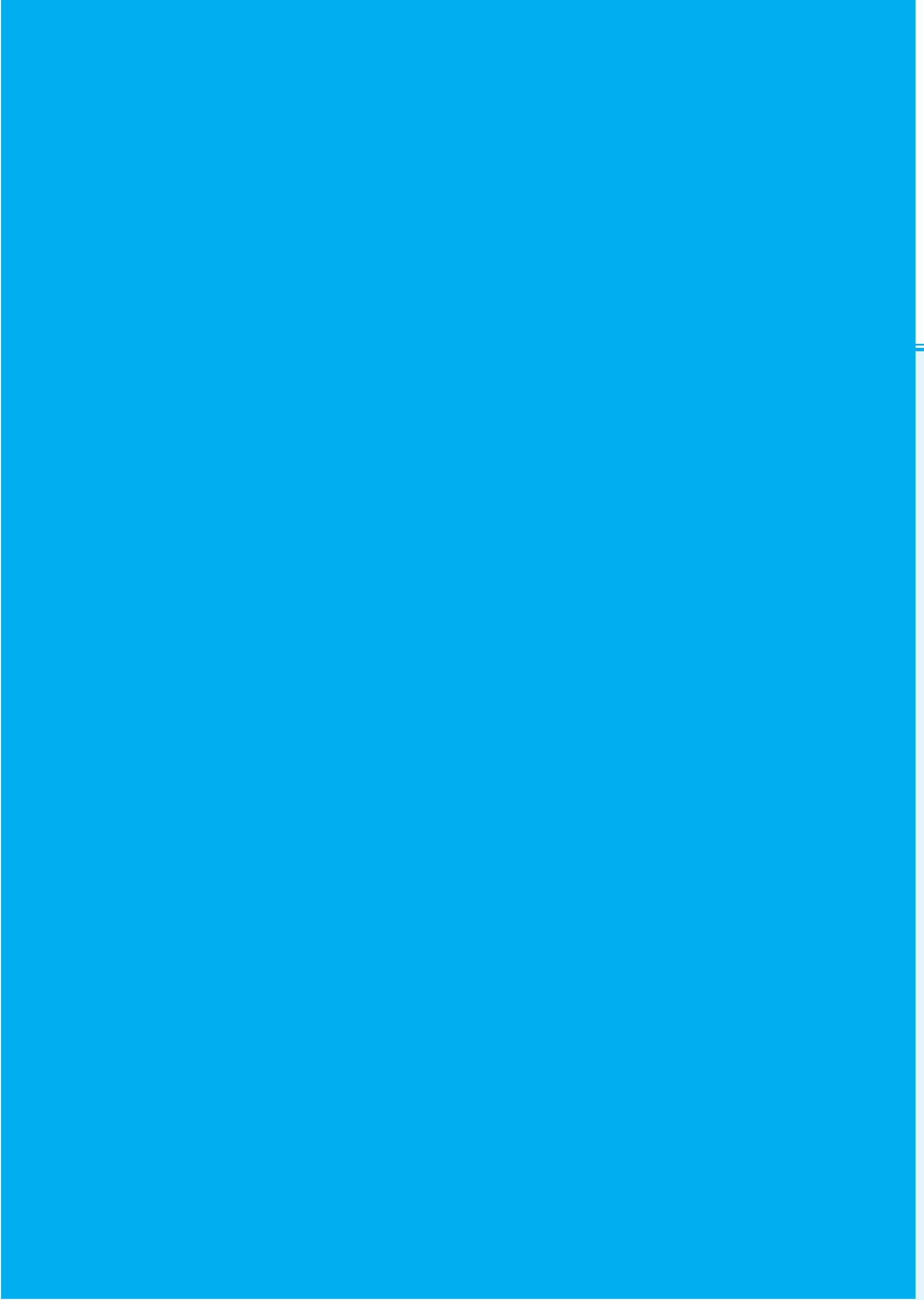




Annual Report 2007

Regulation Reform in Business Competition

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



Forewords

Regulatory reform is a great mission administered by the KPPU during the year 2007. Regulation is a policy instrument which is established to address a problem or political pressure. As the instrument is made to solve the problem, regulation may also generate impact in the form of existence of a new problem and unexpected consequence. Therefore, one of the KPPU's main functions is to give advice and opinions to the government with a view that the government regulation is in harmony with the values of business competition through a regulatory reform.

The KPPU's data shows that a significant development has been achieved in meeting the mission. It can be seen by the extensive efforts taken by KPPU in providing advice and opinions to the government with a view to establishing a fair business competition. One of the advice and opinion which has received positive response from the government relates to the Memorandum of Understanding (MoU) entered into by the Government of Indonesia and Microsoft (a software provider company), for which the Government of Indonesia has yet to implement the agreements which are stipulated in the MoU.

The KPPU's participation in regulatory reform has shown a steady development, among others, through its active participation in the drafting of the government regulation in the retail business in Indonesia which shows its higher enthusiasm in achieving fair business competition. In addition, KPPU has actively established a cooperation with Ministry of Public Works within the framework of disseminating information on the principles of fair business competition in the construction service industries.

During the year 2007, business actors in Indonesia had a better awareness on competition. Major cases handled by KPPU in the year have not only shown its commitment to performing its mission on the regulatory reform, but also promoting the best interests and prosperity of its main stakeholder, the people of Indonesia.

The case regarding Temasek has taken a public attention at the end of the year 2007. In its development, despite of the fact that many speculation on the handling of the case, the KPPU's main objective is to achieve a fair business competition which will in turn protect the customers' best interest.

Finally, one thing for sure, the KPPU's efforts in promoting the regulatory reform will not come to an halt in this year. The harmonization of the government policies with principles of fair business competition shall continue and develop. Law on business competition shall be uphold in more extensive way and the KPPU's institutional basis shall be continuously strengthened. In this matter, the struggle for law enforcement in business competition has just been started.

Chairman,



Mohammad Iqbal

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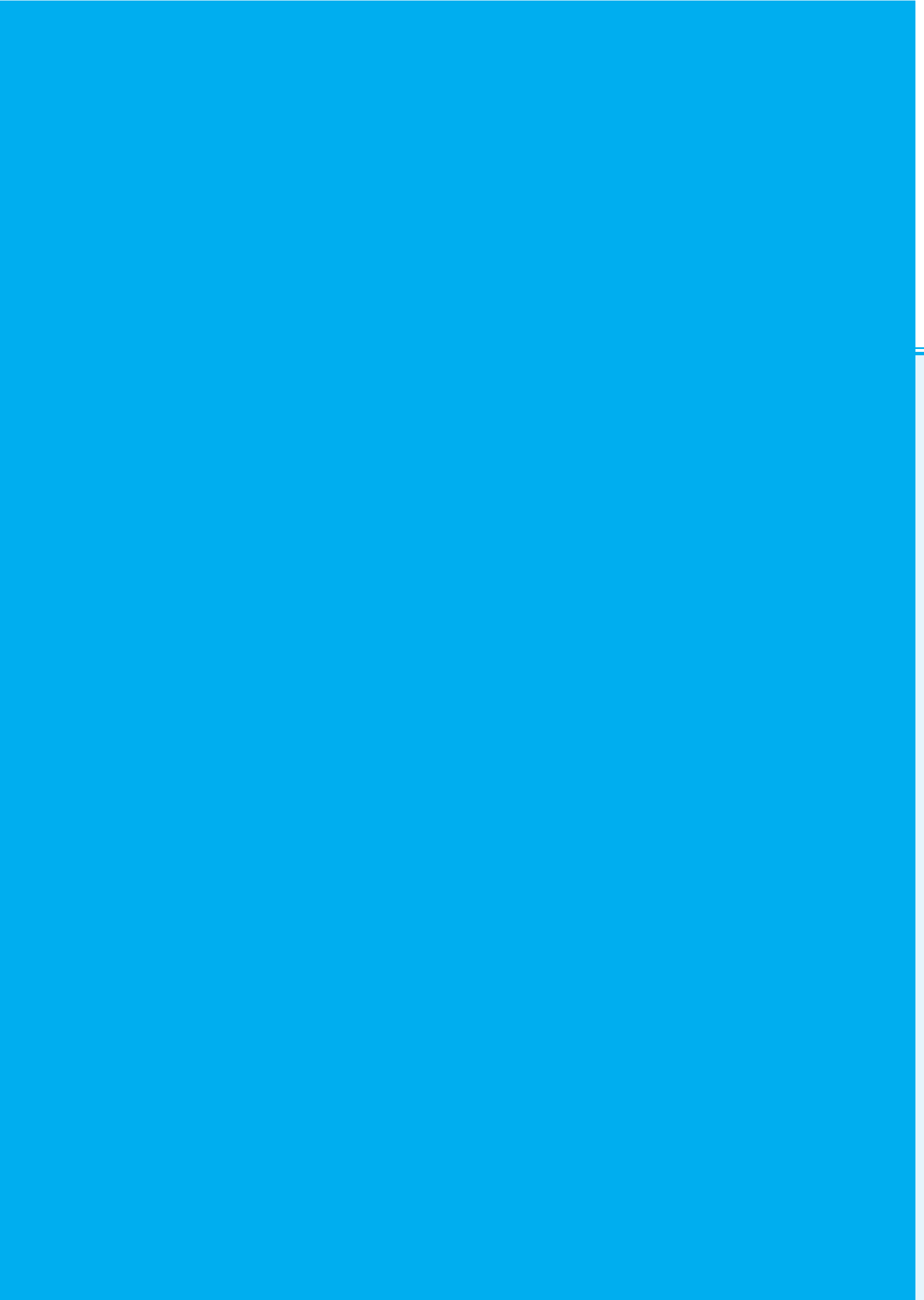
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Introduction **01**
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Introduction

1.1 BACKGROUND

Regulatory reform is a challenge which shall be addressed with real actions involving all stakeholders. In this case, the government's commitment as a regulator is highly required. To this end, KPPU has continuously called on the government to actively promote the regulatory reform, in particular with regard to the establishment and enactment of policy which directly affects the business climate.

In addition, regulatory reform is also expected to serve as a starting point of achieving fair business competition, which will have a direct impact to the economic development for the best interests of people of Indonesia, based on positive values of fair business competition.

The term 'fair business competition' has been more popular throughout the country, not only among legal experts and academician, but also the people in general. They have slowly but sure started to understand and realize the benefits of the enactment of Law Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition.

As mandated by the law that the Commission for the Supervision of Business Competition (KPPU) has to perform the functions of supervision of business sector in Indonesia with a view to achieving a fair business climate, in which KPPU has to perform specific duties and responsibilities as a frontliner in the establishment and upholding of business competition law.

During the year 2007, KPPU has performed a number of work programs with the support of its newly elected members. The current members of KPPU with the term of office of 2006–2011 comprise four incumbent members and nine members who were elected through a selection process. These thirteen members of KPPU have been mandated to perform their functions pursuant to the Decree of the President of the Republic of Indonesia Number 59/P Year 2006, dated December 12, 2006, of which is to be contemplated in an annual report.

The Annual Report 2007 is focused on the Regulatory Reform, a major theme in the performance of the KPPU's functions. **Regulatory reform can be defined as changes aimed at improving the quality of regulations within the framework of enhancing the economic performance, cost effectiveness, and public administration.**

The reform may be in the form of revision and rearrangement of regulations and correction of the process, bearing in mind of three (3) prime movers in the regulatory reform, namely the policy specified by the government as a regulator, competition and market transparency policy.

The essence of regulatory reform is :

- Improving the regulatory quality through enhancement of performance, cost effectiveness, quality of the regulations and some other formal provisions.
- Reform means revising, deleting or establishing the regulations and its implementing institutions.
- Reform may also include improving the quality of regulation and policy drafting and its management.
- Deregulation forms part of regulatory reform which represents deletion of a part of regulatory instrument for a certain sector with a view of boosting the economic performance.

The essential instruments in the regulatory reform consist of:

- Deregulation and privatization by the government (either central or local) in order to optimize the efficiency, improve the transparency and accountability of the regulations.
- Competition policy which include regulations or policy in trading, industry, taxation and others by inviting the participation of the government (related technical departments), regulator and local governments.
- Business Competition Law, namely Law Number 5 Year 1999, in which KPPU has been given a mandate by the law. An effective law on business competition is needed to assure a fair business competition.

In respect of competition policy, there are some matters to be considered in the regulatory reform, among others, as follows :

- Competition policy can promote the efficiency and eliminate the aspects which may hinder the competition.
- Competition policy is aimed at protecting the business competition process and promoting the economic efficiency.
- Competition policy may become a mandate in advocating and internalizing the values of competition and promoting the economic efficiency, as well as improving an awareness on the benefits of a competition.
- Competition policy can create a sound business climate between the companies managed by private sector and governmental bodies.

Some indicators and surveys on the business soundness index and bureaucratic hindrance (in this case the permit), have supported the assumption that the positive impacts of the regulatory reform have not been significant to the people. Even, following the enactment of the local autonomy, the local regulations and retribution have caused higher economic cost to the business sector and people. At international level, the global competitiveness and Indonesia' business competitiveness index in the year 2006 have also indicated that the business climate in Indonesia is less conducive. The Indonesia's standing based on these two indicators have been far left behind other Asean countries such as Singapore, Malaysia, and Thailand.

In this regard, there are many sources of government policy which are not in line with the law on business competition, among others, the government policy which is not supported by clear legislation or not in accordance with the spirit of Law Number 5 Year 1999.

Based on the observation done by KPPU so far, the policy which has not been in line with the Law Number 5 Year 1999 is categorized into three groups. Firstly, group of policy which provides larger room to the business actor with dominant position or to certain business actors. This government policy has tended to create an entry barrier to the competing business actors. As a consequence, business actor with a dominant position has abused the position.

The second group is the government policy which facilitates the agreement entered into by and between business actors which is explicitly in the contrary to the provisions stipulated in Law Number 5 Year 1999. The consequence of the agreement is the existence of anti-competition behavior by business actors such as creating an entry barrier and limitation to the partner which is a party in the agreement.

The third group is the policy which represents the government intervention to the ongoing market mechanism. The intervention is done in the form of trade monopoly or regulation which limits the number of business actors involved. In respect of competition aspect, it is considered as setback as it can may prevent the operation of market mechanism in the sector which provide numerous benefit to the public.

Fair competitive market is believed to provide many benefits in which the role of the government is highly required. In certain case, the competition will be successful if the government does not interfere, let alone if the intervention tend to benefit certain business actors. Ironically, the problems in the industry occasionally derive from matter which is not related to the economy, such as the smuggling. Unfortunately, the solution selected has damaged the trading mechanism which has run well and complied with the competitive mechanism, such as the policy on sugar industry.

In the future, it is expected that the regulatory reform mechanism which is being launched will create a more efficient national economic climate with an objective to promote the welfare of all people of the Republic of Indonesia.

1.2 LAW ENFORCEMENT AND COMPETITION POLICY WITHIN THE FRAMEWORK OF REGULATORY REFORM

Economic development in the first long term development phase has shown many progress and successful achievements in various sectors in promoting the people's welfare. However, the development has also caused challenges and problems in the national economic system which is not in line with the global economic trend and domestic business development, in particularly after the Indonesia was hit by a multi-dimensional crisis in the 1990s which has seriously ruined the life order developed and promoted for a long period of time before.

The eagerness of Indonesian people to escape from the economic crisis has been supported by a legal reform. It includes among others an effort to rearrange the regulation in doing business in Indonesia in order it can grow well, free from any monopoly practice by certain individuals or groups.

This enthusiasm to promote a fair business competition is expected to serve an interesting attraction to domestic and foreign investors in making their investment in the country. The investment will in turn create millions of job opportunities which represent a good news to the effort of eliminating the unemployment rate which trends to raise recently. When many business actors make their investment in the country, consumers will have an option to select various products and services available in the market. In addition, they will have an opportunity to select good quality products and service from the market in a competitive way.

Establishing a fair business climate is not a simple work which can be achieved overnight, it needs a strong commitment from all stakeholders including business actors and government. Legal enforcement is one of the supporting factor in preventing monopolistic practices and unfair business competition, so the business efficiency and effectiveness will in turn improve the national efficiency as one of the efforts in promoting the people's welfare.

KPPU as a state institution which was established by virtue of Law Number 5 Number 1999, has taken efforts in the enforcement of business competition law which is more focused on specific issue in certain industry or market, such as the government policy in telecommunication, retail, security printing sectors, with an objective of eliminating the entry barrier from any dominant business actors or even being monopolistic in the sectors.

It is now the time to change the government paradigm within the framework of regulatory reform. Instead of being a market controller as previously applied, the government should act as the regulator in which the competition shall be driven by the market mechanism. It is also necessary to improve an awareness that some business practices which have been so far implemented and believed to be a reasonable and common, have been prohibited following the enactment of Law Number 5 Year 1999.

The government as a regulator is expected to enact the policy which is in line with the spirit of fair business competition, of which is expected to boost the economic growth. A fair business competition is a key to success for a fair market economic system. It can be implemented in two ways, firstly through competition law enforcement and secondly, application of competition policy which is conducive for the economic growth.

The government policy shall not distort the market, which may lead to an unfair business practice and gradually attribute to non-conducive business competition. These matters shall be in support one another as to create a fair business climate in Indonesia's economy. The prime mover for the implementation of these matters are a competition institution and in Indonesia by KPPU as mandated by the Law Number 5 Year 1999.

In relation to the efforts of internalizing the fair business values in the government policy, KPPU has so far played its role in performing an assessment of the policy issued by the government and other regulatory bodies under a business competition perspective.

The assessment outputs are forwarded to the government or regulatory bodies through policy advocacy and harmonization. In this matter, most KPPU's program have been always synergized with the government policy in economic sector.

For years, in the synergy of the KPPU's program and government agenda, the regulatory assessment has been more focused on policy in such sectors closely related to public services as telecommunication, airport, water supply, cooking oil, lesson textbooks, postal services, energy, health and transportation. KPPU has always assessed the policy on the agricultural trading regulation which frequently causes an adverse effect to the people's welfare, as most of Indonesian people earn their living from the agricultural sector.

The priority sector is set up with a view to optimizing the role of KPPU in an effort to achieve an efficient economy which will in turn promote the welfare of the people of Indonesia.

Fair business competition will assure the achievement of an efficient and effective economic system. It will also guarantee a fair and equal business opportunity for all business actors either large, middle and smaller scales. In addition, a fair business competition will increase the competitive advantage of the domestic industry so as to enable them to compete either at domestic and international market

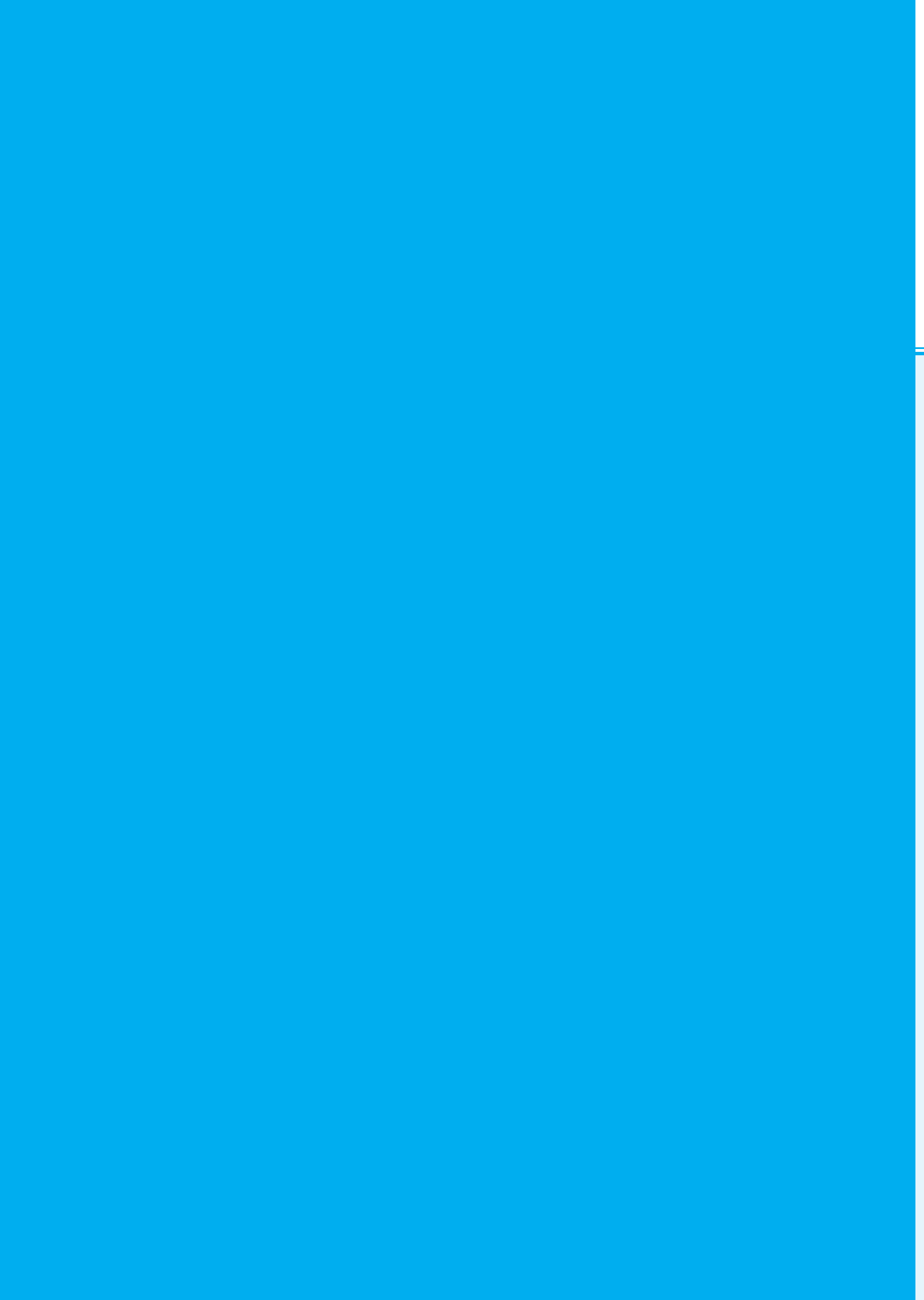
*Regulatory Reform
and Competition Policy*

Annual Report 2007

02

Chapter





Regulatory Reform and Competition Policy

The government work plan formulated into the economic policy is aimed at defining clear implementation direction of the government policy with an objective of promoting the real sector development and empowerment of small and middle scale enterprises. This statement was expressed by the Coordinating Minister of Economics in a seminar on “APEC–OECD Integrated Checklist on Regulatory Reform”, held in a cooperation between KPPU and APEC Secretariat on June 13, 2007 in Jakarta.

Regulatory reform is defined as changes which are aimed at enhancing regulatory quality within the framework of improving economic performance, cost effectiveness, and public administration. The reform may be in the form of revision and rearrangement of regulatory and improvement of policy formulation process in the consideration of three keys of prime movers in regulatory policy, i.e. regulatory policy, competition policy, and open market policy, all of which shall be done in an integrated way.

In line with this concept, the newest economic policy package -- the Policy on The Acceleration of Real Sector Development and Empowerment of Small and Middle Scale Enterprises, the government has prepared policy which are expected to eliminate business uncertainty and improve investment incentive. The main objective of the package is to minimize the regulatory obstacles for business actors and at the same time achieve the expected public services.

Based on the experience, an adhoc approach will not last sustainably due to two reasons – complicated bureaucracy and regulation. A comprehensive reform strategy is required for an effective and sustainable results as the actual challenge will be encountered immediately after the policy is implemented. The existing implementation problem deals with certain group interest and pressure from various parties.

In this regard, the government cannot act alone without support of other bodies. The support of the bodies competent in the implementation of policy is a determinant factor for the successful implementation of the policy as expected. Therefore, the duties and authorities of KPPU are very essential in establishing a platform for a constructive economic development. Active interaction in economy and the cooperation between KPPU and government in the future are highly required for our collective success.

2.1. COMPETITION POLICY

The competition policy program in the year 2007 is not significantly different from those developed in previous years. In 2007, the program among others include the harmonization of policy through a cooperation with various government agencies in order to facilitate the internalization of the business competition values in the government policy. Through the activity, it is expected that the Law Number 5 Year 1999 shall be considered by the government in establishing every policy in economic sector. The harmonization activity comprises of three sub-activities, namely developing a coordination system on competition policy, evaluation of government policy, and providing advice and opinion to the government.

The sub-activity on the establishment of the coordination system on competition policy is aimed at developing an definite mechanism between KPPU and government agencies as well as other regulatory bodies in charge of the competition policy. Meanwhile, the evaluation of government policy is aimed at evaluating the government policy in business competition perspective. The sub-activity which becomes a main duty of KPPU is to provide advice and opinion to the government. It is a follow-up of such activities done by KPPU as the monitoring of business actors, case handling, review of industry and trade sector and evaluation of government policy.

Review of industry and trade sectors are also included in the competition policy program. The activity is aimed at analyzing the conditions of industry and trade sector viewed from business competition perspective. In addition, in order to expand the understanding on the principles of business competition, especially for the year 2007, KPPU had reviewed the basic principles of exemption as stipulated in Law Number 5 Year 1999.

The third focus of the competition policy program is to establish a legal system of business competition addressed to support the performance of duties of KPPU with regard to the enforcement of competition law and providing advice and opinion to the government. The establishment of the legal system was done until the mid of the fiscal year of 2007, among others, like the formulation of the implementing guidelines for Law Number No. 5 Year 1999 and discussion on the amendment of the law.

The formulation of the implementing guidelines for the Law Number 5 Year 1999 is one of the duties of KPPU as mandated by the Law Number 5 Year 1999 in Article 35 point f. The guidelines are formulated with an objective to providing clear definition of the provisions stipulated in Law Number 5 Year 1999. It is expected that by having the guidelines, all stakeholders will have a shared perception on the provisions stipulated in Law Number 5 Year 1999.

The discussion on the amendment of Law Number 5 Year 1999 is aimed at asking inputs from all stakeholders on the proposed amendment which had been prepared in the previous year. In the year 2007, the discussion is expected to have completed all corrections to matters which are mostly significant in the implementation of Law Number 5 Year 1999.

2.2. POLICY HARMONIZATION

Harmonization of the competition policy is one of the main programs of KPPU in promoting the regulatory reform which will lead to the establishment of effective competition policy in Indonesia. Through the activity, it is expected that the internalization of the competition values in every policy issued by government agencies and other regulatory bodies can be easily done. The fact shows that as a result from the harmonization process done in previous years, in 2007, some government agencies have established an intensive coordination with KPPU with regard to the competition issues in the sectors of which such agencies are in charge.

The policy harmonization comprises of three (3) sub-activities, namely developing a coordination system on competition policy, evaluation of government policy and provision of advice and opinion to the government.

I. Developing Coordinating System in Competition Policy

Based on several participatory and coordinating measures taken by KPPU, other government institutions and regulatory bodies indicate that the harmonization process of competition policy have been done well. As of December 2007, some coordination activities on competition policy have been done by KPPU among others as follows :

1. KPPU as a competition supervisory authority has been invited by the government in the formulation process of the Draft Government Regulation on Arrangement of Modern Market and Shop Business under the coordination of the Ministry of Trade. The formulation of the draft represents the government response to the current development in retail business which has led to an “incomparable” competition between small scale or traditional and modern retailers. In this case, KPPU has provided inputs on the main substance of the draft based on the studies it conducts on the retail industries and handling of two cases on retail industries—Indomaret’s case with regard to the modern and traditional retailers and Carrefour’s case related to the relation between modern retailer and suppliers.
2. KPPU has continuously participated in the negotiation on economic agreement entered into by and between Indonesia and other country, especially with regard to the competition issues. The role of KPPU in the negotiation team has been increased as it has been trusted as the team leader in the negotiation related to competition policy. Some program which involves KPPU in the agreement process in the year 2007, among others, the involvement of Indonesia in CTI APEC sub-fora, ASEAN-Australia-New Zealand negotiation, and in the WTO’s Trade Policy Review Meeting.
3. With regard to the policy on goods and service procurement, KPPU has established coordination with some government agencies on the procurement of goods and services owned by the government. Various types of harmonization have been performed. Some government agencies such as the Jakarta Provincial Government, have specifically discussed with KPPU with regard to the alleged tender conspiracy which violates Law Number 5 Year 1999. In addition, the National Development Planning Board (Bappenas), which is now taking an effort to improve the regulation on procurement of goods and services, has invited the participation of KPPU in providing inputs on the said policy in the business competition perspective.
4. As a follow-up action to the evaluation results of the government policy in the construction service industry, KPPU and Ministry of Public Works has continuously carried out a harmonization process. The Ministry is sufficiently responsive to some KPPU’s findings which have become important inputs in the preparation of the draft amendment to Government Regulation Number 20 Year 2000 on Business and Roles of Construction Service Providers. Considering the strategic values of business competition principles, the Ministry is planning to include KPPU as one of the body whose participation will be asked in the provision of training for the prospective members of the Construction Services Development Institute (LPJK) either at national or regional levels.
5. KPPU and the Capital Market Supervisory Body (Bapepam) have established a coordination on problem related the underwriter’s fee fixing. It is done in line with the existence of “fee war” among the underwriters at the capital market. The Indonesian Security Company Association (APEI) has called on the Bapepam to specify the lower limit of the fee as one of the ways in eliminating the “fee war” which may lead to unfair business competition. On this regard, KPPU has provided its opinion to Bapepam that the lower fee fixing will tend to violate the competition principle as it will reduce the capability of business actors in doing the efficiency-based value creation and lead to a lower underwriter fee. KPPU has suggested that Bapepam use another instrument to promote a sound security industry by enhancing the professionalism and company soundness.
6. In relation to the idea of connecting the air ticket price to the aviation safety, the Ministry of Communication together with KPPU have conducted a dialogue on the arrangement of the lower air ticket price limit. In this case, KPPU has affirmed that the aviation safety in Indonesia closely relates to enforcement of safety and technical procedure, instead of the price. The best solution is to consistently enforce the aviation safety regulations. The government has currently made significant progress on the enforcement of the aviation regulation, particularly with regard the safety.

7. KPPU has continuously established a cooperation with the House of Representative (DPR), especially the Commission VI, through public hearing mechanism. In the meeting, KPPU has received inputs from the House on unfair business competition and government regulations which may be in contrary to the Law Number 5 Year 1999, especially with regard to the sectors within the scope of duties of the Commission. The forum has been used by KPPU to report to the House the cases it is being and has handled and results of analysis on the government policies.

II. Evaluation of Government Policy in Business Competition Perspective

The activity is one of the efforts exerted by KPPU in analyzing the substance of the government policies in business competition perspective. It relates to the concern that some policies have produced the seed of business attitudes which are in the contrary to the principles of fair business competition as contemplated in Law Number 5 Year 1999.

Fourteen (14) activities have been done in the year 2007 with regard to the evaluation of government policy with brief information of each activity as follows:

1. Evaluation of Government Policies in Book Industrial Sector

The evaluation is initiated by KPPU after it met with the Minister of National Education in a discussion on book industry whose management has been changed from monopoly to competition. Some parties consider that the book prices are very expensive to the public. Some opinions have arisen, one of which is to return the book management to a trade regulation, The idea is considered as a set-back by the Minister of National Education.

Considering the issue, KPPU has evaluated the policy on national book management. KPPU thinks that the regulation on book provision has met the business competition principle, but yet to be implemented as expected. The followings are brief information of some KPPU's findings:

- a. The distortion of the ideal system specified by the government. The distribution which should have been done in such network as publisher–distributor–bookstore–consumer has been distorted to be publisher–principal–teacher–student (consumer), publisher–agency head–principal teacher–student (consumer), and publisher–teacher–student (consumer).

The distortion has hindered a fair business competition. The competition which should have led to an efficient book industry and good quality books with lower price have not been achieved. The efficiency in book industry has just led to collusive efforts by providing commission to certain public officers or education providers (principals, agency heads, teachers and some other educational officials).

- b. The policy is considered weaker as there is no expressed definition of the bookstore as a market, therefore, the definition of the market has caused a multi-interpretation in accordance with the interest of the respective party. The publishers say that their market is the end-consumer, so they think that it will be not a problem if they distribute books to schools.

The weaknesses of other policy relate to the absence of the implementing regulations (either in the form of implementing or technical guidelines). As a consequence, the establishment of an ideal system as outlined by the government has been stopped at the policy formulation phase only, there is almost no implementation.

- c. The weak implementation has been attributed to such problems as the absence of facilities and infrastructure to implement the ideal system, in this case due to lack of bookstores.

Other weaknesses relate to the lack of supervision on the policy implementation. There is no clear description on who shall supervise and impose sanction to any violations to the policy. At other side, the violation has been committed massively. Some parties even “see” the violation for the reason of lower welfare of teachers. As a consequence, the sanction system has been unclear, therefore, it is no surprise that the violation is massive.

- d. The current policy on book price which is in accordance with the market mechanism where the prices are specified by the publisher is not appropriate, despite of the fact that the publisher is obliged to state the higher retail price on the book cover. As book is a public commodity with relative limited supply, the industrial structure has therefore tended to be oligopoly. The excessive price fixing by the market actors are greatly possible.

In competition perspective, the appropriate policy for such a condition will be generally the government intervention by specifying the higher retail price, with an objective of avoiding the consumer exploitation (student). Within the concept, competition remains to occur as the room for efficient business actors will be maintained.

- e. An unfair business competition may occur as a consequence of the system distortion, absence of sufficient supervision and sanction. Publishers monopoly may arise as result from a facilitation frequently given by the government officials.

2. Evaluation of Law Draft on Postal Services

The evaluation of the policy is initiated by KPPU with regard to the efforts exerted by executive and legislative in amending the Law Number 6 Year 1984 on Postal Services. In general, the provisions of Law Number 6 Year 1984 and Draft Law on Postal Services have substantially addressed the business competition. It among others relates to the change to the management model from monopoly to competition. Through the evaluation, KPPU is expected to provide inputs to the government with regard to the postal service regulatory reform in the form of amendment to Law Number 6 Year 1984.

3. Evaluation of Policy on Palm Oil Industry

The evaluation is done as to address the response to the actual condition in the Crude Palm Oil (CPO) Industry on which some farmers are complaining of the limitation of the factory without having a plantation, so they have no some alternatives in selling their palm products. At other side, large scale plantation which operate the factory are complaining of the presence of the plantation which do not operate the factory for the latter is considered to have reduced their performance.

