of specific regulation absence in logistic sector is any involvement of various ministry institutes in industry and trade of logistic sector. Enhancement of bureaucracy efficiency and law enforcement are required to reduce high cost in logistic business because any overlap and duplication of rule, informal exaction either from government apparatus or from the community. The present of inter-department body that enables to shelter implementation of the policy required so that well coordination among involved institutes, which can be performed by Coordinating Minister for the Economy. In regional level it needs to undertake harmonization of local regulation in compliance with national interest, particularly in effort of increasing logistic sector competitive power.**

d. Globalization**. Globalization era marked with application of AFTA, APEC, and world agreement regulated by WTO. Globalization will allow the entrance of foreign companies with more excellent resources compared with domestic companies. Accordingly, arrangement of foreign company operation by consistently regarding healthy business competition principle is needed. National business actor needs to reinforce in facing free market era, through enhancement of management, human resources, and enhancement of technology domination.**

e. Business competition. **Domination of logistic industrial market shows oligopoly market indication. Nevertheless, any practice that threatens free competition in tariff, banned agreement, merger and acquisition has not been found in this industry. Therefore, any continuously evaluation and supervision is required so that industrial market and logistic sector trade will able to grow and expand through healthy market mechanism. The role of the Commission will be very significant in this aspect.**

3.9 Discussion for Amendment of Act Number 5 of 1999

In 2008, activity for amendment of Act Number 5/1999 entered continuation phase of discussion, where it focused on two subjects in Act Number 5/1999, namely the Commission's institution and procedure of case handling.

In institution aspect, Act Number 5/1999 that currently applied to provide a number of authority and obligation for the Commission to implement the task as supervisor board against the operation of Act Number 5/1999. In the running, arrangement of the Commission's institution in Act Number 5/1999 felt inadequate for this institute in performing effective and efficient tasks. Hence, in continued discussion for amendment of Act Number 5/1999 proposed, there is any reinforcement of institution through arrangement of the Commission's organizational structure. Besides, there is a proposal for task and authority addition the Commission requires in the interest of realizing healthy business competition climate in Indonesia.

In addition to institution, other vital aspect is procedure of case handling. Act Number 5/1999 has regulated about procedure of case handling in Chapter VII, Article 38 until Article 46 as procedure for law enforcement of business competition and Chapter VIII regulates about sanction as administrative act. In implementation, procedure of case handling that has been regulated in Act Number 5/1999 is still less complete it may have potency to cause the problem either at case handling level in the Commission or in objection level at District Court. Accordingly, in the continued discussion for amendment of Act Number 5/1999 it was proposed that procedure of case handling arranged with more complete and systematic by regarding legal instrument issued, either by the Commission or Supreme Court related to case handling procedure of business competition at the Commission and Court.

Activity of the continued discussion carried out either by limited discussion forum or hearing with various related parties among others, government institute, and justice agency, either at district court or Supreme Court, practitioner and legal academician and other parties as stakeholders of Act Number 5/1999. The discussion activity required to hear opinion from various parties concerning substantial subject proposed in the Amendment draft of Act Number 5/1999. Limited discussion carried out in various cities, either in Jakarta or in the region for accommodating and facilitating inputs submitted from various *stakeholders* in the region. In the present of the Continued Discussion phase for Amendment of Act Number 5/1999, then Revision draft of this Act will be finished.

As an implementation of the continued activity for Amendment Discussion of Act Number 5/1999, in 2008 the Commission internal team has been formed and involved various source persons. Currently the amendment draft concerning institution and case handling procedure has been compiled and for further phase interdepartment input that will be the continuation program of amendment arrangement activity in 2009.

3.10 Arrangement of Operation Guideline Draft of Act Number 5/1999

According to Article 35 point f Act Number 5/1999, the Commission has undertaken some programs and activities as follows:

a. Activity of Guideline Arrangement in Article 50 b

Activity of Guideline arrangement in Article 50b concerning agreement related to Franchise in the purpose to provide explanation concerning reason of exception toward franchise agreement and application toward franchise business practice that evolves in the field, where the franchise agreement can not be absolutely exempted from application of Act Number 5 of 1999.

The Article 50b of this guideline defines the limitation of exemption in franchise agreement as set forth hereunder:

1. Fulfillment of franchise concept;
2. Existence of franchise agreement;
3. Existence of clause that may impede competition;
4. Analysis whether the clause is intended to protect Intellectual Property Rights (IPR) of franchise or not;
5. When intended to protect IPR of franchise, then exemption is imposed;
6. When no intention to protect IPR of franchise, then further analysis will be done to know whether a practice of monopoly and unhealthy business competition occurs.

b. Activity of Guideline Arrangement in Article 51

Following are goal of arranging the Article Guideline:

a. Identify obvious legal definition concerning the purpose of production field activity and/or marketing of goods and/or service that dominates basic need of many people and branch of vital production for the country;
b. Identify criteria of state-owned corporation, agency and institute that may carry out monopoly and/or concentration of activity related to production and/or marketing of goods and service that dominates basic need of many people and branch of vital production for the country;
c. Decide mechanism or order that can be made as basis for the government to determines monopoly organizing party and/or concentration of activity related to production and/or marketing of goods and service that dominates basic need of many people and branch of vital production for the country;
d. Being guideline for parties in performing business activity so that no monopoly practice and/or unhealthy business competition resulted in.

In article guideline description about some items given, i.e.:

a. monopoly and/or concentration of activity;
b. production and/or marketing of goods and/or service that dominates basic need of many people;
c. vital production branches for the country; and
d. regulated by Act.

c. Arrangement of Guideline in Article 50 point b concerning IPR

One thing in competition policy is about exemption of agreement in association with IPR, where a touch between business competition and IPR is found; IPR can push healthy competition in other hand also has negative impact against competition. In one hand IPR provide security over so excessive individual property right that may result in anti-competition act.

In a concept of agreement license is exemption of excepted, i.e.:

a. Examined agreement whether is IPR license agreement, if not then exemption applies;
b. The IPR's license agreement has met with requirement according to Act, namely registration at Director General of IPR, if no registration is done then no exemption applies;
c. Agreement of IPR that has met with requirement to have significant influence against market;
d. There are clauses in IPR's agreement that contain nature of anti-competition, if no indication found then exemption of IPR's license agreement applies from provision of business competition's law.

d. Operational Guideline Arrangement of Act Number 5 of 1999 Concerning Relevant Market

This goal of operational guideline arrangement concerning Relevant Market is to provide explicit, right and appropriate definition about the meaning of relevant market as intended in Act Number 5/1999.

This importance of guideline arrangement concerning Relevant Market is:

a. Definition of relevant market is initial phase from *anti-trust* analysis, particularly for law enforcement;
b. Relevant market proof is cross article-based because almost all articles in Act Number 5/1999 associate with relevant market;

In this guideline arrangement analysis focused on:

a. Definition of relevant market concept by product and by geographic;
b. Factors that must be considered in determination of product market and geographic market;
c. *Best practices*;
d. Methodology (qualitative and quantitative) of relevant market arrangement;
e. Method of relevant market arrangement for the Commission with examination time constraint (detailed and step by step);

e. Arrangement of Competition Policy at International Forum

In more luster of discussion about business competition at international forum, Indonesia must prepare internal competition policy for international level as basic position of Indonesia particularly related to the cooperation in trade.

Regarding activity of assessment at bilateral, regional, and multilateral level performed in 2007, the assessment results are followed up in 2008 in order to produce formulation of advice and recommendation about competition policy at international level as input delegation guideline arrangement as required by Act Number 25 of 2000.

Types of activity are as follows:

a. Based on 2007 result of assessment formulated advice and recommendation proposal for Indonesian's competition policy at international level;
b. Undertake coordination with Stakeholders concerning advice and recommendation proposal for the policy, including essence, urgency, benefit, and consequence that must be encountered in the present of the policy.
c. Arrange ideal Indonesian's policy framework at international forum for related substance to the business competition. Ultimately, it will be type of the Commission's advocacy to the government in using the policy at international forum related to business competition.

3.11 Assessment of Implementation in Act Number 5/1999

a. Assessment of Implementation in Article 22 of Act Number 5/1999 concerning Bidding Conspiracy

Conspiracy of goods and/or service procurement is dominant issues in case handling at the Commission. In a few chance it also related to government's policy issues so that the Commission has submitted some advices and/or judgments to realize healthy business competition climate in the procurement of goods and/or service.

Analysis carried out toward the Commission's verdict that already has permanent legal force in direct association with conspiracy practice to bidding, namely Verdict Number 3/KPPU-I/2002 concerning a case of share sale bidding of PT. Indomobil Sukses Mandiri, Verdict Number 7/KPPU-I/2004 related to divestment process of two VLCC (*Very Large Crude Carrier*) tanker vessels belongs to PT Pertamina, Verdict Number 7/KPPU-L/2001 concerning procurement of Kereman cow imported from Australia in the project of Animal Husbandry Development and Management in District/Municipality within East Java in 2000, and Verdict Number 16/KPPU-I/2005 concerning Procurement of Environmental Protection Equipment, i.e. Motor Vehicle Test Equipment undertaken by Surabaya Municipality Transportation Service.

Approach of implementation effectiveness assessment may use various types of theory including *Friedman* theory that splits 3 (three) vital factors, which influence implementation effectiveness of any Act that is factor of Act substance itself, law enforcement apparatus, and factor of law culture.

b. Assessment of Article 25, Act Number 5/1999 concerning Dominant Position

Analysis conducted toward the Commission's verdict that already has permanent legal force in direct association with abuse practice of dominant position i.e. at harbor industry (the Commission's verdict Number 04//KPPU-I/2003 concerning investigation of violation presumed toward Act Number 5 of 1999 carried out by PT. Jakarta International Container Terminal (which more known as JICT case) and battery distribution industry (the Commission's verdict Number 06/KPPU-L/2004 concerning investigation of violation presumed toward Act Number 5 of 1999 carried out by PT Artha Boga Cemerlang (which more known as ABC case).

Practice of dominant position abuse can be concluded that behavior of dominant position abuse the business actors perform to have resulted in negative impact for the business competition because it restricts the consumers to obtain the best option in the market and necessitates the consumers to pay more expensive than appropriate price.

CHAPTER

4

Developing Business Competition Values

4.1 Socialization Of Business Competition

In effort of developing healthy business competition values that is vital subject for the basis of activity in each advocacy performed throughout 2008, socialization task becomes a part from the Commission's advocacy. This activity continues to have progress all days. In other hand, many parties still question healthy competition circumstance, whatever perception.

Based on all sequences of activity for socialization, development of network at mass media, and implementation of other advocacy material, entire tasks of advocacy carried out in 2008 has progressed rather than previous years. A number of progresses in implementation of advocacy activities noted to have been undertaken are development of network, enhancement of advocacy ability and evaluation performance. This increase is effort of advocacy task implementation for responding any challenge from business dynamic that more develops and full with innovation strategy. Followings are the explanations.

1. Network Development

The Commission's external communication network acts as position marker of this agency in the stakeholder group. The Commission's position associates with 2 (two) main tasks, i.e.: law enforcement and submission of advice and judgment. In responding the matter, in 2008, communication strategy in the form of advocacy was addressed into two stakeholder communities where given vital attention, namely mass media and academician. Effort of advocacy carried out for the network development is:

a. Mass Media Network Development

Enhancement of cooperation with mass media is started by commemoration momentum of issuance day for Act Number 5/1999. In the occasion, the Commission, exactly on 12 March 2008, information facilities in media center were available that of course they can be used as well as possible by journalists who were undertaking coverage task at the Commission.

While, for better information access to come, the Commission carried out routine journalist forum and visit media to a number of printing and electronic media. As long as 2008, the journalist forum conducted to discuss a number of business competition issues either at central or regional level, i.e.:

- An Eight Year Period of Realizing Healthy Competition (12 March 2008)
- Create Healthy Competition through Change of Attitude and Obedience of Law (14 April 2008)
- Business Competition in Telecommunication Sector (9 June 2008)
- Amicable Meeting and Discussion on Business Competition (13 August 2008)
- Progress of the Commission's Member Case (18 September 2008)
- End of Year Note: the Commission's Commitment for Law Certainty in Increasing Healthy Competition Culture (17 December 2008)

While, visit media performed are to Bisnis Indonesia, Hukumonline, Jawa Pos, ANTV, Metro TV, and Trans TV. Result from visit media is information *sharing* so the developing discussion substance can be made input for further assessment.

b. Academician Network Development
In addition to mass media, the Commission also looks academician group. Therefore, the Commission also plans the perfect law enforcement through infrastructure creation of any competition law, namely by performing each aspect related to this law in materials the University teaches. Those materials are then compiled in any presentation so that systematic of understanding can be focused. Starting from the goal, the Commission carries out the forum and cooperates with academician group in organizing seminar on business competition. Followings are the explanations:

- Initiative Forum on "Plan and Development of Competition Law Curriculum"
  the Commission's initial program in carrying out the forum on 31 October 2008 is to plan the curriculum addressed supporting and enriching education material of business law at university throughout Indonesia.

  This Plan of Competition Law Curriculum is any complete curriculum that consists of learning materials to provide comprehensive understanding concerning principles of law and policy of competition. The material covers introduction, primary and secondary subjects. These curriculum materials also contain definition of economy in law of competition. In practice, the economic proportion in law of competition related to micro-economic and industrial organization. While, to optimize the performance, the economic aspect concerning competition from three vital subjects, namely: body of legislation, case study of competition and adequate economic concept should be well understood.

  Result of the forum is initial recommendation from the curriculum of business competition law that will be followed up into a text book of business competition law.

  Furthermore, in order to perform dissemination of actual information concerning business competition, the Commission has created mailing lists for academic group and observer of business competition law and having address at ilmu_persaingan@kppu.go.id.

- Business Competition Seminar
  Cooperation with universities carried out together with Universitas Trunojoyo and Universitas Atmajaya in holding of Seminar. The Commission initiates with those two universities is the follow up from visit to universities it often performs. Seminar activity carried out on 21 May 2008 in Madura (Universitas Trunojoyo) and on 4 December 2008 in Yogyakarta (Universitas Atmajaya).

2. Enhancement of Advocacy Ability

Based on evaluation result of advocacy activities in previous years, it was known that the Commission's stakeholder understanding level extremely varies. It must be recognized that until now the Commission is just able to undertake partial advocacy. It needs to develop, understand, and implement advocacy ability, and to search new motion breakthrough in effort of responding the challenge and change. While, based on Act Number 5/1999, the Commission owns two vital tasks, namely enforcement of business competition law and to delivery of advice and judgment to the government. From both, the Commission moves toward effort of people welfare enhancement.

In viewing that law enforcement is a continuous process, law that will be applied must be preceded from any perspective and equal understanding. Important element in improving level of understanding is continuous communication. Application of the continued communication must be always adapted with level of public awareness so that implementation goal of Act Number 5/1991 can be reached.

Through socialization activity, the Commission attempts to create awareness to the business actor who is vital player in the world of competition in order to comply with provision in Act Number 5/1999. The preparedness of business actor in this matter is influenced by factors such as perception about Act Number 5/1999, credibility of supervisory agency and any belief that their change of behavior toward healthy competition will give advantage. Socialization activity is primary one the Commission carries out in the interest of increasing the stakeholder awareness about the Commission and Act Number 5/1999.

As a part of activity to develop advocacy ability, in 2008, a book that is writing result of 2006-2011 period the Commission's member has been compiled having title "Untaian Pemikiran Sewindu Persaingan Usaha" ("Series Thinking in An Eight Years of Business Competition"), which freely published for the group of the Commission's stakeholder. In order to accommodate the matter, effort of advocacy in the form of socialization activity throughout year is designed conforming to the progress of the Commission's stakeholder awareness level, which inter-alia are decision makers at government, or law enforcement apparatus (district court's judge).