4. Evaluation of Policy on Procurement of Goods and Services owned by the Government

As the procurement of goods and services involves a large amount of State Budget and Local Government Budget, the procurement shall be implemented effectively and efficiently. In order to assure such implementation, the supervision of the procurement is very essential. KPPU has so far taken actions against the collusion practice committed in the administration of tender which can cause adverse impact on the results of the procurement activity. The efforts to improve the effectiveness of the procurement are not only done by KPPU through the case handling, but also the rearrangement of the government policy. The government policy on business competition shall be synergized and optimized in order to achieve an efficient and effective goods and service procurement.

5. Evaluation of Government Policy in Construction Service Industry

The evaluation is done to follow up the results of evaluation previously done which indicate that unfair business competition in construction service industry have mostly been driven by the abuse of the policy on construction services especially with regard to the role of LPJK as a regulatory body in charge of construction service industry.

The evaluation is done as the government is preparing the amendment to its Regulation Number 20 Year 2000 on Business and Roles of Construction Services Providers. The amendment is to accommodate some KPPU's findings that the policy on construction service industry have facilitated the violation in the form of conspiracy by the business actors.

6. Evaluation of Government Policy on Oil Industry

The evaluation of the government policy in oil industry in 2007 discussed on the implementation of Law Number 22 Year 2001 especially with regard to the issue of opening of the oil market. Two issues had been addressed in the evaluation, namely the subsidized fuel market tender in 2007 and tender of avtur market.

The government is currently opening the oil downstream market, but yet to be fully realized. The market opening plan says that the subsidized oil will be gradually reduced. With regard to this plan, some obstacles are encountered among others due to the oil market which relates to the public need and the infrastructure owned by Pertamina. The business actors engaged in downstream oil market will in principle increase in number. They often find problems with regard to the absence of clear rule-of-game issued by the regulator, so they tend to wait for it.

The evaluation needs to be followed up with the supervision of:

- a. Implementation after the enactment of the regulation on the avtur market by the Oil and Gas Downstream Regulatory Body (BPH Migas).
- b. Implementation of the policy on oil tender for Public Service Obligation (BBM PSO) as being prepared by BPH Migas.
- c. Issue on the amendment to the government regulation on oil downstream sector as to improve the Law Number 22 Year 2001 as already amended by the Constitution Court.

7. Evaluation of Government Regulation on Telecommunication Industry

The problems relating to the competition policy in telecommunication sector attribute to the lack of preparedness of the government of Indonesia as a regulator in the implementation of telecommunication as to anticipate the changes in telecommunication business, so its regulations have been frequently not consistent with the provisions stipulated in Law Number 5 Year 1999. The lack of preparation in the existing regulation and legal jurisdiction has led to the inability in anticipating the telecommunication business and technology changes in order to promote fair business competition and attract more investors. At other side, the new entry and incumbent telecommunication providers have yet to well consider the competition aspect, so this condition may hinder a fair business competition.

Some indicators/trends in telecommunication industry in Indonesia include as follows:

- a. Sustainable growth. Telecommunication industry has shown a steady growth as the economic development in Indonesia is estimated to increase the demand for telecommunication services;
- b. Migration to wireless network. Wireless network has been more popular as a result from the expansion of the coverage area and better quality of wireless network, reduced cost of cellular phone and growth of prepaid services;
- c. Stricter competition. Telecommunication market has become more competitive as a result from the government regulatory reform.

Based on this situation, KPPU needs to conduct an evaluation on the government policy in telecommunication sector in order that it complies with the principles of business competition.

8. Evaluation of Government Policy on Cooking Oil Industry

The evaluation in the sector is aimed at identifying the cooking oil market condition and analyzing its upstream market performance (palm cooking oil raw materials) in Indonesia as well as the impact of the government with regard to the effort in stabilizing the cooking oil price at the domestic market on the performance of the upstream market performance and cooking oil market in Indonesia.

The analysis is done with reference to some data and information, among others, the growth of fresh fruit bunch production, crude palm oil (CPO), palm cooking oil, CPO export; the CPO domestic demand, especially for the raw material of cooking oil; CPO and cooking oil price trend at domestic and international market; government policies on the CPO and palm cooking oil industry.

The evaluations have come to the following conclusions :

1. Policy on cooking oil price stabilization with short-term instruments (domestic market obligation, export tax, subsidy, VAT exemption) needs to be supported with more strategic policy in industrial and trade sector.
2. A deeper analysis and comprehensive monitoring are needed on the business practice which have allegedly lead to a control of production as indicated by lower utilization of national palm oil factory which ranges from 25 to 49 percent only.

9. Evaluation of Government Policy on Water Supply Industry

Water supply sector is a natural monopoly one and characterized by public service obligation (PSO). The sector is managed by government (central and local) and delegated to state/local government owned enterprises. Water Supply Local Company (PDAM) as a single water supply provider, has some limitation, resulting in lower quality of the services and company performance. In order to anticipate some weaknesses in the water supply management, the government has increased the participation of private sector in water supply development. Some models of cooperation with private sectors have been established among others, service contract, management contract, lease contract, BOT contract, and concession.

Based on the result of the evaluation, it can be concluded as follows:

1. Selection of PDAM's partners in water supply management shall be done through a transparent and competitive tender ;
2. Out of existing cooperation models, divestment is not permitted as it is in the contrary with the regulations regarding natural resources;
3. There are currently some PDAMs which have established cooperation with private partners on the water supply management. In the future, there are some 10-15 cooperation projects on water supply management which will be offered by the government through a tender;
4. The management cooperation which is established not through a tender prior to the enactment of Law Number 16 Year 2004 on Natural Resources remains in effect.
5. Direct Contract Award (in PAM Jaya and PT. ATB Batam cases) indicates that the process potentially causes a problem at implementation phase. In this matter, such contract award may lead to a monopolistic practice and abuse of dominant position by the concerned operator. Necessary adjustment to the cooperation agreement shall be made in order to meet both commercial interest and public services;
6. The procedure of determining the water supply rate has been appropriate as it has involved the stakeholders (consumers and legislative body) in consideration of the proposal submitted by

the regulator/PDAM's board of directors. In its implementation, however, there is no transparent information in determining the water supply rate. The participation of the stakeholder is limited to the notification on the planned rate hike, there is no mechanism to accommodate feedback from the stakeholder.

7. Water supply rate calculation with full cost recovery and cross-subsidy among consumers is not optimum method with regard to the public service and inflict a burden to the operator;
8. Some PDAMs have successfully achieved positive financial performance, but still get a lower target threshold as specified by the government (ROA 10%). In general, the operational and maintenance cost is still difficult to be covered by the operator, let alone the cross subsidy system among consumers;
9. Periodic rate adjustment has yet to consider the operator efficiency target;

10. Evaluation of Government Policy on Seaport Industry

The evaluation derives from the goods and cargo (CSL) import handling rate agreement at Tanjung Priok Seaport entered into by seaport service providers and consumers. The agreement is made as they consider the existing goods and cargo import handling rates are varied and have no clear arrangement. This condition has led to high cost economy which shall be suffered by importers.

The rate agreement is entered into by six associations namely GAFEKSI, APBMI, INSA, APTESINDO (as service providers association) and GPEI and GINSI (as service users) providing for the agreement on component and binding rates. According to these associations, the rate agreement is aimed at reducing the high cost economy for the LCL import.

The rate fixing seems to promote the interests of certain business actors. At other side, the government intervention in the rate fixing is considered insufficient for such kind of natural monopoly industry as the seaport sector.

In order to internalize the values of fair business competition in the sector, KPPU has evaluated the impact of the competition policy on the seaport industry.

Based on the results of the analysis, KPPU has recommended as follows:

- The problem with regard to high economic cost at the seaport shall be solved with a comprehensive seaport management policy set out by the government, instead of the rate agreement.
- Due to the fact that the seaport is still under a natural monopoly, the rate arrangement is needed in which the role of the government as a regulator is required, instead of leaving the arrangement to the association as it is potential to cause an unfair business competition. Nevertheless, as the seaport condition is still natural monopoly in general, some sub-business may be set up in a competition. All seaport activities shall be identified and the best alternative for each type of activity shall be sought.
- As the characteristics of CFS are varied, the relevant rate policy is the price cap with a quality standard.
- Based on the applicable regulations, the type, structure and class of forwarding rate shall be specified by the government in the form of KM, however, there is no any KM established currently. Therefore, the government to prepare the KM immediately.

11. Evaluation of Government Policy on Life Insurance Industry Outside Office Hours at Jakarta Area

Evaluation and study of the impact of government policy on the business competition on local insurance derive from the enactment of Jakarta Governor Regulation Number 82 Year 2006 on the Implementing Guidelines for Life Insurance for Accident Outside Office Hours (JKDK). The regulation provides for that all companies in Jakarta shall cover the Life Insurance for Accident Outside Office Hours (JKDK). In principle, the fact shows that there is only one insurance company which offers the insurance program. The condition requires a more comprehensive analysis in respect of business competition among others related to whether the selection mechanism of the insurance company for the insurance program as set out in the Governor Regulation Number 82 Year 2006 has complied with the principles of fair business competition.

Based on the KPPU's analysis, the following conclusions can be made:

1. Life Insurance for Accident Outside Office Hours is a program combining the general and life insurance. There are many insurance companies in Indonesia, therefore the program shall not be exclusively provided by some or an insurance company.
2. Viewed from demand aspect, the comparison between the number of employees who have and have not been covered by the insurance program indicate that the industry market is still potential. It is indicated by the fact that there is still smaller number of employees in Jakarta who are covered by this kind of insurance program.
3. The regulation on the insurance program in Jakarta does not cause an entry barrier for the insurance companies who are interested in providing the program. It is because the Governor Regulation Number 82 Year 2006 gives an opportunity to every insurance company interested in providing the insurance program to register with the Local Government of Jakarta Province.
4. Despite of this fact, a strict supervision by the public is required on the selection process conducted by the Jakarta Provincial Government in order that the process can be done fairly and transparently.
5. The regulation on the insurance program may reduce the customer alternatives as the program is compulsory to each company in Jakarta, although the company offers similar program with better quality. It is different from Jamsostek (Labor Social Security) which is only obligatory to company who has not participated in the program, meanwhile companies which already had a better program are not obliged to participate in Jamsostek program.
6. The regulation on the insurance program issued by Tangerang and Serang municipal governments provides for that the insurance company who will participate in the insurance program shall be those appointed by the Regent or Mayor. The condition may lead to an unfair business competition as there is no transparent selection process nor clear criteria for insurance company which qualifies for providing the insurance program at the areas.

12. Evaluation of Government Policy in Red Onion Industry

The price of red onion sold by farmers in Brebes Regency has been frequently dropped lower than the production cost, meanwhile the price at consumer level is relatively stable. The condition is worsened by the import of the onion by some traders, despite of the fact that Brebes Regency is a center for red onion production in Indonesia. In order to solve the problem, the local government of Brebes Regency is planning to issue a policy (local government regulation) on the red onion import procedure.

In carrying out the internalization of the principles of business competition, KPPU has evaluated the draft of import procedure. This evaluation is aimed at identifying the problems in the red onion trading.

Based on the annual production data, the onion production volume in Indonesia is actually higher than that of the consumption (over supply). However, red onion is a kind of seasonal agricultural products which is not endurable for a long period storage if no sufficient storage handling. Therefore, wholesalers will import the red onion when the time of scarcity before harvest comes.

Based on the statistical analysis, there is no significant effect between the red onion volume and onion price fluctuation at Brebes. Therefore, import volume does not cause the drop of farmer's onion selling price at Brebes. The main problem lays on the marketing and distribution network of the red onion. The party who plays crucial role in controlling the red onion price, including the import price, is wholesaler who buys the product from farmers and sell the product to retails at secondary or primary markets. The wholesaler has a capability to set the onion maker price. Based on further analysis on the distribution network, it is found that the oligopoly/oligopsony market structure has been established in the red onion transaction in which the number of farmers and retailers is higher than that of wholesalers. It has strengthened the bargaining power of the wholesaler as a price maker. Therefore, the party who has dominant position in controlling the onion market price at Brebes regency is the wholesaler.

In order to solve the problem, KPPU has recommended that the distribution network shall be rearranged in order to improve the transaction efficiency and minimize the wholesaler's market power. Other alternatives available are among others as follows:

- to activate the role market (market creation) as a transaction point between farmers and traders.
- to make a better use of cooperative in order to enhance the farmers' bargaining power.
- to use warehouse receipt mechanism in order to reduce the price uncertainty.

If the government insists on issuing the policy on prohibition of red onion import to Brebes, a coordination among technical government departments shall be done and the policy shall be integrated with the policy on the national trade.

13. Evaluation of Government Policy with regard to Subsidy

The government is currently promoting an efficient state budget allocation as one of the ways to reduce the subsidy which is considered to have not reached the proper target. Some subsidy allocations are considered to cause an unfair market mechanism and produce a market distortion effect only. It has an adverse impact on the efficiency and competitive advantage of business actors who enjoy the subsidy provided by the government. The subsidy has tended to cause a rent-seeking behaviors among the business actors, thereby they are less motivated to enhance the competitive advantage of their products.

The subsidies are currently allocated, among other, for fuel, loan interest, electricity, fertilizers, seeds and public service obligation. The subsidies are provided to achieve price stability, help poor people and small-middle scale enterprises as well as assist state-run companies in performing their public service obligation. The subsidy is allocated to the company selling the product in order that it is sold at a price affordable to the community. However, we need to differentiate between the subsidy concept and social assistance. The subsidy concept is identified in the government budget which is allocated through the state-run and private companies. While, the social assistance is provided by the government with an objective to maintain the buying power of the community in anticipating the inflation impacts.

The subsidy is generally defined as the obligation of the government in anticipating the market failure by providing transfer payment to the public. The market failure occurs as a result from the resources are not allocated efficiently. The subsidy policy is one of the efforts of the government in minimizing the impact of the market failure. The government is currently focusing on enhancing the people's buying power for their basic necessities. The subsidy shall be properly allocated in order to prevent the government failure which may lead to more inefficient resources allocation. Therefore, an evaluation is needed in order that the subsidy granting meets the expected target.

With regard to business competition issues, the policy on subsidy granting needs a proper distribution mechanism as the subsidy allocation may generate efficiency impact or cause the government failure. Rent-seeking behavior may occur when economic actors get the benefits from the government subsidy and are unwilling to do the efforts to improve the condition. To business actors, the subsidy granting has changed their cost structure for their business activities. It also affects the behaviors of business actors in the market which will in turn affect the performance of the market itself. Other business actors in the same marketplace will be affected by the presence of the business actors who are granted with the subsidy. As a result, the competitive business actors shall adjust their behaviors to that of the business actors who receive the subsidy from the government. This condition has led to a less competitive business performance of the business actors in the market.

14. Evaluation of Government Policy in Vehicle Motor Insurance

On June 29, 2007, the Minister of Finance Sri Mulyani has officially enacted the Regulation of Minister of Finance Number 74/PMK.010/2007 on Vehicle Motor Insurance (hereinafter referred to as Regulation of Minister of Finance Number 74 Year 2007). The enactment of the regulation derives from a long process by the Ministry of Finance as a response to the proposal filed by the Indonesian General Insurance Association (AAUI), especially motor vehicle insurance companies. In its development, AAUI had visited the KPPU to have a consultation on the planned insurance policy agreement as proposed by the Association. The agreement is considered urgent by the Association in order to overcome the condition as stated to be a "policy war". At the consultation, the Association said that it plans to call on the government to determine the policy rate in order to eliminate the destructive policy rate war. At the consultation, KPPU reaffirms that any rate agreement by business actors is considered to violate the provisions set out in Law Number 5 Year 1999. It will be subject to a business competition case if the business actors make the policy rate agreement.

After a long process, the Regulation of Minister of Finance Number 74 Year 2007 is finally enacted. This regulation is expected to solve the problems in the insurance industry in Indonesia. Following the enactment of the regulation on September 1, 2007, some stakeholders in motor vehicle insurance industry such as financing companies, agents, automotive producers, insurance brokers have expressed their objections to the enactment of the regulation. Even, they prove that motor vehicle insurance, as a consequence of the regulation, has risen and inflict financial loss to the customers.

The regulation bears some competition issues, mainly the rate fixing which is followed by rate reference. It may lead the business actors to have a rate agreement on lower rate threshold which are so far opposed by KPPU.

Other competition issue relates to an allegation that the issuance of the Regulation of Minister of Finance Number 74 Year 2007 derives from the inability of big insurance company to compete with smaller insurance companies which are able to offer more competitive policy rate.

The evaluation has resulted in some recommendations, as follows:

1. Formulation of the opinions to the Government with regard to the improvement of the government policy on vehicle motor insurance industry which is in accordance with the provisions of Law Number 5 Year 1999. Some important issues of the opinion among others relate to:

- a. Substantial improvement of the policy rate so as to avoid a confusion or multi-interpretation by business actors in the application of the rate.
 - b. Encouraging the stricter action by the regulator to consistently enforce the Regulation of Minister of Finance Number 74 Year 2007 in the form of stern sanction to any business actors who breach the regulation, so the objective of the policy can be achieved as expected.
 - c. Accelerated formulation and application of the Indonesian Insurance Architecture (AAI) which provides for the segmented insurance industry, so each insurance company will focus on the business as per its class. The Caricature is expected to provide clear directions and arrangement in insurance industry and may serve an efficient solution to prevent unfair business competition in the industry, especially in motor vehicle insurance.
2. As this new regulation is just enacted for four months, it has not yet clearly been implemented, so the it us suggested to render sufficient monitoring on the implementation of the regulation.
 3. Current trend on the rate fixing by the regulator needs KPPU's special attention. At one side, this rate reference serves as a means to secure the business sector, but at other side, it may lead to a price conspiracy facilitated by the regulator. Therefore, KPPU shall carefully monitor the trend as some business actors associations have frequently propose the price fixing which may lead to a price collusion, facilitated by the regulator. It is again reaffirmed that a competition is solely aimed at eliminating the price distortion and encouraging the resources flown to the most efficient sector. The competition has encouraged companies to improve its productivity and innovation, so goods and services with lower price and better quality are available in the market, thereby providing more alternatives for customers to choose. The competition is not merely aimed at getting goods and services with lower price, but disregarding the consumers' interest. Competition is a guarantee for consumers to get a better quality products and services. Some rate fixing, other than in motor vehicle insurance, can be found in air ticket fixing and service rate at line 2 of Tanjung Priok Seaport, Jakarta. On this regard, the team decides that a study on the impact of the reference rate fixing by the regulator is necessary in business competition perspective.
 4. Based on the results of analysis by using the CR₄ and HHI methods, it can be concluded that as the competition is not centered on some companies, KPPU has therefore considered that the Regulation of Minister of Finance Number 74 Year 2007 is not in the contrary to the Law Number 5 of the Year 1999.

III. Advice and Opinions Provided to the Government

As mandated by Article 35 paragraph e Law Number 5 Year 1999, the main functions to be performed by KPPU is to give advice and opinions concerning government policy related to monopolistic practices and/or unfair business competition. In the year of 2007, KPPU has provided advice and opinions concerning government policy, especially that is potentially contradictive to Law Number 5 Year 1999. It is done in order to make necessary evaluation so that the government policy will come in harmony with the principles of fair business competition, and in overall improve the performance of economic sector for the welfare of Indonesian people.

Below are the advice and opinions submitted by KPPU to the government in the period of January-December 2007 :

1. Advice and Opinions on the Retail Sector

The main problem encountered by the retail sector is that the absence of regulation on equal playing field between small/traditional retailers and suppliers and big retailer with larger capital.

Related to the above issues, KPPU has provided advice and opinions as below:

- a. KPPU supports the enactment of a regulatory policy that reflect an effort to protect small/traditional retailers as well as supplier from modern retailers. Regarding the codification of the regulation, KPPU understands that it falls within the government jurisdiction
- b. However, KPPU suggests that, in the regulation codification, the government consider any potentials of unfair business competition as stipulated in the Law Number 5 Year 1999, i.e. imposing an entry barrier to business actors based on the supply dan demand analysis. Its expected that this limitation will not be used by some business actor as an instruments to run a monopolistic practice and exhibit an unfair business practice by exploiting the consumers.
- c. Regarding the relationship between supplier and modern retailers, KPPU advises that the codification shall not only address small scale suppliers but also addressing middle and large scale supplier, as the high bargaining power entitled to modern retailer would not only affect small scale supplier but also medium and large supplier. The government needs also to emphasize that any transaction between supplier and modern retailer may not breach the principles of a fair business competition.
- d. If the KPPU involvement is to be defined explicitly within the regulation codification, its suggested to put an additional clause in a separate section as below:

Prohibition of Monopolistic Practices and Unfair Competition:

1. Retailers are prohibited to run an activity that would result in a monopolistic practice and unfair business competition.
2. Prohibition as mentioned in point (1) is in accordance to Law Number 5 Year 1999 regarding Prohibition of Monopolistic Practices and Unfair Competition

Up until this day, there is no formal responds from the government regarding this particular advice of putting additional clause in a separate section.

2. Opinion and Advice on the Memorandum of Understanding (MoU) signing between the Government and Microsoft

KPPU sees that the signing of the MoU can create a distortion in software competition in favour of Microsoft as the dominant player in the software industry in Indonesia. The government's reason that the signing is primarily aimed at eradicating the use of pirated software at government institutions is acceptable, however the implementation of the MoU is not in accordance with the spirit of a fair & healthy business competition.

Regarding the matter, KPPU gives the following advice and opinions :

1. KPPU supports the government's efforts to curb piracy by confiscating illegal softwares particularly in state offices and institutions. Software piracy has come to an alarming level and has become a main concern and a dis incentive factor for software business actors in Indonesia.
2. Software piracy will result in an almost stagnant innovation in the industry, which eventually will deprive innovation and entrepreneurship potential in the industry. KPPU views that the MoU violates the principles of fair business competition as stipulated in Law Number 5 Year 1999. If the MoU is followed up with a formal contract, it will cause :
 - a. Microsoft will gain market power, supported by the fact that Microsoft is a dominant player with more than 90% market share in the operating system software (Microsoft windows) and office

application software (Microsoft Office). This prominent market power is potentially abused. The MoU can be misused as a means to exploit consumer (state offices & Institutions), with Microsoft as the only provider of office application software and operating system software.

- b. Eliminate the market opportunity in providing office application software and operating system software to state institutions for business actors other than Microsoft. This will become a disincentive factor and impede the development of the domestic software industry in Indonesia. It can deprive innovation and entrepreneurship potential in the software industry, as there is no market attraction.
- c. MoU will also result in state offices and institutions having no option when purchasing the operating system software and office application software, other than Microsoft products. In long term basis, this will discourage an efficiency in the bidding process. State institutions will not have an incentive to develop innovation in the software industries in a fair competition market (not only Microsoft).
3. Concerning the above issues, KPPU is in the opinion that the MoU signing with Microsoft is not the right way to end software piracy, as the root of the problem is the enforcement of intellectual property rights.
4. The only solution to ending the piracy is by enforcing the law in a stricter way. However, it will take time and a greater efforts to do so; however, KPPU believes that if all parties concerned and government entities support against the piracy, it can be put to an end.
5. KPPU also recommends that the government seek an alternative policy that will put software piracy to an end, while sustaining a fair business competition. In the long term, it is expected that a fair business competition will contribute to overcome the digital divide and support the knowledge-based economy by encouraging innovations on free and open source software or other specific application software which are affordable to the public
6. Based on the above analysis, KPPU suggests that the government not to follow up the MoU with a formal contract, or annul the deal, to avoid any potential of unfair business competition in the software industry in Indonesia

Up until today, the government has not responded to the advice; however, the government does not follow up the Memorandum of Understanding (MoU) with a formal contract.

3. Advice and Opinions to the Government on the Ministerial Circular Letter, on the Mail-Delivery Service

The advice and opinion below relates to the Communication & Information Ministry's Circular Letter No. 01/SE/M/Kominfo/1/2007 regarding the Mail-Delivery Service. From a business competition point of view, the issuance of the Circular Letter will hamper a competition and development of the postal service business. The Circular Letter's codifications is discriminative against certain business actor (and posing entry barrier) and restrict consumer's options, especially for a corporate or non-individual consumer. This condition may impose harm not only to postal service industry, but also to the overall economy, as the postal service involve many business sectors with thousands of employees. This postal service business grow dynamically, with each business actor has equal capacity in giving an excellent service and competitive price.

On the other side, KPPU notes that the Circular Letter has directly reaffirmed of PT. Pos Indonesia's monopolistic practice. KPPU understands the legal basis of the Circular Letter, which refer to the 1984 Postal Service Law. However, KPPU also notes the facts that for years, the Government allows, even facilitates the mail-delivery by private firm other than PT. Pos Indonesia. In a fair business

competition perspective, the Circular Letter has created a situation which is not conducive for consumer, private mail-delivery firm as well as for PT. Pos Indonesia. With the unequal treatment of monopolistic practice, the short term effect for PT. Pos Indonesia is an improved performance. But in the longer term, PT. Pos Indonesia will have difficulties to develop efficiently as it has done for years. And in the future, when we finally embrace an open competition policy, PT. Pos Indonesia will not have an adequate competitiveness. In overall, the practice will hamper the postal and logistic industry development.

KPPU realizes that the current performance of PT. Pos Indonesia is not optimum. However, in order to improve the performance of PT Pos Indonesia, the solution is not by applying a policy that contradicts to the principles of fair business competition. An anticompetitive and inimical to competition policy can worsen the overall postal service performance. KPPU notes that a comprehensive revitalization program for PT. Pos Indonesia is needed to improve its operational and service performance. To that end, PT. Pos Indonesia will need a full support from the government, by a correct regulatory policy i.e. stipulation of non-commercial activity such as public service obligation (PSO). Meanwhile, for a commercial activity, the management of PT. Pos Indonesia deserves a flexibility to determine its operational and strategic policy such as the pricing on commercial service, and product and service innovation. It will be in line with the main objective of PT. Pos Indonesia (Persero) as a profit center.

On the other side, the Circular Letter reflects an inconsistency (dualism) of government policy in effort of developing the postal service sector. In the draft bill of postal service currently reviewed by the House of Representative, the government affirms its support to the reform in the management of postal service from monopolistic to a fair competition. But the issuance of the Circular letter reflect the contrary fact, in contradiction with the efforts to reform the management as stated in the stated draft bill.

KPPU welcomes any effort taken by the legislative and executive in improving the management in postal service sector, by amending the Law Number 6 Year 1984 on Postal Service. It has to be admitted that the regulation and its implementing guidelines are no longer relevant with the current business development, which tends to be more open and dynamic. To encourage an improvement of the postal service performance, as well as to solve the issue on the circular letter, KPPU advises that the review on the amendment to Law Number 6 Year 1984 can be completed in near future. KPPU also hopes that, during the review on the new draft bill on postal service, the government or in this case, the Ministry of Communication and Information will review the Circular Letter Number 01/SE/M/Kominfo/1/2007 so it is in line with the principles of fair business competition. KPPU also hopes that the revitalization program of PT. Pos Indonesia can be formulated and implemented in near future.

4. Advice and Opinions on the Draft of the Presidential Regulation on Management and Development of Modern Market and Shop Businesses

This KPPU's advice and opinions is to respond to the drafting of the President Regulation aimed at minimizing the problems related retail-supplier business.

In essence, the advice and opinions are as follow:

- a. KPPU fully supports the compilation of the regulation as an effort to protect the small scale and traditional retailers and suppliers to modern retailers. KPPU fully understands that the establishment of the regulation falls within the government jurisdiction.
- b. KPPU advises that, in the regulation codification, the government considers any potentials of unfair business competition as stipulated in the Law Number 5 Year 1999. This may include the regulation on business actor entry barrier based on the supply and demand analysis. However, it

is expected that this limitation will not be abused as an instrument to carry out an unfair business practice, such as the cartel practice between a limited number of business actors in order to exploit consumer or monopolistic practice as in the case of only one business actor within an area.

- c. Regarding the codification of the contract between supplier and modern retailer, KPPU suggests that this codification will not only address small scale supplier but also medium and big scale suppliers. As the high bargaining power entitled to modern retailer will not only effect small scale supplier but also medium and big scale supplier. The codification need to set any form of relationship between supplier and modern retailer which should not contradict with the principles of healthy competition.

Up until the year 2007, this retail draft bill is still under compilation process by the Government. KPPU has always been involved in the process.

5. Advice and Opinion to the Government on Islamic Hajj Operation Policy

The advice and opinions is provided to follow up the evaluation on Islamic Hajj Operation Policy. Management of pilgrim (hajj) has strategic value because it deals with the state service to Moslems in executing their obligation. Every year, Indonesia send 200,000 pilgrim to Mecca. Government needs to provide an excellent management and service with affordable price for hajj pilgrimage.

In its opinions, KPPU expresses its appreciation to some improvements made in the Islamic Hajj Operation Policy, i.e. separation of the supervisory function from the people's eternal fund management function, which in accordance with an effort to create a good governance practice.

However, the new draft bill has not yet optimally addressed the overall Hajj operation issue. There are three main issue which need to be addressed comprehensively:

1. Tariff

KPPU understands that Government roles as regulator is necessary in setting the price for hajj pilgrimage (Traveling Expense Hajj Religious Service or BPIH) at a normal and affordable rate. Based on the current regulation, the BPIH is specified by the President based on the proposal of the Ministry of Religious Affairs, and approved by the House of Representative.

However, this BPIH as proposed by the Ministry of Religious Affair has always been based on the previous year's operational cost calculation. At other side, a significant barrier is found for other business actor in entering the hajj operational market, especially in providing the transportation services, accommodation and consumption) service. Therefore, the situation tend to create higher price fixing, with the BPIH settled by Government tends to increase every year. The mechanism of such policy has encouraged a legitimating of monopoly practice in hajj operation, with the perception of a static market.

2. Policy on Empowerment of National Business Actors

KPPU is in the opinion that the market dynamic in the transportation, tour and travel, and consumption (catering) service business has developed significantly. Therefore, the bidding mechanism in hajj operation should apply an open market competition, instead of a discriminative one.

As shown by the hajj data of 1999, the participation of other flight carrier (Saudi Arabian Airlines) in addition to PT. Garuda Indonesia, has been able to cut flight tariff from US\$ 1,750.- to US\$ 1,250.- per person. If the government has given a chance for foreign flight carriers to participate, then why not offer the same to domestic flight carrier? The paradigm of empowering the market

by encouraging national business actors to participate and compete in the market needs to be considered.

The bidding mechanism in the procurement of catering and accommodation service is still discriminative, with no equal business chances provided to every business actors. The competition for the market as practiced by the government is still far from the expected ideal condition.

3. Islamic Hajj Operation Organization

KPPU is in the opinion that the government dual function as the regulator and operator is the one of among many factors that cause an inefficiency in hajj operational. The regulator-operator relationship should be vertical. The dual function will hinder a reward and punishment mechanism. Based on past experience, Ministry of Religious Affairs has never been 'punished' (as a form of its accountability to public) for the repeated mistakes and mismanagement in the hajj operation.

KPPU thinks that the state's protection warranty is not necessarily be manifested in a dual functionality as a regulator and operator. The past performance on hajj operation shows that this policy has made the hajj operational not optimal.

In reply to the KPPU's advice and opinions, the Ministry of Religious Affairs has given the following response:

1. Regarding the BPIH tariff stipulation, its has been specified through a public hearing with the House of Representative (with its parliament task force mechanism - Panja), to seek the input from relevant parties. The BPIH tariff refers the previous year's tariff in order to get a normal and proportional tariff. A negotiation is made to gain a normal and proportional tariff. Regarding the participations of other business actors in the hajj transportation service, Government has to use Garuda as a sole flight carrier, due to a difficulty in getting in the landing permit at Saudi Arabia airports, It is because the government of Saudi Arabia applies a single designator for a hajj flight carrier for a country. Another consideration is that another flight carrier has always offered a price higher than that offered by either Garuda or Saudi Airline.
2. Regarding the open tender. An open tender has been conducted and announced through mass media. The tender for the procurement of catering service in Surabaya embarkation is announced at Media Indonesia daily newspaper. As for the lodging tariff, the stipulation is in accordance with Arab Saudi government requirement. The Ministry of Religious Affairs has done its best efforts in negotiating and gaining a reasonable price.
3. Ministry of Religious Affairs has promoted an efficiency in the hajj operation, while keep paying attention to the pilgrimage protection. Therefore, the Ministry of Religious Affairs sets up a minimum tariff so a standard service is met as agreed. At that time, Ministry of Religious Affairs has not specified the maximum tariff (as per the KPPU's advice), as there is no tariff standardization on hotel, naqobah, and catering. in Arab Saudi However, The Ministry of Religious Affairs will supervise that the tariff stipulation shall comply with the service provided.
4. An open bidding has been conducted and the winner of the tender has been announced in the website and national newspapers as per the provisions stipulated in the Presidential decree Number 80 Year 2003.
5. In a G to G approach, it is expected that local business actors play their active role in engaging Saudi Arabian business partner.
6. The advice on the separation between operator and regulator functions, has been conveyed by many parties. The issue has dominantly discussed in the hearing sessions at the House

of Representative as the initiator of the revision of Law Number 17 Year 1999 regarding Hajj Operation.

7. The Ministry of Religious Affairs agrees to form an independent supervisory committee that is responsible to monitor the hajj operation in Indonesia, with a consideration of anticipating an overlapping function of operator and supervisory body as established by in accordance with the applicable legislation.
8. The accountability on the hajj operational management is evaluated by internal supervisory institutions (the Ministry's Inspectorate General and Development and Finance Supervisory Board (BPKP) as well as by an external supervisory institutions (Finance Audit Board-BPK). In the last two years, the BPIH financial report is announced in the national mass media upon the completion of hajj operation.

6. Advice & Opinions on the National Textbook Policy

The Ministerial Regulation Number 11 Year 2005 regarding School Textbook is a policy which encourages a fair business competition. However, in its implementation, an ideal platform of the textbook industry is still far from expectation. One of the issues arise is the lack of government attention in implementing and enforcing the policy as stipulated by Ministry of National Education.

With regard to the policy, KPPU has provided the following below and opinions:

1. If the government wants to maintain the current policy, it shall strengthen the policy by:
 - a. developing derivative programs, among others, by the following means :
 - i. Establishing technical guidelines of the policy.
 - ii. Developing bookstores as the front liner in the textbook industry.
 - b. Impose sanction to any parties which breach the stipulated requirements, especially to any official government and executives of the national education, who have distorted the system through their power.
2. With regard to the national textbook pricing policy, as the oligopoly is very potential in the textbook industry and to avoid the consumer exploitation, it is recommended that the government stipulate an upper limit of the book price. It is necessary to anticipate any potential of students exploitation by the business actor. In addition, the policy will facilitate a free competition and promote efficiency.
3. Considering the strategic value of textbook procurement in the national education, KPPU recommends that the procurement be regulated with a higher rules ordinance (law), which is binding every citizen. KPPU suggests that the government prepare a draft bill regarding the national textbook procurement.

7. Advice & Opinions on the Postal Service Policy

KPPU has analyzed and evaluated the draft bill on postal service which is a revision to the current regulation. In order to get a more comprehensive inputs, KPPU has also elaborated many "best practices" approach applicable to the international postal regulation.

The followings are the KPPU's advice and opinions regarding the postal service policy:

- a. Government shall classify the postal services/products which are included in the 'core' category in relation to the Public Service Obligation (PSO) as specified in the UPU convention and ratified by the Government of Indonesia through the Presidential Decree Number 112 Year 2000 (UPU's Sixth Protocol in Beijing) and Presidential Regulation Number 98 Year 2006 (UPU's Seventh Protocol in Bucharest). The classification can be made based on the combination of three main criteria, namely the class of services, weight, and tariff.
- b. Referring to the policies of postal service applied in many countries (as mentioned in the UPU and OECD literature), a standard postal service with certain weight is categorized as a Public Service Obligation entitled to the affordable prices. Meanwhile, other kinds of postal service/product such as the express mail and other premium postal services are categorized as a value added or commercial service which is open to a tariff competition as well as in service excellence, based on a normal market mechanism.
- c. In accordance with the provisions set out in the UPU convention, every law on postal service in each UPU's state shall accommodate a codification on Public Service Obligation (PSO), therefore, the new postal service draft bill shall accommodate such PSO. The new postal service bill has to give a mandate to the government in providing PSO with an adequate system and funding. In this regard, the method or practice of cross subsidy between the commercial and PSO-based postal services shall be removed, as it will put an extra burden to the PSO operator's work performance as well as create a barrier in the business competition.
- d. Based on the new postal service law, the government shall give a concession right to the PSO operator through a transparent and competitive process. In the process, the government will have a PSO operator which will run a PSO function with the lowest scheme subsidy and remove the cross subsidy between the PSO service and commercial service. In order to achieve this, the Government shall comprehensively evaluate and review the PSO funding platform and the performance and capacity of any prospective PSO operator.
- e. To guarantee the implementation of the PSO and the overall postal service operation, the role of the regulatory and supervisory body shall be strengthened and specified in the new postal service law, particularly with regard to the issue on the legal status, institutional format, funding, and authority specification. The supervisory and the regulatory body have to guarantee that there is no cross subsidy between obligation services and commercial or added value service, especially in tariff policy stipulated by the PSO operator and another business actor.
- f. The postal service draft bill shall include the innovations and developments in the particular business, particularly in the integration of commercial postal service and logistic service. It is well understood that the integration of postal service and logistic service will be able to improve the efficiency in the supply chain, thereby leading to a better quality service to consumer with a competitive tariff.

Basically, some competition issues arises in postal service business sector, i.e. the vertical integration, access to postal network (by interconnection) and predatory pricing. To address these issues, the codification of the draft bill should accommodate a fair business competition as amended in the Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Competition.

In its latest development, the KPPU's advice and opinions have been considered by either the government or the House of Representative in the discussion on the postal service draft bill.

8. Advice & Opinion on the Palm Oil Plantation Policy

Many things to be put in order in the oil palm industry in order that the crude palm oil industry will develop as in the expected direction by accommodating the principles of fair competition.

KPPU has provided advice and opinions as below:

- a. The enactment of the Ministerial Regulation Number : 26/Permentan/OT.140/2/2007 on Guidelines for Plantation Business Permit, which requires a palm factory to meet at least 20% of its Fresh Fruit Bunch from its own plantation, has imposed a barrier to the other palm factory which is unable to fulfill such 20% requirement due to limited plantation area. As stipulated in Law Number 18 Year 1999 on Plantation Business, a palm factory is not obliged to have its own plantation area, KPPU has therefore suggested the Ministerial Regulation be annulled.
- b. The partnership between the community plantation as the supplier of fresh fruit bunches and a palm factory as the buyer has showed an unequal bargaining power, despite of the fact that the community plantation has managed 35,58% of the total national palm plantation area. Their dependency on the palm factory is very high. As a result, the market balance is more controlled by the palm factory as the nucleus rather than the farmers as the plasm who produce the fresh fruit bunch. Therefore, the partnership format between the suppliers and palm factory shall comply with the prohibition of monopolistic practice as stipulated in Law Number 5 Year 1999.
- c. The Regulation of Ministry of Agriculture Number 395/Kpts/OT.140/11/2005 on Guidelines for Setting the Price to Buy Fresh Fruit Bunch from Farmers is technically intended to strengthen the bargaining position of the small farmers (plasm) in gaining a normal selling price. In practice, the policy has been abused to set a fixed buying price of bunches produced by the company-supported farmer or self-support farmer. Those practice tend to lead to price fixing that contradicting the No.5/1999 Plantation Business Law. Therefore KPPU suggests that the technical department or the government agencies which are authorized to enforce the provisions stipulated in the Ministerial Regulation Number 395/Kpts/OT.140/11/2005 not to misuse the regulation as an instrument to implement the price fixing.
- d. The large scale private plantation companies have dominantly controlled the national oil palm plantation areas. However, the productivity of the companies are still much lower than other state-run plantation companies which is relatively in proportion to the overall community plantation production. This fact reflects an inefficiency area control, the Government shall therefore review need to further evaluate the issue by keeping a close coordination with the technical department and related government agencies.

KPPU suggests that the competent government agencies enforce the operational requirements as stipulated in the Regulation of Minister of Agriculture Number 395/Kpts/OT.140/11/2005 and not misuse the instrument implement a price fixing.

9. Advice and Opinions on the Operation of Roll On–Roll (RoRo) Container Ships at Batam – Singapore route.

The operation of Ro-Ro ships at the Batam and Singapore route has currently yet to accommodate the policy on transportation sector. Therefore the business practice has potentially caused an unfair business competition and imposed an entry barrier to other national business actors interested operating the Roro ships across the Batam-Singapore route.

The basic problem regarding the Roll on Roll vessel operation is as follow.

1. Until now, no bilateral policy made between the Government of the Republic of Indonesia and the Government of the Republic of Singapore as a legal basis that provides for the cross-shipment between the two countries. The existing legal basis is a Memorandum of Understanding between two countries on economic cooperation and the Decrees of Minister of Trade, Minister of Finance and Minister of Communications. The absence of the legal basis has become an entry barrier for any national business actors interested in engage in the transportation service business, namely Ro-Ro ships system. The barrier is embodied in a condition of no warranty in the viability of transportation service with the Ro-Ro system. In addition, Indonesian ships are frequently denied to enter Singapore seaport for a reason that the Indonesian ships chassis do not meet the standard specified by the Singapore port authority.
2. High economic cost is found at the seaports in Batam Island with regard to the operation of the Ro-ro ships. There are costs which are not in accordance with the national standard and may be categorized as an illegal collection for the revenue of the local government of Batam.

With regard to the above issue, KPPU has provide the following advice and opinions :

1. KPPU suggests that the Government of Indonesia enters into a bilateral agreement with the Government of the Republic of Singapore on such arrangement issue. The agreement shall comprehensively cover all relevant issues in order that national business actors will no longer be hesitant in actively participating in the transportation service using the Roro ships.
2. The agreement shall also encourage a fair business competition and avoid a high cost economy in the transportation service business.

The Government of Indonesia has officially responded to the KPPU's advice and opinions by virtue of a letter sent by the State Secretary, Number B-16/M.Sesneg/D-4/01/2008.

It is stated in the letter that the Minister of State Secretary has asked the Coordinating Minister for Economics to discuss on the advice and opinions provided by the KPPU as a bilateral agreement on Economic Cooperation in the Island of Batam, Bintan, and Karimun has been signed with the Government of the Republic of Singapore on June 25, 2006. The result of the discussion is to be reported to the President through the Minister of State Secretary.

In the letter, the Minister State Secretary said that the policy to regulate the Ro-ro ships operating across the Batam-Singapura route has been accommodated in the Framework Agreement between Republic of Indonesia and the Government of the Republic of Singapore on Economic Cooperation in the Islands of Batam, Bintan, and Karimun.

10. Advice and Opinions on Construction Service Policy

Most of the reports on the alleged violation of Law Number 5 Year 1999 sent to KPPU relate to the construction services. Based the frequent reports, it can be assumed that the root problem in the construction service industry is the nonconductive policy.

Related to the above stated policy, KPPU has provided the following advice and opinions :

1. The regulation in the construction service industry shall be improved to avoid any distortion to the implementation of Law Number 18 Year 1999. The most important issue need to be addressed is the evaluation of the structure of the Construction Service Development Institution (LPJK) which may be filled by the business actors. Therefore, the government needs to encourage an active participation of other more-independent member such as government entities and academia /expertise.

2. It is expected that the Government will enact a regulation to restructure the professional certification process at the LPJK to evolve to be a selection process that will encourage and create a high competent business actor and professional association.

Considering that the root of the problem in construction service industry is the structure of the LPJK, therefore for a long term, KPPU recommends that the government change the institutional structure by positioning the LPJK as a formal state institution with a sole role of regulator in the construction service industry. This structure will set out independency and avoid interest conflict among the LPJK's board members. The structure change can only be done by amendment the Law Number 18 Year 1999, therefore, KPPU recommends that the government prepare a draft bill on the amendment to Law Number 18 Year 1999.

Until now, no formal response received from the government regarding the matter. However, the Ministry of Public Works has frequently involved the KPPU in the socialization of a fair business competition in the construction service industry.

11. Advice and Opinion on the Airport Taxi Management

The airport taxi management has developed into a monopoly practice by certain business actor, with a potential of dominant abuse by posing high tariff over a poor service quality. Meanwhile, the KPPU's review shows that a transparent competition can be implemented in the airport taxi management by giving an opportunity to other business actors having a competency in managing the airport taxi.

KPPU has undertaken some matters as below:

1. Specifically, KPPU has established a coordination with the Ministry of Communications as the regulatory body, in evaluating the possibility of taxi management reform, from a monopolistic practice to a fair competition. Based on the coordination, KPPU finds that the airport taxi management is fully under the control of the airport management authority, namely PT. Angkasa Pura I and PT. Angkasa Pura II.
2. KPPU has carried out a persuasive approach to PT Angkasa Pura I and Angkasa Pura II in reforming the management system by offering an opportunity for other business actors to participate. The result of this persuasive approach is quiet satisfactory. The airport taxi management has been offered to other business actors at the Cengkareng Soekarno-Hatta Airport and Polonia Medan Airport. However, the taxi managements at other airports is still engaging a monopolistic practice, despite of the fact that a fair competition has been gradually implemented. The principles of a fair business competition has not fully been adopted, such as in the selection procure of the taxi company.
3. Regarding the airport management by business actors which is affiliated with the Indonesian Armed Forces (TNI), as some airports are developed in a civil enclave area belong to TNI, the KPPU has taken an effort to establish a coordination with the Ministry of Defense, by issuing an invitation letter to the Minister of Defense. In the letter, KPPU offers an approach to solve the problem of the monopolistic practice by certain business actor that has institutional relation with the Armed Forces. Unfortunately, until today, no formal responds received from the Ministry of Defense.
4. In a further effort to find the solution, KPPU has invited all airport stakeholder from all over Indonesia to a public hearing session. In the public hearing session, KPPU has emphasized that an airport monopolistic practice is not in line with the principles of fair competition as stipulated in Law Number 5 Year 1999. Therefore, a management reform needs to be done as to offer the opportunity to other business actor which is competent in taxi management. Unfortunately, this

effort has not generated an optimal result as well.

Considering the worsening condition in the airport taxi management and no actual effort taken to reform the management, KPPU has then monitored any potential of misuse of the monopolistic rights in the airport taxi management. Based on the result of the monitoring, KPPU finds that there is strong indication of monopolistic practice at some airports. This presumption of airport taxi management monopolistic practice is included in the preliminary examination as an initial step for a law enforcement.

Considering the current trend and lack of actions taken by the related government authorities to improve the airport taxi management system which should promote a fair competition in appointing the business actor which is competent in providing an excellent service with competitive price, KPPU is in the opinion that the government should take necessary measures to establish a policy which promotes a fair business competition in the airport taxi management sector.

If the Government is willing to get a detail and comprehensive information from KPPU, the latter is ready to have hearing session regarding the case.

2.3. REVIEW OF INDUSTRIAL AND TRADE SECTOR

In order to support the competition-policy harmonization program for the purpose of regulatory reform, KPPU has promoted 4 (four) activities of business competition review on industrial and trade sectors. In general, the business competition review on industrial and trade sector is intended to identify business climate in certain industrial and trade sectors. The identification of business climate is implemented through several approaches including SCP (Structure Conduct Performance) approach. The review result in general will be used as internal input for the KPPU to implement two main activities namely enforcing the competition law and providing advice and opinions to the government. The review result by the KPPU can be socialized to other parties outside the KPPU if considered necessary to support the socialization activity and or the advocacy of competition policy to KPPU's stakeholders.

According to commission meeting resolution, there are four selected themes to be reviewed in 2007. These are:

1. Business Competition Review on Telecommunication Sector;
2. Business Competition Review on Retail Sector;
3. Business Competition Review on Rice Sector; and
4. Business Competition Review in the Mapping of Indonesian Industrial Structure.

The background for the selection of the four review themes is by considering several criteria including the fact that these relevant sectors constitute strategic sector and or related to public service. Some other considerations are the review theme must be in synergy with economic development program promoted by the government.

The summary of some studies are as follows:

1. Business Competition Review on Telecommunication Sector

Rapid development of telecommunication industrial sector nowadays is due to the fast-changing telecommunication technology running together with information technology. It seems that the

government itself always makes efforts to issue policy which is in line with the technological development. However the rapid change has made the process to alter the management into full competition seems run improperly. Law Number 36 Year 1999 concerning the Telecommunication and Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition explicitly express that the management of Indonesian telecommunication industry will be implemented pursuant to competitive model (multi-operators). Both laws have brought change to Indonesian telecommunication industry by the emergence of competition serving as management mechanism in telecommunication industry. It has opened opportunity for telecommunication business actor to manage their business more seriously.

On the beginning of the review, various telecommunication technologies are defined including basic principles of telecommunication and telecommunication network system. The discussion is continued by introducing transmission media technology start from copper wire up to the use of satellite. There are also discussion on application and trend of technological development in the future as well as the impact of regulatory change. The regulation that will regulate telecommunication sub-sector should consider the capability of IP technology which enhances the complexity of telecommunication network yet providing service efficiency. The regulation to be applied should consider the development in the future as well as considering the technology implementation on existing network (network legacy). According to the analysis on this part, illustration will be obtained which defines telecommunication facility to support the complexity of competition. Various telecommunication operators which are based on this facility will be compete each other in telecommunication industry, start from cable based operators to frequency, satellite and IP based operators.

The core of this review is the mapping of telecommunication industry structure in Indonesia. The trial mapping is performed based on service segments provided by the operators namely fixed telephone (local connection, long distance connection, international connection) and cellular telephone. For cellular segment, the discussion includes the profile of business actor and operator's performance and behavior. In general, the market structure of telecommunication industry is very concentrated, even the market of International Connection and Long Distance Connection has duopoly market structure dominated by Telkom and Indosat. The structure of Indonesian cellular market constitutes oligopoly market structure with CR₃ value of 98.9 % and HHI of 4450. Telkomsel is dominating the cellular market with market share of 59.6%. For satellite service, there were 55 registered business actors in 2006 while for internet service providers there were 232 business actors in 2005.

The next discussion is regarding telecommunication regulation applicable in Indonesia. Telecommunication Act liberalizes the monopoly rights of Telkom and Indosat as executing agency responsible to perform domestic and international telecommunication services. In order to increase competition, the Telecommunication Act specifically prohibits monopolistic practices and unfair business competition among telecommunication operators. To prevent monopolistic practices and unfair business competition, the Act also regulates network interconnection. Interconnection cost should be agreed by every network provider and the calculation should be done in a transparent manner. This is further regulated in the Ministerial Regulation of Communication and Information No. 8/2006 which obliges cost-based interconnection pattern to all network operators and telecommunication services. In addition, there is other regulation that has been issued by the government regulating the implementation related to Telecommunication Act.

A comparative review is also performed in this review against foreign competition policy in other countries such as the USA, Denmark, Malaysia and Singapore. The objective is to perform benchmark analysis with these countries in terms of competition monitoring, industrial management, regulatory institution and competition regulations. The result of comparative

review indicates the presence of new paradigm in telecommunication business. The technology is considered as “public utility” instead of “market driven industry”. Each country (USA, Denmark, Malaysia and Singapore) has one telecommunication company serving as the backbone of telecommunication system in their respective country. Such company is managed by the Government through share ownership (but it is not State Owned Company) or constitute national company (not foreign company). Other companies freely compete with this company based on service or facility competition. The regulators in all benchmarked countries act as IRS (Independent Regulatory Body).

Business competition analysis includes the introduction of competition policy concept in telecommunication sector. Some important concepts defined are market definition, market power, barriers to entry and essential facilities. In company which possesses large market power, there is a tendency to commit anti-competitive behavior such as misuses of dominant position, refusal of cooperation relating to essential facilities, Cross-Subsidization, Vertical Price Squeezing, Predatory Pricing, Misuses of Information, “Locking-In” Customer, Tied Sales & Bundling and Restrictive Agreement. Every form of anti-competitive behavior frequently occurs in telecommunication sector and different remedial measures need to be taken. Some examples of domestic cases are given as the illustration to complement the discussion. One of Bundling samples committed by PT Telkom is Telkomnet instan. PT. TELKOM sells internet retail service in the form of telkomnet instan at the price of 100 rupiah per minute, while the competitors serve their customers by using similar facility with selling price composed by two components that must be paid by customers, namely the cost for using PT TELKOM network and the cost for accessing the internet.

The historical development of telecommunication industry in Indonesia indicates the characteristics of oligopoly market structure. Oligopoly is not always bad, as this structure occurs naturally like in other countries. Other factors causing the formation of oligopoly market are the need of large investment, high technology, human resources with specific skill and particularly the fact that since the beginning, government policy grants monopoly rights to business actors.

In this review, some points are recommended including those relating to the regulation of full competition that needs to be developed and must fulfill the principle that government role has to be as minimum as possible yet ensuring that the business actors have equal chance and opportunity. It is necessary to issue regulation that regulates competition in telecommunication sector with implementative characteristic and regulate competition practices.

2. Business Competition Review on Retail Sector

Development of retail industry in Indonesia is faster compared to the development other real sectors. In one side, the development increase the competition in this retail sector, particularly the competition among modern retailers. However, in the other side, the rapid development of retail industry has the potential to raise problems, considering that the presence of large retailers with strong capital support, outstanding services and broad network is deemed interfering small retailers such as existing traditional markets. With huge capital power, these modern retailers have larger bargaining power compared to their suppliers.

The review relating to retail sector is focused to understand the market strength of large retailers as buyer in their relationship with the supplier to be sold in hypermarket which is focused on the following:

- The mapping of relationship pattern between supplier and retailer in several products representing competition condition at modern market level.

- The mapping of business actor in their distribution pathways as well as the mapping of competition occurs in the said industry.
- The impact of competition at vertical line against horizontal line competition.
- The potential of competition problems at vertical and horizontal sides.
- The identification of relevant regulation.

From the field review, the following points are obtained:

1. The relation between supplier and retailer on several products which represent competition condition at modern market level indicates that modern market has stronger bargaining power due to wider market outreach.
2. The domination of retailer in term of market outreach becomes main consideration of suppliers in distributing their products either in traditional or modern market. In modern market, supplier considers the potential of market outreach which starts to grow due to the increase of modern market growth.
3. The mapping of business actor in their distribution pathways as well as the mapping of competition occurs in the industrial line.

From result of survey against 53 companies which produce vegetables, fruits, instant noodle, biscuit, mineral water and so fort (electronic, food and household needs), it can be concluded as follows:

- a. Whereas several companies run their business in these fields have position in marketing chain as producer as well as supplier with average business scale which is moderate and large.
- b. In general, company which runs its business in agricultural field (vegetable and fruit products) has averagely 2 marketing channels namely traditional and modern markets. Survey period of 2003 - 2007 indicates that the selling percentage of company products in traditional market is decreased, while the selling of company products in modern market is increased.

The motive for company to supply their product for modern market is underlain by several factors including the fact that modern market constitutes the biggest channel to gain profit for the company, strengthening company's brand image and product, profitable marketing strategy, promising higher profit as the buying power of modern market's consumers is relatively stronger, to expand as well as to seek for larger market opportunity by reaching high class consumers. Besides the profit gained by supplying their products to modern market, there are also obstructions such late payment, the presence of written or unwritten agreement that tends to disadvantage the company in terms of relevant cost provision such as discount, up-front fee, slotting allowance and service level.

Meanwhile, traditional company is better in terms of quick payment, the absence of agreement that disadvantages the company compared to modern market, accessible for low class community, products are easy to sell and there is usually no incriminating procedure and easier to reach middle-low market segment. Meanwhile, the disadvantage of traditional market includes relatively insufficient facility and infrastructure, limited market distribution pathway that influences prices and decreased selling.

4. The potential of business competition problems at vertical and horizontal sides.

There are two types of main supplier in retail trade industry in Indonesia, namely:

- (i) pure supplier which enter into contract with producer.
- (ii) supplier which also acting as producer or company under the hierarchy of subsidiary or under the same holding company.

There are 38.9% among company samples constitutes pure supplier which enter into contract with producer (principal) to sell their products. Main behavioral difference between both companies is supplier's authority in determining price and the quantity that can be sold by them to retailers. Competition pattern of horizontal line among suppliers, vertical line between supplier and retailer as well as among retailers from equal and different classes are influenced by both types of supplier. The potential of other problems from certain products is particularly related to agricultural products, there is tendency of vertical integration of the retailers into supplier function or even producer that will reduce the competition level among retailers horizontally. There are certain facilities like capital and nursery provided by certain retailers to producers and or supplier as their efforts to reinforce vertical relationship between them and the retailers. This has a potential that will harm the sustainability of agricultural industry with low to medium scale capital structure and thus threaten competition patterns of horizontal line among retailers through price fixing and supply availability.

5. The impact of competition at vertical line against horizontal line competition.

Suppliers are generally satisfied by building business relationship with retailers and agree to maintain the business relationship for unlimited period of time. Meanwhile, from pricing strategy and discount, it is obvious that there is a tendency for modern retailer to have stronger influence compared to traditional retailer. From price determination against suppliers, it is obvious that price determination position owned by modern retailer is larger compared to traditional retailer. Similarly, discount strategy against supplier also indicates that modern retailers have more dominant discount strategy.

At horizontal level, there are 96.8% suppliers which do not possess agreement for not selling to other competitor retailers in the same market after entering a contract with certain retailer. This indicates that in horizontal competition, retailers do not force any provision to monopolize supplies. Meanwhile, price competition at horizontal level indicates that modern market always offers lower prices for the entire types of sampled commodity. The composition is as follows, hypermarket determine prices 4% below supermarket while traditional market 22% above supermarket's prices.

In retail trade sector, there are two main issues relating to competition. Firstly, modern market has wider economic scale compared to traditional market that enables them to compete either among modern retailers or with traditional retailers. Secondly, the capability of modern market in term of capital compared to traditional market may raise stronger bargaining position against supplier, that enable them to gain negotiation advantages compared to traditional market in purchasing products base prices.

Considering that the problem arises is the inability to compete shown by small business, there are two main issues that must be implemented by the Government:

1. To secure small scale retailer and to empower small business in order to be able to compete with modern retail business. This issue is currently managed by the Government in the form of Presidential Regulation No. 112/2007 that has been issued on 27 December 2007. However, among various complaints brought forward, it is obvious that the main issue is weak law enforcement against various regulations intended to regulate retail sectors, such as zoning regulation

(Regional Layout), open hours, and so forth. Therefore, law enforcement issue constitutes the most important part to be monitored together.

2. The government is also obliged to empower retail small business so that they will be able to compete with modern retail business. Various trainings, capital addition, access to credit scheme, supply distribution strengthening, management assistance, the layout of selling location and other forms of reinforcement.

3. Business Competition Review on Rice Sector

Rice commodity has very important role for the living of Indonesian people regarded from various aspects such as economy, workforce, environment, social, culture and politic. In fact, rice demand is always continuous and inelastic, therefore the government always regulate national rice economy. Several problems relating to distribution pathway start to appear particularly after the revocation of sugar and rice import trade regulation in 1999 indicated by increasing discrepancy between rice price at consumer level and unhulled rice price at farmer level.

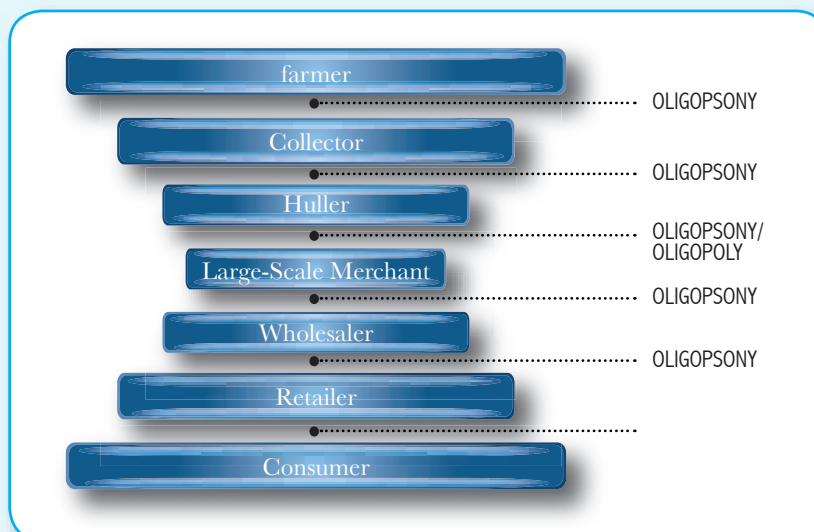
The distribution pathway issue has encouraged the KPPU to perform the review on rice sector industry which is focused on rice industry analysis in Indonesia observed from business competition point of view. Conceptual framework of the review uses industrial structure analysis, regulation analysis, distribution pathway analysis and relevant industrial performance in the perspective of efficiency and contribution toward national economy. The review is performed by using the perspective of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

The area scope of the review comprises North Sumatera, Lampung, West Java, East Java, South Sulawesi and DKI Jakarta. Data used in this research consists of primary and secondary data. The secondary data is collected from central and regional institutions while the primary data is obtained from field survey and Forum Group Discussion.

DISCUSSION RESULT

In general, marketing pathway of rice - unhulled rice is as follows: rice farmer --> collecting merchant--> rice huller --> wholesaler --> retailer --> consumer. Each involved marketing institution has important role to increase product added value which in turn increasing consumer satisfaction.

Market structure at every level of rice and unhulled rice trading distribution is not competitive, however it can be categorized in oligopsony, oligopoly and monopolistic market structures (as illustrated by the following figure):



MONOPOLISTIC

Such market structure enables farmer and consumer to have weak position while huller owner and rice merchant obtain dominant position. Their positions is strengthened by the presence of natural barrier-to-entry such as capital and technology domination, as well as the presence of unhulled-rice purchasing policy by the Bulog and the distribution of LUEP (Village Economic Business Institution) fund intended to such business actor. The domination committed by huller owner and large scale merchant in rice trading enable them to act as price maker.

Viewed from product homogeneity along the trade management chain, it is obvious that from farmer level up to collecting merchant level, their commodities tend to be homogenous. Meanwhile, from RMU up to retailer level, the commodities tend to be heterogeneous. It indicates that in the downstream, the products dominated by the actors of unhulled-rice and rice trade management tend to be more heterogeneous.

Furthermore, viewed from barrier-to-entry aspect, the barrier to enter the market is not only present at huller owner and big-scale merchant level, as it also present at collecting merchant level. It is not easy to be a collecting merchant. In addition to capital, becoming a collecting merchant requires a strong network with RMU owner who usually provide capital loan.

Several indicators of business behavior indicate that there is potential for unfair business competition in rice trading. Collusion among dominant business actors can not be proved explicitly, however there are some unwritten agreements that lead to unfair business competition. Through informal meeting, price agreement usually occurs among collecting merchant and huller owners. The motive to store unhulled-rice committed by RMU owner and motive to store rice committed by big-scale merchant which sometime take more than 3 months should be suspected as it does not only serve as their reserve for production process and during famine season, as they use the rice reserve to gain more and more profit. Other behavior indicating unfair business competition is the occurrence of vertical and horizontal integration committed by big-scale merchant and RMU owner. A business actor has several businesses with various names or there is close family relationship among business actors, therefore they have potential to dominate the market through horizontal integration committed by them. In addition, they commit vertical integration where big-scale merchants also own RMU, extensions in the form of collecting merchant as well as wholesaler or they even have outlet in Cipinang central rice market. There are also big-scale merchants who own rice flour processing factory, for instance in Lampung and South Sulawesi.

Marginal analysis indicates that rice trading has not been run efficiently, although its marketing chain is relatively short. In addition to relatively high marketing margin, the margin is not distributed evenly. Except in South Sulawesi and Lampung, marketing institutions which enjoy profit margin the most are huller owner as well as with the biggest B/C ratio. In South Sulawesi and Lampung, big-scale merchant can enjoy relatively high profit margin so that they can gain biggest B/C ratio.

Through statistical test of market integration it is obtained that market relationship between producer and wholesaler is not integrated for long term period of time. It is obvious from IMC value > 1 for each region, except Medan (IMC = 0.926). Meanwhile, for short period of time, the relationship between producer and wholesaler is considered integrated (positive and significant b_2 value). Relationship between wholesaler and retailer is integrated for long period of time in Medan and Bandung, while other regions do not experience integration. For short period of time, all regions experience integration except Jakarta region (despite significant, the b_2 value is negative). The relationship between producer and retailer for long-term period of time is integrated (IMC < 1) except for Medan region. Meanwhile, the entire regions experience integration for short period of time.

Price transmission elasticity shows that the presence of uncompetitive market indication is also indicated by asymmetrical condition of price movement response start from farmer level up to consumer level. This unfair market competition is indicated, for example by, the fact if price is increased at retailer or wholesaler level, then the price at farmer level will also increase but with lower percentage compared to the situation when the price at retail or wholesaler level is decreased. From market point of view, it means that farmer's bargaining position is not equal to either wholesaler or retailer.

If comparing domestic rice price and foreign rice price, it is obvious that there is no significant correlation. Therefore, foreign price signal does not significantly influence domestic rice sector. It is proved by the fact that even domestic rice price is 30% higher compared to foreign rice price however it does not cause the decrease of domestic rice price.

CONCLUSION

The indication of unfair business competition potential in unhulled rice-rice distribution from farmer up to consumer level is shown by the following:

- (1) Marginal analysis indicates that rice trading has not been run efficiently. In addition to quite large marketing margin, it is not distributed evenly among marketing actors. Business actor with strong capital and dominate the market, particularly huller owner and big-scale merchant, receive highest profit margin in rice trading.
- (2) The result of market integration analysis shows that at the entire review locations, the price of dry unhulled rice (GKP) at farmer level is not integrated with the price at retailer level, meanwhile the rice prices at wholesaler and retailer levels are integrated. The price increase at wholesaler/huller owner level may occur without necessarily increase the price of unhulled-rice at farmer level.
- (3) Some indications of unfair business competition found in the review regions include (a) Some business actors dominant in rice trading either huller owner or big-scale merchant, in addition to inter-regions trading, they also perform vertical integration start from farmer or huller level up to rice merchant, (b) Horizontal integration also occurs among these dominant business actors, in addition to knowing each other, there is also family relationship between them, (c) The ownership of large scale business facility, particularly warehouse, enable them to commit unhulled-rice/rice piling-up, (3) Collusion among these dominant business actors can not be proved explicitly, however there are some unwritten agreements that lead to unfair competition, and (d) The establishment of rice businessmen association and rice huller association which are only followed by big business actors open opportunity to build agreements.

RECOMMENDATION

- (1) Monitoring need to be performed against business actors, by focusing on the possibility of unfair practices committed by huller business actor in collecting unhulled-rice from farmers as well as against rice stock domination committed by every trading actors, particularly at wholesale level during non-harvest season where the price at consumer level tends to increase.
- (2) The policy to distribute LUEP (Village Economic Business Institutions) fund in cooperation with Bulog, in term of unhulled-rice/rice procurement, needs to be further reviewed with potential impact against the strengthening of oligopsony market structure of huller business within unhulled rice-rice marketing pathway.

4. Review on the Mapping of Industrial Structure

The dynamic of various micro-macro economic variables is getting increased recently, in line with the fluctuation of national and international economies. The increase of volatility is predicted to contribute significant impact against real sector, particularly industrial and trade sectors in Indonesia. The phenomenon accompanies various efforts by the Government after economic crisis of 1998-1999 in order to perform policy deregulation and industrial and trade sector restructuring to attain more healthy, efficient and competitive economic system to support the target of sustainable economic growth.

As an institution that monitors business competition, it is important for the KPPU to implement a review on industrial and trade structure in Indonesia after the economic crisis. Through the review, it is expected that the KPPU obtain information regarding the dynamic of industrial structure in Indonesia as well as its performance. In addition, by performing this review, it is expected to obtain various information reflecting business competition climate in industrial and trade sectors.

This review will be focused on national industrial sector by taking 15 samples of strategic industrial sectors (core) that have been determined by the Ministry of Industry and by referring to National Industry Development Policy (2005). Industrial structure and performance analysis is performed against these strategic industrial sectors by using secondary data (the statistics of medium-large industry from the Statistic Central Bureau/BPS) and input-output matrix from BPS year 2000. To complement the review, specific interview method is also performed in order to elaborate the policy on the development of regional superior industries (South Sulawesi and West Java provinces) with cluster model.

Analysis

Based on the result of statistical data analysis and market structure parameter, there is an indication that strategic industry in Indonesia has tendency of fluctuating market concentration. Strategic industry in Indonesia also has relatively large market barrier with increasing trend (dynamic). From performance point of view, various indicators show fluctuating performance with PCM (Price Cost Margin) value ranges from 31 - 41% while the average capacity utilization ranges from 73 - 77%.

Based on data analysis result by using time series and cross section method, it is obtained that there are three trade and industrial sectors with quite significant anti competition potential. The three sectors comprise pulp & paper, tobacco and sugar. By referring to several parameters as follows: market concentration ration, entry barrier ration and performance ration, the three sectors indicate relatively more dominant values, either inter-sectoral or inter-time, compared to some other sectors.