Expected results from socialization activity provided in the programs of communication are to push people actively involved in operational supervision of Act Number 5/1991 and to give efficient Indonesia's economic matters through realization of conducive business climate. In addition, socialization activity is only unlimited to seminar and interactive dialogue at TV. The implementation runs parallel with other communication activity for enhancing awareness and knowledge of stakeholders. Activity of interactive dialogue is already carried out at:

1. Metro TV on 10 December 2008 took a theme "the Commission as Supervisory Board of Business Competition";
2. TV One on 17 December 2008, "Modern Retailer VS Traditional Retailer";
3. TV One on 18 December 2008, "Healthy Competition in the Procurement of Goods/Service".
4. TV One on 19 December 2008, "Cartel and the Problem";
5. Metro TV on 26 December 2008, "Business Competition in Upstream Industry of Indonesia's Oil and Natural Gas".

The end goal of socialization effectiveness is establishment of business competition community that will support advancement and is reflection from well awareness level toward healthy business competition. Furthermore, detailed socialization activity based on stakeholder is as follows:

1. Entrepreneur

The more business competition law advanced, demand from business actor also more varied. In this context, effort of advocacy must be arranged keenly to shoot a number of interests attach to business actor. Therefore, this socialization is carried out through:

a. Discussion forum
   Discussion forum carried out according to strategic sector by discussing the actual progress. In 2008 discussion forum in oil and natural gas sector, namely Seminar on Business Competition in Downstream Industry of Indonesia's Oil and Natural Gas was carried out on 30 June 2008 and 1 July 2008. Recommendation of the seminar on oil and natural gas sector is:

   1. Intensive discussion forum is needed by involving various relevant agencies (Ministry of Energy and Mineral Resources, State Ministry for State Enterprise, BP MIGAS, BPH MIGAS, Ministry of Trade, and other agencies) concerning:
      1. Understanding of Act Number 22 of 2001 along with its secondary regulation and impact emerged;
      2. Implementation of proper, healthy, and transparent competition mechanism, in decision of business actor for BBM (refined fuel oil) supplying and distribution; and
      3. Formulation of national interest definition and its coverage in realizing goal of Act Number 22 of 2001.
   2. Policy harmonization forum inter-relevant agency, either toward existing or further policy is needed in effort of applying proper, healthy, and transparent competition mechanism in downstream market for oil and natural gas or creation of energy policy that having impact to enhancement of community welfare;
   3. Further and concrete intensive discussion and (in the form of *focus group discussion*) concerning the upstream industrial problem of oil and natural gas.

b. Audience
   The Commission has received a number of audience requests from business actor and representative of regional house of representative. It is noted that, throughout 2008 entrepreneur from a number of sectors, among others, banking industry, retailer industry and Association of Indonesia Young Entrepreneur (HIPMI). While, Salatiga Regional House of Representative, Sukabumi, Yogyakarta, and Pematang Siantar Regional House of Representative have conducted the audience.

2. Policy Maker at Government
   Some specifications owned by environment of policy in a number of regions in Indonesia are deemed to provide adequate significant challenge toward the Commission and implementation of competition regulation. Establishment of awareness level toward Act Number 5/1999 in the region of course, can be retrieved from various aspects, but it must be avoided that no discrepancy between this structure of competition regulation and people expectation occurs. The Commission's network in growing regional economic matters established through a cooperation with the government either at center or at region. Cooperation is realized in the form of audience and organization of business competition seminar. Seminar activity with regional government has been conducted in the following number of provinces:
   - North Sumatera Province on 26 March 2008;
   - West Sumatera Province on 9 April 2008;
   - Bangka Belitung Province on 23 April 2008;
   - South Sulawesi Province on 30 April 2008;
   - East Kalimantan Province on 14 May 2008;
   - West Kalimantan Province on 25 June 2008;

- Central Sulawesi Province on 20 August 2008;
- Maluku Province on 27 August 2008; and
- Papua Province on 27 October 2008.

Actual measure the Commission performs to encounter the perception is that in regional context, the Commission then attempts to undertake mapping of business competition issues that occurs. In order to map the business competition issues, first discussion conducted with relevant parties based on portion of issue in the region. Thus, latest format in implementation of socialization activity through limited discussion with party who direct encounters the problem is compiled.

The discussion was accomplished due to input from the Commission's Regional Representative Office (KPD) concerning issues that bring up in their territory region. Thus, each element issue then can be identified as competition substance in the region. While, for further analysis in order that the identification becomes a useful input, it is then translated into assessment of monitoring as the forum follow up.

3. District Court Judge
   Law and policy of business competition that continues to develop demanding case handling technique that more profound beside enhancement of awareness so that perception similarity is created. In this thinking framework, the Commission carries out training for judges as continued effort to equal perception about implementation effectiveness of business competition law and policy for Supreme Judges and judges from District Court, among others, in:
   - Palembang on 16 and 17 June 2008;
   - Bengkulu on 24 and 25 June 2008.

3. Evaluation Ability

Varying the Commission's stakeholder of course also, has distinct interest to information access about the Commission and Act Number 5/1999. It results in socialization material in the form of seminar, discussion forum and training that carried out by academician group, central and regional government agency, business actor in health and harbor equipment sectors, district court's judge and mass media are adjusted to information need of Act Number 5/1999 for each of the public element.

The stakeholder reason and sorting is that each socialization forum will be effective if discussion of certain business competition issues is sharpened. However, prominent material of socialization is still about Tender Conspiracy. The basis is until now the Commission often receives the report concerning behavior of tender conspiracy from various elements of people.

Those circumstances of course must be corrected, so that awareness of law desired can be reached and applied appropriately. In other hand, law enforcement apparatus of Act Number 5/1999, the Commission must race with dynamic of business world that filled in competition nuance. Various innovations that accompany rate of business world must be paid close attention in the implementation of the Commission's function. It becomes critical because innovation is often made as marketing strategy that may be touching with stipulation of healthy business competition.

Thus, starting from 2008, arrangement of advocacy material standardization based on evaluation of activity result in a number forum in the region was undertaken. Those activities were carried out in:
- Gorontalo, dated 31 March 2008;
- Mataram, 28 May 2008;
- Surabaya, 21 October 2008;
- Bali, 5 November 2008;
- Banda Aceh, 13 November 2008;
- Batam, 18 November 2008;

- Yogyakarta, 4 December 2008;
- Jakarta, 9 December 2008; and
- Palangkaraya, 16 December 2008.

Analysis of Policy Harmonization Concept:
Mechanism of Business Competition in Downstream Industry of Indonesia's Oil and Natural Gas

Determination of *grand strategy* course in oil and natural gas downstream sector is initial commitment that must be synchronized by all related parties in the sector. As a consequence, the Commission invites various parties related to downstream industrial sector of oil and natural gas in Indonesia to convey an input in the National Seminar titled "Business Competition in Oil and Natural Gas Downstream Industry in Indonesia" that takes place during two days (30 June – 1 July 2008) at Borobudur Hotel, Jakarta. Two primary substances discussed in the seminar are Downstream Sector Policy of Indonesia's Oil and Natural Gas and Legal Instrument in Oil and Natural Gas Industry.

Arrangement of oil and natural gas downstream sector ought to be started when amendment of legislation in the sector occurs. Type of the amendment is most obvious to see in Act Number 8/1971, which includes private participation openness in this industry and change of Pertamina's participation from the only sole business actor in this sector into incorporated (Persero).

This change means Pertamina equals to other private business actor and starts to apply competition system in several downstream sectors of oil and natural gas. Type of change occurs due to demand to make this sector efficient so that having high competitive value. Unfortunately, some opinions state that this change is more relied on effect of liberalization demand from developed countries and having impact toward national companies.

Response to the paradigm change adequate varies. If the Commission values that this paradigm change must be followed by interpretation toward course of downstream sector policy for oil and natural gas after revision of Act by Constitution Law Court, the Government party then takes a stance by executing a number of relevant policies. It is expressed by Minister of Energy and Mineral Resources, Mr. Purnomo Yusgiantoro, who explains that development and course of downstream sector policy has actually been arranged in the national energy policy, oil and natural gas policy, oil and natural gas downstream sector policy, BBM policy and described in the business of oil and natural gas downstream sector. In principle, thinking groove of the oil and natural gas downstream based on provision and utilization of BBM on the scope of downstream business field for oil and natural gas.

While, in association with downstream infrastructure ownership of oil and natural gas, thing that must be paid close attention is how far the *national interest* is put into downstream sector policy of oil and natural gas. Result of discussion with Minister of State Enterprise, Sofyan Djalil, has opinion that close attention thing to pay is how far this *national interest* is put into downstream sector policy of oil and natural gas.

Furthermore, application of business competition in downstream sector of oil and natural gas is believed mostly relied on the government efforts. As explained by Chairman of Commission VII, DPR (House of Representative), Erlangga Hartarto, among the government efforts that quite positive is increase of people buying power, expansion of employment field and inter-relevant agency effectiveness of coordination and inter-sector synergy either in the center or in the region.

Various interpretations concerning implementation of downstream sector policy for oil and natural gas is really then further explained by Faisal Basti and Dr. Kurtubi as economic observer in the sector. The result is point of view concerning downstream sector policy of oil and natural gas is more appropriate if to look at the policy partiality on the people interest and not only to side with the government. Obvious legal instrument in application of the government policy must be a primary basis in implementation of sector that clearly becomes basic need of the many people.

In other hand, a member of the Commission, Tadjuddin Noer Said has opinion that a number of issues have emerged in the transition period of paradigm change toward Act of Oil and Natural Gas, among others, are:

- Some issues that are necessary to confirm, such as mechanism of price determination, definition coverage of BBM the government decides, and others are found.
- Regulation weakness has resulted in price determination issue by Pertamina as business actor over certain product that having potency to touch with Business Competition Act (Act Number 5/1991).

Considering that downstream sector problem of oil and natural gas will not finished only in seminar discussion, the Commission also values need of intensive discussion forum by involving various relevant agencies, namely Ministry of Energy and Mineral Resources, State Ministry for State Enterprise, BP MiGAS, BPH MIGAS, Coordinating Minister for the Economy, Ministry of Trade, and other agencies concerning:

a. Awareness of Act Number 22/2001 along with secondary regulation and impact resulted in;
b. Implementation of proper, healthy, and transparent competition mechanism in determination of business actor for BBM supply and distribution; and
c. Formulation of national interest definition and the coverage in realizing goal of Act Number 22/2001.

The Commission also always attempts to provide evaluation toward various entrepreneur behaviors and government policy from neutral point of view without any *vested interest*. By this consistency the Commission expects that Indonesia nation can pick up optimum benefit from the growth of healthy business competition.

4.2 DOMESTIC COOPERATION AND SOCIALIZATION OF BUSINESS COMPETITION

DOMESTIC COOPERATION

In addition to reinforcement of international level cooperation with international competition agencies, the Commission also reinforces cooperation with other relevant agency and department at national level. In effort of braiding the well cooperation, as people mandate performer in reinforcing law of competition in Indonesia as instructed by Act Number 5 of 1999, the Commission has held the meeting with some State Minister and relevant State Agencies in order to braid inter-state agency and government cooperation in the creation of well synergy for the competition law enforcement.

1. Audience

Starting from early January 2008 – July 2008 the Commission has held the meeting, among others:

1. Meeting with the BAPPENAS (National Development Planning Board) (12 March 2008)
   The Commission requested opinion of a Minister in macro respect, namely concerning government attitude (in this matter BAPPENAS) on issue/course of national competition policy.

2. Meeting with Vice President of Republic of Indonesia (28 March 2008)
   Besides conveying advice and judgment to the President, the Commission also pleads direct support from the Vice President by holding direct meeting with the Vice President. In this meeting, the Commission delivered result of the performance and several cases that have been handling. In addition, in the occasion, the Commission also asked government support to perform well cooperation for the competition law enforcement in Indonesia.

3. Meeting with Coordinating Minister for the Economy (12 April 2008)
   the Commission requests the Minister opinion about government attitude (in this matter Coordinating Minister for the Economy) on issue/course of national competition policy. It is because in assessments conducted the Commission is unable to cover entire existing economic sector, in addition, it needs regulatory agencies that also associate with competition issue in order that able to cooperate for accomplishment of competition issue undergone.

4. Meeting with Minister of Industry (21 April 2008)
   Delivery of assessments that are being handled by the Commission, i.e. basic industrial field that extremely influences on the economy, such as refined sugar industry, steel, tobacco, and pulp industries.

5. Meeting with Minister of Defense (21 May 2008)
   the Commission expresses some industrial issues where in the perspective of the Commission it is under management of Ministry of Defense, such as airport taxi management at civil enclave and strategic industry in association with defense. Furthermore, it relates to issues of goods and service industry that touch with Ministry of Defense in association with the *supply* need guarantee for Ministry of Defense.

6. Meeting with Minister of Transportation (20 June 2008)
   This meeting discusses response of Transportation Minister from some advices and judgments the Commission has submitted to the Ministry of Transportation, among others, Decree of Transportation Minister Number KM 15 of 2007 concerning *Tally* Performance and Management at harbor, line tariff agreement of two Tanjung Priok harbors, and execution of *roll on-roll off* (RoRo) container transport from Batam to Singapore.

7. Meeting with Governor of National Security Agency (11 December 2008)
   the Commission in this matter represented by the Chairman, some commission members and Executive Directress holds a meeting with Governor of LEMHANAS (National Security Agency), Mr. Muladi at his official room, Lemhanas Building, Jakarta.

2. Arrangement of Memorandum of Understanding

Besides meeting with state and government agencies, the Commission also arranges formulation of *Memorandum of Understanding* (MoU) with Ministry of Information and Communication concerning monopoly practice handling and unhealthy business competition in communication and information industry and KAPOLRI (Chief National Police) concerning cooperation and coordination in case handling of monopoly practice and unhealthy business competition. It aims to braid cooperation in case handling the Commission encounters, because in handling cases, it of course, needs support and participation from various parties including relevant state government and agencies. Scope of the MoU between the Commission and the Ministry of Information and Communication, are among others:

1. Assessment and Monitoring of business actor behavior in information and communication industry that has potency to violate Act Number 5/1991 concerning Prohibition of Monopoly Practice and Unhealthy Business Competition, so that it then may become input for the Commission to follows up in the process of law enforcement;

2. Harmonization of competition policy in information and communication industry in order to achieve expected output in relevant industry;
3. Data and/or information access either proactive or reactive in nature;
4. Socialization of healthy business competition principles to the stakeholder of information and communication industry.

3. Hearing with DPR (House of Representative)

DPR (House of Representative) particularly Commission VI that focuses on the sector of Industry, Trade, cooperation/small and middle business, State Enterprise, Investment and National Standardization Agency as necessary *partner* for the Commission in the expression of aspiration and responsibility of performance in the period of this 7 (seven) months commenced from January – December 2008 has held Hearing with DPR RI amounting to 5 (five) times.

In first Hearing dated 19 March 2008 some following conclusion are made:
1. Related to many relevant cases with unhealthy business competition, Commission VI of DPR RI supports the Commission's measures in effort of increasing the function and role according to message of Act Number 5/1999 concerning monopoly practice ban and unhealthy business competition.
2. Commission VI of DPR RI asks the government to perform policy harmonization based on recommendation of the Commission and Commission VI of DPR RI asks the Commission to deliver results of assessment in association with regulation that may result in emergence of monopoly practice and unhealthy business competition to Commission IV of DPR RI.
3. In effort of keeping the Commission's independence as an agency that performs mandate of Act Number 5/1999 then Commission VI of DPR RI requests to finish status of the Commission's secretariat office and then in association with this case Commission VI will also hold a dialogue with relevant State Ministers (State Minister for Administrative Reforms, State Secretary, and Finance Minister).