To measure the contribution of the three sectors to economy, multiplier analysis is used as well as the contribution to PDB. With regard to multiplier values, sugar, tobacco and pulp & paper have multiplier contribution to income and output larger than 1. Tobacco has multiplier output of 1.4534 and income multiplier of 2.022 with average contribution to PDB of 3.39%. Pulp and paper has multiplier output of 1.6099 and income multiplier of 1.76 with average contribution to PDB of 3.631 %. Meanwhile, sugar has multiplier output of 1.98 and income multiplier of 4.2 with average contribution to PDB of 0.53 %. Therefore, it can be said that the contributions of the three sectors, observed from multiplier side (output and income), as well as contribution to PDB are relatively high.

Based on upstream-downstream linkage analysis, the majority of agriculture based industries obtain raw material from agricultural or plantation sector. In addition, the roles of trade service and transportation service sectors with regard to upstream or downstream segment are relatively significant. Index linkage backward analysis indicates value above average national industry (>1), it

means that the backward linkage or the use of national industry as input for the concerned sectors is relatively high. Meanwhile forward linkage index has value below the average national industry. It means that forward linkage or the use of output of the concerned sectors for other industries is relatively low. It may serve as indication that the output of industrial sector is intended more for consumption (final) and export purpose, than to be the input for downstream sector.

Particularly for sugar, backward-forward index indicates values between 1.25-0.87. It implies that sugar processing depends a lot on upstream sector (sugarcane plantation) and the output is intended for final consumption purpose (at the portion of +/- 66%) and export (+/- 8%). For tobacco, backward-forward index indicates values between 1.25-0.72. It implies that tobacco processing industry depends on upstream sector (tobacco plantation) and the output is intended for final consumption purpose (+/- 84.8%) and export (+/- 4.5%). For pulp & paper industry, backward-forward index indicates values between 1.04 - 1.03. It implies that the upstream (forestry-pulp) - downstream (paper industry, printing, etc.) correlation in pulp and paper sector is relatively strong. The portion of final consumption is relatively low (+/- 6.5%) while the export portion is relatively high (+/- 48.15%). Petrochemical industry shows very strong forward integration (2.62) which indicates that petrochemical output constitutes important input for downstream sector. The portion of final consumption is relatively low (+/- 16.62%) while the export portion is relatively high (+/- 28.17%).

In policy perspective, the development of national industry uses two approaches. The first approach is top down by determining strategic industry (core) and supporting industry to be developed (National Industry Development Policy, 2005). The second approach is bottom up, namely policy for the development of regional superior industry based on cluster. The example of second approach is GERBANG EMAS program (Gerakan Pembangunan Ekonomi Masyarakat / Community Economic Development Movement) promoted by the provincial government of South Sulawesi. Similar program is also performed by the provincial government of West Java and some other regions. In general, the provincial government will determine regional superior industries deemed proper to be developed. Some factors to be developed includes business scale (priority for Small Business Enterprise) and workforce absorption. Based on the consideration, several selected sectors represent agricultural sector (resources based), handicraft, soft food-drink and some other home industries. Particularly from West Java province, the provincial government select industrial cluster which has been implemented traditionally such as textile product, footwear, furniture and automotive parts as priority besides selecting prospective and innovative industries such as Telematics industry and Creative industry.

Sufficient information to evaluate bottom up approach has not been obtained. Until today, coordination issue as the impact of regional autonomy format has caused the Provincial Government and Regency/Municipality Government to frequently obstruct the implementation of industrial development program that has been stipulated. In addition, integration between cluster with inter-region characteristic and coordination with central government cannot be implemented optimally. It can be seen from the policies of central/regional government of Papua to develop fermented cacao industry, while the development of cacao commodity in South Sulawesi is still relatively overlooked.

Conclusion

1. The industrial structure (strategic) in Indonesia indicates dynamic pattern observed from the view of market structure, entry barrier and performance. From various parameters of structure and performance, pulp & paper, sugar and tobacco industries have relatively low competition climate compared to other strategic industrial sectors;
2. Industrial sectors of pulp and paper, sugar and tobacco have relatively high multiplier income and output ($\times 1$). In addition, the three sectors have relatively significant contribution to the PDB;
3. The roles of agricultural and plantation sectors are relatively high for downstream strategic industries. In addition, the roles of trade service and transportation service sectors also play significant portion in upstream-downstream linkage for respective sector;
4. Backward linkage of strategic industries in Indonesia is averagely strong ($\times 1$). Meanwhile, the forward linkage is relatively low or below average ($\times 1$). It implies that the majority strategic industry in Indonesia constitutes downstream sector, which depends a lot on inputs from upstream sector and the final output is consumed or exported.
5. The approach of industrial development policy either top down (national policy) or bottom up (regional policy) may produce economic synergy as long as performed in a coordinated and integrated manner. In its implementation, either inter-regional coordination or integration of industrial cluster is relatively hard to perform.

Recommendation

1. As the pillar of future industrial development, the KPPU needs to periodically review various strategic industries determined by the government to ensure that business climate in every sector is properly maintained. In this case, specific analysis needs to be applied on several sectors, such as petrochemical which output serves as input for several important industries such as fertilizer, plastic industry, paint, etc.;
2. Monitoring needs to be performed against sugar, tobacco and pulp and paper industries, considering that various ratios of market structure, entry barrier and performance indicate that the competition in the three sectors is relatively low;
3. To improve economy efficiency, the KPPU needs to be focused against trade service and transportation service sectors which play quite significant role in the process of downstream-upstream industries linkage in Indonesia;
4. To encourage the process of industrial policies harmonization, either at national or regional level by using business competition as entry point of analysis. Therefore, the KPPU may contribute to attain effective competition policy in Indonesia.

2.4. DISCUSSION ON THE AMENDMENT OF LAW NO. 5/1999

This activity constitutes the follow up of KPPU activity in 2006. Until the end of 2007, the KPPU had scheduled intensive discussion with various stakeholders in order to complete the materials for the amendment of Law No. 5/1999, particularly the material which, according to KPPU experience, may obstruct effective implementation of Law No. 5/1999. These materials include those relating to the institutional of the KPPU and case handling procedures.

2.5. ARRANGEMENT OF IMPLEMENTATION GUIDELINE OF LAW NO. 5/1999

By the end of 2007, the activity to arrange the Implementation Guideline of Law No. 5/1999 has prepared 4 (four) guideline drafts, namely the guideline of Article 50 letter a concerning Exception of Agreement and Action in the Implementation of Applicable Law and Regulation, the guideline of Article 47 concerning Administrative Sanction, the guideline of Article 19 concerning Market Domination and the guideline of Article 25 concerning Dominant Position.

In the second semester of 2007, 3 (three) guidelines have been arranged, namely the Guideline of Article 26 concerning Double Positions, the Guideline of Article 27 concerning Shareownership, and the guideline of Article 50 concerning the Exception for Agency. It is expected that the Guideline Drafts can be completed by the end of this year so that they can be consulted to the public.

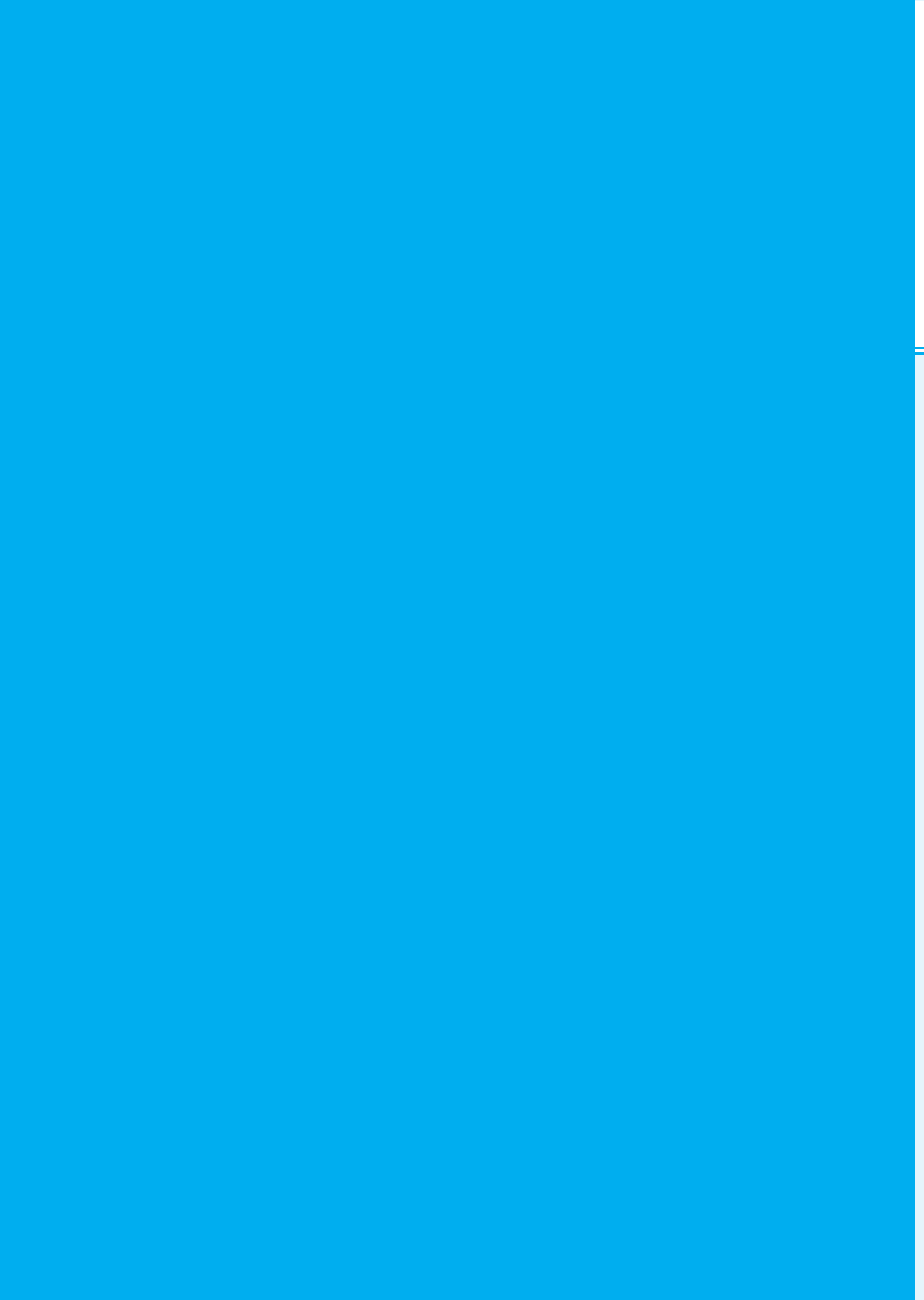


*Development
of Competition Law Enforcement*

Annual Report 2007

03

Chapter



Development of Competition Law Enforcement

Law Number 5 Year 1999 mandates that the main function of KPPU, in addition to the competition law enforcement, is to provide advice and opinions to the government with regard to the government regulation which is in contrary to the Law Number 5 Year 1999 (Article 35 point e). In the performance of its function in enforcing the business competition law and providing advice and opinions to the government regulations within the framework of regulatory reform, KPPU develops the following mechanism:

1. Identification of Industry with High Concentration Level

One of the KPPU's activities in supervising business competition in some industrial sectors is the preliminary identification of the industry with high concentration level. It is done because in such kind of industry, there arises a dominant position holder with greater market power which may lead to the violation of the fair business competition principles as stipulated in Law Number 5 Year 1999.

Law Number 5 Year 1999 defines a business actor as the holder of dominant position if it controls 50% of the market share for one business actor or 75% of market share for two or three business actors. The identification process is essential to give more clearly direction for the performance of KPPU's functions in strictly supervising the industries with high concentration.

2. Identification of Government Policies which Impact Business Competition

One of the crucial measures to be taken in performing its functions to provide advice and opinions to the government, KPPU also develops activities aimed at identifying policies and draft of policies of the government which are potentially in the contrary to the Law Number 5 Year 1999.

The identification process is done on a sustainable basis by monitoring the government policies in each industrial sector. KPPU gets the information from mass media, public reports or regulator issuing the policy.

By applying the tools specified by KPPU, an analysis is done on the potential violation of the policies of Law Number 5 Year 1999. Based on the analysis done by KPPU, there are three group of government policies which is potential to be in the contrary to the Law Number 5 Year 1999, as follows:

- 1) The first group is the polices which give a larger room to business actors with dominant position. This government policy tend to create an entry barrier to the competitors. In addition, abuse of the dominant position will be easily committed as it is protected by the policy.
- 2) The second group is the policies which facilitate agreement among business actors which is explicitly in the contrary to the provisions of Law Number 5 Year 1999.

- 3) The third group is the policies which represent the government intervention to the ongoing market mechanism. It arises among others in the form of commodity trade regulation or a regulation which limits the players to involve.

3. Monitoring of Business Actors

One of the efforts in enforcing the business competition law taken by KPPU is by monitoring business actors. The essence of the activity is to observe and analyze the behaviors of the business actors or group of business actors which possess significant market shares at certain industrial sector, either the control over goods and service or both. Structurally, the control of market share has been defined in Law Number 5 Year 1999, that is, if the business actor(s) controls the market shares of goods or service reaching the portion of 50% or more or two or three business actors or group of business actors control more than 75% of the market shares.

The main objective of the monitoring of business actors or group of business actors who control the market share as above stated is to monitor the behavior of the said business actors in order that they do not abuse their dominant position and do not lead to a monopolistic practice or unfair business competition. It is theoretically said and practicably proven that business actors with dominant position and act as a market leader has a larger opportunity and capability to control the market in unfair methods which will gradually cause adverse impact to the public. For example, consumers have to pay for a higher price than it should be for a certain goods or service.

The monitoring activity of business actors a lot of budget as KPPU shall conduct various survey, either on business actors or consumers. The surveys are greatly needed as a collection method of primary data in determining the market and market shares controlled by certain business actors. Having identified at least four largest business actors in a market for certain goods or services, maka then KPPU will monitor the attitudes of such business actors. In a monopolistic market, there is a general trend to create a entry barrier from the monopolistic business actors, while in a oligopolistic market, an agreement which is potential the principles of fair business competition is frequently made, such as production cartel, zoning and price fixing.

In addition from surveys, the data and information either raw and processed which are assessed as primary data are also greatly needed in monitoring the behaviors of the business actors. Secondary data may derive from any sources,, as far as its accuracy can be guaranteed and proven, such as statistical data issued by the government bodies or non-governmental organizations, primary data from individuals, field data obtained by KPPU itself. The secondary data are so arranged and processed that they become comprehensive data to which KPPU refers in improving the quality of monitoring of the business actors.

The monitoring results of business actors will not end with a report only, KPPU will follow up its findings. The result of monitoring which shows an early indication of violation to the provisions of Law Number 5 Year 1999, KPPU will handle the case on its initiative in order to maintain a fair business competition in Indonesia..

3.1. Enforcement of Business Competition Law

In addition to providing for the legal materials on business competition, Law Number 5 Year 1999 also sets out the procedure of case handling with reference to the competition law.

Formal provisions as stipulated in Law Number 5 Year 1999 contain the main subject matters, and KPPU as an institution established by virtue of law on business competition is mandated to supervise the implementation of business competition in Indonesia and prepare guidelines and/ or publications related to the law on business competition as set out in Article 36 point f of Law Number 5 Year 1999.

The founders of KPPU fully realize that the handling procedure of business competition cases as stipulated in Chapter VII on the Case Handling Procedure Article 38 through Article 46 of Law Number 5 Year 1999, is the main formal regulation on the business competition case handling which shall be further elaborated in order to eliminate misinterpretation on the provisions stipulated in the above stated Chapter VII.

In its development, it is felt that the Decree Number 05 is no longer sufficient to handle business competition cases in Indonesia. KPPU has received numerous constructive inputs from various parties, ranging from the reported party in business competition cases, academicians observing the business competition development and its law, advocates criticizing that the Decree Number 05 is less transparent and does not sufficiently met the due process of law), and other law enforcing officials such as judges who see some rooms in the handling of business competition cases by KPPU.

KPPU has the authority in investigating the alleged violation to Law Number 5 Year 1999 and making a decision as well imposing administrative sanction if the violation of the Law Number 5 Year 1999 is proven true. Nevertheless, the Commissioners of KPPU are in the opinion that the law on business competition is not to merely impose sanctions against the reported party in running its business, but to change the behavior of the reported party in managing its business by internalizing the principles of a fair business competition.

In the year 2006, KPPU issued the Commission Regulation Number Year 2006 on Business Competition Case Handling Procedure at KPPU (hereinafter referred to as Commission Regulation Number 1 Year 2006”) on the annulment of Decree Number 05 and took in effect from November 2006. The Commission Regulation is expected to give more attention to a correct law of procedure. The enactment of the regulation has produced an extraordinary development in business competition case handling by KPPU. The regulation among others introduces the “behavior regime” change in the enforcement of business competition law.

In the year 2007, the Commission Regulation is in the process of a transition and undertakes an implementation trial. The assessment is made on the capability of the regulation meeting the “justice” for all reported parties, so in the future, KPPU can decide whether to immediately establish the formal law of business competition case handling at KPPU or establish its implementing regulations only.

3.2. Monitoring of Business Actors

In monitoring the business actors, KPPU, in addition to monitoring the business actors which have dominant position in their market, but also the business actors who have allegedly violated the provisions stipulated in Law Number 5 Year 1999. The monitoring is done through persuasive approach, in addition to the efforts of law enforcement, in order that the said business actors is voluntarily willing to make changes to their business activities which are in the contrary to Law Number 5 Year 1999. Until now, the monitoring activities have resulted in a number of initiative cases as follows :

1. Alleged rate fixing of fumigation service of exported goods by Indonesian Pest Controlling Company Association (IPPHAMI).
2. Alleged vertical integration and market control in the inter-insular motor vehicle distribution market by PT Astra International Tbk Group.
3. Alleged tender conspiracy in the procurement of one-burner gas stoves conducted by the State Ministry of Small and Middle Scale Enterprises.

4. Alleged tender conspiracy in the procurement of cleaning service at PT. Angkasa Pura I.
5. Alleged monopoly, price fixing and area zoning in the taxi service management at Batam area.
6. Monitoring of Jack Up Drilling Tender at CNOOC.
7. Monitoring of discriminative direct appointment of subsidized fertilizer distributor by PT Kujang.
8. Monitoring of discriminative direct appointment of subsidized fertilizer distributor by PT Petrokimia.

Some monitoring activities are performed on the alleged monopoly, rate fixing and area zoning in the taxi service management at Hasanuddin (Makassar), Sepinggan (Balikpapan), and Ngurah Rai (Bali) Airports in order to change the business actors' business behaviors.

Meanwhile, the monitoring activities are also done on some business actors engaged in various sectors, among others, as follows:

1. Monitoring of the alleged cartel of group of certain business actors who control the procurement of local sugar.
2. Monitoring of alleged vertical integration conducted by PT. Astra International Tbk in the sea inter-insular transportation of motor vehicles.
3. Monitoring of alleged vertical integration in broilers husbandry industry in East Kalimantan.
4. Monitoring of alleged monopoly of fumigation service on imported goods in Central Java and DI Yogyakarta by the Usaha Kita Cooperative.
5. Monitoring of alleged monopoly of natural gas management by PT. Energy Equity Sengkang EPICS in South Sulawesi.
6. Monitoring of alleged discrimination and loss-sale by Astra Honda Motor.
7. Monitoring penguasaan gudang CDC di Pelabuhan Tanjung Priok oleh PT. Multi Terminal Indonesia.
8. Monitoring of alleged cartel by AKLI (Indonesian Electrical Contractors Association).
9. Monitoring of alleged monopoly on airport taxi management at Hang Nadim Airport.
10. Monitoring of alleged discrimination by Angkasa Pura I in the management of some ground handling facilities and other facilities at Ngurah Rai, Juanda, and Hasanuddin Airports.
11. Monitoring of alleged cartel by public road lighting factory.
12. Monitoring of alleged cartel in pharmaceutical sector.
13. Monitoring of alleged entry barrier practice by interconnection in telecommunication industry.
14. Monitoring on the rate fixing on goods and cargo handling at line 2 of Tanjung Priok Seaport.
15. Monitoring of alleged vertical integration in cooking oil industry.
16. Monitoring of alleged market control and misuse of dominant position in fertilizer distribution.

17. Monitoring of alleged market control in avtur supply at Juanda Airport, Surabaya.
18. Monitoring of procurement tender of medical equipment at Lumajang Regional Hospital.
19. Monitoring of taxi service at airports throughout Indonesia.
20. Monitoring of tender of cleaning service at PT. Angkasa Pura I.
21. Monitoring of tender held by State-run Electricity Company (PLN) for the procurement of generator turbine at Borang, South Sumatera.
22. Monitoring of procurement tender of contraception equipment at National Family Planning Board (BKKBN).
23. Monitoring of alleged abuse of dominant position of PD Pasar Jaya and Developer at Tanah Abang Market.

These monitoring activities are expected to increase the number of KPPU’s initiative cases, so it will not depend on the public reports and to improve its performance in supervising the business actors’ unfair business practices. The followings are details of the monitoring activities performed by KPPU in the year 2007.

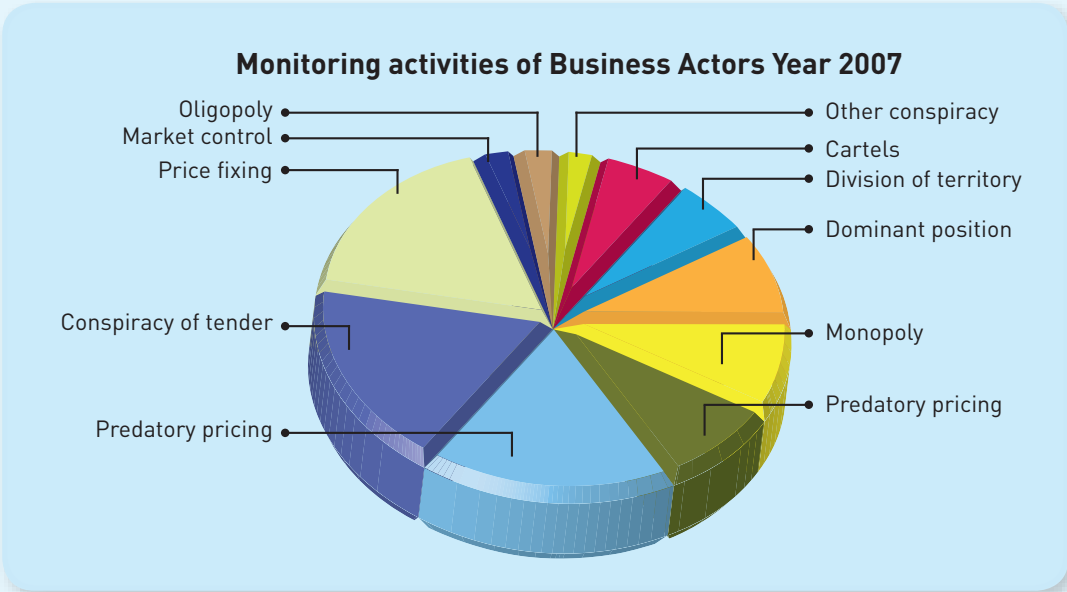


Figure 1

3.3. REPORT HANDLING

The number of reports received by KPPU as of the end of 2007 shows an increase. KPPU received 244 (two hundred and forty four) reports, dominantly regarding the alleged tender conspiracy. Other reports relate to the monopoly, discrimination, conspiracy, rate fixing, and other alleged violations. The followings are the details of the reports received by KPPU as of the end of the year 2007:

Out of the reports, 51 reports have been followed up as business competition cases, 9 reports followed up with monitoring mechanism of business actors, and 82 reports are entered into the List of Complaint Annulment (“Buku Daftar Penghentian Laporan”), with a reason of not including in business competition cases or being incomplete or unclear.

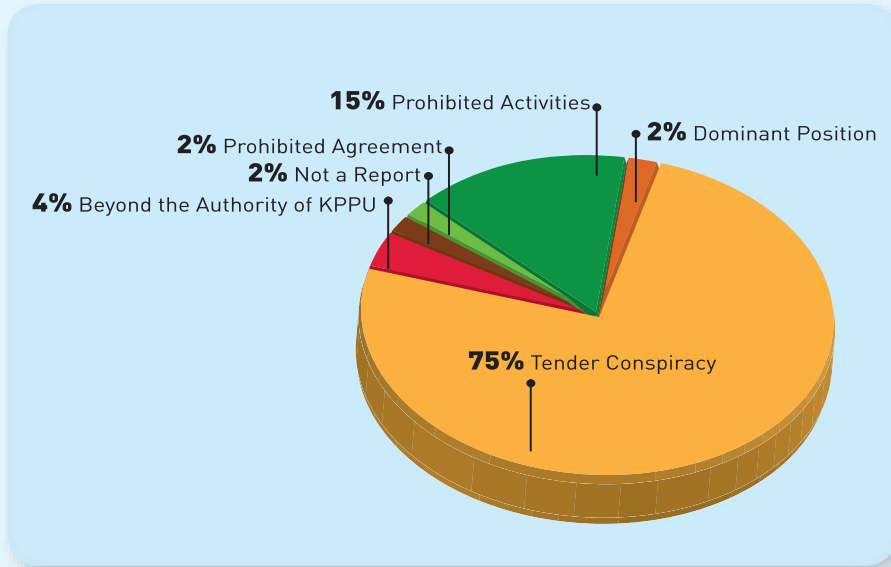


Figure 2

3.4. CASE HANDLING

During the year 2007, KPPU handled thirty-one (31) business competition cases. It is the highest achievement since the establishment of KPPU and it seems to rise as the number of the reports received by KPPU keeps increasing. The details of the case handling by KPPU since the year 2000 is as follows :

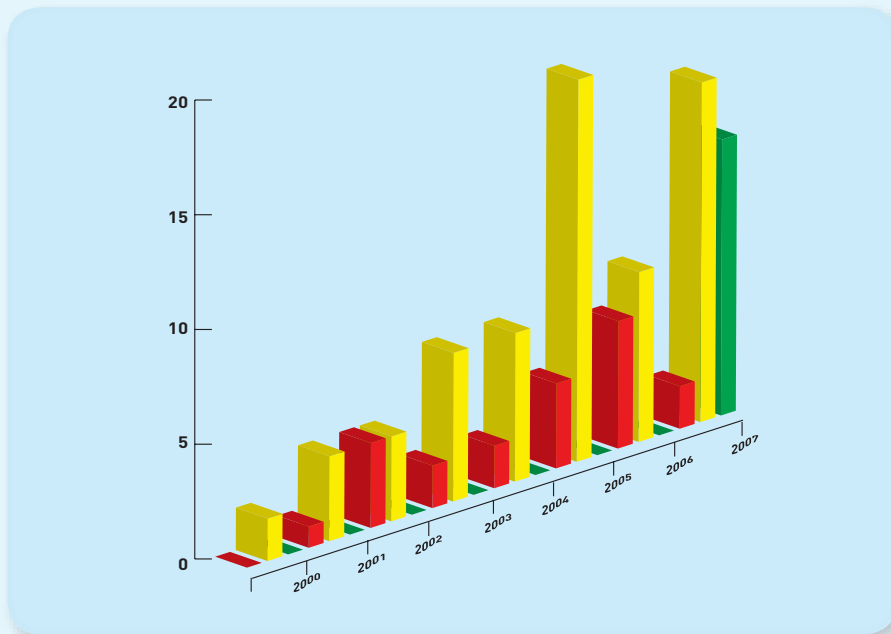


Figure 3

List of KPPU's Decisions pronounced in the Year 2007

Decision on Tender

a. Government Tender

1. Case Decision Number 09/KPPU-L/2006 on Procurement Tender of Furniture at State Administration Institution (LAN), Makassar
2. Case Decision Number 16/KPPU-L/2006 on Tender for Middle Voltage Cable Network (SKTM) of 20 KV, Packages 4, 9, 20, and 21 at PT PLN, Jakarta Raya dan Tangerang (PLN Disjaya) Distribution Division, in the fiscal year of 2005
3. Case Decision Number 17/KPPU-L/2006 Procurement Tender of Lamp Components at Public Road and Utility Facility Lighting Agency of South Jakarta Municipality
4. Case Decision Number 02/KPPU-L/2007 Procurement Tender of Instrument of Nutritional Surveillance in the year 2006 at A. Wahab Sjahranie Regional Hospital, Samarinda
5. Case Decision Number 03/KPPU-L/2007 Tender for Construction of Building of Padangsidempuan District Court, North Sumatra
6. Case Decision Number 04/KPPU-L/2007 Procurement Tender of LCD at the Area Administration Bureau, Secretariat of Provincial Government of Jakarta, Fiscal Year of 2006
7. Case Decision Number. 05/KPPU-L/2007 Tender for Dredging Work of the Draft at Belawan Seaport in the year 2006
8. Case Decision Number 06/KPPU-L/2007 Procurement Tender of Fogging Machine at the Area Administration Bureau, Provincial Government of Jakarta, Year 2006
9. Case Decision Number 08/KPPU-L/2007 Garden and Cemetery Agency Dinas Pertamanan dan Pemakaman Kota Bengkulu

b. Private Sector Tender

10. Case Decision Number 08/KPPU-L/2006 Tender for Non Destructing Testing Inspection Services
11. Case Decision Number 14/KPPU-L/2006 Procurement Tender of Integrated Shorebase Management and Logistic Services (Number DCU-0064a) at BP Berau

Decision on Non-Tender

12. Case Decision Number 15/KPPU-L/2006 LPG Distribution at South Sumatra
13. Case Decision Number 07/KPPU-L/2007 Cross Ownership by Temasek Business Group and Monopolistic Practice by Telkomsel

3.5. LITIGATION AND DECISION MONITORING

In this year, KPPU feels sufficiently relieved as three (3) cases handled by KPPU which receives public attention, namely the Case Number 01/KPPU-L/2003 on Garuda Indonesia, Case Number No. 02/KPPU-L/2004 on PT. Telkom Indonesia, Case Number 02/KPPU-L/2005 on PT Carrefour Indonesia have been strengthened by the Supreme Court.

Other relieving matters amidst many criticism against KPPU is that these verdicts of the Supreme Court have been voluntarily complied with by the respective business actor without having to wait for an execution by KPPU. PT. Carrefour Indonesia (a foreign investment company) is the first company which has paid the penalty as specified by KPPU in the amount of IDR. 1,500,000,000.00 (one billion and five hundred million Rupiah), followed by PT. Garuda Indonesia which has paid the penalty in the amount of IDR. 1,000,000,000.00 (one billion Rupiah). PT. Telekomunikasi Indonesia which is also willing to observe the sanction imposed to it, namely to annul all cooperation agreements entered into with 130,000 public telecommunication shops ("wartel"). Through its letter Number TEL. 18/HK710/COP-D0032000/2007, Telkom has asked a period of six (6) months to amend the cooperation and KPPU has established a team to monitor the implementation of its decision regarding Telkom.

Long Struggle in Law Enforcement for Competition

Garuda Indonesia, Telkom and Carrefour are three business giants who stumbled by the Law Number 5 Year 1999. The three of them fulfilled the sanctions stipulated KPPU and turn the year 2007 as a momentum of clarification that KPPU will not let anyone who is against the Prohibition of Monopolistic Practices and Unfair Business Competition.

KPPU litigation process for those three giants' case took a long time. It started from an appeal to District Court up until an Appeal to the Supreme Court which ended with the KPPU's win. Three wins which add a long list of KPPU's decision with the permanent legal powers.

Carrefour: Murderous Trading Terms

Carrefour case started with a report on October 20, 2004 regarding the implementation of trading terms done by Carrefour which burden the suppliers. The trading terms which applied are: listing fee*, minus margin*, fix rebate, payment term, regular discount, common assortment cost, opening cost (new store) and penalty. Generally, in the report, suppliers thought that those trading terms were burdening especially on the items of listing fee and minus margin requirements, due to each year Carrefour has added types of items, increased the cost and percentage of fee trading terms. Other thing which considered as burdening was that Carrefour did not differentiate between big suppliers and small suppliers.

For such breaching, the Meeting of KPPU Commission Board on August 19, 2005 decided that Carrefour had been proven legally and surely breaching the Article 19 point a of the Law Number 5 Year 1999 (reject and or impede certain other business actors from conducting the same business activities in the relevant market) and had ordered Carrefour to stop the activities of applying minus margin requirement to suppliers and condemned Carrefour to pay the fine of Rp. 1.500.000.000,- (One billion five hundred million rupiah).

Upon such decision, Carrefour filed a plea to South Jakarta State Court with the reason that KPPU had exceeded the time limits for Preliminary Examination, Further Examination and Decision Award. Carrefour also gave a reason that minus margin requirement was a legal bonding based on the agreement between the requestor and the supplier, and Carrefour's competitors has also applied the same trading term which minus margin concept's purpose was to fight against the price discrimination carried out by the suppliers. The Judge of South Jakarta State Court refused all Carrefour's objections and strengthened the KPPU's decision No. 02/KPPU-L/2005.

Not losing hope, Carrefour again appealed to Supreme Court with the same objections. Supreme Court refused it and again strengthened KPPU's decision on January 18, 2007.

Facing such decision, Carrefour's fighting steps are stopped and they chose to obey the KPPU's decision and paid the fine of Rp. 1.500.000.000,- (One billion five hundred million rupiah) to the government through the Ministry of Finance, Directorate General of State Treasury, State Treasury Service Office (KPPN) Jakarta I (The State Treasury Services Office of the Directorate General of Treasury the Ministry of Finance Jakarta I). The fine put into State Treasury as government non-tax revenue on June 8, 2007. Since August 3, 2005, Carrefour has no longer applied the minus margin requirement in their contracts with suppliers and no longer applied this requirement with suppliers whom agree on the term in the valid contracts.

Exclusive Dealing and Entry Barrier by Telkom

Cooperation agreement between Telkom the owners of public telecommunication shops which required shops to sell only Telkom products caused Telkom to be stuck in the Article 15 paragraph (3) point b (Exclusive Dealing) and the Article 19 letters a and b (Entry Barrier) the Law Number 5 Year 1999. Based on such agreement, Telkom closed the access codes 001 and 008 from PT Indosat and switch it to access code 017 from Telkom.

In KPPU Board Meeting, on August 13, 2004, Telkom was proven in breaching both mentioned laws and was being ordered to cancel the clausul which stated that shop owners or managements could only sell Telkom products and services. KPPU also ordered Telkom to stop any activity which proved causing monopoly and or causing unfair competition by eliminating bonding requirements to open international call access and or other international call services than Telkom products at Shop and also to open international call access and or other international call services than Telkom products at Shop.

Responding to that order, Telkom was not slow down its fight and filed a plea to Bandung State Court with a case of incompleteness of Commission Members during case preview which can be procedure failure. Telkom also presented that KPPU's decision was based on facts which was not stated in the Further Examination Minutes (BAP) so it was a legally failed decision and one-sided witnesses proposed from Telkom causing Telkom felt treated unfairly before law.

Based on objections from Telkom, on November 8, 2004 Bandung State Court granted Telkom's objection and cancelled KPPU's decision. Decision cancellation from Bandung State Court did not hold KPPU efforts in supporting law of business competition and pushed KPPU to appeal to Supreme Court.

Such KPPU long struggle was responded well by the Supreme Court, on January 15, 2007 the Supreme Court decided to grant KPPU appeal and to cancel Bandung State Court verdict. The winning finally back to the Law Number 5 Year 1999 and Telkom accepted to cancel all cooperation agreements that they made with 130.000 shop owners. Through the Letter No. TEL. 18/HK710/COP-D0032000/2007 Telkom requested a timeframe of 6 (six) months to amend all cooperation agreements and KPPU has created a team to do monitoring on the implementation of such Telkom's decision.

Garuda Indonesia with Abacus Connection requirement.

Abacus Connection is an online computer network with airline reservation system, which is known by the term Computerized Reservation System or CRS. Some CRS are: Sabre system, Galileo system, Amadeus system, Worldspan system and Abacus system.

For airlines, working with more than one CRS will not cause financial loss due to the costs are based on transactions only. But Garuda Indonesia chose to establish PT Abacus Indonesia as a distributor for Abacus system which started to operate in 1995 and at that time was the only CRS supplier in Indonesia.

Entering the period of 1998, the competitor for Abacus system made an entry into Indonesian market, which was Galileo system. Garuda Indonesia soon created protection steps for its subsidiary, PT Abacus Indonesia. The protection was a rule that causing travel agents to use only Galileo system for international reservation segment, as for domestic segment, it had to be done from Abacus Connection.

Garuda Indonesia then, started to develop the regulation to build dual access system that included ARGAs system (Automated Reservation of Garuda Airways). In the beginning, the system was installed on ARGAs terminal at every travel agent. After that, all ARGAs system at travel agent was pulled back and replaced by dual access system that included ARGAs system to the Abacus terminal. With this regulation, Garuda Indonesia made sure that domestic flight reservation, international flight reservation and domestic-international mixed flight reservation by Abacus system and ARGAs system that was included in Abacus terminal by dual access system. No doubt that such regulation gave full control on Garuda Indonesia ticket reservation because all reservation process had to be done from Abacus system.

Such Garuda Indonesia's attitude was reported to KPPU on October 9, 2002 and after full review through KPPU Board Meeting on July 30, 2003, KPPU decided that Garuda Indonesia was proven guilty by breaching the Article 14 regarding Vertical Integration, Article 15 paragraph (2) regarding Exclusive Dealing, and Article 26 regarding Double Positions from the Law Number 5 Year 1999.

On that breaching KPPU ordered Garuda Indonesia to stop vertical integration by canceling all exclusive dealings of dual access with PT Abacus Indonesia, withdraw Abacus connection requirement in appointing domestic passage agency and punished Garuda Indonesia with an administration fee of Rp. 1.000.000.000 (one billion Rupiah) that has to be paid to State Treasury.

Fourteen days after the decision received, Garuda Indonesia filed a plea to Central Jakarta State Court with some objections which were :

1. KPPU wrongly stated the name and address of Garuda Indonesia with "PT (Persero) Perusahaan Penerbangan Garuda Indonesia addressed on Jalan Merdeka Timur No. 13, Jakarta Pusat" which supposed to be "Perusahaan Perseroan (Persero) PT. Perusahaan Penerbangan Garuda Indonesia with address on Jl. Medan Merdeka Selatan No. 13, Jakarta Pusat."
2. Review and decision process from KPPU breached the time regulation of the Law Number 5 Year 1999.
3. Review and decision making process from KPPU breached the stipulations on reviewing methods by the Commission Board according to the Law Number 5 Year 1999.
4. KPPU law consideration based on the review that was done on the documents which was not supposed to be received legally by KPPU.

Those objections from Garuda Indonesia were legalized by Central Jakarta State Court on October 16, 2003 and cancelled the KPPU's prior decision.

Not giving up, KPPU filed an appeal to Supreme Court and won the case on September 5, 2005. Since such appeal granted, KPPU sent warning letter on the sanction implementation to Garuda Indonesia continuously. On July 23, 2007, Garuda Indonesia stated it would be able to fulfill all sanctions from KPPU and paid the fine of Rp. 1.000.000.000,- (One billion Rupiah) to State Treasury as non-tax government revenue.

LEGAL REVIEW UPON THE KPPU's FINE SANCTION

Article 47 paragraph (2) point g of the Law Number 5 Year 1999 gives an authority to KPPU to put an administrative sanction against business actors that breach the regulations in the Law Number 5 Year 1999. The amount of fine, how to calculate the fine, and which regulation in the Law 5 Year 1999 that can be applied with the fine are not clarified in such law. The Article 47 paragraph (2) point g only gives minimum fine for 1 billion rupiah and maximum fine for 25 billion rupiah.

KPPU has repeatedly stated decisions with varied fine sanctions against business actors who proven guilty had been breached the Law Number 5 Year 1999. A lot of people then asked for the juridical justification on fine application stated by KPPU and basic calculation in stating certain amount of fine by KPPU. Before we can answer those questions, first we have to understand the philosophy of fine existence in before law.

Fine sentence is one of punishment types against the violation of public law beside other punishments such as jail sentence. In the beginning, punishment philosophy was meant to insult such law or crime breaker. To hold public justice then law or crime breaker has to be punished according to his action.

The development of utilitarianism philosophy that sees everything has to reflect its utility also effects on how the judges think of law. Utilitarians see law as the tools to get greatest happiness for greatest number. In public law, punishment seems no longer as insult, but far more also have to be utilized as deterrence effect. To reach such goal, if necessary, punishment is showed to public so the same crime is not going to happen in the future by someone else. Public collective memory is built by surreal statement: if you do the same thing, then you will get the same sanction. That is so, hopefully after one implementation of punishment, the same crime can be avoided.

In that context, KPPU puts sanction as fine sentence to business. Competition law, in this, the Law Number 5 Year 1999, is part of public law, which is the law that is use to protect the public needs. Breaching on that law means hurting the public feels of justice and disturbance of the public needs. Thus, KPPU gives sanction as fine sentence not only to punish the business, but also as an effort to create deterrence effect so that public needs for fair competition is always protected.

When KPPU states fine sentence and how much the amount of fine is a discrete from KPPU, especially the Commission Council, who handles the case. In transparent era these days, the procedure of the Commission Council in calculating the amount of fine becomes a demand from some of the businesses. Effort to transparency of fine calculation procedure has been done by KPPU in some decisions, but up till now it is not yet legalized into KPPU formal regulation. To guarantee transparency on fine sentence from KPPU in the future, today they are working on formal regulation of how to calculate fine sentence for business which proven guilty of violation of the Law Number 5 Year 1999.

What needed to be stressed on is fine sentence from KPPU is done to avoid the same crime repeatedly in the future. Fine sentence hopefully becomes incentive for business in doing its business activity to always obey the regulations in the Law Number 5 Year 1999.

Some people feels maximum fine sentence of 25 billion rupiah is ineffective to create deterrence effect to other business in some industry that has business volume from hundreds of billion to trillion rupiah. In United States, for example, violation of anti-trust law can cause to treble damages, which the fine sentence is three times the damage. In European Union, sanction against law of competition can be up to 10% of revenue from the business.

That doubt can be right, but changing the regulation of maximum fine sentence means amending the Law Number 5 Year 1999 that can take quite a long process. The important thing for KPPU nowadays is to socialize the decisions along with fine sentences on the violations of the Law Number 5 Year 1999, so the deterrence effect that is hoped for can be done effectively.

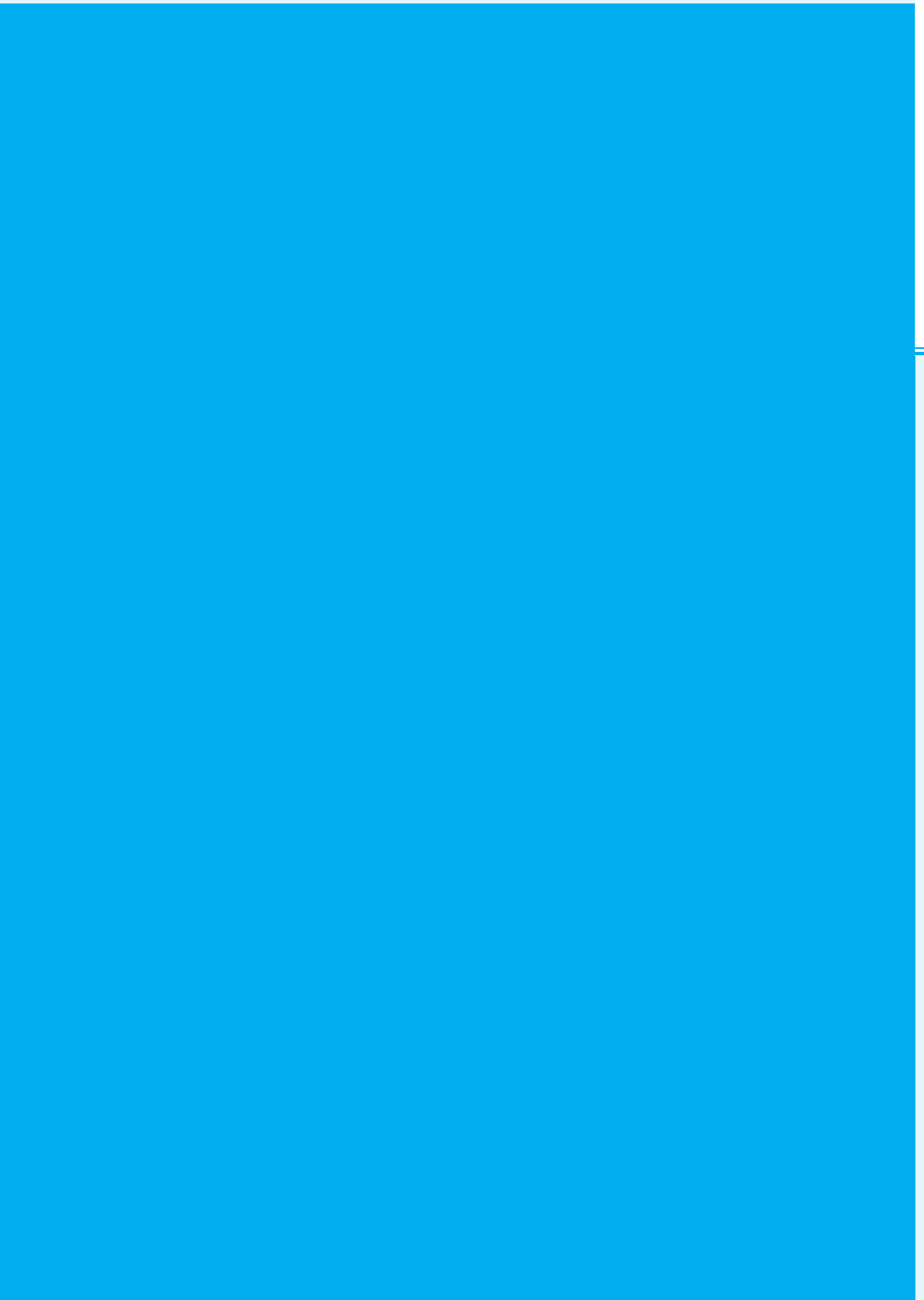
*Regulatory
Reform Socialization*

04

Annual Report 2007

Chapter





Regulatory Reform Socialization

One of the main functions in developing institutional cooperation is to open and establish relations with domestic and international institutions. Such relations may be in the form of official cooperation by virtue of memorandum of understanding or agreement or collective activities such as seminar and workshop. The cooperation with those institutions becomes essential particularly in respect of the regulatory reform as we realize that the competition policies cannot stand alone and shall be established together with other elements of the government with a view all stakeholders have shared objective, namely for the people's welfare. with such interdependency, the function of the institutional cooperation become very essential.

During the year 2007, KPPU has specified some important target in the implementation of the regulatory reform, namely the adoption of the integrated checklist on regulatory reform, human resources capacity building, law and business competition policy knowledge exchange at international forum, negotiation on competition policy at international level, and improvement of KPPU's role as a regular observer at the OECD.

The Integrated Checklist on Regulatory Reform is a economic guidelines for the regulatory reform. With the checklist, the economy will get the best practice in changing its policies. Until now, Indonesia has not fully applied the checklist, some government agencies have however applied some specific policies. In promoting the regulation reform process, at the beginning of the year 2007, KPPU has expressed its intention to hold an APEC seminar on the utilizing of the integrated checklist at the APEC CPDG Meeting, held on January 23-24, 2007 in Canberra, Australia. KPPU has reported the meeting the objective of the seminar and its technical implementation.

The seminar called "APEC Seminar on Utilizing the "APEC-OECD Integrated Checklist on Regulatory Reform" in the Competition Policy and Deregulation Aspects, was held in Jakarta on June 13-15, 2007. The seminar was attended by 98 participants from 16 economies, five of them are the representative of economies in Jakarta. Two participants from OECD secretariat were present in the seminar. The seminar has resolved some recommendations which give a clear direction for the regulatory reform. One of the important recommendation of the seminar is an agreement among the economies to seek the best way (based experiences) in adopting the competition assessment, regulatory reform, and competition policy. Therefore, the seminar participants have stressed on the importance of continuous dialogue and technical assistance for the utilization of the integrated checklist. Other important recommendation which needs to be followed up by Indonesia and other economies relates to the idea to develop institution which will produce leadership and effective cooperation among the governments in realizing the regulatory reform.

The resolution and recommendation of the seminar have been reported by KPPU and discussed by the APEC economies at the APEC Policy Dialogue: Seminar on the Role of Competition Policy in Structural Reform and the second meeting of APEC Economic Committee II held in June 2007.

Roles of KPPU in APEC in Promoting the Regulatory Reform

There are some issues which need the attention of KPPU and application of law and competition policy at APEC economies level and the implementation of the regulatory reform at national level. Such attention is obtained due the success of KPPU in passing the project proposal on APEC seminar on the utilizing of APEC-OECD Integrated Checklist with regard to the correlation between competition policy and sectoral regulator. KPPU is honored as it has been appointed as the host of said international seminar. Such decision is made after KPPU tries its best in passing the proposal to the APEC Budget and Management Committee Meeting held in Singapore in August 2007. Following such approval, KPPU is also honored as it has been appointed to host the Fourth APEC Training in Competition Policy which is proposed by Japan Fair Trade Commission (JFTC). Therefore, it can be made sure that in the year 2008, KPPU will be honored to host these two international APEC activities.

As a member of APEC economies, especially at the APEC's CPDG sub fora, KPPU has actively participated in the formulation of the APEC Individual Action Plan 2007 under the coordination of the Coordinating Ministry for Economics. Such action plan represents a combination of some issues (chapter) related to the economic policy in a state, among others, tariff and non-tariff, services, investment, standardization, customs, government procurement, intellectual property right and competition policy. In this context, KPPU is responsible for the chapter competition policy. In such action plan, KPPU reports some competition policies in Indonesia viewed from various aspects among others, general policy framework, reviews of competition policies, competition institution, measures, cooperation arrangement, activities with other APEC economies and international organization, dan collective action.

In addition to its participation in the formulation of the APEC Individual Action Plan 2007, KPPU also participated in the formulation of the APEC Economic Policy Report 2008 (AEPR 2008). AEPR 2008 is a report containing the development of economic policies at all APEC economies. For the AEPR 2007, APEC has validated the topic "Public Sector Governance" in which Indonesia gives contribution in the Individual Economic Policy Report. Especially for the formulation of the AEPR 2008, it has agreed that the Competition Policy will be the topic of the report, so KPPU has been appointed by the Coordinating Ministry for Economics of the Republic of Indonesia to prepare for the report. The report contains three chapters as follows :

- a. Chapter 1 on The Role of Competition Policy in Structural Reform and Creating Competition Culture. This chapter consists of some sub-chapters, namely APEC development, Economic Committee, and LAISR; difference of competition and competition policy; and development of business actors in APEC economies. This Chapter is prepared by Japan after receiving the advice from Australia and Indonesia;
- b. Chapter 2 on Competition Policy at Different Stages for Development: Lesson from APEC. This Chapter is prepared by Peru as the host of APEC 2008; and
- c. Chapter 3 on Individual Economy Report on Competition Policy.

Indonesia (KPPU) is one of the co-sponsors of the AEPR 2008. Therefore, it is expected to participate in the formulation of the Chapter 1 of the report. As a member of APEC, Indonesia has been also asked to participate in the preparation of the Individual Economic Policy Report which is a part of the Chapter 3. As the topic of the report on the competition policy, KPPU is asked to prepare the individual report as per the agreed template.

Role of KPPU in Establishing Discussion Forum for Legal Issues and Competition Policy in ASEAN

In achieving the role, KPPU has actively contributed to the annual meeting of the ASEAN Consultative Forum for Competition (ACFC) and ACFC international conference held in Vietnam on August and October 2007. The conference discussed various agenda, namely the regional forum in establishing policy law, advice on regional cooperation development, identification of elements for an effective regional cooperation, and requirement for effective cooperation among ASEAN member states. In the conference, KPPU has been trusted to report the latest development on the business competition institution and law at ASEAN. In the annual meeting of related institutions association on business competition law and policy at ASEAN level, two proposals on the implementation of competition law and policy at regional level are also discussed. The first proposal is submitted by Indonesia which proposes the establishment of the ASEAN Competition Institute (ACI) as an independent and non-profit institution with an objective of helping ASEAN countries in developing competition law and supporting the functions of ACFC and AEGC. In addition to the ACI, the meeting also discussed the proposal on the establishment of the ASEAN Expert Group on Competition (AEGC) as submitted by Vietnam and Singapore. Based on the information provided, KPPU expresses its support on the establishment of AEGC as it is one of the best ways to achieve of the mission for the ASEAN Economic Community in the year 2015. Nevertheless, KPPU is also in the opinion that the existence of ACFC shall be maintained, despite of the establishment of AEGC. In order to continue the ACFC's program, it has been agreed that ACFC will be chaired by Singapore (CCS) for the period of 2007-2008 as the Chairperson and Malaysia (Ministry of National Planning and Economic Development) as the Vice Chairperson. The position will be in effect from October 1, 2007.

Following up the agenda, in October 25, 2007, KPPU has also contributed to the ACFC Top Level Official Meeting which discussed the preparation for the establishment of the ASEAN Expert Group on Competition (AEGC) and the handover of the position of ACFC Chairperson from Vietnam to Singapore. As result of the 39th ASEAN Economic Minister (AEM) Meeting held in Makati City, the Philippines, on August 24, 2007, the Senior Economic Official Meeting (SEOM) has agreed to give recommendations to the AEM on the establishment of the AEGC under the control of the SEOM. The ACFC meeting is aimed at discussing technical matters as described in the organization term of reference. Until now, the role of KPPU in the establishment of the AEGC is still intensified.

Role of KPPU in Developing Cooperation among Competition Institutions

In addition to its active role at international and regional forums, KPPU exerts its best efforts in maintaining and improving the harmonization among international institutions which has so far been well-established. It is done by facilitating various surveys proposed by some competition institutions and organizations at international level, one of which the questionnaires sent by the Office of Commercial Affairs, Royal Thai Embassy in Jakarta. The questionnaires are sent in relation to the efforts taken by the Department of Internal Trade, Ministry of Commerce Thailand in the preparation of the Competition Policy Framework. In that regard, the Ministry has asked KPPU to provide information on the implementation of competition policy and law in Indonesia, among others with regard to the competition policy framework, correlation between competition policy and other policies; effective ways in enforcing competition law; application of competition law and policy in agricultural, industrial and service sectors; and some types of vertical integration in Indonesia.

Further, in the scope cooperation, KPPU and the Japan Fair Trade Commission (JFTC), in the support of The Association for Overseas Technical Scholarship (AOTS), the sub-directorate in October had facilitated a training for academicians or researchers specialized in business competition on business competition law and policy in Japan. The training will be held for a week in February 2008 in Tokyo, Japan and discuss some substantial topics, among other on Japan's Antimonopoly Act, updated development of competition law and policy at each country and panel discussion on some competition issues. KPPU is aware that the media is very important in developing and enhancing the role of academicians in developing the business competition policy either at national or international level (in this case, at East Asia region).

In the scope of cooperation between KPPU and GTZ-ICL, KPPU has facilitated a training on advanced competition law for Judges at District Courts at Central and Yogyakarta region. The training discussed the handling of tender cases at KPPU and held on November 14-15, 2007 in Yogyakarta. After the training, KPPU and GTZ-ICL had facilitated the visit of Prof. J. Bornkamm, a Supreme Court Judge in Germany, to Indonesia. The visit was made on November 19-23, 2007. He discussed some issues among others the process of an objection to the business competition decision in Indonesia. In addition, Prof. J. Bornkamm had a meeting and discussion with Supreme Court and some stakeholders.

APEC Seminar on Utilizing the “APEC – OECD Integrated Checklist on Regulatory Reform” in the Competition Policy and Deregulation Aspects

KPPU, in collaboration with APEC Secretariat, invites APEC members to participate in “APEC–OECD Integrated Checklist on Regulatory Reform” on June 13-15, 2007 in Jakarta. The sessions of the seminar are preceded by opening from Mr. Toshiyuki Nanbu (Convenor of CPDG), Mr. Budiono (Coordinating Minister for Economy), and Mr. Mohammad Iqbal (Chairman of KPPU). Afterwards, keynote speeches will be presented by Professor Tetsuzo Yamamoto (Graduate School of Commerce, Waseda University) and Mr. Sean Ennis (Competition Division, OECD Secretariat), respectively.

The seminar, which objectives is to improve understanding about APEC-OECD Checklist (checklist) as an effective self-assessment tool, is held as an experiences and informations sharing event in checklist implementation and its effects on Regulatory Reform process. The results of the seminar will be used as a recommendation about the possibility of actual implementation of using the checklist in policy harmonization between regulatory bodies and competition institution.

In principle, Regulatory Reform is defined as changes for the purpose of increasing the regulation quality in regard to improve the economic performance, cost effectiveness and government administration. Methods of the reform can occur as revision and rearrangement of regulatory frame and process improvement which consider 3 (three) keys of prime mover in regulatory reform, that is regulatory policies, competition policies, and market openness policies.

Considering that the results of the seminar will initiate understanding improvement toward two main substances, that is regulatory reform and competition policy and law, hence the discussion will be divided into two difference groups, i.e. first discussion group concerning Regulatory Reform, and second group concerning Competition Policy and Law. The results of the discussion can reflect positive response and recommendation toward the implementation of competition policy, both in country which has and has not adopted competition law.

The recommendations obtained from the last session of the seminar are expected to be an input for relevant competition supervision bodies and institutions to arrange the continuous implementation of competition policy with gradual approach in accordance with the policy of APEC members. If it is actualized, then its contributions to APEC members will be very significant, especially in competition law systems.

After all, even though between one APEC members with another, there are differences found in the approach of the policy and competition law, but the explanation of each agenda from APEC members, respectively, will be very useful to promote the existence of competition law. Therefore, every country can contribute its policies and competition laws for economic growth and development. Limitedness of human resources for developing economic sector in terms of competition issues is not supposed to restrain the importance of adopting and implementing competition law.

The seminar is attended by approximately 60 participants, both domestic and foreign, in particular APEC members. It is expected that the seminar will produce useful inputs and recommendations.

4.1. HUMAN RESOURCES CAPACITY BUILDING

Human resources are assets which shall be maintained and developed. It also applies to KPPU, moreover with regard to its specific function, namely to uphold the competition law and provide advice to the government and public. In building its capacity, KPPU has facilitated some domestic and international workshop for the development of KPPU's human resources.

OECD-Korea Regional Center for Competition (OECD-RCC) is a part of the OECD which has facilitated the workshop on the enforcement of competition law for government staff in Asia. At the workshop, some advanced materials will be presented and discussed by experts in business competition law from the OECD head office in Paris. KPPU has actively participated and exchanged knowledge and experience in the workshop since the inception of the OECD-RCC at the end of 2004. In the first semester of 2007, three workshops have been conducted in Seoul, South Korea. Theories and practices on market definition, market strength assessment, merger, abuse of dominant position, enforcement and sanction and price fixing have been discussed in the workshop.

In a cooperation with Japan Fair Trade Commission (JFTC), KPPU under the facilitation of the Japan International Cooperation Agency (JICA) has sent ten (10) staff of its secretariat to attend the country focused training held in Nagoya and Tokyo for three (3) weeks in February-March, 2007. This comprehensive training is focused on the enforcement practices of competition law and policy in Japan and some introduction and discussion on the JFC internal information. In addition, JICA and JFTC has also facilitated a comparative study for thirteen (13) Commissioners of KPPU at Osaka and Tokyo for two (2) weeks in March 2007.

Within the context of membership of the ASEAN Consultative Forum for Competition (ACFC), KPPU had been given an opportunity to actively participate in the training held by the ACFC, namely Advanced Workshop on "Investigating Abuse of Dominance Cases" held in Hanoi in March 2007.

In order to improve the quality of its advice and opinions, KPPU has also sent its Secretariat staff to study the theory and method of economic analysis in the competition policy assessment by attending Research Symposium on Political Economy Constraints in Regulatory Regimes in Developing Countries held by Consumer Unity and Trust Society (CUTS), a non-profit oriented organization engaged in consumer protection, in March 2007 in New Delhi, India.

In the first semester of the year 2007, KPPU has appointed 77 new staff having various expertise background such as law, economics, engineering and others. Following the increased number of its human resources, it is an obligation for the institution to improve the values for its human resources through provision of trainings. In the first semester of 2007, KPPU in a cooperation with UNCTAD and GTZ has held a Roundtable Discussion on Competition Law and Policy and Workshop on Competition Law and Policy for its newly installed staff, directors, and Commissioners. The activities have given basic knowledge to the new staff in performing their functions and developed their awareness on the importance of regulatory reform in telecommunication and procedure of handling any objections to the KPPU's decision. It is planned that these two issues will be further discussed at the subsequent meeting between KPPU and UNCTAD. In addition, the activity has led to an agreement on a bilateral cooperation between KPPU and UNCTAD in two years to come. In the cooperation, KPPU has been specifically asked to serve a center for competition law and policy development for Southeast region. In realizing this plan, UNCTAD will facilitate the translation of the UNCTAD training modules into Bahasa Indonesia and implementation of the training of trainer (ToT) for the KPPU's internal and external parties. In addition, it has facilitated a workshop in telecommunication and infrastructure industries and other essential facilities and potential application of class action in the enforcement of business competition law in Indonesia.

As an implementation of its role in developing its human resources, KPPU has facilitated its two staff to attend an international training in August. The training comprises of the 3rd APEC Training Course on Competition Policy for APEC Economies held in Singapore and Specific Training Program organized by the Taiwan Fair Trade Commission, held in Taiwan. The first training is a part of a series of training on competition policy within a period of five years, from 2005 to 2009. Two previous training had been conducted in the Philippines and Thailand and generally focused on the implementation of competition policy in APEC countries. Especially for the third training, it focused on two topics, namely Competition Policy and Small and Middle Scale Enterprises; and Effective Implementation of Competition Law and Policy. The training by TFTC is a tailor-made training program as per the requirement and proposal submitted by KPPU.

KPPU has prepared and delivered the formulation of the regulation on merger and acquisition as a follow-up to the mandate stipulated in Article 28 and 29 Law Number 5 Year 1999 to related government authorities for a ratification. The discussion on the draft regulation is being in process. In an effort to support the preparedness of KPPU in implementing the regulation on merger and acquisition, it has facilitated the participation of its resources in attending the Joint Seminar by the Chinese Taipei Fair Trade Commission (CTFTC) and the OECD on “Merger Control Issues in Developing and Transition Economies” held in Kuala Lumpur, Malaysia on September 11-12, 2007. In the said joint seminar, some essential topics have been discussed, namely the importance of codification on merger, product and geographic markets, importance of notification before merger and selection of evaluation standard, effective notification improvement before merger and merger-related sanction.

In addition to facilitating the conference, KPPU has also facilitated the administrative process of the official duty travel of KPPU’s commissioners to some competition business-related institutions in Germany on September 2-8, 2007. In the visit made in a collaboration between KPPU and GTZ, KPPU’s commissioners have discussed with competition law enforcing bodies, competition policy institutions, sectoral regulator, courts of law, ministry of economics and technology, parliament members, academicians, and lawyers in Germany regarding the business competition issues at both countries.

In October, KPPU has also facilitated its participation in two training activities (organized by OECD-RCC and ACFC) and two top level officials meeting (OECD and ACFC). Firstly, as an implementation of the cooperation between KPPU and OECD, KPPU has assigned its staff for the four times in the year to attend the Workshop on Anticompetitive Unilateral Conduct, held in Seoul, on October 10-12, 2007. The said seminar, regularly held by OECD Korea Regional Center for Competition (OECD-RCC), focused on some issues regarding the abuse of dominant position; especially exclusive dealing, bundling and tying, fidelity rebates, refusals to deal, predation, and others issues. In the training, KPPU was appointed to discuss two cases in two sessions respectively on bundling, tying dan fidelity rebates; and refusals to deal and predatory pricing. The second training, the ASEAN Consultative Forum on Competition (ACFC) Training Course on Merger and Acquisition, organized by ACFC in a collaboration with ASEAN Secretariat and US FTC, held in Hanoi, Vietnam, on October 22-24, 2007 focused on the improvement of the participants’ understanding the theories and practice of monitoring and handling of merger and acquisition cases.

In an effort to develop the institutional cooperation and with a view of supporting the government program in competition policy, in August, KPPU has actively participated in APEC forum, Economic Committee and Competition Policy & Deregulation Group subfora and Committee on Trade Investment. At APEC forum held in Australia, KPPU has obtained an approval for two project activities to be implemented 2008. The first project is the seminar on sectoral regulator, aimed at improving the cooperations and competition institutions and sectoral regulator, and the second project is a training for KPPU’s staff on business competition.

In order to enhance the public awareness on the importance of merger regulation, KPPU held a Workshop On Merger Review in Jakarta on November 27-29, 2007. The workshop was held in a collaboration with the Organisation for Economic

Cooperation and Development (OECD). A number of keynote speakers were present in the workshop, namely Arnold Celnicker and Karin Lunning from OECD, and Osamu Igarashi from Japan Fair Trade Commission (JFTC). The workshop was aimed at improving the understanding and competency of KPPU's staff in handling merger and acquisition cases.

The speakers presented the following materials:

- Overview of merger law and economics
- Unilateral and coordinated effects, and entry
- Market definition and concentration
- Investigative tools & plan
- Efficiencies, failing firm and other defenses
- Merger regulation in Japan
- How to conduct an interview

In the workshop, the participants were asked to carry out a simulation on merger case investigation, which finally produced a conclusion on product market, geographical market, possible effect of merger (price setting, predatory pricing), possible effect of entry to the market.

Further, still in a collaboration with Organisation For Economic Cooperation and Development (OECD), KPPU held a Workshop On Merger Regulation in Jakarta, on November 30, 2007. In the workshop, KPPU invited representatives from Ministry of Trade, Ministry of Industry, Indonesian Pharmaceutical Company Association, Faculty of Law of Trisakti University, and other related agencies. The speakers were not only from KPPU and OECD, but also from Bank Indonesia and Ministry of Law and Human Rights. In the workshop, KPPU received various inputs from business actors/stakeholders, on the following:

1. Simplicity of regulations and synchronization of the existing regulations.
2. Best practices references from developing countries which are relevant to condition in Indonesia.
3. Review of the threshold which is considered too small.
4. KPPU can keep all data and information presented in the merger document fully confidential.
5. KPPU considers the impact of vertical merger (not only horizontal one).

In the meantime, OECD has provided inputs to KPPU in order that the threshold in a merger shall be stipulated in the Commission's regulation, instead of the Draft Government Regulation, as it will make it easier to make necessary changes. OECD also asked KPPU to review the articles of the draft government regulation on merger, in order that it can be enacted effectively and consistent with the Law Number 5 Year 1999.

4.2. KNOWLEDGE SHARING AT INTERNATIONAL FORUM

KPPU understands that in order to improve the international awareness on competition law and policy in Indonesia, the KPPU's participation at international forum in the exchange of experience and knowledge for the development of competition law and policy is very essential. One of the participation is in the Seminar on Sharing Experiences in APEC Economies on Strengthening the Economic Legal Infrastructure (in scope of APEC-CPDG) and the 3rd Top Level Official's Meeting on Competition Policy and the 4th East

Asia Conference on Competition Law and Policy (in scope of ACFC) held in Ha Noi, Viet Nam. In these two activities, KPPU was given an opportunity to present its views on the development of the upholding of competition law and policy in.

In wider scope, KPPU had also been given an opportunity to share its experiences on the technical assistance model between KPPU and JFTC at the 6th Annual International Competition Network Meeting, held at the end of May 2007 in Moscow, Russia.

July 2007 is a very significant month for the KPPU's institutional development either internally or externally, signifying by its participation in the 8th Session of the Intergovernmental Groups of Experts on Competition Law and Policy, held by the United Nation for Conference on Trade and Development (UNCTAD) in Geneva on July 17-19, 2007. In general, the session discussed some agenda, namely business competition at national and international levels on energy, business competition policy and application of Intellectual Property Rights, competition policy at the West African Economic and Monetary Union (WAEMU) and criteria of an effective evaluation of business competition institutions. In the session, KPPU was honored to lead the session and share its experience with regard to the application Intellectual Property Right in competition law. The KPPU's delegates presented some matters, among others, intellectual property rights law and competition law have a similarity. With regard to the innovation, intellectual property rights law states that an innovation is entitled to have a protection as it will benefit customers and business competition policy emphasizes on the creation of a fair competition spirit that will encourage the innovation. Every new innovation will encourage competitors to create another new innovation, of which will in turn benefit customers. In its implementation, there is however a controversy between the competition law and intellectual property rights law. KPPU is in the opinion that the selling pirated products (no license) is a form of unfair business competition. In addition, KPPU thinks that the application of intellectual property rights may cause an unfair competition, when the holder of the intellectual property rights refuses to license without legal reasons.

In the activity, KPPU has received some advice, namely should actively participate in such kind of conference due to some considerations. Firstly, the forum is a learning forum on competition laws applied at some countries. KPPU can learn lessons either on the strengths or weaknesses of such laws in order to strengthen the competition law in Indonesia.