Furthermore, second Hearing held on 26 June 2008 with questionnaire list. From discussion during the Hearing takes place following conclusions are resulted:
1. Commission VI urges the government in this matter State Minister for Administrative Reforms to decide immediately secretariat management status (equivalent to 1A Echelon) and asks the Finance Minister to decide part of own budget.
2. Commission VI also asks the government in this matter Finance Ministry and State Ministry for Administrative Reforms in order to immediately process the Commission's budget clearance that is in blocking status by Directorate General of Budget, Finance Ministry.

3. Report of the Commission's performance result along with case verdict result that has been handled or case handling that still under process. Furthermore, discussion about institution issue, therein related to administrative issue (including human resources or problem of building inadequacy as working place).
4. Commission VI also asks the Commission to continue increasing the performance.

Next three Hearings are to discuss the Commission's financing budget for 2009, and delivery of the evaluated the Commission's performance and case handling that has been deciding by the Commission. Those three Hearings held on 10 September, 23 September and 14 October 2008. Conclusion resulted from the three Hearings concerning budget are as follows:
1. Related to Temporary Budget Limit of RAPBN 2009 (State Budgetary Income & Expenditure Plan) for the Commission is Rp. 82,089,300,000,- (Eighty two billion eighty nine million three hundred thousand rupiah) as included in Budget Limit Trade Ministry of Republic of Indonesia, then Commission VI of DPR RI can understand budget need proposal amounting to Rp. 118,000,000,000,- (One hundred eighteen billion rupiah).

2. Because the realized DIPA (budget implementation) of the Commission until 4 September 2008 just reached Rp. 26,368,876,801,- (Twenty six billion three hundred sixty eight million eight hundred seventy six hundred and eight hundred one rupiah) or reaches 30.33% from budget limit that can be realized by Rp. 86,939,983,000,- (Eighty six billion nine hundred thirty nine million nine hundred eighty three thousand rupiah), then Commission VI of DPR RI urges the Commission in order that undertakes optimization of budget use so that policy, program and task performed according to target.

From those Hearings Commission VI of DPR RI continues to support effort the Commission has performed in carrying out its function as mandate performer of Act Number 5/1999 concerning monopoly practice ban and unhealthy business competition. In addition, from some assessments the Commission has carried out, Commission VI gives positive response and pushes the Commission to continue performing monitoring toward vital economic sectors that perpetrate violation of Act Number 5/1999.

4.3 FOREIGN COOPERATION

The progress of institutional cooperation activity in international forum and cooperation with relevant international agencies with development of competition law and policy values throughout 2008 is described as follows:

1. OECD

In the period of 2008, the Commission continued to undertake effort of reinforcing the Commission institutional existence either through realization of regulation reform, i.e. adoption of *integrated checklist on regulatory reform*, enhancement of human resources capacity, shared knowledge about business competition law and policy in international forum, implementation of negotiation about competition policy at international level, and enhancement of the Commission's role as *regular observer* to OECD.

According *OECD-Competition Committee* agenda, in this 2008 first semester, twice *Competition Committee* meeting has been held. In February first meeting, the Commission gained honor to be one of assembly chairmen to discuss issue on *Residential Water Heaters* and *Consumer Choice in Mobile Telephony*. The Commission also submitted *written contribution* titled *Indonesian Antitrust Issues in Interlocking Directorate*. Issue on "*interlocking directorate*" arranged in Article 26 Act Number 5/1999. This rule also performed in line with other relevant government or ministry regulation, among others, Act Number 19/2003 concerning State Enterprise, Regulation of Bank Indonesia Number 2/7/2000 and BAPEPAM (Capital Market Supervisory Agency) Regulation Number Kep-45/PM/1997 dated 26 December 1997.

Besides active in the meeting, the Commission also held a meeting with relevant *OECD expert* in the possibility of OECD aid in the form of *technical assistance* to provide training on implementation of *OECD assessment toolkit*. The planned training proposal that will be carried out in Indonesia also is follow up from one of necessary recommendations resulted in APEC Seminar held on June 2007 in Jakarta, i.e. any agreement of APEC economists to find out best method (based on their experiences) in adopting *competition assessment*, regulation reform, and competition policy. Therefore, they also emphasize the important of continuous dialogue and technical assistance in application of *OECD integrated checklist*. Thus, the Commission needs to prepare insight and knowledge toward the *toolkits* that is in line with plan of *OECD assessment toolkits* application.

While in the meeting participation on June, the Commission shows its existence as member of *regular observer OECD* (since December 2005) through submission of *written contribution* in WP 2 and WP 3 meeting on June 2008. However, the Commission is not able to attend the meeting because it coincides with performance of APEC seminar agenda where the Commission as *host country* to organize the event. In the absence of the event does not lessen active contribution of the Commission in the meeting. The Commission remains

to submit 3 (three) *written contribution* as discussion paper in the forum. The papers submitted are, firstly, *competition issues in Indonesia construction industry*, secondly, *bundling in Indonesian competition law* and thirdly, *market studies in Indonesian competition agency.* The Commission also actively contributes in OECD meeting on October 2008 concerning *monopsony and buyer power* and *the rationales for and against vertical unbundling of retail gasoline outlets*.

2. OECD – Korea Policy Centre

The OECD Korean or currently known as *OECD-Korea Policy Centre* (OCED-KPC); formerly called *OECD-Korea Regional Center for Competition* (OECD-KRCC) is means of *sharing experience* and *capacity building* for authority of competition agency officer in Asia-Pacific territory that is part of OECD. Throughout 2008, OECD-KRCC has invited the Commission to participate in four trainings. In the training, some advanced subjects conveyed and discussed by legal expert of business competition sent from OECD central office in Paris. The Commission itself has actively involved and shares experience in the training since OECD-RCC established, i.e. at the end of 2004. Throughout 2008, five times training (*workshop*) have been held in South Korea and Singapore. Various theories and practices about *cartel* and *leniency program*, dominant position abuse, and *quantitative methods* in measuring market strength, and merger are discussed in the *workshop*. Following are short explanations concerning OECD Korea training the Commission has participated:

1. "*Regional Antitrust Workshop on Cartels, Leniency Program and the Interface between Competition and Regulation*"
   This seminar held in Singapore on 5-7 march 2008. It discussed competition issue related to cartel, type and implementation of effective *leniency program* and inter-competition and regulation relationship. First session is *sharing* experience from each participant country in combating national or international cartel. Second session, is discussion on cartel theories and how the *leniency program* can be an effective part in anti-cartel agenda. Final session is to discuss effort of competition law enforcement that often crushes with industrial regulation by the government, and way to braid harmonious relationship between competition agency and regulator.

2. "*Regional Antitrust Workshop on Abuse of Dominance*"
   The seminar held in Seoul, Korea in 23-35 April 2008. It discussed on how to determine monopoly change and dominant position abuse. It is participated by competition agencies from 13 countries that shares mind and information each other concerning business competition case in association with dominant position abuse. OECD as an organizer provides illustration of relevant definition and theories, and provides hypothetical case as discussion topic for participants in evaluating this case of *dominant position abuse*.

3. "*Regional Antitrust Workshop on Quantitative Methods*"
   This seminar held in Jeju Island, Korea on 18-20 June 2008. It aims to introduce *economic mindset* and economic theory/approach that commonly used by several relevant *competition agencies* in the process of business competition law enforcement. First session focused on basic concept of economic analysis related to competition law. Second session explains how to gather, manage and use economic data. Third session is to explain some basic statistic and technical concepts used in investigation and litigation process. Seminar is formulated in order that participants gain basic understanding on use of tool and economic evidence in analyzing the competition.

4. "*Regional Antitrust Workshop on Horizontal Mergers and Joint Ventures*"

   The seminar held in Seoul, Korea on 12-14 November 2008. It analyzes competition issues in association with horizontal and joint venture mergers. First day focused on competition effect that emerges from any horizontal merger, *the primary economics avenues of harm of anticompetitive effects of horizontal merger*

furnished by case study from relevant agency. In second day, participant analyzes two *hypothetical cases* concerning issues that often appear in evaluation of merger. Final session focused on *merger remedy* and *joint ventures*, furnished by case study on types of joint venture and approach of competition law that may be applied.

5. "*Regional Antitrust Workshop on Anti-Cartel Enforcement*"
   This training held in Seoul, Korea on 10-12 December 2008. It arranged such a way to provide knowledge for participant concerning an introduction of theory and practice used in law enforcement of modern anti-cartel. It discussed case study model of original but false cartel, along with speech by experts concerning various aspects of cartel and investigations of cartel. In first session, participant performs discussion with law enforcement apparatus, expert and to review case document. Afterwards, any ransacking undertaken and participant starts formal investigation. In second phase, participant confronted with consumers and one companies that participate to carry out cartel but then decides to cooperate with competition agency. In third phase, participant confronted back to other cartel company. In each phase, participant split into three groups and each group will interview its each character. After interviewing, each group will complete each other their finding result and will analyze and determine together further investigation measure.

   Through the OECD – RCC capacity and expertise, the Commission plans to submit the training proposal organized in Indonesia in 2009 with goal to maximize active participation of the Commission's personnel demanded to increase their capability in analyzing and applying business competition cases.

3. UNCTAD

UNCTAD is one of part agencies from *United Nations* where it particularly focusing on *Competition Law and Consumer Policies Branch*. *Technical assistance* formulation that has been pioneered since the end of 2004 between the Commission and UNCTAD, then in 2007 a framework of bilateral cooperation among these two agencies for two years to come, i.e. 2008 - 2009 has been achieved. In the cooperation, the Commission is specifically asked to be the development center of competition law and policy for South East Asian regional. In realizing the initiative, UNCTAD will facilitate activity of translating UNCTAD training modules into Indonesian language and performing *trainer for trainer* (ToT) for internal and external the Commission's personnel, as well as, facilitating *workshop* performance in industry of telecommunication, infrastructure and other essential facilities, and potency of applying *class action* in law enforcement of business competition in Indonesia. In 2008, an activity performed in November is *Workshop Competition and Regulation in the Telecommunications Sector.*

In addition, activity in a framework of the bilateral cooperation, the Commission also takes active role in UNCTAD meeting particularly in *Inter-Governmental Group of Expert (IGE) Meeting on Competition Law and Policy* that is a UNCTAD annual agenda held at UNCTAD's headquarters in Geneva, Swiss. On July 2008, the Commission attended UNCTAD meeting of *Ad Hoc Expert Group on the Role of Competition Law and Policy in Promoting Growth and Development* and UNCTAD *Intergovernmental Group of Experts on Competition Law and Policy,* Ninth Session in Geneva, Swiss. In this occasion, the Commission presented *written contribution* titled *Indonesian perspective on abuse of dominance*. In addition, the Commission also became one of panelists in a meeting of *Ad-hoc Expert Group on the Role of Competition Law and Policy in Promoting Growth and Development* in discussing about position and attitude of developing countries against behavior of dominant position abuse.

One of significant points made in the meeting is the Commission says that Indonesia, in this matter the Commission itself, attracts and opens the possibility for UNCTAD to hold *peer review* over competition law and policy in Indonesia that will be held at least on July 2009. Besides this *peer review* is addressed increasing quality or effectiveness of competition law and policy assessment in Indonesia in the interest of

strengthening implementation of law and policy for *fair* business competition in Indonesia, also intended making tight cooperation among entire policy maker of business interest. In general, ***UNCTAD Voluntary Peer Reviews on Competition Law and Policy*** **is carried out by competition policy experts and will be made basis of performing peer review in annual session of** Intergovernmental Group of Experts (IGE) meeting.

As a follow up on the *Peer Reviews* plan, the Commission has held a sequence of internal meeting to finalize the concept and prepare relevant data that may be required. Currently, UNCTAD has appointed consultants from Brazil and Japan. On December 2008, UNCTAD has sent delegation to Jakarta, namely Mr. Hassan Qaqaya who assists to formulate main goal of *peer review* the Commission wants. In the visit identification of issue content that will be discussed in *peer review*, basic information gathering, and discussion with stakeholder the Commission considers important in the preparation of *peer review* report is followed to discuss,

4. APEC

In first semester of 2008, the Commission has shown active role and participation in the compilation process of *APEC Individual Action Plan 2008* (APEC-IAP), 2008 Individual Action Plan) under coordination of Coordinating Ministry for the Economy particularly in *Chapter Competition*. APEC–IAP 2008 to discuss combination of various issues related to economic policy in a country, among others, tariff and non-tariff, service, investment, standardization, customs duty, government procurement, intellectual property rights, and competition policy. In association with the 2008 APEC–IAP arrangement, the Commission also involved in organizing plan for *APEC Peer Review* that will be held in 2009. The Commission has coordinated with Coordinating Minister for the Economy concerning competition law and policy issues that will be presented in the *Peer Review*.

On August 2008, the Commission attended *APEC SOM III Meeting and Related Meetings* in Peru. In this meeting, the Commission invited presenting results obtained from the project on "*APEC Seminar for Sharing Experiences in APEC Economies on Relations between Competition Authorities and Regulator Bodies* (CTI13/2008T)" on 11-13 June 2008 and expressed the progress report of project implementation on "*The Fourth APEC Training Course on Competition Policy* (CTI14/2008T)" on 5-7 November 2008, both held in Bali. The Commission is also trusted providing presentation in session of *Sharing Experiences for Members with Newly Established Competition Agencies*. This session is a means of sharing experience and information for member countries that will or has just owned *competition agency*. Developed countries that have experience in establishing *competition agency* also follow to be invited for sharing their experience and opinion in implementing *competition policy*.

While, as realization of active participation in effort of supporting regulation reform that begins to socialize on relevant stakeholder group, then in 2008, the Commission initiated performance and being as *host country* in a program initiated by APEC, i.e.:

1. *APEC Seminar for Sharing Experiences in APEC Economies on Relations between Competition Authorities and Regulator Bodies (CTI 13/2008T)*, held on 11 – 13 June 2008 in Bali.
   The seminar is a follow up from APEC seminar held on June 2007 in Jakarta, where one of recommendations from result of the APEC seminar is the need of further discussion and meeting in order that sharing experience from implementation of *APEC-OECD Integrated Checklist* as part of effort to encourage *Regulatory Reform* process for realizing healthy competition policy.

   One of points from *APEC-OECD Integrated Checklist* concerning realization of *establishing* solid and harmonious institutions as vital instrument to encourage *Regulatory Reform* through harmonious institution framework between competition agency and relevant regulator sector. Besides, this activity is expected increasing awareness of *APEC economies'* members on the significant of developing *Regulatory*

Reform particularly in the interest of relationship between competition agency and sectoral regulator. Thus, it is expected that practices of implementation and utilization to *OECD Integrated Checklist* in the policy harmonization especially for regulator and competition agency required so that policy making can be performed consistently and in turn quality improvement of *Regulatory Reform* policy in the form of policy harmonization can be accelerated and cost effectiveness in economic development can be increased. The success APEC seminar performance during two and a half days is shown by participation of more or less 100 members either from government representative from *APEC economies* member countries as many as 13 countries, i.e.: Chili, Japan, Mexico, Peru, Philippines, Papua New Guinea, Russia, Singapore, Thailand, Vietnam, Malaysia, Chinese Taipei and Indonesia. This event is also attended by representative from *Organization for Economic Cooperation and Development* (OECD) and *International Competition Network* (ICN). Participant from domestic representative, i.e. relevant department also active participates in this event. The seminar generates some recommendations and conclusions that create explicit course for harmonization and reinforcement of cooperation between competition agency and certain sectoral regulator agency in a framework of realizing regulatory reform. Significant recommendation generated is awareness of political support required establishing a policy framework that is in line with regulatory reform and in association with realization of policy harmonization between competition agency and certain sectoral regulatory agency, then it needs to consider clearance and limitation of task among those both agencies.