In the UNCTAD sessions, Indonesian delegations have received special attention. It is a good momentum to promote the existence of Indonesia in general and KPPU in particular, at international level. At the 5th General Assembly held in Turki in 2005, Indonesian delegation which was then led by the Commissioner Syamsul Maarif was elected as the Vice President of the Conference. In the conference, Indonesian delegation member, M. Iqbal, was trusted as the Chairman of the Conference. While, other delegation members, Commissioner Syamsul Maarif was trusted as the panelist in two sessions, Peer Review West Africa and Intellectual Property Rights. It is a form of trust by UNCTAD to KPPU and therefore, Indonesia is better to actively participate in global forums, like the UNCTAD.

Further, KPPU has actively participated in the formulation process of the APEC Individual Action Plan 2007 which deals with some economic policy issues of a country, among others, tariff and non-tariff, service, investment, standardization, customs, government procurement, intellectual property rights and competition policy.

In addition, KPPU has also participated in the formulation of the APEC Economic Policy Report 2008 (AEPR 2008) which contains the economic policy development of all APEC state members, in which Competition Policy has been agreed as the topic of the report. KPPU is expected to participate in the formulation of the Chapter 1 of the report on The Role of Competition Policy in Structural Reform and Creating Competition Culture and illustrate the development of APEC, Economic Committee, Leader's Agenda to Implement Structural Reform (LAISR), difference between competition and competition policy, and progress in business competition at APEC state members.

As an APEC's member, Indonesia has also participated in the preparation of the Individual Economic Policy Report which contains the development of competition policy and enforcement of competition law in Indonesia.

4.3. INTERNATIONAL NEGOTIATION IMPLEMENTATION

Competition policy is a popular issue at international level, where some countries (especially the developed countries) either through international or regional organizations keep exerting their efforts in establishing a mechanism for enhancement of business competition roles. Some trade negotiations which are attended by KPPU in this year include the negotiation on ASEAN-Australia-New Zealand (AANZ) Free Trade Area (FTA) and session on Trade Policy Review (TPR) Indonesia. The session is a forum to discuss the views of the WTO's state members on the Indonesia trade policy and Government Report on the Indonesia's statement on the Indonesia's trade policy.

4.4. IMPROVING ROLES OF KPPU AS A REGULAR OBSERVER

As a regular observer of OECD, KPPU has actively participated in some activities of the competition committee at the OECD forum. It among others presenting a paper on the implementation and development of competition policy in Indonesia, attending discussion and presenting views on the development of concepts and current issues on business competition at international level, and attending every Working Party, KPPU has been given an opportunity to contribute in issues relating to competition and receive inputs from other countries on the best practices which can be used to analyzed the competition issues. In 2007, KPPU has given its contribution on the enforcement of competition law and policy on energy, legal profession, and public procurement either at the Competition Committee's Meeting and Working Group Roundtable Discussion.

Furthermore, as an actualization of the active role of KPPU as an observer, it has also encouraged the socialization and adoption the APEC-OECD Integrated Checklist on Regulatory Reform through the APEC Seminar in Utilizing APEC-OECD Integrated Checklist on Regulatory Reform and Deregulated Aspect. KPPU has taken efforts in implementing of the OECD recommendation by translating the OECD Competition Assessment Toolkit into Indonesian Language.

Through these activities, KPPU believes that it will be able to develop its competency and capability in supporting the regulatory reform in order to create a competitive culture at each aspect of economy as required, so it is expected to lead to steady economic growth and improvement of the people's welfare.

4.5. INSTITUTIONAL SOCIALIZATION AND COOPERATION

In order to develop the awareness of and enhance the introduction of Law Number 5 Year 1999 to the public, KPPU has conducted various activities either at home or abroad.

1. Socialization

KPPU realizes the importance of socialization of competition law to the public as an effort to prevent unfair business competition practice and promote the harmonization of the government policy and competition policy. During seven years since its inception, KPPU has carried out the socialization activities at regional areas by holding a public hearing, journalist and student forums, and publication of periodic media "Kompetisi", distribution of publication materials, and Guideline for the Articles of Law Number 5 Year 1999. Nevertheless, there are still many community members, business actors, government officers either at local or central levels, who are not aware of a fair business competition. Therefore, KPPU has developed its communication strategy by holding interactive dialogue program through media and television, and publication of Public Service Advertisement at national television stations. The target of the socialization activity is to improve the understanding and awareness of the public on the definition of business

competition, with a view that they will apply a fair business competition in their daily activities.

The socialization of competition law is conducted through interactive dialogue at radio and television stations and publication of Public Service Advertisement through television. The interactive dialogue is conducted at three (3) radio stations, namely Elshinta (90,0 FM), Trijaya Jakarta (104,75 FM), and Suara Metro Jakarta (107,8 FM). It consists of 30 (thirty) episodes, respectively 12 (twelve) episodes at 2 (dua) news radio stations and 6 (six) episodes at 1 (one) national radio network through live event and interactive dialogue.

The television interactive dialogues are broadcasted through three television stations, namely Metro TV, Trans7, and TVRI, totaling 7 (seven) episodes. The public service advertisement is broadcasted in two (2) versions. The first version conveys a message on the benefits of a fair business competition in air transportation sector, and the second version on the functions of KPPU and agreements and activities prohibited by Law Number 5 Year 1999. The advertisement comprises of 300 (three hundred) spots broadcasted at 3 (three) national private television stations RCTI, SCTV, and Metro TV.

In order to develop a fair business competition culture, KPPU has carried out socialization activities at regional areas throughout Indonesia. It is also aimed at improving the awareness and supports of the stakeholders in the enactment of Law Number 5 Year 1999. The socialization activities have been done during the period of 2000-2007 at 23 (twenty-three) provinces in Indonesia. The activities in the year 2007 were conducted in Banjarmasin, Pekanbaru, Surabaya, Gorontalo, Batam, Medan, Makassar, and at some other cities by involving local governments, Chamber of Commerce and Industry, and local mass media. Questions which frequently arise in the community deal with the reporting process and examination of the report on the alleged unfair business competition, sanction imposed by KPPU to those who violate the provisions of Law Number 5 Year 1999, construction service, tender conspiracy and KPPU's opinions on a policy.

The first activity carried out in this year was Community Development Forum in the form of Journalist Forum with a theme "Regulatory Reform for a Better Indonesia Economy". The forum was held on January 25, 2007 at KPPU's Building in Jakarta, attended by the Commissioners of the term office of 2006–2011 and journalists from some national media.

On March 8, 2007, the government held a workshop bearing a theme of "Supports of Business Competition Community to Fair Business Competition" in Jakarta. The workshop was attended by the Minister of Trade, Coordinating Minister for Economics and related government authorities. On the same date, after the workshop was completed, a Journalist Forum was held and attended by some national mass media. Furthermore, KPPU in a collaboration with Supreme Court held a seminar on business competition attended by some judges in March 15, 2007 in Medan, bearing a theme of "Standard of Proof of Competition Law Infringements". This activity was aimed at improving the effectiveness of enforcement of Law Number 5 Year 1999 on Indonesian legal system. Meanwhile, the last activity in March 2007 was a Journalist Forum held at KPPU's building on March 16, 2007 and discussing "Giving the KPPU's Advice and Opinions (Microsoft and Retails)". This Journalist Forum was also attended by journalists from various national mass media.

There were ten (10) activities conducted in April 2007, two of which were seminars "Implementation and Implication of Enforcement of Business Competition Law in Indonesia", and "Business Competition: Principles of Business Competition According to Law Number 5 Year 1999". In addition, a journalist forum held within the framework of Pronouncing the Supreme Court Verdict which had strengthened the KPPU's decision on Carrefour and Telkom cases. KPPU had also conducted two Training of Judges from the District Courts in Bali-NTT-NTB and East Java and DIY. Meanwhile, there was a socialization bearing a theme of "Principles of Business Competition in Agribusiness Sector". In addition, two workshops had been held for prospective employees of KPPU and for business actors on "Principles of Business Competition Law in Article 22 of Law Number 5 Year 1999".

In May 2007, four (4) socialization activities were carried out. Firstly, the Business Actor Workshop held on May 16, 2007 in Balikpapan bearing a theme of “Principles of Business Competition Law according to Law Number 5 Year 1999”. The workshop was attended by members of Chamber of Commerce and Industry of East Kalimantan Province and Entrepreneurs’ Association.

The next activity was a Parliament/Government Workshop taking a theme of “Principles of Business Competition Law according to Law Number 5 Year 1999”, held in Tanjung Pinang. The workshop was attended by top officials of Provincial Government of Riau Islands, Provincial House of Representative and Local Chamber of Commerce and Industry. Further, the same workshop was held in Kendari. The workshop was attended by top officials of Provincial Government and Chamber of Commerce and Industry of Southeast Sulawesi Province. The last activity conducted in May 2007 was a Seminar on Business Competition at the KPPU’s Regional Representative Office on May 30, 2007, bearing the theme of “Principles of Business Competition Law according to Law Number 5 Year 1999”. The seminar was attended by top officials of Provincial Government and Chamber of Commerce and Industry of West Nusa Tenggara Province.

The first activity carried out in June 2007 was a Journalist Forum bearing a theme of Providing Advice and Opinions to the Circular Letter of Ministry of Communication and Information, Number 01/SE/M/Kominfo/1/2007”, held at KPPU’s office in Jakarta. The forum was held on June 6, 2007 and attended by journalists from various national mass media. The next activity was an APEC Seminar, held on June 13-15, 2007 in Jakarta. It was attended by the KPPU’s Commissioners and stakeholders`. While, the next activity was the Socialization of Commission’s Regulation held on June 25, 2007 in Banjarmasin, South Kalimantan and bearing a theme of ”Principles of Business Competition Law according to Law Number 5 Year 1999”. The activity was attended by top officials from local government, Chamber of Commerce and Academician in South Kalimantan. In addition, KPPU in a collaboration with Supreme Court had conducted a seminar on business competition, which was intended for judges and aimed at improving the effective implementation and enforcement of Law Number 5 Year 1999 in the Indonesia’s law order.

In July 2007, six socialization activities were held, namely:

- Workshop for Business Actors held in Pekanbaru on “Principles of Business Competition Law pursuant to Law Number 5 Year 1999”. The workshop is attended by Local Government elements and Chamber of Commerce and Industry of Riau Province.
- Community Development Forum (Journalist Forum) on” Grabbing the Essence of Tender Conspiracy in State-run Electricity Company (PLN) Case”. The forum is attended by national mass media.
- Socialization to Surabaya with a theme ”Principles of Competition Law pursuant to Law Number 5 Year 1999”. The activity is attended by representatives of financial industry, namely financing and insurance companies and banks in Surabaya.
- Socialization of the Commission’s Regulation held in Gorontalo under the theme ”Principles of Competition Law pursuant to Law Number 5 Year 1999”. It is attended by local government and Chamber of Commerce and Industry of Gorontalo Province.
- Community Development Forum (Journalist Forum) on ”Improving an Understanding on Principles of Competition” which is attended by mass media in Batam.
- Workshop on ”Business Competition in Palm Plantation in North Sumatra and its Problems” held in Medan. The workshop is attended by entrepreneurs in palm plantation.

In August 2007, a socialization activity on the Commissioner’s Regulation was held in Makassar bearing a theme of “Business Competition Law and Policy According to Law Number 5 Year 1999”. The activity was attended by academicians in Makassar.

KPPU had also conducted intensive socialization through mass media in the form of publication of its Public Service Advertisement at three national television stations, namely RCTI, SCTV, and Metro TV. Interactive dialogue was conducted for five times in this month as broadcasted by such radio stations as Elshinta, Trijaya, and Suara Metro.

Twenty-five Interactive dialogues bearing various themes were conducted in November 2007. These dialogues were broadcasted by Suara Metro Radio, Trijaya Radio, Elshinta Radio, Metro TV, TVRI, and Trans7. In addition, a journalist forum was conducted to discuss the KPPU's decision regarding Temasek. At the end of November, a Parliament/Government Workshop on "Merger Review" was held and attended by the Ministry of Law and Human Rights, Bank Indonesia, Coordinating Ministry for Economics, Perbarindo, GP Farmasi, OECD, GTZ, JFTC, JICA, Bapepam, Trisakti's Faculty of Law, Faculty of Economics, of Padjajaran University and Ministry of Trade.

In December 2007, intensive socialization through mass media was conducted by posting articles at two printing media, namely Trust and Business Review Magazines. Also, six interactive dialogues were conducted at Trijaya Radio, Suara Metro Radio, and Metro TV.

On October 4, 2007, KPPU conducted a journalist forum in relation to the advice and opinions of KPPU on the hajj policy. The forum discussed various topics among others, the tender mechanism in selecting the goods and service providers for hajj operation. The tender for such procurement was not conducted transparently. Therefore, KPPU suggested that the tender mechanism shall be improved through clear technical criteria, so bidder with best quality product and lowest price will be selected. The government had given its response to the advice and opinions by virtue of a letter sent by Minister of Religious Affairs, No. MA/164/2007, dated August 24, 2007, confirming that hajj administration in Indonesia would be further conducted through a tender mechanism pursuant to the Decree of President of the Republic of Indonesia, Number 80 Year 2003.

Three matters to be improved as stated in the said advice and opinions, namely rate policy, national business actors empowerment policy and hajj administration organization. The government had given the following responses:

- a. KPPU suggests that the Traveling Expense Hajj Religious Service or BPIH) be specified through a non-discriminative tender mechanism with clear and transparent technical criteria. The government has responded the advice by stating an argument that BPIH originally refers to the previous year's rate, a discussion and bargaining process was however conducted to get reasonable and proportional one. With regard to the air transportation rate, it is understood that the quotation submitted Garuda Indonesia is the lowest one, compared to quotations proposed by other participants, namely Air Asia.
- b. KPPU had also proposed the national business actors empowerment policy. In this matter, the Ministry of Religious Affairs is suggested to specify the domestic service through a tender pursuant to the Presidential Decree Number 80 Year 2003 with a view that national business actors may participate in the service procurement. While for the catering and accommodation in Saudi Arabia, the same mechanism cannot be applied as it shall comply with the regulations stipulated by the government of Saudi Arabia that the services shall be procured by any Saudi Arabian companies. In response to the KPPU's advice, the Ministry of Religious Affairs stated that the most important thing is the active role of the national business actors in getting business partners in Saudi Arabia and avoid middlemen service.
- c. KPPU is in the opinion that the Government's dual functions concurrently as a regulator and operator has been one of the causes of the inefficiency in hajj operation. This condition will hinder a reward and punishment mechanism. In responding to this opinion, the government disagrees that the separation of the function as a regulator and operator will result in a better hajj operation.

In responding to the government's reply as stated in a letter from the Ministry of Religious Affairs, KPPU reaffirms that it will surrender the implementation of any policies as stated in the letter to the Ministry of Religious Affairs. Furthermore, as per the KPPU's function, it will monitor the implementation of the policy to assure that the policy is implemented accordingly.

By the end of the year 2007, precisely on December 17, 2007 KPPU held a Journalist Forum on Final Notes of the Year 2007 discussing the KPPU's performance, either in respect of law enforcement and policy harmonization. The sectors monitored by KPPU in the year 2007 include telecommunication, retail, health and tender. This forum was attended by journalists from various mass media. The KPPU's performance during the year shows a fairly significant growth compared to those of the previous year. It is reflected in the increased number of advice and opinions provided by KPPU to the government from five (5) to be eleven (11). Such increase is not only in the matter of quantity, but also of the quality, as such advice and opinions relate to sectors which are vital to the people's welfare, among others, in retail, pharmacy and palm plantation sectors. The number of reports on alleged violation of business competition received by KPPU from the public also grew at 13,5% and the cases decided risen to 46 %. Such growth has become a barometer of the increased public participation in creating a fair business competition culture in the country.

There are some matters which shall be given serious attention in telecommunication sector, among others, as follows:

- a. Telecommunication sector is strategic as it relates to the satellite provision and operation, undersea cable network and microwave links which deal with the public need, the Government shall therefore deserve the rights to control such sectors with a view to assuring that no sovereignty of the Republic of Indonesia is violated with regard to international communication access;
- b. Telecommunication sector is vital in providing substantial contribution to the national economic growth. Despite of the fact that numerous operators have provided the service, it has shown no optimum competition performance;
- c. The government plans to implement effective policy with regard to the following:
 1. Interconnection arrangement.
 2. Prevention of potential abuse of vertical integration.
 3. Application of modern licensing.
 4. Policy development in order to keep technology advancement and business strategy development.
- d. Consumers have so far suffered from a loss resulting from anti-competition practices by some telecommunication business actors, among others, due to the cross-ownership by Temasek Business Group, which has led to a price-leadership in the telecommunication industry. Telkomsel as a market leader had excessively fixed the cellular telecommunication rate. The Commission finds that effective from the year 2003 to 2006, cellular telecommunication consumers have suffered from quite big loss, ranging from Rp 14.7 trillion to Rp 30.8 trillion;

In retail sector, there are some matters which shall be given serious attention:

- a. The competition between hypermarkets and small retailers and traditional markets represent a different level of playing field). In this case, competition, sektoral and local government policies play a significant role in handling the problem.
- b. The Commission in its advice and opinions provided with regard to the Draft Presidential Regulation on

Arrangement of Modern Retail and Shop Business, fully supports the government policy in protecting the small scale and traditional business actors and suppliers of modern retailers;

- c. Such arrangement, particularly with regard to the limitation of the number of business actors, shall consider the possibility of unfair business competition, such as the potential carter or monopolistic practice;
- d. Zone arrangement. It deals with clear, expressed and transparent zone arrangement especially through the local government regulation, which promotes the interest of small retailers and pays attention to the equal of playing field between small and large retailers without ignoring the interest of consumers;
- e. Arrangement on the relation between suppliers and modern retailers shall not only address with small suppliers, but also middle and large suppliers. It is due to the trend that large retailers tend to have a dominant position against the supplier;
- f. Arrangement with regard to the transaction between retailers and suppliers shall consider the principles of fair business competition;
- g. The Supreme Court has strengthened the KPPU's decision to impose a punishment against large retailer and/or hypermarket, Carrefour, which has violated the provisions stipulated in Article 19 (a) of Law Number 5 Year 1999. Therefore, Carrefour shall stop the application of minus margin requirements to its suppliers and be subject to a fine in the amount of Rp 1.5 billion.

In health sector, serious attention shall be given to the structure of the pharmaceutical industry which is oligopolistic and may lead to a collusion between the business actors and government policy makers. An evaluation is necessary on the Regulation of Minister of Health number 69/2006 on Highest Retail Price Fixing at the medicine labels and the regulation regarding generic medicine.

In tender sector, tender conspiracy occasionally involves the government officials, namely the Procurement Committee, its superior or officials in charge of goods and service procurement. Several types of tender conspiracy which are frequently found in case handling are as follows:

- a. Agreement among bidders in arranging and determining the winner;
- b. Bid manipulation (limited time, non-national wide tender announcement; tender conducted on holiday);
- c. Conspiracy on stipulating technical requirements and specification which can only be met by one of the bidders;
- d. Bidding committee does not provide the minutes of the visit meeting (aanwijzing) which inform the results of the visit to all bidders;
- e. Requirement to pay the bond within a limited period of time;
- f. Meeting or communication between bidding committee and bidders during the tender is conducted to submit the quotation with a price slightly lower than those submitted by other bidders.

In addition to the performance, the Journalist Forum on Final Notes of the Year 2007 also discussed the challenges and obstacles encountered by KPPU in performing its functions, among others, determining the institutional status which has not yet been completed, despite of the fact that KPPU has submitted the Draft of the Presidential Regulation on KPPU for the improvement of the Presidential Regulation Number 75 Year 1999 to the government. The status of the KPPU's Secretariat which has not yet been clearly specified has impacted its institutional development, budget management and development of its human resources, including insufficient welfare of its employees. In addition, the limited supporting facilities

either with regard to the building and inventory have caused KPPU unable to perform its operation optimally. KPPU also realizes that the support and active role of the government in formulating policy which is in line with principles of fair business competition are greatly required with a view of achieving fair business competition. Therefore, KPPU expects greater support of the government extended to KPPU in the years to come.

Institutional Cooperation

KPPU has carried out various activities in order to develop its institutional capacities through cooperation a number of business competition institutions either at level or international level. The cooperation was realized in the form of seminar, workshop, conference, training and etc. In this regard, during the period of January–December 2007, KPPU has carried out the following activities:

- Attending the SOM I APEC Meeting held in Canberra Australia within the framework of international cooperation. Since the year 2007, the issues on competition policy has become a priority agenda in APEC program as discussed in the EC (Economic Committee), SELI (Strengthening on Economic Legal Infrastructure), and CPDG (Competition Policy and Deregulation Group) Forums.
- As a realization of the cooperation between KPPU and Japan Fair Trade Commission (JFTC), KPPU's Commissioners of the period 2006-2011 attended a seminar held in Japan on March 18–29, 2007. This visit was also aimed at exchanging experiences between Indonesia and Japan as Japan had upheld the business competition law since sixty years ago.
- Holding a seminar bearing a theme of “Role of Regional Office of Competition Authority” in Batam and Medan, as to compare the power of the KPPU's and JFTC's Regional Offices.
- Holding a meeting with the National Development Planning Board (Bappenas) on March 29, 2007 discussing the cooperation between Indonesia–Germany, The meeting was attended by the some government officials from various ministries.
- Attending a training on Advanced Antitrust Market Definition Analysis held in Seoul and organized by OECD Korea Regional Center for Competition (OECD-RCC Seoul) in April 2007. The KPPU's delegation proposed the case on cartel in the procurement of medical equipments at Bekasi Regional Hospital.
- Attending the ABA 2007 Annual Spring Meeting held in Washington, U.S.A.. The meeting which was held on April 17–20, 2007, was a place where antitrust and competition legal experts, economists and top officials from some parts of the globe met. It was attended by 2,200 participants.
- As a part of the cooperation with the United Nation for Conference in Trade and Development (UNCTAD), KPPU held a Workshop on Competition Law and Policy on April 24, 2007 and the Roundtable Discussion on Competition Law and Policy on April 25, 2007. These two activities were held at Sahid Jaya Hotel, Jakarta. The workshop was intended for the KPPU's newly installed staff totaling seventy-seven (77) persons, while the roundtable was intended for the KPPU's Commissioners, directors and some government top officials (in this case, from the Ministry of Communications and Information and Ministry of Trade). These two activities involved five experts, namely Hassan Qaqaya and Michael Adam from UNCTAD, Fausta Gisolli from Italia, Ewan Beurrow from England, and Min Ho Lee from Korea. The workshop discussed about the relevant market fixing and abuse of dominant position, while the roundtable was more led to discuss the case handling procedure applied in Europe, telecommunication industry in Italia and retail industry in England.
- In addition, KPPU had held a bilateral meeting with UNCTAD discussing the follow-up actions of the subsequent the technical cooperation. In the meeting, it was agreed that UNCTAD would assist KPPU in two years to come with regard to some matters, namely:

- a. Holding a roundtable discussion on essential facilities, where the first phase of the meeting was more focused on telecommunication industry;
 - b. Formulation of module and curricula for training to be provided by KPPU;
 - c. Training for the trainee; and
 - d. Training and comparative study for KPPU librarians.
- With regard to the trilateral cooperation between KPPU, Supreme Court, and GTZ-ICL, formal and informal meeting had been held between KPPU and GTZ-ICL to discuss some issues related to the Implementing Agreement between three parties. In the meeting, some matters were agreed, among others, with regard to the amendment to the main objective of the agreement, including its indicators, amendment to the short-term objective and its indicators, establishment of Steering Committee dan Implementing Level, and application of transparency principles and effective agreement implementation.
 - Holding a joint discussion with Ministry of Trade discussing the theme on the implementation of the agenda of international meeting, namely the APEC CTI – II, held on April 16–24, 2007, attending a meeting on the APEC Integrated Checklist, and discussing the cooperation between ASEAN and AANZ.
 - Participating in the 3rd Top Level Official’s Meeting on Competition Policy and the 4th East Asia Conference on Competition Law and Policy, held in Hanoi Hanoi, Vietnam, on May 3-4, 2007.
 - Attending the Intersession ASEAN-Australia-New Zealand (AANZ) TNG Working Group on Economic Cooperation. The meeting which was held in Singapore on May 6-7, 2007 was a follow up to the 8th Trade Negotiating Committee (TNC) AANZ of Free Trade Area (FTA), held on March 4-9, 2007 in Wellington, New Zealand.
 - Attending the Sixth Annual International Competition Network Meeting, held in Moscow on May 29 to June 1, 2007. The meeting was a summit of the top officials of international competition institutions which discussed strategic issues on development and upholding of business competition law and policy.
 - Making administrative and technical preparation for APEC seminar which was held on June 2007. In addition, KPPU also assisted the preparation for the back-to-back seminar organized by GTZ and Asian Competition Forum. In the seminar, bearing a theme of Challenges in Competition Law in Asia was held at Aryaduta Hotel, Jakarta on May 23, 2007, KPPU was honored to deliver a keynote speech on current issues on business competition in Indonesia. The seminar was aimed at exchanging ideas among academicians on international business competition; from Hong Kong, India, Vietnam, Japan, China, and Indonesia.
 - Attending the OECD Competition Committee Regular Meeting held on Juni 5-8, 2007. In the meeting, KPPU actively participated in the roundtable discussion, held by the Working Party number 2, discussing business competition in legal profession and by the Working Party number 3 discussing two main topics, namely How to Provide Effective Guidance to Business on Monopolization/Abuse of Dominance dan Public Procurement–the Role of Antitrust Agencies in Promoting Competition.
 - Attending the Regional Antitrust Workshop held by the OECD Korea Regional Center for Competition (OECD-RCC Seoul). The seminar was focused on study of merger cases, abuse of dominant position and price fixing. With regard to these three areas, the speaker gave specific explanations on such aspects as measuring market power, testing the abuse of dominant position, implementation and sanction, and determining the market shares and other issue.

- Holding the APEC Seminar on Utilizing the APEC-OECD Integrated Checklist on Regulatory Reform in the Competition and Deregulation Aspect, held at the Sultan Hotel, on June 13-15, 2007. The seminar produced a number of follow-up recommendation as follows:
 - a. Sustainable discussion and dialogues among the countries to exchange their experiences in implementation of the APEC-OECD Integrated Checklist on Regulatory Reform.
 - b. Countries considered ways in competition assessment, regulatory reform, and competition policy which shall be taken through experiences and existing conditions.
 - c. Continuation of technical assistance program will be considered in the APEC-OECD Integrated Checklist on Regulatory Reform, which was aimed at improving the understanding on how the states apply the checklist in the specified condition and consideration in order to identify the priority area as a main concern.
 - d. The party states continue the experience exchange, aimed at: 1. Application of Regulatory Impact Analysis; and 2. Promoting the regulatory reform and competition values, within the framework of developing the understanding of the issues and assisting the development of technical expertise and capabilities in this field.
 - e. The party states consider the efforts of building the institutional structure in order to produce effective leadership and coordination among the governments for policy reform.
 - f. Each country considers the application of the crosscheck as to response the checklist with other governmental institutions.
 - g. All countries consider the application of self-assessment procedure in the APEC-OECD Integrated Checklist on Regulatory Reform to give significant contribution to the competition law and policy in the economic growth and the results of the seminar is expected to receive attentions from the ministries.
- In addition to holding APEC, KPPU, JICA, and JFTC seminars, a half-day seminar was also held at the same venue on June 15, 2007 on the regulatory reform and competition policy. The seminar was attended by the representatives of government institutions, business actors and academicians.
- Attending the fifth session of Trade Policy Review (TPR) held in Geneva, on June 27-29, 2007. This session was a forum to discuss the trade policy of some countries reviewed by Indonesia in conjunction with the upholding of the transparency. The session discussed two documents, namely Secretariat Report in the form of the draft report on the views of WTO's members on the Indonesia; trade policy and Government Report on the Indonesia's statement on its trade policy. In the session, Indonesia received some questions regarding the technical matters on the basis of the inputs provided by departments on the trade policy. In the session, KPPU was represented by the Director of Competition Policy.
- Attending the APEC Policy Dialogue: Seminar on the Role of Competition Policy in Structural Reform (June 27, 2007). In the seminar, KPPU was asked to deliver a presentation in the third session on the development of competition law and policy, especially on the experiences and challenges in the development of the competition policy. Furthermore, KPPU also participated in the Economic Committee II Roundtable Discussion: APEC-OECD Integrated Checklist on Regulatory Reform (June 28, 2007). In the meeting, KPPU was asked to deliver a presentation in the second session on the report of implementation of CPDG Seminar on Utilizing APEC-OECD Integrated Checklist on Regulatory Reform in Competition Policy and Deregulation Aspects. These two events were held in Cairns, Australia on June 27-30, 2007. In this matter, KPPU was represented by its Commissioner Chairperson and Director of Communication.

Fair Business Competition for Economics Development and Improving People's Welfare

The thirteen members of KPPU for the period 2006 – 2011 which have been assigned since early 2007, have been welcomed by the President of Indonesia, Mr. Susilo Bambang Yudhoyono at Istana Negara to report the performance of KPPU, strategic plan of KPPU 2007-2012 and deliver KPPU views about the role of business competitions in promoting economic growth, improving efficiencies and people's welfare. At Tuesday, May 15, 2007, KPPU group led by Chairman of KPPU, Mohammad Iqbal, was accepted by the President of Indonesia along with the ministers, i.e. Coordinating Minister for Economy, Minister of Finance, State Secretary (Mensesneg), Cabinet Secretary (Menseskab), and Minister of Law and Human Rights.

At that occasion, Chairman of KPPU particularly reported several cases handled by KPPU and some advices and opinions which were provided to the government. Since its establishment, the most business competition cases which were reported to KPPU deal with tender conspiracy cases. Meanwhile, business competition cases which also found are concerning discriminatory practice as done by Carrefour and misuse of dominant position by PT Telkom. In addition, it is also reported to the President several advice and opinions concerning the industrial sector such as aeronautics industry, telecommunication, energy, and palm oil industry.

In regard to palm oil industry, the review performed by KPPU indicates that there are vertical integrations (upstream/downstream) and market dominations by several big business actors (oligopoly). However, the regulations in this industry are not satisfying; one of them is indicated by the increase of domestic cooking oil price.

The other important role is KPPU's contributions in international forums such as ICN, OECD, APEC and ASEAN. In particular, Chairman of KPPU informed that on July 2007, Indonesia would be the host of seminar about APEC-OECD Integrated Checklist on Regulatory Reform" in the Competition Policy and Deregulation Aspects. The purpose of the seminar is to discuss regulatory reform self-assessment among APEC economies which have prepared or in progress of preparing the competition law.

At the end of the report, KPPU presented its intentions toward the government so that KPPU can be an integrated part of state apparatus especially in creating conducive business climate as implemented in other countries such as Korea, Japan and Australia.

Entire subject matters of the report presented by KPPU has been responded positively by the President. According to the President, business competition is needed in order to promote the economic development and to improve the people's welfare. The President also accepts KPPU invitation to improve relationship/cooperation with relevant ministries in order to internalize competition policy in government sectoral policy. Therefore, KPPU must improve its coordination and cooperation with government (relevant departments), in particular with ministers responsible for the economy.

The President also instructs that monopoly practices and tender conspiracy should be terminated and BUMN must be able to compete fairly with private sector. In international activities, the President will extend its full support to KPPU and invite KPPU participate in APEC leader's meeting to be held in Australia by the end of 2007.

The Success of Implementation of Competition Concept by Regulatory Reform

Policy reform process in Japan was started from the stagnant Japanese economic early condition and has shown significant economic growth nowadays. Such information was presented by Professor Tetsuzo Yamamoto (Graduate School of Commerce, Waseda University) in his keynote speech which was presented at the opening of the seminar “APEC–OECD Integrated Checklist on Regulatory Reform” on July 13, 2007 in Jakarta. The achievement passed through some structural reform processes with various challenges.

Yamamoto stated that five challenges faced; i.e. monetary policy, fiscal consolidation, promoting structural reform, decreasing imbalance of income level and poverty; improving national innovation and strengthening Japanese integrity in global economy. Economic improvement based on structural reform is determined by two following factors, structural reform which is motorized by private sector and structural reform which is motorized by government.

Along with the dynamics of economic growth, Yamamoto also identifies the important things that should be considered as well by competition supervision institution, Japan Fair Trade Commission, in which, they have to organize structural policy, improve the supervision of administration provision which is not suitable with competition concept and strengthen the case handling process. Furthermore, Japanese experiences show that relation between regulatory reform and competition policy at certain range can overlap with structural reform, such as in industrial reform, use of third party in public service and regulation concerning with liberalization.

In addition to the presentation given by Yamamoto, competition concepts for economic growth can also be referred from the explanation given by the Chinese Taipei competition supervision institution, as represented Mr. Tzu-Shun Hu, which says that competition concepts need to consider 3 (three) aspects i.e. government policy, business community, and society or public.

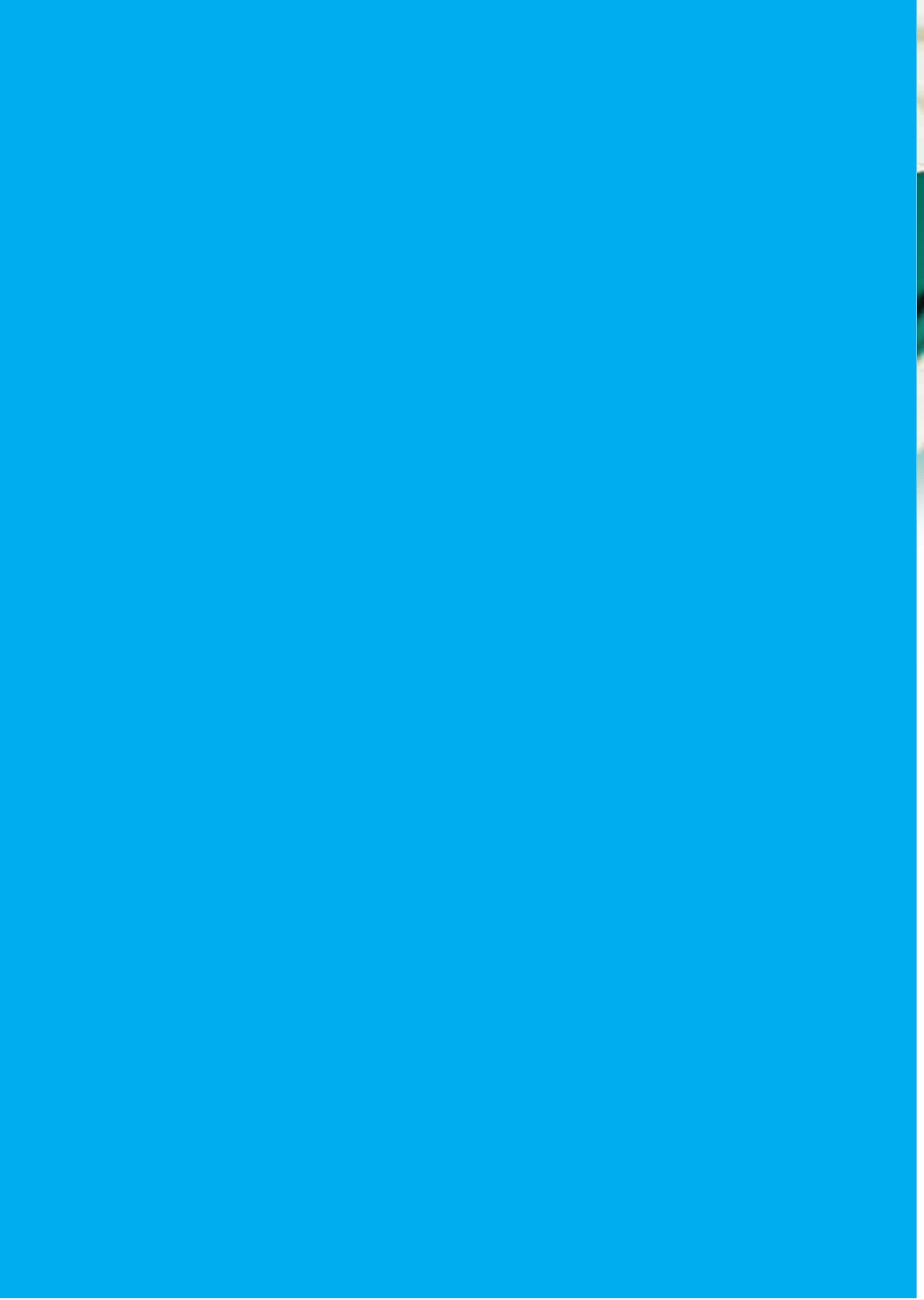
Several concrete actions that have been performed are:

In 1994, government established 461 Task Force, which is responsible to evaluate various rules which are inconsistency with Fair Trade Law, among others in such sectors as sugar industry, petroleum products, telecommunication, and LPG.

In 1996, government established Deregulation Task Force, which is aimed at annulling about 200 (two hundred) policies which are not needed in several industrial sectors.

In 1997, by Special Project, government evaluated 74 (seventy four) laws concerned with State Own Enterprises.

In 2001, Green Silicon Projects was launched which reformed the provisions in relation to the insurances, lawyer fees, and movies.



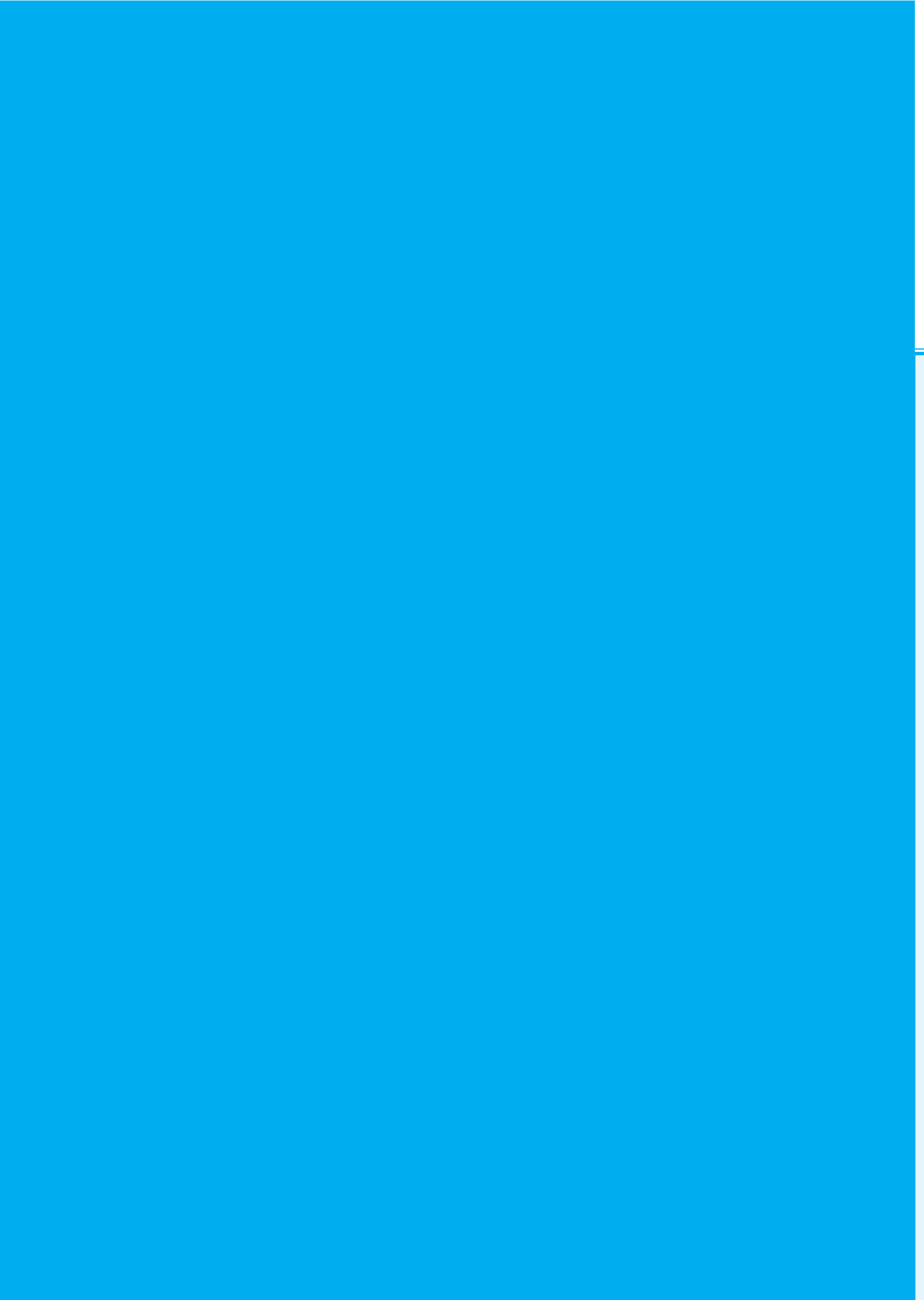


*Institutional
Development*

05

Annual Report 2007

Chapter



Institutional Development

Article 34 of Law Number 5 Year 1999 expressly provides for that the Commission will be assisted by the Secretariat of the KPPU for a smooth implementation of its duties. It has also been stipulated clearly in Article 12 of the Presidential Decree Number 75/1999 on KPPU. Provisions regarding the structure of the organization, duties, and secretariat function are further regulated by the Commission's Decree.

Based on the provisions, KPPU sets up and enacts the structure of the organization, duties, and secretariat function in the Commission's Decree. The Commission's Decree has been changed several times; the latest is Commission's Decree Number 160/Kep/KPPU/VIII/2007 on Secretariat of KPPU

Meanwhile, following up the results of inter-department discussion in 2006 which is, among other, agreeing that it is deemed necessary to amend the Presidential Decree Number 75 Year 1999 on KPPU, in particular Article 12 Paragraph (2) which reads: "Provisions regarding the structure of the organization, duties, and secretariat function shall be stipulated by the Commission's decree". The stated Article 12 Paragraph (2) needs to be elaborated so that it will cover the provisions concerning position, duties, function, leadership, structure of the organization, budget and secretariat personnel.

In KPPU's internal discussion, it has been agreed and formulated the draft of the Presidential Regulation on Amendment to Presidential Decree Number 75 Year 1999 on KPPU. Furthermore the draft has been imparted to State Minister for Administrative Reform, State Secretary, and Cabinet Secretary with letter Number: 236/K/VIII/2007 August 1, 2007 on Proposal for Draft of Presidential Regulation, and it has been followed with KPPU's letter Number: 251/K/VIII/2007 August 10, 1999 on Change of Proposal for Draft of Presidential Regulation.

As mandated in Law Number 5/1999 on Prohibition of Monopolistic Practices and Unfair Competition, and Presidential Decree Number 75 Year 1999 on Commission for the Supervision of Business Competition that for a smooth implementation of its duties, KPPU will be assisted by a secretariat. Thus, it is clear that the existence of the Secretariat of KPPU is deemed necessary to advocate and support a smooth implementation of KPPU's duties. Therefore, in order to provide support for a smooth implementation of KPPU's duties so that it can be implemented optimally, it is deemed necessary to determine immediately the certainty of position, organization, duties and function of the secretariat.

Moreover, in an effort of institutional strengthening, KPPU is demanded to be a law enforcement institution which is independent, credible, professional, transparent, and accountable to the public and the state. Therefore, KPPU Commissioner are deemed necessary to be inaugurated by the President of the Republic of Indonesia. As for coordination which has been performed with Deputy for Human Resources of State Secretary regarding the plan of the President to inaugurate KPPU members for the period 2006-2011 which was previously scheduled on the first Sunday of March and rescheduled on March 20, 2006, has not yet been realized.

At the time being, KPPU has had approximately 200 (two hundred) secretariat staffs, the numbers has included the addition of 120 (one hundred and twenty) new staffs which was recruited in 2007 and assigned in the whole directorate and KPPU regional branch offices. The recruitment of new staffs is done for the purpose of improving the KPPU's professionalism in facing more difficult challenges in the future. On this regard, KPPU has performed various forms of preconditioning for entire staffs, both new staffs and senior staffs. The preconditioning are designed in various forms, one of them is in the form of training which is held at home and abroad by KPPU in collaboration with the competition law enforcement institutions of other countries, such as Japan Fair Trade Commission (JFTC), Korea Fair Trade Commission (KFTC), and Chinese Taipei Trade Commission (CTFC).

5.1. INSTITUTIONAL DEVELOPMENT

KPPU conducts a hearing with Commission VI of Indonesian House of Representatives (DPR RI) discussing the development of law and policy enforcement and KPPU's budget.

At the session held on June 12, 2007, KPPU was requested to answer following questions asked by the Commission VI of the House:

1. How far is KPPU's role in conducting coordination with government, particularly with government to stop monopoly and begin to reduce tender conspiracy?
2. How is the realization and evaluation of the target achievement which have been conducted by KPPU until mid 2007?
3. How is the progress of drafting of the Government Regulation on Merger and Acquisitions?
4. How is the realization of the review on academic manuscript and evaluation on Articles of Law Number 5/1999?
5. How is the KPPU's monitoring and review toward alleged abuse of dominant position by several foreign companies in the telecommunication industry and other strategic industries? and
6. What is the results of KPPU's investigation on the alleged monopolistic practice by PT. Musim Mas in a cooperation with PT. Pelindo I ?

Based on the discussion, it has produced following results:

1. Regarding KPPU's Decision for the Case Number 01/KPPU-L/2004, dated June 1, 2004, in which PT. Pelindo I and PT. Musim Mas are the reported parties, Commission VI calls on KPPU to conduct the field monitoring proactively, regarding the implementation of its decision. It is because there is still overlapping functions of the regulator and operator. Commission VI asks the government c.o. Ministry of Communication, in this case, Port Authority, to optimize its functions as a regulator and the function of Pelindo I as the operator and facilitator.
2. In an effort to optimize KPPU's performance, Commission VI urges KPPU to take proactive initiatives, not only awaiting for reports in examining all kinds of agreements and business practices pursuant to KPPU's duties as stipulated in Article 35 Law Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Competition.
3. Fair competition in industrial sector which control the needs of people in general will provide enormous development benefits for people economic growth. Therefore, Commission VI requests government to promote the internalization of values of fair business competition in the government institutions.
4. In an effort to improve the KPPU's performance, Commission VI calls on the government c.o. Ministry

of Finance c.o. Directorate General of Budget and Fiscal Balance to immediately realize the KPPU's operational budget which has been so far postponed.

5. In an effort to improve the people's welfare and to protect the consumers, Commission VI calls on the KPPU to coordinate with the National Consumer Protection Agency (BPKN) and other relevant institutions.
6. As for PT. Indosat's case, Commission VI asks the KPPU to issue a decision which promote the best interest of consumers.

Furthermore, in the hearing held on June 25, 2007, KPPU was asked to answer the questions asked by the Commission VI with regard to :

1. Description of target realization of programs which have been conducted by KPPU during 2006 until the 1st semester of 2007, as well the overall evaluation results of programs which have been conducted.
2. Description concerning policy and program plan of KPPU as stipulated in RKAK/L year 2008.
3. Details of the KPPU's Work Program and Priority Scale as well as the details of indicative threshold in the Draft State Budget (RAPBN) of the year 2008.

Based on the discussion, it has come to the following conclusions:

1. KPPU has been asked to set up the whole budget policies which are based on the KPPU's duties and obligations as stipulated in Law Number 5 Year 1999, in order that the structure design, budget posting and budget operation will be based the basic issues particularly with regard to the elimination of monopoly, cartel, and unfair business competition; and
2. The approval of Commission VI of the House of Representative on the proposal on the indicative threshold budget of the KPPU of at least in amount of Rp 88,430,300,000.00 – Rp 150,742,794,000.00

In the hearing, the House also notifies the following issues:

1. The importance of improvement of the socialization and monitoring activities by KPPU;
2. It is deemed necessary to conduct a monitoring toward small and medium scale business regarding the strategic issues (in particular small-middle scale retailers), the tender monitoring at the regional areas, and monitoring of the nature resource industries; and
3. It is deemed necessary for KPPU to reconsider of the procurement of land and building as there are still numerous government buildings which are unused can be utilized now.

In assuring an effective competition policy in Indonesia, based on the mandate given by the House of Representative, KPPU has explored the possibility of establishing a cooperation with the National Consumer Protection Agency (BPKN). In a meeting held on September 20, 2007, KPPU and BPKN agreed to inaugurate the cooperation between the institutions through an execution of a Memorandum of Understanding (MoU). Following the establishment of the cooperation, it will be the fifth MoU entered into by KPPU, after the MoU made with the Central Bureau of Statistics (BPS), Capital Market Supervisory Body and Financial Institutions (Bapapem LK), Ministry of Communication and Information (Depkominfo), and the Corruption Eradication Commission (KPK). The cooperation is directed toward an effort of achieving a fair business competition and consumer protection. The draft of MoU, as prepared by the Sub-Directorate, provides for the scope of cooperation which will include a consultation regarding business competition and consumer protection; coordination on the findings of each party, particularly in the effort of preventing of unfair business competition which affects the consumers; and socialization of the correlation between the principles of fair business competition and consumer protection.

In addition, KPPU conducted a hearing for two times with Commission VI of the House on September 11, and September 24, 2007. The meeting was focused on the proposing process of the KPPU's budget for the year 2008 and the evaluation of the KPPU's budget performance of the year 2007. Based on the conclusions of the meeting, KPPU was requested to optimize the budget utilization of the year 2007 and the KPPU's budget proposal of the year 2008 is approved. In addition, the House also called on KPPU to solve the case related the alleged monopoly in telecommunication sector which involves the Temasek Holding Company pursuant to the prevailing laws and regulations. Aside from the call on to KPPU, the House also asks the government c.o. the Ministry of Finance c.o. Directorate General of Fiscal Balance to immediately realize the KPPU's operational budget which is still postponed until now.

Official Meeting with the Regional House of Representative (DPRD), District Secretary (SEKDA), and Secretary of Regional House of Representative (Sekretaris DPRD) which was held on Januari 23-24, 2007 at the Bidakara Hotel, Jakarta was attended by 1,500 participants, comprising :

- a. Chairman of the Regional House of Representative, District Secretary, and Secretary of Regional House of Representative from 33 provinces in Indonesia
- b. Chairman of the Regional House of Representative, District Secretary, and Secretary of Regional House of Representative from of 434 districts in Indonesia.

The participants are provided with the following materials :

- Government Regulation Number 37 Year 2006, presented by the Director General of Regional Financial Administration Development (BAKD)
- Policy on Government Goods and Services, presented by the National Development Planning Board (Bappenas)
- Prohibition of Tender Conspiracy, presented by KPPU
- Eradication of Corruption in the Procurement of Government Goods and Services.

In order to promote the KPPU's institutional strengthening, KPPU hold Gathering for Fair Competition Community in March 2007 as an initial concept of establishment of a community which supports the achievement of fair business competition climate, in conjunction with the celebration of 8 years of the enactment of Law Number 5 Year 1999. The gathering was attended by the Minister of Trade of the Republic of Indonesia, Chairman of Commission VI of the House and several representatives from government institutions. At the same occasion, the Minister of Trade notified that KPPU as a policy partner of the Ministry of Trade can discuss and resolve important regulations in order to create fair business competition climate, such as the formulation of the Presidential Decree on the rearrangement of modern market. Furthermore, the Chairman of Commission VI of the House states that KPPU has succeeded in promoting the business competition culture in Indonesian aviation business.

5.2. IMPROVEMENT OF FACILITIES AND INFRASTRUCTURES

The smooth performance of the KPPU's duties and authorities and its Secretariat is not only determined by the human resources only, but also by the condition and state of its supporting facilities and infrastructures.

In order to optimize the enforcement of Law Number 5 Year 1999, KPPU has recruited 77 new employees at the beginning of 2007 to be assigned as per the requirements of the Secretariat. At the other side, the increased number of the employees has caused the working environment less conducive due to the lack of rooms and facilities and infrastructures for newly recruited employees.

Sufficient rooms will support the performance of the KPPU's duties. Therefore, there is a great need to provide sufficient working rooms for the KPPU's commissioners, directors and employees, the examination room, meeting room, decision pronouncing room, hearing room, library, audio visual rooms, public area rooms and vehicle parking lot.

The efforts in procuring the state-owned land and building through the Minister of Finance has not yet produced the result. Meanwhile, a proposal has been delivered to the State Secretary to obtain former building of the Corruption Eradication Commission's (KPK) office located on Jl. Juanda No.36 Jakarta for the development of the KPPU office rooms.

In order to improve the health service, since the first semester of the year 2007, KPPU has provided insurance for its employees. The insurance covers inpatient and outpatient medical service (both general practitioners and specialists services).

5.3. IMPROVEMENT AND DEVELOPMENT OF KPPU REGIONAL BRANCH OFFICES

KPPU has five (5) Regional Offices (KPD KPPU), namely in Medan, Surabaya, Makassar, Balikpapan, and Batam. These regional offices have significantly supported the performance of the KPPU's duties. The regional offices have handed some cases which are located within their work area, especially in the investigation and preliminary examination. In addition, the regional offices have done other activities which require their facilitation.

In an effort to improve their existence, the Regional Offices obtain support from various parties, such as the Commission VI of the House, Regional House of Representative, local governments, mass media, and other parties. The stated will facilitate the KPPU Regional Offices' operation in their working area. Therefore, it is expected that the effort of upholding Law Number 5 Year 1999 will run effectively and result in the achievement of fair business competition throughout Indonesia.

The support from the Commission VI of the House toward the empowerment and development of the KPPU's Regional Offices is very strong; as it was stated in a hearing between the Commission VI of the House and Secretary General of the Ministry of Trade and the KPPU's Executive Director held on July 9, 2007. One of the conclusion of the hearing (point 4) says: "In an effort to improve the KPPU's performance and its services to the public as well as to achieve effective case/report handling on the fair business competition at the regional areas in conjunction with the implementation of Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, Commission VI has therefore requested KPPU to establish its regional offices in phases at all provincial capitals through Indonesia".

The request of the Commission VI as stated above represents a very good news and therefore needs to be responded positively by KPPU as well as government and other related parties (KPPU's stakeholders). However, in its implementation, this positive support from the House still encounters some obstacles. It deals with the problem of institutional status of Secretariat of KPPU, personnel, and independence of the KPPU's budget.

As a response, KPPU is taking every efforts in fulfilling the request of the Commission VI through the following :

- Conducting an evaluation and review on the existence and empowerment of the KPPU's Regional Offices.
- Making a plan on the establishment of the Regional Offices at two (2) provincial capitals in the fiscal year 2008.
- Improving and developing the basic duties, functions and authorities of the KPPU's Regional Offices;

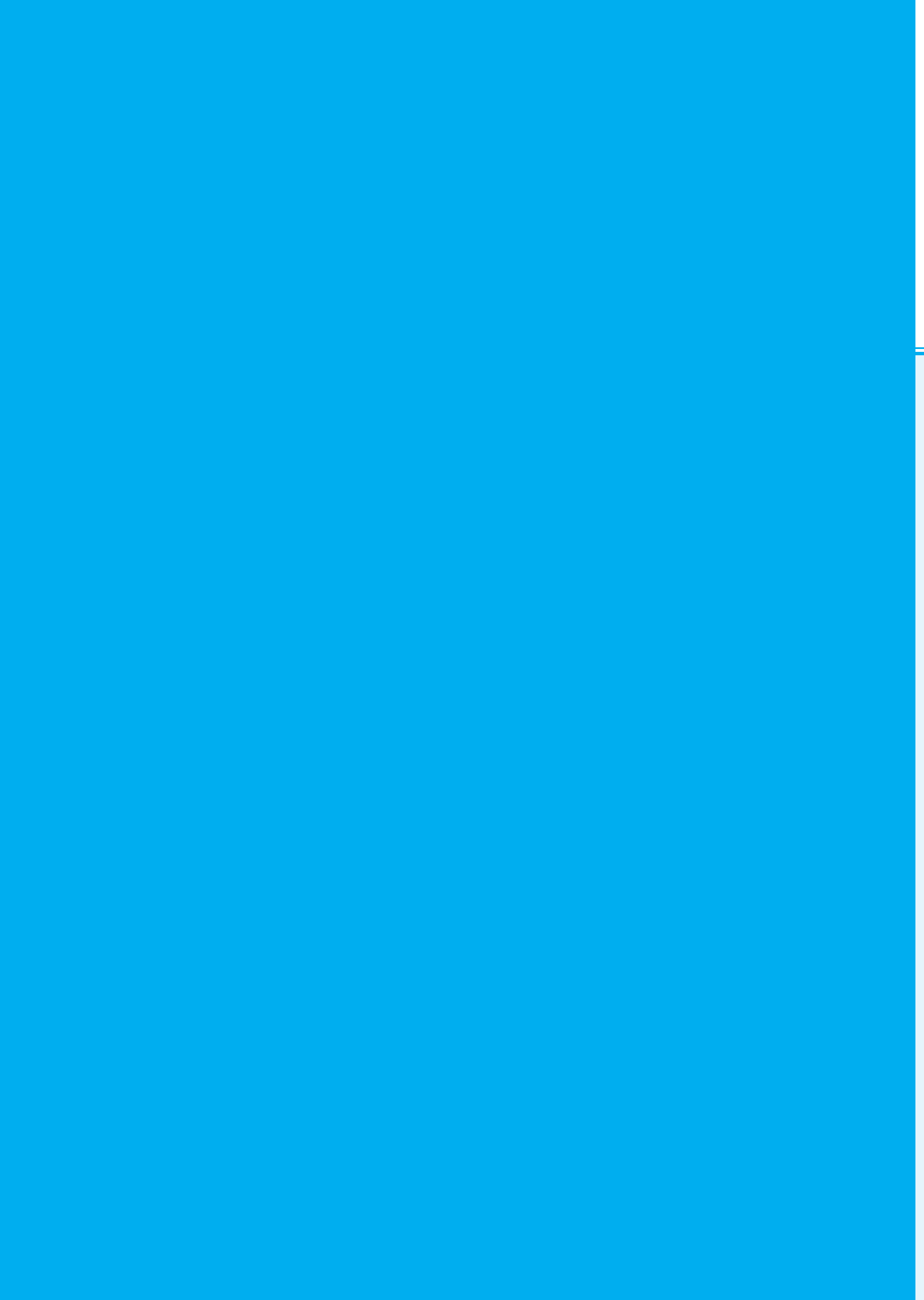
- Increasing the quantity of human resources and improving/developing their capabilities;
- Improving the working facilities and infrastructures of the Regional Offices.
- Proposing the operational budget for each Regional Office.

Closing **06**

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Chapter





Closing

The condition represents a heavier challenge to KPPU as the public have a higher expectation on KPPU to play its active role in improving the economic system as an effort to improve the Indonesia's competitive advantage in the globalization era.

During the year 2007, KPPU realizes that it has to perform an extra duties due to the fact that when Indonesia's economy is going through a recovery process, some anti-competition business practices were committed, such discrimination, abuse of dominant position, collusion, cartel and other business activities which are in the contrary to the provisions stipulated in Law Number 5 Year 1999.

The condition represents a heavier challenge to KPPU as the public have a higher expectation on KPPU to play its active role in improving the economic system as an effort to improve the Indonesia's competitive advantage in the globalization era.

The factual facts shows that the challenges faced by KPPU do not derive from the business actors which become the largest object of the KPPU's duties, but also from the government, i.e. it has not yet effectively accommodated the spirit of competition in its economic policies. It is therefore not odd that some regulations even tend to be anti-competition in nature.

Therefore, starting from the spirit to adjust the government policies in an effort to improve the effectiveness of the implementation of the competition law in Indonesia,, KPPU has continuously promoted the regulatory reform with a view of giving contributions to the national economic growth. To that end, KPPU shall always monitor the government regulations with regard to the business competition in all sectors, the economic impacts of the decisions made by KPPU as well as considering the equilibrium between the interest of business actors and that of the people as stipulated in Article 2 of Law Number 5 Year 1999 through regulatory reform.

The regulatory reform which is being intensified nowadays has at least given new color to the course of the Indonesia' economic growth. The positive values taken from the implementation of the regulatory reform mechanism is the participation of KPPU in establishing the drafts of government regulations. During the year 2007, KPPU has provided not less than ten (10) advice and opinions to the government with regard to some industries, some of which have been positively responded by the government in performing its functions as a regulator. It is expected that it will be good beginning step in realizing the noble objective of the law, namely to improve the people's welfare.

Regulatory reform requires four things, namely: political supports, political will, comprehensive economic analysis and strict and fair law enforcement. The regulatory reform program will be successfully implemented if it is accommodated by an established framework and institution. Therefore, it is deemed necessary to establish National Business Competition Policy, i.e. a national policy to accommodate the coordination and harmonization of the values of business competition with sectoral policies and vice versa.

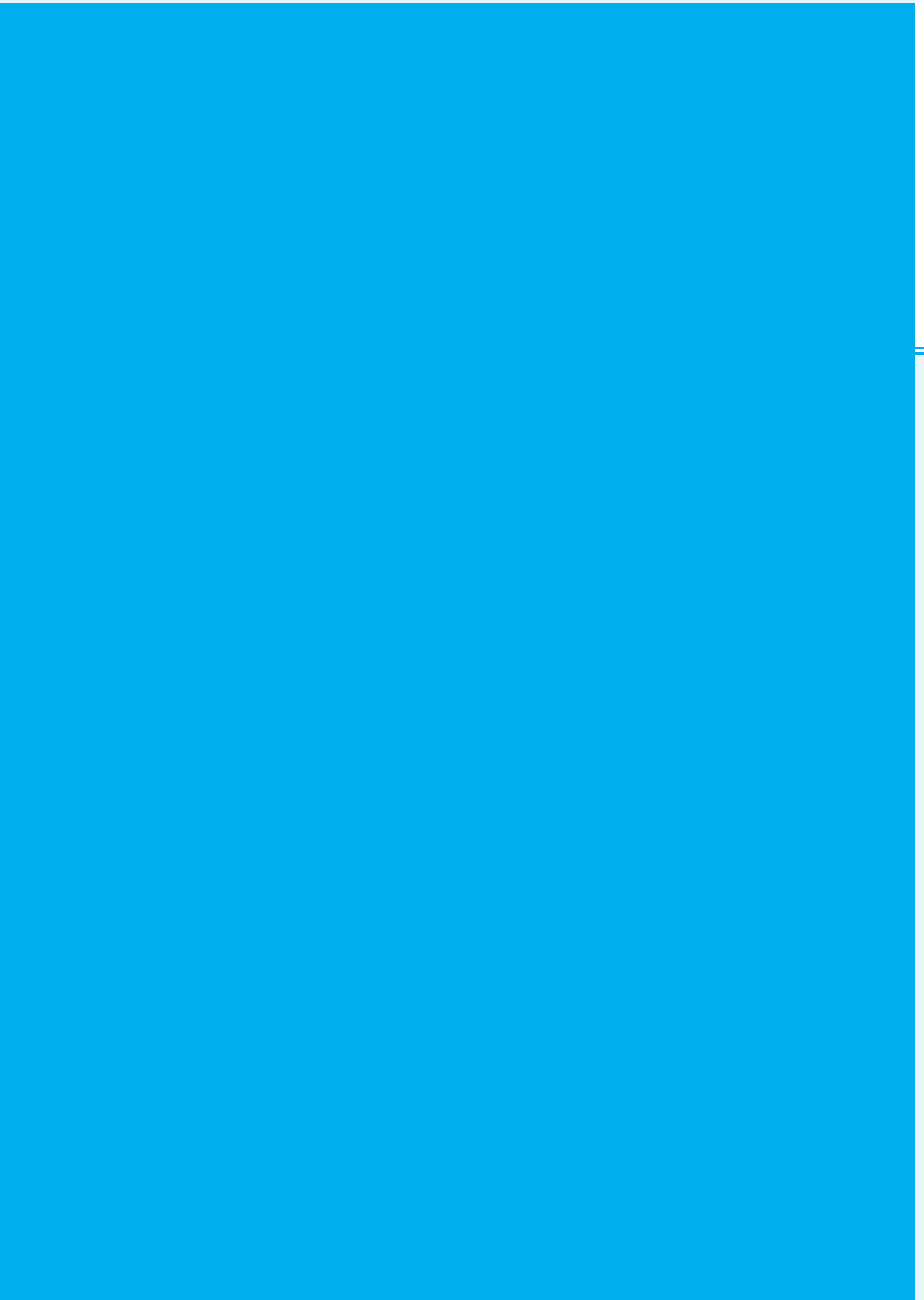


*Case, Decision and
Stipulation Summary*

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Annual Report 2007

Appendix



Case, Decision and Stipulation Summary

CASE DECISION NUMBER 08/KPPU-L/2006 TENDER FOR NON DESTRUCTING TESTING INSPECTION SERVICES

This case derived from a report received by KPPU at the beginning of May 2006 regarding the alleged violation of Law Number 5 Year 1999 in relation to the Tender No. 200/SINS-WD/03-D for the work of Non Destructing Testing (NDT) Inspection Services at Total E & P Indonesia, Balikpapan, East Kalimantan Timur.

The alleged tender conspiracy arises after the NDT tender is repeated as no bidders qualified for the tender requirements. Before the second tender was conducted, a meeting was made between PT. Surveyor Indonesia and PT. Inspektindo Pratama discussing the cooperation between PT. Surveyor Indonesia and PT. Inspektindo Pratama in order to win the tender and handle the project of NDT Inspection Services, Tender No. 200/SINS-WD/03-D at Total E & P Indonesia.

Some data and facts obtained from the examination and investigation carried out by KPPU are as follows :

1. The meeting produced an agreement as contemplated in a cooperation agreement, dated January 24, 2004, signed by the President Director of PT. Surveyor Indonesia and PT. Inspektindo Pratama respectively, mainly agreeing on the division of work and responsibilities of each party, among others, as follows:
 - a. The scope of the cooperation commences from the pre-tender up to the implementation of the project activities, namely Preparation, Formulation and Delivery of Administrative and Technical Data, Quotation Data and Data of Work Implementation;
 - b. PT. Surveyor Indonesia will play its role as a bidder. Every efforts will be taken in order that it will become the awardees of the tender and PT. Inspektindo Pratama will fully support the efforts.
 - c. PT. Surveyor Indonesia will arrange for and establish a Success Team for the technical evaluation with a full support from PT. Inspektindo Pratama;
 - d. PT. Inspektindo Pratama will play its role to manage and arrange for the composition of the bid price in order that the mutual beneficial selling price and composition will be obtained;
2. PT. Inspektindo Pratama had breached the agreement as it submitted its bid document on January 15, 2004 for the NDT Tender. It breached the second agreement that the bidder should have been PT. Surveyor Indonesia. It was confirmed by Johannes Widodo Rantow, the Director of PT. Inspektindo Pratama who delivered a cancellation letter on February 14, 2004 to the President Director of PT. Surveyor Indonesia, Didie B. Tedjosumirat, stating that the cooperation agreement, dated January 13,

2003 was invalid because on the date when the cooperation agreement was signed, H.S. Syafrul was no longer the President Director PT. Inspektindo Pratama and informing that PT. Inspektindo Pratama decided to independently participate in the tender. The newly installed Director of PT. Inspektindo Pratama had cancelled the agreement as it was difficult to be implemented and would gradually inflict a financial loss to PT. Inspektindo Pratama. He also stated that it was not proper to establish a cooperation between two bidders. PT. Inspektindo Pratama then submitted its tender document on February 15, 2004.

3. On February 16, 2004, the President Director of PT. Surveyor Indonesia, Didie B. Tedjosumirat, delivered a response to the letter sent by the Director of PT. Inspektindo Pratama, and PT. Surveyor Indonesia stated that the cooperation agreement was annulled by law, all rights and obligations arising out of the agreement should therefore be declared to be non-existent and unenforceable.
4. PT. Surveyor Indonesia and PT. Inspektindo Pratama had committed a tender conspiracy in the form of cooperation agreement to arrange and determine PT. Surveyor Indonesia as the winner for the tender for the NDT Inspection Services, held by the Tender Committee of Total E & P Indonesia. The submission of the bid document by PT. Inspektindo Pratama and cancellation of the Cooperation Agreement dated January 13, 2004 by both parties, the conspiracy to arrange and determine the winner of the tender was proved not to have been carried out by PT. Surveyor Indonesia and PT. Inspektindo Pratama, thereby, it does not meet one of the elements of violations stated in the provisions of Article 22 of Law Number 5 Year 1999 which says: "Business actors shall be prohibited from entering into conspiracies with other parties in order to arrange and or determine awardees of tenders which may potentially result in unfair business competition", and it can be therefore said that no violations to the provisions stipulated in Law Number 5 Year 1999 had been committed.

Based on the above facts, on March 15, 2007 KPPU decided that the Reported Party I: PT Surveyor Indonesia and the Reported Party II: PT Inspektindo Pratama were not proved to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999 on Conspiracy.

CASE DECISION NO. 09/KPPU-L/2006 TENDER OF FURNITURE AT PUBLIC ADMINISTRATION INSTITUTION (LAN), MAKASSAR

The KPPU's Decision No. 09/KPPU-L/2006 derived from case reported to KPPU. Based on the facts obtained from the results of examination conducted by the Examination Team, the Commission's Assembly is in the opinion that the Tender Committee has made some mistakes and negligence in conducting the tender process, among others, as follows:

1. No detailed criteria/specification of the fabrication and non-fabrication goods;
2. No announcement on the total value of the Self-Assessed Price (HPS) as stipulated in the Presidential Decree Number 80 of 2003;
3. Non evaluation of the bid documents as stipulated in the Work Plan and Requirements (RKS);
4. No evaluation of the basic capabilities (KD) of the bidders.