Other vital recommendation is a proposal of mechanism for consultation and coordination system between competition agency and sectoral regulator agency before arranging regulation that involves task and authority of both agencies, e.g. mechanism of *Memorandum of Understanding* (MoU) arrangement, which in technical implementation can be arrangement of *joint-working team*, regular discussion and meeting for sharing information and experience each other on competition issue in the sector that becomes jurisdiction of certain sectoral regulatory agency. Other important thing that Indonesia or *APEC economies* need to follow up is that regulatory reform process will run well when any institute that may support and keep the process performed through an adequate institute either from financing and coordination in the use of regulatory management tools.

2. *The Fourth APEC Training Course on Competition Policy (CTI 14/2008T),* held on 5-7 November 2008 in Bali

   APEC Training Course held on 5-7 November 2008 in Sanur Paradise Plaza Hotel, Sanur, Bali. This training course that held during two and a half days attended by 25 international participants from 13 countries of *APEC Economies* member, i.e.: Australia, Chili, China, Japan, Hong Kong, Malaysia, Russia, Singapore, Thailand, Vietnam, Mexico, Peru, Taipei and Indonesia. It is also attended by 30 domestic participants that originate from representatives of government ministries, regulator and academician who active participate in this training course. In first day, this event opened by Chairman of the Commission and representative from CPLG. Agenda then continued by presentation on topic that becomes main discussion, i.e. *Competition Policy and Industrial Policy* (WG I) by the Commission Commissioner, Mr. Nawir Messi and *Challenges for cartel cases in domestic/international markets* (WG II) by Prof. Makoto Kurita from Chiba University, Japan. Afterwards, participants are split into two *working groups* for each discusses every topic at more profound.

   In Working Group I concerning *"Competition Policy and Industrial Policy"* various regulations that may secure business actors from competition and provides special access to production factor or market for their products are discussed. In the practice, impact of interest between *industrial policy* that wants to secure local company, State Enterprise and anti-competition Act that also applied for securing consumers often occurs.

   While in Working Group II concerning *"Challenges for cartel cases in domestic/international markets"*, cartel case handling was discussed. Result of discussion indicated that nearly entire APEC countries have

applied measures to combat cartel through competition agency and government regulation. Discussion focused on condition and challenge encountered by competition agency investigator in examining cartel case, such as limited investigation authority, how to prove direct evidence, and how to formulate *leniency program*.

In the closing, the Commission as organizing agency of the international training course views that both issues discussed are most frequently found in effort of applying business competition law and policy in various countries. Occasionally, various efforts of prevention undergo deadlock as a result of certain party interest that always colorize any industrial policy. It will of course create various distortions in effort of developing competition policy in each country. In facing the circumstance, redefinition of national interest in each industrial policy becomes crucial so that no reason always made for each protection in certain industry.

The Importance of Policy Reformation Institution in the Harmonization of Competition and Sectoral Regulation Policy

On October 2002, APEC and OECD agreed formulation of APEC-OECD Integrated Checklist on Regulatory Reform (Checklist) for being able to apply in member countries. This *checklist* aims to provide basic awareness concerning applied competition policy in various countries. This application of *checklist* can be expected helping creation of harmonious program between competition policy and government policy, and increasing relationship between competition agency and regulator agency.

World economic fluctuation that is being and will continue to take place today forces APEC member countries to change their economic policy so that it may minimize negative effect and distortion against their national economy. It means that they must restructure economic policy framework, by increasing policy quality resulted and increasing quality of policy formulation process. Agenda for policy change or regulatory reform currently is becoming a hot topic in various bilateral, regional, and multilateral discussions. In APEC member countries, this change becomes prominent agenda in line with *APEC-OECD Integrated Checklist* formulated as *toolkit* for policy makers in applying regulatory reform.

This APEC-OECD Integrated Checklist intended acting as *voluntary tool* that can be used by member countries in evaluating their business, activity, and performance in applying regulatory reform, competition policy, implementation of competition Act and open market policy supported by APEC and OECD. In order to socialize this *checklist*, a sequence of seminars as forum for sharing each other experience and concept, policy and good regulatory reform practices are held. Through these seminars, member countries that have experience in *regulatory reform* may share to other country that has not applied or will apply the *checklist*.

As part from a sequence of the seminar, on 11-13 June 2008, *"APEC Seminar for Sharing Experiences on Relations between Competition Authority and Regulatory Bodies"* was held in Bali, Indonesia. This international seminar accomplished for the cooperation between the Commission and APEC (*Asia-Pacific Economic Cooperation*), supported by *Taiwan Fair Trade Commission Chinese Taipei* and *Ministry of Foreign Trade and Tourism Peru*. It is a follow up from APEC seminar held on June 2007 in Jakarta, where one of recommendation generated is the need of further discussion and meeting held in order to share experience on implementation of *APEC-OECD Integrated Checklist*, as part from effort of encouraging *Regulatory Reform* in order to realize healthy competition policy. Noted more or less 100 participants who come from representative of APEC member countries, such as Chili, Jepang, Republic of Korea, Malaysia, Mexico, Papua New Guinea, Peru, Philippines, Russia, China,

Thailand dan Vietnam. This seminar is also attended by representative delegation from OECD (Organization for Economic Cooperation and Development) and ICN (International Competition Network). The seminar is also attended by representative from domestic government ministries.

This seminar aims to increase capacity of developing competition law and policy in each APEC member country, and being a means of sharing experience each other in order to deepen awareness over principles contained in *APEC-OECD Integrated Checklist*, mainly in managing relationship between competition agency and regulator authority, and how this *checklist* may become effective tool for applying competition policy rule. Through this seminar, awarenss of *APEC economies* member countries on the importance of developing regulatory reform agency, particularly in the interest of relationship between competition agency and sectoral regulator can be expected to increase. From a forum of sharing information, *best practices* upon application of *checklist* is searched. The *best practices* in application of policy harmonization between competition agency and regulator body will support the created conducive business climate and investment in each APEC member country, either in developed country or in developing country. Right now, there are many among APEC member countries that still need *capacity building* in order to apply effective *checklist*, particularly in developing countries. Hence, the created forum of sharing experience becomes huge benefit for them as means of learning and socialization.

The Commisison emphasizes the importance of applying healthy competition principles and establishment of economic agency that having role as regulator and supervisor. Healthy competition will lessen high cost economy so that business activity can run more efficient and full of innovation, while formation of economic agency will ensure effectiveness of operational and economical aspect in related sectors. For example in Indonesia, Badan Regulasi Telekomuniasi Indonesia (BRTI) (Indonesian Telecommunication Regulatory Body) supervises telecommunication policy and Komisi Penyiaran Indonesia (KPI) (Indonesian Broadcasting Commission) supervises Indonesia's broadcasting system. In order to ensure formation of healthy competiton climate and avoid occurrence of authority and policy overlapp, harmonization and coordination inter- economic agencies is required. For example, the Commission as competition agency has cooperated with various regulator bodies. The Commission has signed MoU with KPK (Corruption Combating Commission), Information and Communication Minister and some relevant technical departments. The Commission also braids coordination with other regulator such as BRTI through participation in various workshops and discussion fora. Currently, the Commission is developing various schemes of cooperation and coordination with other regulator body so that harmonization of policy between competition agency and regulator body can be more realized.

Discussion agenda in "*APEC Seminar for Sharing Experiences on Relations between Competition Authority and Regulatory Bodies"* generates some recommendations and conclusions that create obvious course for harmonization and reinforcement of cooperation between competition agency and regulator agency in a framework of realizing regulatory reform. One of the generated important recommendations is awareness of political support needed to develop a framework of agency for regulatory reform. This regulatory reform may work maximum if there is a strong agency that enables to have role as supporter, supervisor and keeper for creation of appropriate regulatory reform. It is in line with one of points in *APEC-OECD Integrated Checklist,* i.e. for creating solid institutional system as vital instrement in encouraging regulatory reform process through harmonious institutional framework between competition agency and regulator sector. In this point, competition law and competition agency have strategic role in implementing regulatory reform.

Other significant recommendation is a proposal of any consultation and coordination system mechanism between competition agency and regulatory agency before arranging any regulation that involves task and authority of both agencies, e.g. mechanism of *Memorandum of Understading* (MoU) arrangement, which

in technical operational can be arrangement of *joint-working team*, regular discussion and meeting for sharing each other information and experience on competition issue in the sector that becomes jurisdiction of certain sector regulator agency. This coodination becomes important because there are various problems that often appear in relationship between competition agency and regulator body, such as power and authority overlapping, lack of agency independence, lack of awareness on competition issue in each regulation and policy, and difference of goal on any public policy. While, in association with realization of policy harmonization between competition agency and regulator body, then it needs to formulate clearance and limitation of tasks among those both agencies.

Challenge each country in the world encounters is to keep stable economic growth through application of effective competition law and regulation. Current business innovation often hampered by behavior of anti-competition and application of randomly law, then each country is better to reanalyze its policy implementation. *APEC-OECD Integrated Checklist on Regulatory Reform* will provide guide and criteria in order to facilitate this evaluation process, by providing key concept of implementing effective *regulatory reform* policy, for assisting decision makers. Practices of *checklist* implementation and utilization in the policy harmonization mainly for regulator and competition agency are absolutely required so that policy formulation can be performed consistently; quality improvement of regulation reform policy in economic development can be increased. Expectation emerges afterwards is this seminar can help member countries to understand benefit, way of use and application of *checklist*, and encourage them to apply *regulatory reform* in order to enhance economic growth throughout countries in Asia Pacific zone.

5. ASEAN through Negotiation on *Free Trade Area Agreement - Competition Chapter*

As continuation from the Commission's participation in development of competition law and policy that has been issues of discussing negotiation in international level, where some countries (particularly developed countries) either through international or bilateral organizations continues to undertake for creating any mechanism of competition policy role enhancement. As in 2007 where the Commission actively involved in some negotiations of trade is negotiation on *ASEAN-Australia-New Zealand (AANZ) Free Trade Area (FTA).* In this 2008, the Commission also becomes part in negotiation on *Joint Committee for ASEAN – EU Free Trade Area* (JC – AEFTA) where the Commission within ASEAN umbrella has been a benchmark for the progress of competition law and policy aspect that already adequate developed so that the Commission is expected to have role in providing information related to negotiated subject, i.e. preparation of questionnaire materials on the progress of competition law and policy in Indonesia.

On October 2008, the Commission sent its delegation to attend The 6th *Joint Committee for ASEAN – EU Free Trade Area* (JC – AEFTA) in Hanoi. In this meeting view exchange concerning trade modality of goods, intellectual property rights (IPR), and trade policy was conducted. Specifically, in discussion of chapter on *Competition Policy*, the EU emphasizes the need of chapter concerning competition as part of AEFTA approval. The Commission as Indonesia's delegation explains about the progress of *competition law and policy* in Indonesia, where currently Act Number 5 of 1999 is in amendment process; Indonesia also still develops legal instrument that will undertake supervision against merger and acquisition, the Commission also explains that in Indonesia, provision of monopoly right for any business actor still be allowed as long as the provision is addressed for public society welfare and decided through Act. It is agreed that further meeting is planned to hold for discussing *competition policy* will be attended by experts from ASEAN countries.

6. ASEAN through formation of *ASEAN Expert Group on Competition* (AEGC)

In effort of establishing competition policy framework in effective regional scale, then through ASEAN, establishment of *ASEAN Expert Group on Competition* (AEGC) has been agreed on August 2007 in a meeting of

ASEAN-*Senior Economic Official Meeting (SEOM)* so that it will be always under SEOM. AEGC is ASEAN formal forum to discuss issues and progress of competition law in ASEAN countries. AEGC is formed as effort of establishing competition policy framework in more effective regional scale, and to discuss and coordinate competition policy in the target of promoting the created business competition environment in ASEAN's territory. Prior to AEGC is formally established, ASEAN formerly has owned voluntary similar organization called ACFC (*Asean Consultative Forum on Competition*). Throughout 2008, the Commission has actively participated in entire activities held by AEGC, namely:

a. 1st AEGC Meeting
   The meeting held in Singapore on 18-20 March 2008. In this meeting it was agreed that all ASEAN member countries should have had business law in 2015, in line with application of *Asean Economic Community* (AEC). The AEGC also agrees to form 3 (three) *working group* for more focusing activity in the scope that becoming prominent focus of AEGC, namely:

   (i) *Forum for competition policy*, which addressed as means of discussion and coordination concerning competition policy for member countries.
   (ii) *Training and capacity building* in the goal of providing training course for all ASEAN member countries, under cooperation with dialogue partners, such as America, OECD and German. Training course subject will around on development of competition policy, advocacy and investigation technical training.
   (iii) *Regional Guideline* as *best practice* for pattern of competition policy implementation that is adapted with ASEAN regional economic circumstance that based on experience from each member countries. This guideline is expected will become a handbook for all ASEAN member countries in preparing competition law. It is also expected to play vital role in line with ASEAN business world interest, so that healthy competition circumstance throughout internal ASEAN is created.

b. AEGC Training Course on Competition Policy and Advocacy
   This AEGC training course held on 28-29 July 2008 in Singapore and being an arena of sharing mind and experience inter-ASEAN countries in applying competition law and policy. Primary focus of discussion is experience of countries that has applied formal competition law and policy in their country, and has created competition authority. In ASEAN umbrella, only Indonesia, Thailand, Vietnam and Singapore have applied this subject, while other ASEAN countries are still in observation for implementing law of competition in their country. ASEAN party through ABDI also present economic progress of ASEAN countries related to preparedness in application of competition law and policy.

c. 2nd AEGC Meeting
   The meeting held in Singapore on 30 July – 1 August 2008. The Commission's participation is undertaken in the interest of increasing the Commission's role on development of competition policy in ASEAN level. In this seminar, *AEGC Capacity Building* agenda proposed by Malaysia is discussed. It is agreed that Malaysia will prepare continuation technical proposal by stressing the important of advocacy activity coverage for entire categories of business competition in each country. In *AEGC Regional Guideline* agenda, Singapore delivers proposal of guideline coverage, which is a framework guideline for ASEAN member as part of effort to implement competition law. The guideline proposal will be further analyzed by each country. Ultimate, is AEGC Handbook agenda from Vietnam, which states that this handbook addressed as ASEAN formal publication concerning system of business competition law and policy throughout ASEAN member, so that this handbook must provide detailed and systematic information for business actor in ASEAN countries.

d. AEGC Training Workshop on "Setting Up an Effective Competition Agency and the Priorities of a New Competition Agency"
   the Commission receives invitation to participate in *AEGC Training Workshop* held on 2-4 December

2008 in Tokyo, Japan. This workshop is part from *AEGC Training and capacity building Working Group* program in 2008. The training contains discussion and means of sharing experience each other inter-countries concerning (i) way to establish effective competition agency, and (ii) priority that must be encountered by new agency, such as to create legislative framework, internal process and *capacity building*. In addition to presentation of *sharing experiences* from some Asia countries (Korea, Thailand, and China), the United States of America also shares experience in respect of: (i) determination of priority scale for competition agency and availability of resources, and (ii) priority change and availability of resources as response of business climate change, and (iii) effectiveness and efficiency for internal and external cooperation and coordination in implementation process and accomplishment of competition law enforcement.

7. International Competition Network (ICN)

International Competition Network (ICN) is informal network for competition agency over the world, established on October 2001 in the goal of facilitating equality of procedure and substance in competition law enforcement. ICN member reaches 100 competition agencies and 88 countries throughout the world (per 1 April 2007). ICN consists of *Steering Group* that is responsible for decision making and various working group focusing on implementation of competition policy and ICN operational. This working group holds a workshop with certain theme related to working group activity. Through this activity, ICN does not only provide member agency with opportunity to raise certain competition issues, but also facilitates communication inter-member agency. ICN also hold annual meeting where each working group reports their activity during a year and discuss on business competition law and policy.

For this year, *The International Competition Network* (ICN) *Seventh Annual Conference* that initiated by *Japan Fair Trade Commission* (JFTC) takes place at *Kyoto International Conference Center* (ICC Kyoto). Conference held from 13-17 April 2008. More than 500 participants came from 70 jurisdictions, including representative from competition agency and *independent* observer such as lawyer with specialization in competition law attended this conference. Participants discuss on latest competition law and policy applied in various countries.

In a sequence of ICN meeting, the Commission's representative is trusted as one of Panelists in one of plenary sessions, namely in report session and Panelist in *breakout session*. By this seminar, Indonesia through the Commission is expected to participate more active in each activity of ICN *Working Group*. In this occasion, the Commission also conveys a proposal for being *host country* of organizing next *ICN Annual Conference*. Besides Indonesia (the Commission), there are 2 (two) candidates of country that file equal proposal i.e. Chinese Taipei and Turkey. Through consideration and evaluation of material, technique-operational preparedness and location of ICN performance in this year has been in Asia territory countries, then Turkey was decided as *host country* for 2009 ICN organizing.

8. World Intellectual Property Organization (WIPO)

On October 2008, the Commission sent delegation to attend *WIPO Asia-Pacific Seminar on Intellectual Property Rights and Competition Policy* in Korea. One of important sessions is presentation of participant countries concerning linkage between IPR and competition policy. Indonesia delivers legal foundation concerning competition and IPR, and some case examples occurs. Currently the Commission itself is compiling guideline concerning IPR definitions as found in Article 50 (b0 Act Number 5 of 1999. In viewing of linkage of complex issue between IPR and *competition policy*, in short term WIPO will prepare guideline document that will contain aspects such as legal perspective, legislation arrangement, and inter-institute cooperation.

9. Asian Competition Forum

On 8 – 9 December 2008, the Commission attended *The 4th Annual Competition Law and Policy Conference* in Hong Kong. The program that initiated by Asian Competition Forum is an annual meeting for academicians, lawyer and law enforcement apparatus for Asia level competition law to discuss various issues of

business competition law that currently are rapid growing in Asia. In this conference, issues on contemporary competition law and policy, such as business competition in energy sector and natural resources, regulation or business competition in financial market, IPR, pressure in cartel case, leniency program, sanction and law enforcement, and assistance for development of regional business competition law and policy are discussed. In addition, the conference also discusses law of business competition in China and Hong Kong.

In bilateral cooperation level, the Commission is already and continues to keep the established cooperation with competition agency of companion Country. The braided cooperation is addressed to strengthen the Commission's positioning international forum. In the cooperation framework, the Commission has strengthened the cooperation with some competition agencies as follows:

1. Japan Fair Trade Commission (JFTC)

Bilateral cooperation with JFTC has been established since the beginning of the Commission founded in 2000 and continues to show positive progress. Activity of the Commission's participation in the framework of bilateral cooperation, the Commission actively attended the program of *The 4th East Asia Top Officials Meeting on Competition Law and Policy* held in Japan on 16 April 2008, which carried out in *back-to-back* with ICN annual meeting sponsored by JFTC. This activity is annual meeting that represented by senior officials from competition agencies in East Asia countries.

In this meeting, the progress of law enforcement and competition policy in Korea, Taiwan, and Singapore is discussed. This meeting also formalizes establishment of *Technical Assistance Task-force* that aims to facilitate efficiency of competition policy technical aid in East Asia, where including inter-donor country coordination, inter-donor country, and receiver country. This coordination involves exchange of information and opinion interrelated agencies. Members from *Technical Assistance Task-force* are individuals who responsible for technical aid in their each agencies.

2. Chinese Taipei Fair Trade Commission

As type of bilateral cooperation, the Commission attends *Regional Seminar on Competition Issues in Retailing* held in Bangkok, Thailand on 10-11 July 2008. This seminar initiated by *Chinese Taipei Fair Trade Commission* (Chinese Taipei FTC) with support from OECD in a framework of *International Co-Operation Program on Competition Policy.* The seminar was attended by various experts from OECD, ACCC (Australia) and competition agency representative from 11 countries, including Indonesia. The big theme taken in this seminar is competition issue in association with *buyer power*, *selling below cost*, and hypermarket development. *Roundtable* agenda filled with topic on experience from delegation country in handling *Buyer Power in Retailing* case, *Below Cost Retailing* case and other in association with retail sale in each country.

the Commission's delegation presents a paper about buying power of Carrefour Hypermart and Indomart Supermarket in Indonesia's retail sector. These both retailers are assumed having their dominant position as product and service buyer. In Carrefour case, the Commission obtains report from supplier that Carrefour abuses dominant position owned by applying *minus margin*. This rule makes suppliers are unable supplying to Carrefour competitor, in which it extremely encumbers and inflicts suppliers. While, in Indomart case, the Commission provides advice to the government for making improvement and control over license of establishing supermarket in order not kills traditional retail business and provides opportunity to engage similar business for small middle, and large companies.

From this seminar participation it can be drawn conclusion that application of various retail regulations in participant countries by each government sometimes even has negative impact for competition, i.e. by restricting competition itself. Because retail problem is adequate complex (including retailer, supplier, and consumer), competition agency must be careful in absorbing retail problem emerges. The Commission also expects that seminar with equal themes can be held in Indonesia so that government and relevant stakeholder may understand this retail issue more profound.

Furthermore, on 13-17 October 2008, the Commission sent his 5 (five) delegations to attend CT-FTC Training Course held at CT-FTC's office in Taiwan. This training course is a follow up of the braided cooperation during the time, where previously, the Commission has filed the project proposal titled "Training in Capacity Building for the Commission" to CT-FTC. This project aims to increase the capacity of the Commission's human resources through CT-FTC's best practices in forming agency, human resources, and other subject related to effort of competition law enforcement.

In this occasion, training course sessions are split into several categories:

a. Law Enforcement Strategy
   In this session, the Commission studied a methodology that CT-FTC uses to dig and elaborate economic evidence in competition law enforcement, such as relevant market definition, dominant position and merger and acquisition review; CT-FTC also provides case study examples that CT-FTC ever encounters.
b. Communication Strategy
   - Public Awareness
     This session explained strategy that CT-FTC performs to increase public appreciation, either toward competition law or competition agency.
     The strategy includes communication (socialization), advocacy of competition, *media writing*, journalistic, and *customer survey*.
   - External Relationship

   This session elaborated way the CT-FTC manages harmonious relationship between CT-FTC as competition agency, Government as regulator and public society.

c. Competition Policy Strategy
   In this session, the Commission studied *best practices* in oil and gas industry. CT-FTC elaborates condition that oil and gas sector encounters in Taiwan, including oil well management process, exploration and exploitation of oil and gas industry, and relevant cases in oil and gas industry.

3. JICA – BAPPENAS

the Commission and JFTC, in a framework of JICA collaboration, cooperate to develop *Project Phase II on Competition Policy and Law* scheduled starting on April 2009 until April 2012 in which *Project Phase I* has terminated on April 2008. The expected goal is to increase implementation of policy system and competition law in Indonesia. Activities programmed including training course, seminar/workshop, internship and assessment, which located either in Japan or in Indonesia. Expected output from activities performed in this project is enhancement of the Commission's staff capability in handling and enforce Act Number 5/1999 as well as enhancement of performance in daily working organization.

In collaboration with JFTC, JICA facilitates the Commission in the participation of training course held in Japan, Namely:

a. Ten staffs of secretariat office sent to attend JICA *Country Focused Training on Competition Law and Policy* held in Nagoya and Tokyo during 3 (three) weeks on March 2008. This very comprehensive training course focused on law enforcement and competition policy practices in Japan as well as various introductions and discussion on internal JFTC.
b. In addition to training course held in group, JFTC through JICA also provides *technical assistance* in the form of individual training addressed to one the Commission staff, which held during 4 (four) weeks on September 2008. The training course focused on *sharing* experience and application of competition law and policy from various countries in East Europe and Asia Pacific zone.

Currently, the Commission is filing a proposal for the *long term training* program, i.e. fellowship program undertaken for Master and Doctor Degree, taking place at National University, Japan. Four the Commission staffs will

be sent to Japan in each academic year in order to study in various disciplines, such as economics, law, development, public policy and other disciplines that may support the Commission development.

This goal of program is to increase the Commission staff capacity and capability in order to develop policy and law of competition in Indonesia in conforming to progress in international level. In addition to *long term training* program, *In Country Training* also held in Jakarta. This training planned to hold at four times every year, by different topic and theme according the Commission need.

Entire plans of activity in a framework of this *competition policy and law project* coordinated by BAPPENAS as agency that having authority to make coordination aid projects of international agencies in a framework of *Government to Government* collaboration.

4. GTZ Germany

In association with trilateral collaboration of the Commission, GTZ-ICL and MA that enters phase II started on July 2008 – December 2009 some activities among others, judge workshop in Bandung and Batam for District Court and High Court are held. It is intended for socialization of advanced competition law for district and high court's judge. Thus, those judges can understand official report of competition law and method of solving cases related to monopoly practice and unhealthy business competition. Meanwhile, the Commission and GTZ-ICL collaboration also have activity and I-Radio in *Talk show* program discussing cases in association with violation of Act Number 5/1999 concerning monopoly practice and unhealthy business competition, with source person from the Commission's Commissioner. This activity is carried out twice a month by holding interactive program with I-Radio listener. This activity has taken place twice. First show held on 24 June 2008 where Mr. Erwin Syahril (Commissioner) as a source person who discussed about hajj management, then second show on 15 July 2008 discussed on LPG distribution in Indonesia. Public response for this program is very good, thus the Commission can attract people attention and expand the socialization to Indonesia's people at whole. After several times on-air broadcast on radio, the Commission cooperates with GTZ and I-Radio holds off-air interactive dialogue at Semanggi Plaza, Jakarta on December 2008. Many people attended this program and actively participate to ask a question, ranging from procedure to report until business problem they encounter.

On November 2008, GTZ cooperated with the Commission to hold Econometric training for the Commission's secretariat office staff. This training aims that the Commission's staff may obtain knowledge about data analysis and method of data processing and to conclude those data so that an analysis that can be compared with existing fact is resulted. This science can be applied in the process of case examination if a number of data that must be analyzed and interpreted economically are found and to see impact occurs from those data obtained.

Other collaboration with GTZ today is a plan to publish Learning Book that is addressed for academician group. On December 2008 a meeting between the Commission, GTZ and five academician representatives was held in order to formulate SAP and GBPP together, and prepared some guidelines and drafts that the Commission compiled.

Still on December 2008, GTZ held a seminar having theme "Progress and Research of Business Competition in Indonesia" at Universitas Gadjah Mada Yogyakarta that raising topic on development of business competition law in Indonesia, dominant position in Indonesia and law enforcement of business competition in Indonesia. Source persons in the seminar consist of academicians from some universities, inter-alia, UI, UGM, USU, UNAIR and Universitas Kristen Satya Kencana. This seminar generates some conclusions about effort of developing business competition law in Indonesia, the most prominent is an effort of regulatory harmonization with government and relevant parties because without their collaboration business competition law will not well applied.

5. Korea Fair Trade Commission (KFTC)

In increasing credibility, the Commission deems necessary to make collaboration with other country *competition agency*; one of agencies is *Korea Fair Trade Commission* (KFTC). The formulation of bilateral collaboration started by the Commission files a proposal in organizing a workshop that planned to hold on August 2008 and training in Seoul, Korea on March 2009. Workshop performance that planned in Jakarta to cooperate with *expert* from OECD in providing training to increase understanding of *OECD Competition Assessment Tool Kit,* which addressed for the Commission's staff and some representatives from other relevant agencies. This activity aimed to braid collaboration with existing *competition agency* in Seoul and to develop economic analysis when investigation process started and increase well synergy with government agencies.

On September 2008, the Commission followed to participate in a sequence of seminar held by KFTC, namely *The 5th Seoul International Competition Forum, Asia International Competition Conference* and *The 13th International Workshop on Competition Policy.* In first forum, the Commission is trusted to give welcome speech. This forum discusses about *The Optimal Harmonization of the Public and Private Enforcement,* where role of privately anti-monopoly law enforcement is extremely important and is supplement to publicly anti-monopoly law enforcement. Second theme is *The Role and Direction of Economic Analysis in Competition Law Enforcement.* In this forum, the Commission presents the use of economic analysis in implementation of Act and concerning impediment and challenge that economics and economist in Indonesia encounters. While, in second forum, theme raised is *Global Competition Dialogue with an Emphasis on Asia.* Furthermore, in third forum three sessions are programmed, namely *Significant and Specific Methods of Market Definition in Competition Law Enforcement, Role of Competition Authority in Regulatory Reform and Towards Regional Cooperation in Competition Law Enforcement.* In first session the Commission is trusted as one of speakers, in which it explains about pertinent market determination and application within the case, where to determine pertinent market, *product market* with *geographic market* must be defined, while on application within the case, example of closed agreement case in battery distribution is given (the Commission's verdict Number 6/KPPU-L/2004) and cross-ownership of Temasek (the Commission's verdict Number 7/KPPU-L/2007).

CHAPTER

5

Reinforcement of Organizational Development

ORGANIZATIONAL development of the Commission's secretariat office is marked by issuance of Presidential Decree Number 80 0f 2008 concerning Amendment on Presidential Decree Number 75 of 1999 concerning the Commission. Substantially, there are some respects in this regulation, as follows:

1. Formulation of work plan and budget is managed by Chief the Commission as Budget User within the Commission; further stipulation concerning the Commission's work plan and budget is arranged by Chief the Commission after getting approval from Finance Minister.
2. Financing on implementation of the Commission's task and function is borne to budget part of Trade Ministry until Commission has own Budget Part conforms to applicable law and regulation.
3. Personnel management for Civil Servant (PNS) staffed at Commission Secretariat Office is performed by pertinent sister agency, according to applicable law and regulation.
4. The Commission's secretariat remuneration is defined by Chief the Commission through job evaluation after getting judgment from Finance Minister.

Through enactment of the Presidential Regulation, the Commission then has own budget part, so that financing management of the Commission activities becomes more autonomy and no longer accommodated through Trade Ministry's budget. In association with remuneration for the Commission's secretariat Staff, it will be taken into account more systematic through job evaluation for each the Commission's secretariat staff. However, in aspect of developing organizational structure and the Commission's secretariat personnel, the Presidential Regulation is inadequate yet to support the creation of effective and credible the Commission in the national government system of Republic of Indonesia.

As an agency decided in Act Number 5 of 1999 being supervisor for implementation of the Act, the Commission indeed must be furnished by Secretariat organizational instrument that enables to support performance of the Commission's task and authority. Based on discussion undertaken at the

Commission in association with secretariat organizational development, there are some vital subjects the Commission's secretariat must have as supporting for implementing the Commission's member task and authority, among others, as follows:

1. Secretariat office manager chaired by Secretary General with position equals to Echelon IA.
2. Explicitness concerning personnel status of the Commission's Secretariat staff.
3. The Commission's budget management by having separate Budget Division.
4. Remuneration for Commission's Secretariat staff made by considering work load and job risk.

Based on Article 34, Act Number 5 of 1999, it sounds that for acceleration of tasks implemented, Commission is assisted by a Secretariat, then in paragraph (4) it is mentioned that rule about structure of organization, task, and function of Secretariat and Work Group shall be further arranged by Commission Decree. Similarly, in the Presidential Decree Number 75 of 1999 concerning the Commission, in Article 12, paragraph (2) mentioned that further stipulation concerning structure of organization, task, and function of Secretariat shall be further arranged by Commission Decree. Based on the stipulation, then some Commission Decrees that arrange organization and procedure of Commission' Secretariat, and latest by Commission Decree Number 160/KPPU/Kep/VIII/2007 concerning the Commission' Secretariat have been arranged.

In spite of both law and regulations have confirmed that the Commission owns an authority to define its secretariat organizational structure, but State Ministry for Administrative Reforms, Finance Ministry, State Secretary, and Institute of State Personnel Administration have not completely received it. The reason often stated is that for the purpose of stipulating the organization of the Commission's Secretariat pursuant to the Commission's task and function as a state agency is by making first amendment against Act Number 5 of 1999, namely Article 30. This Article 30 in Act Number 5 of 1999 that currently applies is considered to have not yet owned adequate strong foundation for the Commission's existence as a state agency. Confirmation of the Commission as a state agency through the amendment of Article 30 further becomes powerful foundation for defining the Commission's secretariat status.

As way out for organizational development of the Commission's Secretariat without must undertake first amendment against Act Number 5 of 1999 in viewing that to perform amendment of Act it needs preparation and longer time, then the Commission submits an authority owned based on Article 34 of Act Number 5/1999 and Article 12 of Presidential Decree Number 75/1999 to the Government. Based on the consideration, the Commission through a letter number: 51/K/II/2008 concerning proposal of Amendment to the Presidential Decree Number 75 of 1999 pleads to the President for regulating the Commission' Secretariat through other law product that allows entering regulation concerning the Commission's Secretariat organization. The possibility of available law product is through amendment of Presidential Decree Number 75 of 1999.

The proposal of amendment against Presidential Decree Number 75 of 1999 that accommodates regulation concerning the Commission's Secretariat organization is by entering regulation about four vital subjects mentioned above as prerequisite for establishment of effective the Commission's secretariat in supporting task and authority of the Commission as a state agency. Unfortunately, in the progress it is not completely yet accommodated in the Presidential Regulation Number 80 of 2008.

In viewing that the Commission's desire to have a Secretariat that enables to support as best as possible implementation of the Commission's Member task and function is not yet completely realized, then still being constraint for the Commission in undertaking organizational developments toward effective and credible the Commission agency in creating healthy business competition climate. Previous reason that State Ministry for Administrative Reforms and other relevant agency questions to seem is that indeed it must be finished by undertaking amendment against articles in association with the Commission's organization.

Effort of internally organizational reinforcement is performed through establishment of the Commission's organization and operation procedure that is able to support as best as possible implementation of the Commission's Member task and function, by constantly holding on to the Commission's authority in management of the Commission's Secretariat as confirmed in Article 34 of Act Number 5/1999 and Presidential Decree Number 75 of 1999. The Commission will continue to attempt organizational reinforcement for then made as input for preparing amendment of Act Number 5/1999 particularly in association with aspect of the Commission's Secretariat organization.

Reinforcement of Task and Function for The Commission's Regional Representative Office

In Article 3 paragraph (2) of Presidential Decree Number 75/1999 concerning the Commission, it was mentioned that the Commission may open representative office in a city of province. Today, the Commission owns representative office at 5 (five) regions, namely Kantor Perwakilan Daerah (KPD) (Regional Representative Office) of the Commission in Medan, Surabaya, Balikpapan, Makassar, and Batam. Currently, this five RRO of the Commission evenly own working area in 6 (six) provinces. In order to increase performance and effectiveness of KPD-KPPU in performing its task and function, then in 2008 certain task and function from Executive Director was delegated to KPD-KPPU

In 2008, reinforcement of task, function and authority of KPD-KPPU was marked by decision of KPPU's Executive Director Number 34/DE/Kep/X/2008 concerning Delegation of certain Task and Function from Executive Director to Chief KPD. It mentioned in the decision that Executive Director delegates certain task from law enforcement function, competition policy, administration and communication to Chief KPD. The decision will be affirmed by Commission's Regulation that is more comprehensive to regulate the policy. It is a strategic legal foundation RRO in implementing its task and authority.

In order to reinforce the Commission's organization, in 2008 some regulations in association with the Commission's organizational development have been decided, namely:

1. **Regulation of BSC Number 1 of 2008 concerning Guideline of State-Owned Assets Management (SOAM) within the Commission**

   This Regulation of Commission aims to realize administrative order of responsible SOA management so that utilization of efficient and effective use of SOA increases.

   Scope of SOA Management Guideline within the Commission involves several respects related to SOA management, which including arrangement on planning and budgeting, procurement, admission and filing, utilization and administration, securing, maintenance, assessment, abolition and transfer, management, supervision and control, sanction and indemnity.

2. **Regulation of the Commission Number 2 of 2008 concerning Authority of Secretariat in Case Handling**

   This Regulation of Commission is intended providing authority to the Secretariat for handling assumed violation case against Act Number 5 of 1999. Case that can be own handled by Secretariat is tender conspiracy case where bidding value is not more than Rp. 10,000,000,000,- (ten billion rupiah). Authority given to the Secretariat is limited on case handling in Preliminary and Continuation Examination phase. While for Assembly Session, it will remain to be performed by Council of Commission.

3. **Regulation of the Commission Number 3 of 2008 concerning Guideline of the Commission's Budget Management**

This Commission regulation intended to provide guideline or reference basics and used as technical guidance for Official and Accounting Staff is to create acceleration and uniformity in the implementation so that efficiency and effectiveness are ensured, and it can be justifiable according to applicable law and regulation.

The scope of the Commission's Budget Management Guideline involves several respects in association with the Commission's budget management, which including the Commission's budget administrator (Subject performs management), mechanism in budget management (starting from payment mechanism phase, planning, implementation, recording until evaluation phase, where they are passed on throughout the following year), documents required for accountability and signature, numbering and coding of letters in association with budget.

4. **Regulation of the Commission Number 4 of 2008 concerning Operational Guidance for Domestic Official Travel within the Commission Scope.**

This Regulation of Commission Number 4 of 2008 intended regulating all matters associate with domestic official travel applied within the Commission scope. In this regulation of Commission operational rules of domestic official travel within the Commission scope are included; either performed by Commission Member, Board of Directors, Division Manager, or the Commission's secretariat staff. Matters arranged among others, official travel cost, transportation and accommodation facilities for those make official travel (adjusted to level of official travel), payment procedure for official travel, cancellation, replacement and/or postponement, and accountability of official travel.

CHAPTER

6

Closing

EIGHT years passed since establishment of the Commission, mostly enabled that public has not adequate realized many things the Commission has undertaken. Despite no less effort of the Commission in internalizing Act Number 5 of 1999 through socialization and publication activities, business competition is not simple concept that people may accept it easily. Unsurprising, there are many parties that also still doubt the Commission performance; even question the significance of business competition for public interest.

Similarly with situation of law enforcement for business competition. This process does not only regard legal aspect, but also involving economic analysis since the process of case determination, proof, until verdict arrangement conducted. Economic impact the end consumer as primary *stakeholder* of the Commission feels ultimately becomes vital judgment of the Commission in each activity of enforcing competition law in Indonesia. Proof in the form of analysis, which then opens opportunity for the Commission's verdict debate, even the process of case handling conducted. Discourse launched to media for debating economic analysis the Commission uses in handling this case undertaken by many parties who feel their interest will be influenced by the Commission's verdict. Media often also exposes news that still issue so that focusing public opinion in a certain view, e.g. on assumption of the Commission partiality on certain interests.

However, the Commission continues to run for showing to the public his independent and credible performance. It can bee seen from objection process against the Commission's verdict, where Supreme Court rejects appeal proposed by business group of giant telecommunication from Singapore, Temasek. In addition, chained-effect that public may obtain from the verdict is declining of cellular telecommunication tariff throughout Indonesia.

Entering free trade era that more brightening world of business competition, this agency also extremely needs various experiences (*best practices*) from a number of similar business competition agencies over the world. Various international for the Commission attended or held by the Commission indicate that problems the competition agencies encounter are very substantive and complex. It shows how hard effort of any competition agency in dis-

playing its existence to create competition policy that having positive impact for the country economy.

In other hand, world economic fluctuation that still ongoing, with real example is economic recession that currently is afflicting the world, forces APEC member countries change their economic policy in order to minimize negative effect and distortion against their national economy, by increasing policy quality resulted and increasing quality of policy formulation process. In APEC member countries, this change becomes chief agenda in line with *APEC-OECD Integrated Checklist* formulated as *toolkit* for policy makers in applying regulation reform.

The Commission also follows to have role and socialize this *checklist*, through organization of *"APEC Seminar for Sharing Experiences on Relations between Competition Authority and Regulatory Bodies"* in Bali, Indonesia. One of recommendations resulted is the need of holding further discussion and meeting for sharing information upon implementation of *APEC-OECD Integrated Checklist*, as part of effort to push *Regulatory Reform* process in order to realize healthy competition policy.

Harmonization process of business competition policy with the government also continues to increase, where throughout 2008 the Commission provides advice and judgment toward strategic sectors such as natural gas, retail, and telecommunication. Optimism also continues to create in the present of 9 (nine) judgment advices of the Commission that are well accepted and effectively implemented by the government.

Progress the Commission achieves throughout 2008 of course does not put a person to sleep, but continues to make it as trigger for becoming better and credible agency, either today or tomorrow.

APPENDIX

1

The Commission's Resume of 2008 Advices and Judgments

1. Advice and Judgment concerning Import Tariff Agreement of Tanjung Priok LCL Line 2

Advice and judgment through letter Number 38/K/I/2008 dated 31 January 2008 that associates with the policy of line 2 tariff decision at Tanjung Priok harbor undertaken by some business actor associations, namely Gabungan Forwarder dan Ekspedisi Indonesia (GAFEKSI) (*Association of Indonesian Forwarder and Expedition*), Gabungan Importir Nasional Seluruh Indonesia (GINSI) (*Association of Indonesian National Importer*), Gabungan Pengusaha Eksportir Indonesia (GPEI) (*Association of Indonesian Exporter*), Asosiasi Perusahaan Bongkar Muat Indonesia (APBMI) (*Association of Indonesian Load and Unload Company*), Asosiasi Pengusaha Tempat Penimbunan Sementara Indonesia (APTESINDO) (*Association of National Temporary Stockpiling Site Manufacturer*), and Indonesian National Shipowner's Association (INSA). This policy of tariff determination is not appropriate solution to create healthy harbor service industry; it is seen from some aspects:

- Business actor ability to manage his/her business is different each other, including facility, quality, and tariff offered may also differ.
- Tariff concept agreement is only beneficial for business actor who has no ability to offer lower tariff (efficient), in addition, no standard of service quality found to result in a company that offers bad service quality remains to be paid with a number of similar tariff to a company that offers good service quality.

Regarding some respects above, the Commission then recommends to the government for making tariff arrangement and deciding service quality standard so that function of government as regulator runs at best.

2. Advice and Judgment concerning Restructuring Program of PT Pengerukan Indonesia (Indonesian Dredging Corporation) by State Enterprise Ministry

Advice and judgment is submitted to the government through letter Number: 39/K/I/2008 dated 31 January 2008 concerning Decree of State Enterprise Minister concerning Effort of Recovering PT Rukindo through providing exclusivity of dredging work at PT Pelindo I, II, II and IV. Provision of the exclusive work has contradictory potency with healthy business competition principle, because it may result in:

- PT Pelindo I, II, III and IV lose occasion to obtain dredging service provider, which may offer more competitive price, because offering to other party is already closed.
- Recovery program the State Enterprise Ministry applies to have been entry barrier for dredging business actor except PT Rukindo. As a result of the circumstance is some business actors have no access into market, particularly on work given direct To PT Rukindo.
- Provision of work by direct appointment to PT Rukindo, in the long term, can reduce effort of creating PT Rukindo's competitive excellence through corporation efficiency and becoming disincentive for developing PT Rukindo's competitive power.

Paying attention to some negative potency, the Commission then recommends the State Enterprise Ministry for seeking other alternative in line with healthy competition principle in effort of recovering PT Rukindo.

3. Advice of the Commission against Regulation Draft of BPH MIGAS concerning Arrangement and Supervision on Implementation of Provision and Distribution for Aircraft BBM at Airport.

In Act Number 22 0f 2001 concerning MIGAS, activity of this business either upstream or downstream, is performed through mechanism of healthy, appropriate and transparent business competition. Thus, in the implementation market expansion that increasingly felt in side of downstream MIGAS occurs. Previously, Pertamina monopolizes in side of downstream MIGAS. Yet, currently other business actor is given occasion to participate in undertaking this activity of downstream MIGAS business. One of those apply mechanism of business competition is non-subsidy BBM commodity such as Pertamax. In addition, other commodity that currently is under process to the market expansion is Flight BBM and kerosene. BPH MIGAS as regulator in side of downstream MIGAS needs to issue the regulation so that healthy business competition is created.

Based on the draft of the Regulation of BPH MIGAS, the Commission through letter of advice and judgment Number 76/K/III/2008 dated 6 March 2008 provided the following inputs:

a. It is necessary to affirm Article 2 paragraph 5 so that it sounds "in the interest of domestic Flight RFO production, the corporation is obliged to prioritize domestic refinery production".
b. Article 5 of paragraph 1 is necessary to perfect into "at one open airport, for entire business actors who are eligible to perform business activity of storage and/or Aircraft BBM commerce required to consistently pay attention on healthy, appropriate and transparent competition principle".

Requirement for being provider and distributor of the Flight RFO as included in Article 6 and 7 should not be *entry barrier* for new business actor.

4. Advice and Judgment concerning Transportation Minister Decree Number 15 of 2007 concerning *Tally* Organization and Management at Harbor

The Commission provides advice and judgment through a letter Number 101/K/III/2008 dated 17 March 2008 associated with import tariff agreement on *Less Than Container Load* (LCL) at Line 2 Tanjung Priok that undertaken by some business actor associations by reason to reduce *high cost economy*. Those advice and judgment are delivered in some respects, namely:

a. Tariff agreement the business actor performs in this case of association contraries with Act Number 5 of 1999; thus it must be stopped.
b. The government is advisable to amend the regulation by revoking authority to the business actor in defining tariff based on agreement. The government should perform regulator function, where it is in charge to define completely tariff policy, while business actor is only positioned as input provider.
c. Paying attention to tariff imposition circumstance at line 2, in order to avoid consumer exploitation by constantly providing ample room for competition, the Commission deems the government needs to

undertake policy intervention by defining detailed tariff formula and defining upper limit tariff policy.

d. In association with effort of increasing line-2 service performance, besides tariff policy, the Commission recommends as to government applies policy for minimum service quality standard along with explicitness of law enforcement.

5. Advice and Judgment concerning Duplicate Position at PT Deraya and PT Derazona Air Service

The Commission provides response against letter of Director General for Air Transportation Number 40/2159/DAU/509/08 concerning duplicate position at two airlines, i.e. PT Deraya and PT Derazona Air Service. This response is given through a letter Number 318/K/VI/2008 dated 2 June 2008. The Commission's result of analysis against the case is as follows:

a. Duplicate position that currently performed having smallest potency to influence existing competition in Indonesian scheduled air transport industry. It indicated from smaller market segment of both companies, where their combined market size only reaches 12% based on total airplanes and 5.4% based on total seat.
b. Majority owner of both similar companies and position of PT. Derazona Air Service as subsidiary of PT. Deraya, indicates that both companies synergy have been carried out since establishment. In this case, duplicate is indeed more intended to reinforce synergy takes place. This circumstance is supported by difference of market segment that becomes the target, namely unscheduled commercial air transport with fixed wing-based airplane for PT Deraya and helicopter for PT Derazona Air Service. Based on this matter, it may be concluded that small possibility occurs direct competition among those both airlines.

c. Reason duplicate position performed as initial measure to make merger smooth in one hand is deemed best on the basis that both have an owner that during the time have synergy each other and relationship structure of both indicates that PT Deraya is a sister company of PT. Derazona Air Service. Merger that they perform is vertical one, which will be a path of their consolidation toward the company's efficiency. In general, this is best in effort of consolidating unscheduled commercial air transport industry that currently 34 companies grab it. Efficiency as a result of merger is expected to take place, because fusion of those both companies will generate new company in one more slim and efficient management.

6. Advice and Judgment concerning Cross-Ownership at TV's Broadcasting Media

Advice and judgment submitted to the President of Republic of Indonesia by a letter Number 338/K/VI/2008 dated 5 June 2008 in association with cross-ownership management at TV's broadcasting media.

Related to that issue, the Commission delivers some following respects:

a. The Commission considers that concentration of ownership arranged in Act Number 32 of 2002 concerning Broadcasting to have equal spirit with Act Number 5 of 1999.
b. The Commission finds the fact that there is an effective control performed by Media Nusantara Citra (MNC) Group against TV's station it owns. It is relied on extent of share ownership or placement of management representative in some TV's broadcasting agencies simultaneously.
c. In consideration of relevant market, such as total audience and advertising income, report of the Commission's research result showed that MNC is unable to meet with criteria for being categorized as dominant position in television broadcasting industry, in viewing that market segment from advertising income is less than 50% (Period 2004 – 2007) from total market segment of television industry. In other hand, until now, no negative impact the Commission finds from the ownership concentration, too.
d. However, the Commission commits to continue performing monitoring against business actor behavior at broadcasting industry that may result in monopoly practice and unhealthy business competition.

e. With respect to discourse expands publicly that concentration of ownership results in emergence of information monopoly, the Commission has opinion that it mostly possible to occur. Therefore, support from broadcasting sector regulator, i.e. Information and Communication Ministry and KPI to obtain data and analysis on the discourse is needed.
f. Result of the Commission assessment against Act Number 32 of 2002 concerning Broadcasting indicated that Act applies the principle of single present policy that explicitly and obviously attempts to prevent occurrence of ownership concentration either by any individual or corporation that roots on information monopoly takes place.
g. The Commission also pays close attention that arrangement in Government Regulation Number 50 of 2005 concerning Organization of Private Broadcasting Agency has the interpretation that may contradict with Broadcasting Act. Accordingly, the Commission recommends that government can make revision against the regulation.

7. Advice & Judgment of the Commission against Airport Warehouse Management

Airport includes a group of *capital intensive industry*; hence, it is classified as *natural monopoly industry*. However, in the progress, the principles of business competition then implemented in several managements of airport, one of them is at warehouse service.

Airport warehouse service provider owns unique characteristic so that availability of substitution service is not relatively present. Therefore, mechanism of selecting airport warehouse service operator is commonly performed through tender process, because of the characteristic, the government intervention then needs to undertake mainly in association with tariff regulation and service quality.

Based on characteristic of *natural monopoly* airport industry with still limited competition, then special for warehouse service needs to make revision of Minister Decree Number 29 of 1997 concerning provision of warehouse rent service. Arrangement required according to the Commission is delivered through letter of advice and judgment Number 609/K/VIII/2008 dated 12 August 2008, containing the following matters:

1. The government is necessary to define tariff formula that reflects actual tariff in order to avoid tariff decision by operator, which results in high cost economy or exploitative tariff.
2. Rule of minimum service standard is necessary reinforced so that operator is indeed competent business actor, which then will encourage service quality in airport kept as well as enhancement of airport industry performance in Indonesia.

8. Advice & Judgment of the Commission In Association With Anti-Dumping Entry Toll (ADET) for Sodium Tripolyphosphate Product

One of items that become source of material is a policy plan of imposing ADET for Sodium Tripolyphosphate Product (STTP) that derives from China. Decision of ADET has potency to generate distortion of business competition in domestic STTP market, which will make expensive STTP downstream product, mostly detergent.
Following are results of the Commission analysis delivered through letter of advice and judgment Number 679/K/VIII/2008, dated 27 August 008:

1. Imported STTP product is main competitor from the only STTP producer in Indonesia, namely PT Petrocentral.
2. ADET imposition for STTP will cause price rise of STTP downstream product, particularly detergent. Thus, it results in domestic detergent product becomes uneconomical and more beneficial to import detergent. This will result in domestic detergent producer is endangered closing in the future.

3. There is no *blueprint* concerning upstream industry (STTP) and downstream industry (detergent) so that priority in the chain is unknown.

Based on the analysis, the Commission then recommends for the Government in order to reconsider the plan of deciding ADET for STTP, mainly against impact that will be resulted in later.

9. Advice against draft of Arrangement and Management Guidance for Traditional Market, Shopping Centre and Modern Shop

This Guidance draft is operational rule from the Presidential Regulation Number 112 of 2007 concerning Arrangement and Management of Traditional Market, Shopping Center and Modern Shop. This guidance draft elaborates content of the Presidential Regulation Number 112 of 2007 in Article 4 paragraph 3, concerning establishment of shopping center and modern shop, Article 8 paragraph 6 concerning commodities supply to a modern shop and Article 14 concerning permit procedure.

Following are recommendation from the Commission delivered by letter of advice and judgment Number 681/K/VIII/2008, dated 28 August 2008:

1. In arrangement of Article 3 paragraph 3 concerning establishment of shopping center and modern shop, it is advisable that arrangement on distance is not only destined between hypermarket and traditional market but also between modern shop and shopping center.
2. In Article 3 paragraph 3 (b), using term of unhealthy business competition in this case is less appropriate, and it is better harmonized with definition of unhealthy business competition as set up in Act Number 5 of 1999.
3. For partnership issue, it is proposed giving a period of time for both parties to analyze and fully understand the consequence from agreement content prior to signature is made as form of approval against trading term that will be implemented.
4. In association with trading term issue, the Commission is unable to involve farther as long as no trading term results in unhealthy business competition as set up in Act Number 5 of 1999, because technical issue of trading term is part of *Business to Business* approach.

The Commission recommends for *trading term* arrangement (as core of supplier-retailer issue) is not focused on type of cost set up, but also on aspect for the cost limitation of amount negotiated between retailer and supplier.

10. Advice related to East Java Provincial Governor Decree Number 123/1997 concerning Closure of Digging Material Mining Area for Class C in East Java Province

Arrangement in Decree Number 123/1997 is made as to mining process of sand and rock in the area made by paying attention environmental preservation. However, the Decree is then deemed as entry barrier for mining business actor.

In consideration for this Decree is not deemed as barrier to entry, the Commission through a letter of advice and judgment Number 1070/K/XII/2008 dated 19 December 2008, recommends as to improvement against the policy or other mining policy in East Java Province is undertaken by accommodating some following matters:

a. The Government of East Java is necessary to undertake *mapping* against mining-proper land in a mining area. This *mapping* should figure out economic value, social, and environmental preservation. The *mapping* should be also announced publicly so that being clear for public, areas that enable to be

mined along with the reason. It is expected through this process, no longer business actor or public who feel any barrier to undertake the process of mining in the area.

b. When in the process of mapping mining-proper land owned by community is found and they want to operate themselves, then occasion must be given as long as they meet with stipulation applies. Furthermore, when mining community is unable to meet with requirement due to limited ability, then government is obliged to undertake empowerment for them.
c. Provision of mining land concession must be conducted through mechanism of healthy business competition, i.e. through selection or tender process announced openly to the public. The process must be performed transparently and indiscriminative.
d. The process of providing concession must explicitly and obviously regulate right and obligation for business actor who acts as mining operator. Explicit action must be given to business actor who is unable to meet with his/her obligation, including license revocation act, then concession right tender must be reprocessed for getting business actor who more enables to satisfy his/her obligation.

11. Advice to Retail Industrial Policy in Balikpapan City

The government has issued Presidential Regulation Number 112/2007 in which substance of arrangement in the Presidential Regulation is to undertake limitation toward modern retailer activities through some limitations, among others:

a. Decision of zone (location) that modern retailer may enter, relied on spatial plan from the area of local Regional Government.
b. Limitation of open hour for modern retail.
c. Limitation of trade requirement type.
d. License tightening.
e. Obligation to perform partnership and provide various facilities to small business actor.

The Presidential Regulation Number 112/2007 provides huge authority to the Regional Government as key actor of implementing retail arrangement substance in its area including arrangement of license, zoning, and open hour.

However, until now in fact, even very little Government takes initiative to implement substance set up in the Presidential Regulation Number 112/2007.

In order to push healthy business competition climate in retail industry occurs, then the Commission through a letter of advice and judgment Number 1071/K/XII/2008 dated 19 December 2008, recommends Balikpapan City Government for taking following measures:

1. Set up *grand strategy* for retail policy in Balikpapan Municipality territory according to applicable law and regulation including the Presidential Regulation Number 112/2007. Through this *grand strategy* arrangement, it is expected for being clear to retail business actor either small/traditional or modern, concerning course of developing retail industry of Balikpapan City in the future.

2. Immediate to implement task and function of the Regional Government as set up in the Presidential Regulation Number 112/2007, as to retail industrial development is more conducive. Some of the tasks include among others:
   a. Zoning policy
   b. Open hour limitation policy
   c. Trade requirement limitation policy
   d. Obligation policy to undertake partnership with small business actor
   e. More tight and selective license policy.

12. Advice to Retail Industrial Policy in Samarinda City

In order to push occurrence of healthy business competition climate, them the Commission through a letter of advice and judgment Number 1071/K/XII/2008 dated 19 December 2008, recommends the Samarinda City Government in order to take following measures:

1. Set up *grand strategy* for retail policy in Samarinda Municipality territory according to applicable law and regulation including the Presidential Regulation Number 112/2007. Through this *grand strategy* arrangement, it is expected for being clear to retail business actor either small/traditional or modern, concerning course of developing retail industry of Samarinda City in the future.
2. Immediate to implement task and function of the Regional Government as set up in the Presidential Regulation Number 112/2007, as to retail industrial development is more conducive. Some of the tasks include among others:
   a. Zoning policy
   b. Open hour limitation policy
   c. Trade requirement limitation policy
   d. Obligation policy to undertake partnership with small business actor
   e. More tight and selective license policy.

13. Advice to Retail Industrial Policy in Banjarmasin City

In order to increase healthy business competition climate, them the Commission through a letter of advice and judgment Number 1071/K/XII/2008 dated 19 December 2008, recommends the Banjarmasin City Government in order to take following measures:

1. Set up *grand strategy* for retail policy in Banjarmasin Municipality territory according to applicable law and regulation including the Presidential Regulation Number 112/2007. Through this *grand strategy* arrangement, it is expected for being clear to retail business actor either small/traditional or modern, concerning course of developing retail industry of Banjarmasin City in the future.
2. Immediate to implement task and function of the Regional Government as set up in the Presidential Regulation Number 112/2007, as to retail industrial development is more conducive. Some of the tasks include among others:
   a. Zoning policy
   b. Open hour limitation policy
   c. Trade requirement limitation policy
   d. Obligation policy to undertake partnership with small business actor
   e. More tight and selective license policy.

14. Advice to Retail Industrial Policy in Pontianak City

In order to push occurrence of healthy business competition climate, them the Commission through a letter of advice and judgment Number 1071/K/XII/2008 dated 19 December 2008, recommends the Pontianak City Government in order to take following measures:

1. Set up *grand strategy* for retail policy in Pontianak Municipality territory according to applicable law and regulation including the Presidential Regulation Number 112/2007. Through this *grand strategy* arrangement, it is expected for being clear to retail business actor either small/traditional or modern, concerning course of developing retail industry of Pontianak City in the future.
3. Immediate to implement task and function of the Regional Government as set up in the Presidential Regulation Number 112/2007, as to retail industrial development is more conducive. Some of the tasks include among others:

a. Zoning policy
b. Open hour limitation policy
c. Trade requirement limitation policy
d. Obligation policy to undertake partnership with small business actor
e. More tight and selective license policy.

15. Advice related to the Policy of Telecommunication Tower Development in Palu

Palu Major Regulation Number 4 of 2008 concerning Arrangement and Development of Telecommunication Tower in Palu set up in the interest of anticipating the more rapid development of telecommunication tower and so many applications from new operator and expansion of coverage from old operator in Palu city.

In the rule it only obligates private business actor who must regard procedure and law and regulation related to telecommunication tower development permit, while for business actor whose status is state/regional enterprise unarranged explicitly. This formulation has potency to open gap for Palu City Government to provide exclusive right or at least different treatment (discrimination) against state/regional enterprise business actor.

The Palu Major Regulation Number 4 of 2008 also regulates about Third Party Contribution. This stipulation opens opportunity of inappropriate cost created, which of course, will influence degree of efficiency for tower provider.

Through a letter of advice and judgment Number 1076/K/XII/2008 dated 24 December, Palu City Government is recommended for the completion of Palu Major Regulation Number 4 of 2008 concerning Arrangement and Development of Telecommunication Tower in Palu City, among others:

1. Confirm the present of providing equal treatment in license process of telecommunication tower development, either private or state/regional enterprise.
2. Create selection process of fair and indiscriminative telecommunication tower provider and meet with norm/principle of business competition so that no principle set up in Act Number 5/1999 and/or other applicable law and regulation that contradict.
3. As effort of preventing monopoly power exploitation for tower provide business actor over tower user or Government competition business actor is expected:

a. Determining amount of rent tariff and tower definitely by paying close attention to user reach and reasonable cost.
b. Regulating and deciding appropriate requirements for tower user.
c. Defining minimum service quality standard that is obliged the tower provider meets with.
d. Regulating as to monopoly license of tower provision on the basis of limited time frame and on the basis of business actor competence in providing service.

16. Advice related to the Policy of Telecommunication Tower Development in Makassar

Stipulation of Telecommunication Tower Development within Makassar City Territory in principle is arranged in the intention to provide direction for organization of telecommunication according to applicable law and regulation.

In the implementation, Makassar City Government appoints a company, namely PT. Makassar Satu Indonesia, based on Letter of Recommendation from Makassar's Major Number 555/041/EKBANG of 2007 concerning General Plan for Development and Management of Telecommunication Tower.
In the issuance of the letter, party that wants to develop tower should get recommendation from PT. Makassar Satu Indonesia for filing license to Head of Makassar City Spatial and Building Service.

This act of Makassar City Government provides exclusive right to one supplier for constructing and managing Collective Telecommunication Tower, namely PT. Makassar Satu Indonesia reflects any private monopoly that ends on the closed of chance to engage equal business for other actor.

Appointment of one or more business actors in limited number to manage *essential facility*, in business competition perspective should be undertaken through mechanism of *competition for the market*, i.e. tender one. In this case, appointment of PT. Makassar Satu Indonesia contradicts with the principle of healthy business competition.

Through a letter of advice and judgment Number 1077/K/XII/2008 dated 24 December 2008, the Commission provides the following advice and judgment:

1. Amend the substance of Makassar's Major Regulation Number 19 of 2006 as to harmonious with the principle of healthy business competition. Some arrangement substances required are:
   a. Makassar City Government performs *remapping* of tower location, which is appropriate and best site for telecommunication tower throughout Makassar City. *Stakeholder*, mainly operator should be involved preventing occurrence of site that technically is impossible so that inefficiency may be resulted in.
   b. Tower in site of Mapping result occupied existing business actor, the management should remain to conduct by existing business actor; this for avoiding occurrence of economy inefficiency.
   c. Tower in site of Mapping result where no tower is present, conducted by business actor who gets license according to site selection carried out by mechanism of competition for the market.
   d. Because of management model that tends to monopoly/oligopoly, then City Government as regulator should make intervention to protect the presence of monopoly/oligopoly power abuse from tower operator against telecommunication operator. Intervention may be performed concerning:
      i. Tariff
         When only one business actor of collective tower provider is found, then tariff should be decided by the Government. However, when more than one is found, then Government intervention performance is only limited on determination of upper tariff limit.
      ii. Service Quality
         The Government should regulate service quality minimum standard in this industry, in order to prevent *abuse of monopoly/oligopoly power* by tower provider occurs.
      iii. Agreement Requirement
         The Government should pay close attention the process and substance of agreement between tower operator and telecommunication operator, as to no discriminative process occurs, create barrier to enter and other requirement that reflects any *abuse of monopoly/oligopoly power*.
   e. When no defined minimum performance standard achieved, the City Government should revoke license of tower organization and management, for then undertakes re-tender process to the license, in order to get business actor who has more ability in managing collective tower.
2. Makassar Municipality Regional Government is advised to revoke exclusive right of PT Makassar Satu Indonesia and make reselection through open tender publicly in order to choose collective tower management in site where no management is present.

17. Advice related to the Policy of Telecommunication Tower Development in Yogyakarta City

In the perspective of telecommunication industrial management, collective tower policy is effort to push the presence of telecommunication sectoral efficiency through utilization of collective facility, so that cost of facility use can be pressed as lowest as possible. In this case, one of indicators for the success of collective tower policy is emergence of various facilities in developing telecommunication network that roots on cost the operator expends lower than develop own tower.

In the progress, collective tower policy in any area results in the tower grid has role as *essential facility*, because it should be used by operator when the area desired becoming a part from *its area coverage* (operator reachable area)

In this case, utilization of healthy business competition principles becomes a must in the concept of collective tower policy as to this policy may act optimum.

the Commission recommends the Yogyakarta City Government to make regulate in association with collective tower containing some regulation substance, among others:

1. Necessity of Yogyakarta City Government undertakes tower location *mapping*, for telecommunication throughout city of Yogyakarta.
2. Provide occasion to existing tower owner as to can constantly carry out the work as tower operator, in order to avoid inefficiency occurs as a result of no existing tower is utilized.
3. Stipulation for location of mapping result where no tower is present as to development of tower undertaken through competition for the market.
4. Stipulation to avoid abuse of monopoly/oligopoly power occurs, then City Government as regulator should make intervention in order to protect consumer (telecommunication operator) in the presence of monopoly/oligopoly power abuse from tower operator. Intervention can be conducted concerning:
   a. Tariff
      When only one business actor of collective tower provider is found, then tariff should be decided by the Government. However, when more than one is found, then Government intervention performance is only limited on determination of upper tariff limit. It is conducted avoiding occurrence of consumer exploitation by tower provider.
   b. Service Quality
      The Government should regulate service quality minimum standard in this industry, in order to prevent *abuse of monopoly/oligopoly power* by tower provider occurs.
   c. Agreement Requirement
      The Government should pay close attention the process and substance of agreement between tower operator and telecommunication operator, as to no discriminative process occurs, create barrier to enter and other requirement that reflects any *abuse of monopoly/oligopoly power*.

Stipulation that regulates when no defined minimum performance standard achieved, the City Government may revoke operation license of tower management; for then to make re-tender process on the license in order to obtain business actor who has more ability in the management of collective tower.

APPENDIX

2

Resume on Impact Evaluation and Assessment For 2008 Business Competition Policy

1. **Impact Evaluation and Assessment on Business Competition Policy in Soybean Industry**

   Bouncing of soybean price in domestic market has impact on the survival of soybean processing industrial business that widely undertaken by small entrepreneur, then the Commission is concerned with analyzing potential issue around soybean commodity trade. Since soybean production declines, Indonesia becomes to depend on imported soybean. When imported soybean price rises, then soybean in domestic market even follows to rise. In addition to imported soybean price is high, this soybean importer even concentrated on two importers, so that it results in *market power* becomes determinant factor in directing soybean price movement in domestic market.

   From policy aspect, no barrier for business actor occurs, so that indication of *market power* reinforcement for those two soybean main importers needs to be more scrutinized.

2. **Impact Evaluation and Assessment on Business Competition Policy in Pharmacy Industry**

   Issue that stimulates this activity of policy evaluation is costly prescription drugs price (*ethical drugs*) and the present of adequate significant price difference among branded drugs in one therapy class. While no government regulation sets up this ethical drugs comprehensively. The Commission then undertakes study concerning effectiveness of policy on prescribed drugs price and effect of prescription drugs on business competition climate.

   Based on result of study, the Commission provides to the government as to decide upper limit price for *branded generic* drugs, improve generic drugs price structure, parallel import needs to develop for expanding competition climate on originator drugs from Foreign Capital Investment, enhance consumer awareness about drugs, and provide right to pharmacist for replacing branded drugs a doctor describes so that patients may choose brand of drugs that will be used but still has equal content.

3. **Impact Evaluation and Assessment on Business Competition Policy in Retail Industry**

   the Commission evaluates impact from the government policy, i.e. Presidential Regulation Number 112/ 2007. After the regulation enacted, there is no conditional difference prior to the regulation enacted. Problem emerges is between Modern Retail and Traditional Retail as well as between Retailer and Supplier.

The Commission provides recommendation to the government as to immediate sets up a policy framework of retail sector in Indonesia, arrange Presidential Regulation Number 112/2007 more effective, establish intermediation agency for solving the problem inter retailer, between retailer and supplier, and between retailer and market trader. In addition, it is recommended to the government for conducting socialization of the Presidential Regulation Number 112/2007 in the regions so they can prepare implementation rule in their each region.

4. Impact Evaluation and Assessment on Business Competition Policy in Media Industry

Advertising industry has rapid grown. However, there is no regulation established so that business competition in advertising industry needs to be observed. Competition in advertising industry is indicated by creativity. The more creative and optimum the service provided for the advertisers as well as the increased sales volume experienced by the advertisers, the stronger the advertising industry becomes.

Advertising industry is a competitive industry considering that there are a lot of business actors in this industry. Matters that are necessary to pay close attention are no cartel, boycott and unhealthy competition behavior in advertising industry will occur. The government role in this advertising industry is to provide protection for people as information receiver.

5. Impact Evaluation and Assessment on Business Competition Policy in KSO Industry

The Commission assumes that Regional Government regulation is found unsuitable with the principle of healthy competition in KSO. Accordingly, the Commission makes evaluation of policy related to KSO in order to know impact of local regulation in pioneer flight industry.

After conducting a study, the Commission finds that there is an agreement between Regional Government and certain airline that necessitates the Regional Government for not provides license to another airline; it becomes *entry barrier* for other airline that wants to open flight at pioneer line.

In addition, no selection of airlines is conducted by tender process; so that no transparency and keeping selected airline quality is guaranteed. As a result of just one airline selected, it is concerned that *excessive pricing* particularly for unsubsidized KSO route will occur. Therefore, the Commission recommends to the government for regulating upper limit tariff and license in order to avoid excessive price and entry barrier. Besides, selection of airline must be conducted through tender mechanism

6. Impact Evaluation and Assessment on Business Competition Policy in Milk Industry

The Commission assumes that there is any inequality of bargaining power between squeezing cow breeder (through Primary Cooperation) and Milk Processing Industry (MPI). This inequality results in lower buying price of fresh milk defined by MPI. It becomes indication about *abuse of dominant position* conducted by MPI against squeezing cow breeder.

Pattern of squeezing cow breeding development and milk distribution is marked by breeder/cooperation dependence toward MPI; so that it owns higher bargaining power and may pressure buying power from breeder. The Commission gives recommendation that government may reinforce cooperation bargaining power against MPI by increasing existing institutional capacity. In addition, the Commission also recommends the government for reinforcing Standar Nasional Indonesia (ISN) (Voluntary Indonesian National Standard) voluntarily by applying referral price of fresh milk purchased by MPI.

7. Impact Evaluation and Assessment on Business Competition Policy in Traffic Bill

   The government is setting up Traffic and Road Transportation Bill, which therein amendment of concept from monopoly into open is found. The Commission feels necessary to carry out internalization of business competition values in the Bill so that it can be well implemented.

   the Commission recommends the government for transferring LLAJ (Road Transportation Traffic) Units Management exactly into private party so that no trade off between efficiency and service occurs. The government remains to run its function as regulator and private party as operator; thus strategic planning is constantly performed by government and people will get better service.

8. Impact Evaluation and Assessment on Business Competition Policy in Electric Power Sector

   Act Number 20/2002 has been nullified by Constitution Law Court because it undergoes deregulation failure. In addition, regional autonomy causes change in providing license of carrying out electric power sector business occurs. Therefore, the Commission needs to analyze regulation in electric power sector as to in compliance with healthy business competition.

   The principle of healthy business competition is not yet accommodated in the Bill of Electric Power. The principle of healthy business competition can be applied in providing license, i.e. license given based on non-discriminative principle. Similarly, requirement and other technical stipulation must be satisfied as to no *entry barrier* for business actor is resulted in. Stipulation concerning electric price the government regulates should reflect production cost so that price is too inexpensive.

9. Impact Evaluation and Assessment of Business Competition Policy in Town Road Transportation

   This activity of policy evaluation is stimulated by the present of issue concerning cab tariff ORGANDA (Regional Transportation Organization) decides and the present of town transport bundling with town transport trajectory carried out by dealer. Those both behaviors have potency to create unhealthy business competition. From here, the Commission starts to absorb information in association with regulation mainly local regulation that sets up decision of cab tariff and town transport trajectory license.

   Research result showed that no decision of upper limit tariff for taxi the government makes to contradict with law of business competition because it aims to protect consumer; however decision of lower limit tariff Organda decides may remove consumer preference. Concerning town transport bundling phenomenon with its trajectory, the Commission finds that private role magnitude causes problem such as provision of trajectory license exceeds demand, etc; so that government needs to optimize more roles and implement the principle of healthy business competition as application of mechanism on *competition for the market*.

10. Impact Evaluation and Assessment of Business Competition Policy in National Energy Sector

   Through enactment of Act Number 10/2007 concerning Energy, then the regulation is necessary to evaluate so that no law of business competition that contradicts. Some aspects that need to scrutinize in the regulation among others, supply management, subsidy mechanism, and tariff determination.

   Some competition issues in Act of Energy that can be identified are as follows:
   a. Domination and arrangement on energy resources (Article 4 paragraph 3);
   b. Price of energy (Article 7);
   c. Existence of National Board of Energy (Article 12);

d. General Plan for National and Regional Energy
e. Energy business engagement (Article 23).

Based on the issues, the Commission provides recommendation to the government for setting up more detailed arrangement concept about domination of state in energy sector and arrangement through company. Price policy needs to set up more detailed so that higher economic values can be provided, and it also needs any assessment to identify types of energy that commercially manageable and energy the government should manage.

11. Impact Evaluation and Assessment on Business Competition Policy in Forest Product Industry

Forest product utilization for production function is not engaged as big as for people welfare; so that assumption of dominating centralized forest business in Indonesia only for some business actor groups is found. Hence, the Commission identifies market structure in industry of forest product utilization, identify competition circumstance and identify government policy that regulates forest management and its impact against business competition.

Based on market of forest product processing and commerce, there are several types of market structure of forest product industry in Indonesia, among others, monopoly in West Papua district, Riau Islands, DKI Jakarta, Central Sulawesi, and West Java; Duopoly for North Maluku district and Lampung, and Oligopoly for Maluku district, South Sumatera, Banten, Papua, South Sulawesi, North Sumatera, West Kalimantan, Central Kalimantan, Jambi, Riau, East Java, Central Java, South Kalimantan and East Kalimantan. In association with impact of competition from government policy in forest management market or forest product processing and commerce, no significant effect in general to obstruct competition is found. However, the government needs to anticipate monopoly and unhealthy business competition practices at relevant sector are found.

12. Impact Evaluation and Assessment on Business Competition Policy in Downstream Oil and Natural Gas Industry

Until now, Pertamina still monopolizes LPG industry. In the progress problem appears in association with price rise of LPG that results in scarcity of LPG either PSO or Non-PSO. Unclearness of government policy course in managing arrangement of LPG results in occurrence of entry barrier for other business actor. Furthermore, the Commission performs assessment to identify production process of LPG, industrial structure of LPG, and their industrial development in Indonesia. In addition, the Commission also analyzes the process of LPG price decision the Pertamina decides, particularly at 3 kg container LPG.

After conversion of kerosene into LPG is implemented, scarcity of LPG in fact, triggered by mechanism of inadequate distribution control, limited infrastructure, and limitation of LPG supply. LPG industry actually opens, but some government regulations result in business actor hardly enters into LPG industry, such as subsidy the government decides. Hence, the government is necessary to define grand strategy of appropriate planning related to conversion of energy and its consequence.

13. Impact Evaluation and Assessment on Business Competition Policy in Voyage and Harbor Industry

Issuance of Act Number 17/2008 concerning Harbor has started applying competition aspect in harbor industry. The Commission needs to look at type of competition within and inter-harbor offered in Act Number 17/2008, private role in harbor business, and authority of harbor operator. The Commission then, makes analysis on sabotage principle in effort national sea transportation empowerment, and regulation framework in harbor industry.

the Commission supports empowerment of national voyage industry with sabotage, but it needs to keep as to inter-business actor competition is for improvement of shipping industrial performance. The government also needs to alert potency of unhealthy competition occurs because position of stronger shipping company after the company enters into ship agent business. This Act even provides new management structure by separating between operator and regulator. This new management structure provides three methods to increase competition and participation of private sector, among others separation of harbor assets, new investment at new terminal, and enables to make quick change to special terminal so that it can be used separate for accommodating general cargo.

14. Impact Evaluation and Assessment on Business Competition Policy in Fertilizer Industry

This activity focused to see impact of national policy against non-subsidy fertilizer industry. During the time, the government only regulates subsidized fertilizer in order to obtain lower price by establishing fertilizer holding. However, non-subsidy fertilizer is completely unarranged. It causes impact for non-subsidy fertilizer industry.

Current policy has impact on business actor who owns dominant market place in the market, i.e. stimulate domination of fertilizer producer market strength occurs after fertilizer holding is established. This policy of holding establishment becomes legitimate for monopolization of fertilizer production on State Enterprise is created, so that no opportunity given for private business actor to grow and develop. However, in one hand, the policy of providing subsidy on fertilizer may push achievement of food self-sufficient. Therefore, it needs to reformulate fertilizer policy that provides minimum distortion impact in competition.

15. Impact Evaluation and Assessment on Business Competition Policy in Procurement of Goods and Service

In principle, government policy concerning procurement of goods and service has directed on healthy business competition. However, in fact, there are still any slots the business actor utilizes for conspiracy act. Therefore, the Commission identifies government regulation in association with procurement of goods and service from view point of business competition as well as concerning the Presidential Decree Number 80/2003.

Based on research result, there are various behaviors of business actor or the commission that still contradicts with business competition. From result of analysis, it is known that event this Presidential Decree Number 80/2003 must also be revised so that in compliance with law of business competition and procurement of goods and service implemented can be more efficient.

To The New Era in Implementation of Business Competition

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KPPU

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