Despite of the facts that the mistakes and negligence have been committed in the tender process, the Commission's Assembly is in the opinion that such mistakes and negligence were not intentionally done to arrange for the winning of one of the bidders.

The Commission's Assembly is in the opinion that the alleged conspiracy committed by the Tender Committee and CV Diamond Abadi and CV Banyumas in the form of Post Bidding between the Tender Committee and CV Diamond Abadi and the alleged horizontal conspiracy among the bidders are not supported by the facts and convincing evidences. Based on the examination results, the Commission's

Assembly also found some facts which are deemed necessary to be presented in its decision, as follows:

1. A witness who stated under a penalty of perjury that there was a horizontal conspiracy in the form of a compensation offer for tender resignation in the sum of Rp 100,000,000.- (one hundred million Rupiah) from the Reported Party III to other bidders was groundless;
2. It was found that the use of other company's name by a bidder in order to meet the competency requirements specified for a tender is considered common. Such practice is not a unfavorable condition for a fair business competition;
3. Particularly for procurement tender, the qualification requirements regarding the Basic Competency has potentially become an entry barrier to small-scale or newly established companies in obtaining an opportunity in participating in a tender and this condition may lead to unfair business competition;
4. The verdict of the State Administration Court (PTUN) which was strengthened by the verdict of the State Administration High Court (PTTUN) on the same tender process and the Notification on the Results of Investigation of South Sulawesi Regional Police on the same tender process, were not considered by the Commission's Assembly as it was not relevant to the case number No. 09/KPPU-L/2006 which deals with business competition.

Based on the facts and evidences found during the examination process, the Commission's Assembly has therefore decided:

1. to declare that the Reported Party I : Tender Committee of Procurement of Furniture at the Office of the Center for State Apparatus II Study, Education and Training (PKP2A) of State Administration Institution (LAN) Makassar, is not proven to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999 on Conspiracy;
2. to declare that the Reported Party II: CV Diamond Abadi is not proven to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999 on Conspiracy;
3. to declare that the Reported Party III: CV CV Banyumas is not proven to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999 on Conspiracy;
4. The decision was pronounced in the Meeting of the Commission's Assembly which was declared to open tp public, on Friday, March 16, 2007 at the KPPU's building on Jl. Ir. H. Juanda no. 36 Jakarta Pusat. Despite of the fact that the Reported Parties are not proven to have violated the Law Number 5 Year 1999, pursuant to the provisions of Article 35 point e of Law Number 5 Year 1999, the Commission's Assembly has recommended in its decision as follows:
 1. To ask the superior of the Tender Committee to impose sanction to the Tender Committee Meminta for its negligence and mistakes in carrying out the furniture tender at the State Administration Institution (LAN) of Makassar;
 2. To take necessary actions pursuant to the applicable registration against the report, oath or statement which are allegedly false;
 3. To call on the government to establish a regulation on the procurement of goods and services for the government institutions and private sectors which obligates the Tender Committee to stipulate on the prohibition of company's name illegal use/lending and evaluation of the bidders identity validity;
 4. To ask the government to review the provisions stipulated in the Presidential Decree Number 80 of 2003 on the Requirements for Basic Competency and other requirements for the goods

procurement which are potential to hinder the business actors in participating in a tender without ignoring their competency in performing the work.

Case Decision No. 10/KPPU-L/2006 Tender Conspiracy for Construction of Two (2) units of Ro-Ro Ships of 750 GT at BRR NAD-Nias

KPPU has completed the examination in accordance with the applicable laws and regulations and decided the case No. 10/KPPU-L/2006, on the alleged violations of Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Competition with regard to the tender for construction of two (2) units of Ro-Ro ships of 750 GT at the Rehabilitation and Reconstruction Agency (BRR) of Aceh Darussalam-Nias (NAD-Nias).

This case derived from a report on the alleged conspiracy committed by the Tender Committee and PT. Daya Radar Utama, PT. Dok & Perkapalan Kodja Bahari and PT. Dumas Tanjung Perak Shipyard to arrange for the winning of PT. Daya Radar Utama in the administrative evaluation based on the following evidences:

1. That, there were two (2) versions of the administrative document examination checklist signed by PT. Dok & Perkapalan Kodja Bahari and PT. Dumas Tanjung Perak Shipyard in their capacities as witnesses for the same tender document, namely the tender document submitted by PT. Daya Radar Utama;
2. That, the Tender Committee proposed that PT. Daya Radar Utama as the winner of the tender, despite of the fact that based on the checklist, PT. Daya Radar Utama did not fulfill the administrative requirements.

In the Preliminary Examination, the Examination Team found the fact and indication as follows :

1. That the existence of two (2) versions of administrative document checklist of PT. Daya Radar Utama did not indicate the involvement of PT. Dok & Perkapalan Kodja Bahari and PT. Dumas Tanjung Perak Shipyard in a tender conspiracy as the power to determine the winner of the tender laid on the Tender Committee and the fact shows that the checklist was not made as a reference by the tender committee;
2. That there was a strong indication of a conspiracy between the Head of Working Unit of the Rehabilitation and Reconstruction Agency (SATKER BRR) and the Directorate of River, Lake and Crossing Transportation (LLASDP) in the tender planning process which tended to assist PT. Daya Radar Utama as the tender winner. It relates to the fixing of the ship type which tended to select the ship type which is frequently produced by PT. Daya Radar Utama in the project managed by the Ministry of Communication;
3. That there was a strong indication that the Tender Committee did not carry out the evaluation fairly and tended to assist PT. Daya Radar Utama as the tender winner. It related to the decision of the Tender Committee to ignore the administrative requirements of the bid document submitted by PT. Daya Radar Utama and to carry out a limited evaluation of the bidder qualifications by ignoring the factual capabilities of all bidders

In the Further Examination, the Examination Team came to a conclusion as follows:

1. That, based on the analysis on the alleged violation of Law Number 5 Year 1999, the Examination Team concludes that the acts taken by the Tender Committee, PT. Daya Radar Utama, Head of SATKER BRR and Directorate of LLASDP, either jointly or severally, in the tender process of Ro-Ro Ships 750 GT at the BRR are not categorized as a tender conspiracy;
2. Therefore, the Examination Committee concludes that there is no evidence of the violation of Article 22, Law Number 5 Year 1999 committed by the Tender Committee, PT Daya Radar Utama, Head of SATKER BRR and Directorate of LLASDP.

Based on the above facts and with regard to the alleged violations of the provisions stipulated in Article 22 of Law Number 5 Year 1999, the Commission's Assembly is in the opinion that the following elements of the article have been met:

1. Element of business actor. Such element, in this case PT. Daya Radar Utama, has been met.
2. Element of conspiracy with other parties to assist and/or fix the tender winner.
 - That it is true that the Tender Committee has dropped PT. Industri Kapal Indonesia (Persero) in the administrative evaluation as it is in accordance with the provisions stipulated in the Presidential Decree Number 80 of 2003 and the Unit Price Analysis does not meet the requirements as it only describes the material price list. It has been acknowledged and ratified by all bidders, including PT. Industri Kapal Indonesia (Persero) itself;
 - That it is true that the Tender Committee has assisted PT. Daya Radar Utama in the first phase (administrative evaluation), although it did not submit the maker list as it is not specified in the Tender document. The Work Implementation Method does not require such signing as it is provided for in the tender document;
 - That it is true that the Tender Committee changed the type of 600 GT to be 750 GT on the reason of the ship capacity. Despite of the fact that the Directorate of LLASDP suggested the Head of SATKER BRR to use the type of 750 GT with the technical specification and prototype specified by the consultant, PT. Mega Ocean Jaya, the Tender Committee did not fully use the suggested technical specification and prototype as it is only able to carry eleven (11) trucks. As a matter of fact, the Head of Satker wanted a ship which is able to carry 14 trucks and 8 small and middle weight vehicles;
 - That it is true that the Tender Committee only considered the most extensive experiences in the field of construction of the Ro-Ro ship and did not consider the experience in constructing other types of ships made of steel materials. It is mainly due to the limited capacity of the Tender Committee in interpreting the most extensive experience in the field of the same type as provided for in the Presidential Decree Number 80 of 2003, instead of rendering a effort of the element of conspiracy as stipulated in Article 22 of Law Number 5 Year 1999;
 - Therefore, the element of conspiracy with other parties in assisting and/or fixing the winner of the tender is not met.
3. That, as the element of conspiracy with other parties in assisting and/or fixing the winner of the tender is not met, then the Commission's Assembly is in the opinion that other elements of Article 22 of Law Number 5 Year 1999 are not necessarily proven.

Before making the decision, the Commission's Assembly has considered the matters as follows:

1. That, during the examination, it was found some weakness of the Tender Committee in preparing the technical specification of the ships to procured. It may lead to the intervention of other parties in determining the technical specification, thereby reducing the independency of the Tender Committee;
2. That, during the examination, some weakness of the Tender Committee were found in assessing the basic capabilities of the bidders which only assessed the Most Extensive Value in the similar field, namely the construction of the Ro-Ro ship only;
3. That, with regard to such weaknesses, the Commission's Assembly recommends the Commission provide advice and opinions to the BRR NAD-Nias that it shall appoint the members of the Tender Committee who have the qualification in accordance with the goods and services to be offered.

In consideration of the above stated facts and conclusion, and bearing in mind of the provisions stipulated in Article 43 paragraph (3) of Law Number 5 Year 1999, the Commission's Assembly decides :

To declare that the Tender Committee, PT Daya Radar Utama, Head of SATKER BRR, and Directorate of LLASDP are not proved to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999 in the tender of 750 GT ship at the BRR.

KPPU has examined and made decision to the above case independently (impartially) and solely in rendering the supervisory mandate on the implementation of Law Number 5 Year 1999 in order to establish business certainty and fair and effective business competition for all business actors. The Case Decision No. 10/KPPU-L/2006 was pronounced in a Commission's Assembly Session open to public on Monday, April 16, 2007 at the KPPU's Building, Jl. Ir. H. Juanda No. 36 Jakarta Pusat.

Case Decision No. 14/KPPU-L/2006 Procurement Tender for Integrated Shorebase Management and Logistic Services (No. DCU-0064A) at BP Berau

This case derived for a report filed to KPPU on June 29, 2006 reporting an alleged violation of the provisions stipulated in Article 22 of Law Number 5 Year 1999 on the conspiracy of the tender for the procurement of the integrated shore base management and logistic services (No. DCU-0064A) at BP Berau. The results of the examination conducted by the Commission's Assembly found that on November 2 and 3, 2004, BP Berau Ltd announced the tender for the procurement of the integrated shore base management and logistic services which included the management of shore base at the Tangguh LNG Project, camp and catering, mechanical workshop, logistic management and cargo handling, land transportation, workshop equipment, waste management, oil spill handling and cleaning, drilling pipe inspection and sea transportation.

BP Berau Ltd conducted 2 times of tender for the procurement of the integrated shorebase management and logistic services. The first tender was conducted on November 2-3, 2005 and declared to be annulled as five companies who submitted their documents were declared disqualified as their quotation were considered to have not met the prescribed requirements. The second tender, conducted on September 13-27, 2005. Out of the bidders, four companies had met the previous prequalification phase, namely PT. Cipta Krida Bahari, PT. Citra Pembina Pengangkutan Industries (CPPI), PT. Eka Nuri (Leader Eka Nuri Consortium), and PT. Supraco was declared to be disqualified after the evaluation process. These three bidders submitted their quotations as follows: (1) Eka Nuri Consortium in the amount of US \$ 73,696,172.88 with domestic product portion (TKDN) of 86.05, (2) PT Cipta Pembina Pengangkutan Industries in the amount of US \$ 78,908,093.00 with domestic product portion of 51.29, and (3) PT Cipta Krida Bahari in the amount of US \$ 83,911,513.98 with domestic product portion of 62.14.

On December 8, 2005, PT Cipta Pembina Pengangkutan Industries expressed its objections to BP Berau on the quotation submitted by Eka Nuri Consortium with regard to the calculation of the domestic product portion and port permit owned PT Bangun Adyabahan Perkasa which was used in the quotation of Eka Nuri Consortium.

Furthermore, on December 15, 2005, BP Berau Ltd submitted a proposal to BPMIGAS to appoint Eka Nuri Consortium as the tender winner, despite of the fact that the calculation of the domestic product portion has not yet been completed due to the reason of a revision made to the domestic product portion of Eka Nuri Consortium would not affect the rank. BP Berau then submitted a verification application to the Directorate General of Oil and Gas. The Directorate General issued the results of the verification for the domestic product portion and declared that Eka Nuri Consortium had made a mistake in calculating its domestic product portion which was 86.05 and should be 56.03. Due to such mistake, Eka Nuri Consortium should be subject to a penalty in the form of the order to meet its local product portion as stated in the quotation plus 10% or in total of 96,05%.

On April 26, 2006, BPMIGAS approved the proposal submitted by BP Berau Ltd. to appoint Eka Nuri Consortium as the winner with a condition that all required permits in accordance with applicable regulations shall have been obtained by the contractor before the commencement of the work. On January 27, 2006, the LoA was signed by PT. Eka Nuri and BP Berau Ltd. and the latter announced that Eka Nuri Consortium had been appointed as the winner and the preceding of which would be continued to the signing of working contract between BP Berau Ltd. and Eka Nuri Consortium.

The Commission's Assembly is in the opinion that the alleged violation in this case relates to the tender conspiracy on the basis of three problems, namely (1) the Domestic Product Portion (TKDN) of Eka Nuri Consortium, (2) Port Permit of PT. Bangun Adyabahan Perkasa which was used by Eka Nuri Consortium, dan (3) LoA of BP Berau.

On the basis of the results of the sufficient examination by asking information from witnesses, government agencies, experts and by investigating the documents and correspondence with related parties, there is no evidence that there is a conspiracy between Eka Nuri Consortium (the Reported Party I) and BP Berau Ltd (the Reported Party II) in the tender in order to assist Eka Nuri Consortium as the winner of the tender.

The Commission's Assembly in its decision pronounced on Thursday, June 28, 2007 at the KPPU's Building, Jl. Ir. H. Juanda no. 36 Jakarta Pusat, has provided its advice and opinions to the Government and related parties as follows:

1. To recommend to the Minister of Communication to correct the mechanism and process of granting a permit of port operation in order to promote legal and business certainties for business actors engaged in the port business.
2. To recommend to the Head of BPMIGAS to impose a sanction to the Head of Legal Division, Alan Frederik, in accordance with the applicable procedure.
3. To recommend to the BPMIGAS to establish a coordination with related government agencies in promoting the use of domestic products and services.
4. To recommend to the BPMIGAS to impose a sanction to BP Berau Ltd. for its failure to fully comply with the provisions stipulated in PTK 007 at this tender
5. To recommend to BPMIGAS to improve the PTK 007 especially in relation to TKDN and contract-preceding work.

Case Decision No. 15/KPPU-L/2006 LPG Distribution in South Sumatra

KPPU has completed the examination in accordance with the applicable laws and regulations and made a decision to the case number No. 15/KPPU-L/2006, namely the alleged violations to the Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Competition with regard to the LPG distribution in South Sumatra.

Based on a series of examinations conducted by the Examination Team, the Commission's Assembly is in the opinion that:

- a. The agreement entered into between PT Pertamina (Persero) and the LPG agents does not intended to limit the number of the agents for the distribution and marketing of the LPG.
- b. The agreement between PT Pertamina (Persero) and APPEL - PT Bina Mulia Jaya Abadi was intended to maintain the availability of the LPG at each agent with lower price.

- c. The existence of APPEL in Bangka Island has caused lower price of LPG at consumer level.
- d. The annulment of the Letter sent by the General Manager of UPMS II PT Pertamina (Persero) No. 057/E22000/2006-S3, dated March 3, 2006 is a measure taken by PT Pertamina (Persero) in giving a discretion to the LPG agents in selecting the location to buy/refill the LPG.

Based on the results of examination, the Commission's Assembly also found other matters which are deemed necessary to be conveyed in its decision namely:

1. That, the LPG is a independent commodity (the price of which is not specified by the government), the government however still interfere in specifying the price.
2. That, the lack of response by Wira Penjualan UPMS II Palembang to the problems related to the LPG distribution in Bangka Island has resulted in the breach of agreement entered into by APPEL and agen, which results in the delay of PT Pertamina (Persero) in taking necessary actions.

Pursuant to the duties of the Commission as stated in Article 35 point e of Law Number 5 Year 1999, the Commission's Assembly in its decision has recommended to the Commission as follows :

1. To ask the government to implement stricter procedure in the distribution and determination of the price of LPG .
2. To ask PT Pertamina (Persero) to impose administrative sanction to Wira Penjualan UPMS II Palembang for its negligence in performing its supervisory duties for the LPG distribution at Bangka Island in accordance with the applicable regulations.

Based on the evidences as above illustrated, the Commission's Assembly has decided that PT Pertamina (Persero) as the Reported Party is not proven to have violate the provisions stipulated in Law Number 5 Year 1999 Article 15 paragraph (1) on Closed Agreement and Article 25 paragraph (1) point a on Abuse of Dominant Position. The decision was pronounced on Wednesday, May 23, 2007 at the KPPU's Building, Jl. Ir. H. Juanda no. 36 Jakarta Pusat.

Case Decision No. 16/KPPU-L/2006 Tender for Middle Voltage Cable Network (SKTM) of 20 KV, Packages 4, 9, 20, an 21 at PT PLN (State-Run Electricity Company), Jakarta Raya and Tangerang (PLN Disjaya) Distribution Division, in the fiscal year of 2005.

Based on the report received by KPPU, it has conducted a series of examinations on the case. The Commission's Assembly found the fact that the tender for the Middle Voltage Cable Network (SKTM) was a combination between construction service (excavation and cable installation) and cable procurement with a percentage of 20% and 80% consecutively for the total project amount.

PLN Disjaya in administering this tender process referred to the Decrees of the Board of Directors of PLN No. 100.K/010/DIR/2004 and No. 200.K/010/DIR/2004, the implementation of which shall be in the discretion of the General Manager of each work area. PLN Disjaya which offered the tender had made a mistake in implementing the Decrees of the Board of Directors of PLN when it established the requirements for the tender. One of the requirements was that the obligation of the contractor to obtain supports from any cable manufacturer or establish a consortium in which the contractor acting as the leader. As a matter fact, the work portion of the contractor was very small compared to the procurement of its main materials. The decrees do not provide for the obligation to establish a consortium or obtain such support.

Furthermore, the requirement had been used by the cable manufacturers, Central Executive Board (DPD) of Indonesia Electrical Contractor Association (DPD AKLI) and contractors in making an arrangement which represents a conspiracy in the form of:

1. Arrangement to obtain the letter of support or establish a consortium, a condition was established for 3 bidders with lowest quotation price for packages 4, 20, dan 21 in the form of consortium and letter of support for the fourth rank and so forth;
2. Arrangement for quotation price, so there was no bidders which offered the price exceeding the Self-Estimate Price (HPS). In fact, the tender committee had never announced the amount of the Self-Estimate Price for each package at the time of the tender meeting (aanwijzing);
3. Arrangement for quantity of cable supply for each package offered, so each manufacturer supplied a relative same quantity.

Such conspiracy was not fully fruitful following the appointment of

PT. Prima Beton as the winner for the package 9, so some manufacturers had failed to supply the cable for package 9. Further, for business reason and upon the approval of PLN Disjaya, PT. Prima Beton imported the cable so as to enable it to implement the work

Other form of arrangement was an agreement among nine cable manufacturers to offer the same cable price for middle voltage cable sized 3x240mm² and 3x300mm², which were previously varied and changed to be Rp 270,000,-/m for the size of 3x240mm² and Rp 311.450,-/m for the size of 3x300mm². Such arrangement occurred as the Tender Committee postponed the schedule for the submission of the bidding document and the transfer of one manufacturer from one consortium to another.

The violations of the provisions set out in Law Number 5 Year 1999 were committed by :

- (1) PT. PLN Distribusi Jakarta Raya and Tangerang (PLN Disjaya) held a tender,
- (2) Regional Executive Board (DPD) of Indonesia Electrical Contractor Association of Jakarta dan Tangerang is an association for electrical contractors,
- (3) The business actors are as follows:

PT. Alpha Radiant, PT. Yudhita Nugraha Karya, PT. Tangguk Jaya, PT. Prima Beton, PT. Guna Swastika, PT. Kedungjaya Rekadayatama, PT. Dipa Menka Engineering, PT. Nusakontrindo Widyatama, PT. Canas Unggul, PT. Megaputra Ganda Dinamika, PT. Riffi Brothers & Sons, PT. Wahanayasa Trans Energi, PT. Indo Fuji Energi, PT. Hilmanindo Signitama, PT. Andika Energindo, PT. Inpar Saka, PT. Metrindo Maju Persada, PT. Mekadaya Terestria, PT. Dhana Julaga Ekada which are mechanical and electrical contractors, PT. Sumi Indo Kabel Tbk., PT. Jembo Cable Company Tbk., PT. BICC Berca Cables, PT. Kabelindo Murni, PT. Voksel Elektrik Tbk., PT. GT Kabel Indonesia Tbk., PT. Prysmian Cables Indonesia, PT. Terang Kita and PT. Supreme Cable Manufacturing Corporation which are cable manufacturers.

After analyzing the facts and making a conclusion, on Thursday, June 28, 2007 at the KPPU's Building, Jl. Ir. H. Juanda no. 36 Jakarta Pusat, the Commission's Assembly has decided :

1. to declare PT GT Kabel Indonesia Tbk, PT Supreme Cable Manufacturing Corporation, PT Prysmian Cable Indonesia, PT BICC Berca Cable, PT Voksel Electric Tbk, PT Terang Kita, PT Jembo Cable Company Tbk, PT Sumi Indo Kabel dan PT Kabelindo Murni Tbk are convincingly proven to have violated the provisions stipulated in Article 5 of Law Number 5 Year 1999 on Price Fixing.
2. to declare that PT Supreme Cable Manufacturing Corporation has been convincingly proven to have violated Article 19 point d of Law Number 5 Year 1999 on Market Control.
3. to declare that PT Alpha Radiant Engineering, PT Yudhita Nugraha Karya, PT Tangguk Jaya, PT Guna Swastika Dinamika, PT Kedungjaya Rekadayatama, PT Dipa Menka Engineering, PT Nusakontrindo Widyatama, PT Canas Unggul, PT Megaputra Ganda Dinamika, PT Riffi Brothres & Sons, PT Wahanayasa

Trans Energi, PT Indofuji Energi, PT Hilmanindo Signintama, PT Andika Energindo, PT Inpar Saka, PT Metrindo Maju Persada, PT Mekadaya Terestria, PT Dhana Julaga Ekada, PT Sumi Indo Kabel Tbk, PT Jembo Company Cable Tbk, PT BICC Berca Cables, PT Kabelindo Murni Tbk, PT Voksel Elektrik Tbk, PT GT Kabel Indonesia Tbk, PT Prysmian Cables Indonesia, PT Terang Kita, PT Supreme Cable Manufacturing Corporation, PT PLN Distribusi Jakarta Raya and Tangerang and DPD AKLI Jakarta and Tangerang have been convincingly proved to have violated Article 22 of Law Number 5 Year 1999 on Conspiracy.

4. to declare that PT Prima Beton International is not proven to have violated Article 22 of Law Number 5 Year 1999 on Conspiracy.
5. to order PT GT Kabel Indonesia Tbk, PT Prysmian Cable Indonesia, PT BICC Berca Cable, PT Voksel Electric Tbk, PT Terang Kita, PT Jembo Cable Company Tbk, PT Sumi Indo Kabel dan PT Kabelindo Murni Tbk to pay a fine in the amount of Rp. 1,000,000,000,- (one billion Rupiah) respectively.
6. to order PT Supreme Cable Manufacturing Corporation to pay a fine in the amount of Rp. 1,500,000,000,- (one billion and five hundred million Rupiah).
7. to order PT PLN Distribusi Jakarta Raya and Tangerang to a fine in the amount of Rp. 2,000,000,000,- (two billion Rupiah).
8. to prohibit PT Alpha Radiant Engineering, PT Yudhita Nugraha Karya, PT Tangguk Jaya, PT Guna Swastika Dinamika, PT Kedungjaya Rekadayatama, PT Dipa Menka Engineering, PT Nusakontrindo Widyatama, PT Canas Unggul, PT Megaputra Ganda Dinamika, PT Riffi Brothres & Sons, PT Wahanayasa Trans Energi, PT Indofuji Energi, PT Hilmanindo Signintama, PT Andika Energindo, PT Inpar Saka, PT Metrindo Maju Persada, PT Mekadaya Terestria, PT Dhana Julaga Ekada participate in any tender administered by PLN Distribusi Jakarta Raya and Tangerang for a period of one (1) year as of this decision was enforceable.

Case Decision No. 17/KPPU-L/2006 Procurement Tender of Lamp Components at Public Road and Utility Facility Lighting Agency of South Jakarta Municipality.

KPPU had completed the examination in accordance with the applicable laws and regulations and made a decision to the case No. 17/KPPU-L/2006 on the alleged violation of the provisions stipulated in Article 22 of Law Number 5 Year 1999 on Prohibition of Monopolistic Practice and Unfair Competition in the Procurement Tender of of Lamp Components at Public Road and Utility Facility Lighting Agency of South Jakarta Municipality.

The Case No. 17/KPPU-L/2006 was reported by business actors to KPPU. In the case, the Commission's Assembly needed to assess the horizontal conspiracy of business actors as follows

1. PT Harbarinja Agung (the Reported Party I)
2. PT Sekala Jalmakarya (the Reported Party II)
3. PT Dinamika Prakarsa Elektrikal (the Reported Party III)
4. PT Dian Pratama Persada (the Reported Party IV)

Meanwhile, with regard to the Committee for the Procurement of Goods and Services at the Public Road and Utility Facility Lighting Agency (hereinafter referred to as "PJU & SJU") of South Jakarta Municipality (the Reported Party V), the Commission's Assembly needed to assess the Work Plan and Requirements (RKS prepared by the Committee on the basis of the technical specification by the Public Road and Utility Facility Lighting Agency of Jakarta Province. In the Work Plan and Requirement, the Public Road and Utility Facility Lighting Agency of Jakarta Province stipulates that:

1. The products offered shall be from one manufacturing brand;
2. The imported products offered shall be produced by the manufacturer having a representative office and investment in lighting in Indonesia (proved by the letter issued by the competent authority such as the Investment Coordinating Board /Ministry of Industry and Ministry of Trade);
3. Trademark of the products offered shall be in accordance with the trademark of the manufacturing country.

With the stipulation of the above requirements, only four (4) companies which have made investment in lighting sector in Indonesia were able to participate in this tender, namely Philips, GE, Osram, and Panasonic. As a matter of fact, only two bidders participated in the tender namely Philips and GE. The winner for the HPS 70 watts lamps was PT Sekala Jalmakarya which offered the GE brand lamps with the price of Rp 1,977,362,750, while the winner for the HPS 150 Watts lamps was PT Harbarinja Agung which offered the Philips brand lamps with the price of Rp 533,275,600.

Based on a series of examinations conducted by the Examination Team, the Commission's Assembly was in the opinion that:

- a. PT Philips Indonesia (Philips) and PT GE Lighting Indonesia (GE) were not included in the category as the representative office as required in the Work Plan and Requirements (RKS) which provided for the existence of representative office and having made investment in lighting sector in Indonesia.
- b. The requirements which provided for the existence of representative office and having made investment in lighting sector in Indonesia were not relevant and had hindered any companies who do not have any representative office nor made investment in lighting sector in Indonesia in offering their products in the tender.
- c. The requirements which provided for the existence of representative office and having made investment in lighting sector in Indonesia were in the contrary to the principles of fair business competition. Despite of the facts that the requirements have been consciously agreed by the prospective bidders with the tender committee, the requirements did not meet the enforceability of an agreement nor a justified clause. As the agreement did not comply with objective requirements, it shall be therefore void by the law.
- d. Typing error in the bid document of PT Sekala Jalmakarya, PT Harbarinja Agung and PT Dian Pratama Persada was not due to a coincidence as PT Sekala Jalmakarya, PT Harbarinja Agung and PT Dian Pratama Persada are different and separate entities and independent one another. Such same typing error indicated that the quotation submitted by PT Sekala Jalmakarya, PT Harbarinja Agung and PT Dian Pratama Persada had been prepared by the same persons or at least prepared collectively.
- e. Arrangement for the tender winner by way of adjusting the gross profit percentage between PT Sekala Jalmakarya, PT Harbarinja Agung and PT Dian Pratama Persada.

Prior to making a decision on this case, the Commission's Assembly had considered as follows :

1. That, PT Philips Indonesia and PT GE Lighting Indonesia used the import component of HPS 70 Watt and 150 Watt lamps which are a ready to use product and are not the raw material of or a part of the industrial support of these companies. The import permit shall be only used to import the components to support the industry.
2. That, the requirement for the letter of support by attaching the letter of certification on investment in lighting sector in Indonesia had hindered other prospective bidders to participate in participating and winning the tender.

In handling this case, the Commission's Assembly acts independently and is not bound by any case handling whatsoever nor persons whomsoever.

As per the duties of the Commission as provided for in Article 35 point e of Law Number 5 Year 1999, the Commission's Assembly in its decision has made some recommendations to the Commission as follows:

1. To recommend the Minister of Trade review the imported permit for finished goods granted to the lamp manufacturers which are included in the Lighting and Electrical Industry Association (AILKI).
2. To recommend the Governor of Jakarta Province order the Head of Public Road and Utility Facility Lighting Agency of Jakarta Province not to stipulate the requirements on the existence of branch office and investment in lighting sector in Indonesia in any tender to be administered in the future.
3. To recommend the Governor of Jakarta Province order the Regional Supervisory Body (Bawasda) to carry out examination on the fulfillment of lamp requirements at the Public Road and Utility Facility Lighting Agencies and Sub-Agencies in Jakarta Province.

Based on the facts found during the examination, the Commission's Assembly decides:

1. To declare that the Reported Party I, the Reported Party II, and the Reported Party IV are proved to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999;
2. To declare that the Reported Party III and the Reported Party V are not proven to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999;
3. To declare the clause on the requirements for branch office and investment in lighting in Indonesia as stated in the Work Plan and Requirements (RKS) are annulled and void by the law”;
4. To prohibit the Reported Party I, Reported Party II, and Reported Party IV participate in any procurement tender at the Public Road and Utility Facility Lighting Agency and Sub-Agencies in Jakarta Province for a period of two (2) years as from this decision become enforceable;
5. To order the Reported Party I, the Reported Party II, and the Reported Party IV to pay a fine in the amount of each Rp 1,000,000,000 if in the violation of point 4 of this decision, which shall be payable to the State Treasury Office as the State Revenue from Violation Fine in Business Competition, Ministry of Finance, Directorate General of Budget, State Treasury Office (KPKN) Jakarta I, having its address on Jl. Ir. H. Juanda No. 9, Jakarta Pusat through any Government-run banks, with the Account Code of 423419;

The examination and formulation of the decision to the case No. 17/KPPU-L/2006 was conducted by KPPU on the basis of independency principles. In other words, KPPU is impartial as it performs its supervisory duties on the implementation of Law Number 5 Year 1999 in order to promote business certainty for all business actors and assure a fair and effective business competition. The decision was pronounced in a Commission's Assembly's meeting open to public on Thursday, July 4, 2007 at the KPPU's Building on Jl. Ir. H. Juanda no. 36 Jakarta Pusat.

Case Decision No. 02/KPPU-L/2007 Procurement Tender of Instrument of Nutritional Surveillance in the year 2006 at A. Wahab Sjahranie Regional Hospital, Samarinda

KPPU has completed the examination in accordance with the applicable laws and regulations and decided the case No 02/KPPU-L/2007 on the alleged violation to Article 22 of Law Number 5 Year 1999 on Conspiracy in the Procurement Tender of Instrument of Nutritional Surveillance in the year 2006 at A. Wahab Sjahranie Regional Hospital, Samarinda. The Commission's Assembly comprising Erwin Syahril, S.H. as the Chairperson of the Examination Team, Dr. Sukarmi, S.H., M.H., and Ir. Dedie S. Martadisastra,

S.E., M.M., respectively as Members, has decided the A. Wahab Sjahranie Regional Hospital (the Reported Party I) and the bidders, namely CV RISA (the Reported Party II), PT Binaco Group (the Reported Party III), CV Fadlan Prima (the Reported Party IV), CV Citra Selaras Abadi (the Reported Party V), PT Cahaya Bulu Mampu (the Reported Party VI) and PT Makna Karya Bhakti (the Reported Party VII) were proven to have violated Article 22 of Law Number 5 Year 1999.

This case was derived from a report filed to KPPU reporting the alleged violation of Law Number 5 Year 1999 in the Procurement Tender of Instrument of Nutritional Surveillance in the year 2006 at A. Wahab Sjahranie Regional Hospital. Samarinda. Based on the report and a series of examinations conducted by the Examination Team as well as some evidences found, the Commission's Assembly was in the opinion and came to a conclusion that in the vertical conspiracy in the stated tender, A. Wahab Sjahranie Regional Hospital of Samarinda (the Reported Party I) had facilitated CV. Risa (the Reported Party II) to win the tender for the procurement of the instrument of nutritional surveillance, among others, in the form of:

1. The Tender Committee established a qualification for mechanical-electrical sub-sector, although the procurement of the instrument should be included in the non-medical business sub-sector. Therefore, PT Binaco Group, CV Fadlan Prima, CV Citra Selaras`Abadi and PT Cahaya Bulu Mampu who did not meet the qualification for the non-medical business sub-sector were able to participate in the tender acting as the pseudo-competitors to CV Risa;
2. The Tender Committee had considered PT Binaco Group, CV Fadlan Prima, CV Citra Selaras`Abadi and PT Cahaya Bulu Mampu qualified for the administration and technical evaluation, despite of the fact that these companies did not have any experiences in supplying the instrument of nutritional surveillance, in order to act the pseudo-competitors to CV Risa, so the tender requirements were met;
3. The Tender Committee considered PT Binaco Group, CV Fadlan Prima, CV Citra Selaras Abadi and PT Cahaya Bulu Mampu qualified for the tender, despite of the fact that they had a letter of support with the same reference number;

Meanwhile, in the horizontal conspiracy in the stated tender, CV Risa made some arrangements in order to win the tender by ways of as follows :

1. To use the name of PT Binaco Group as the pseudo competitor in the tender;
2. To ask a letter of support to PT Makna Karya Bhakti for PT Binaco Group;
3. To duplicate the letter of support owned by PT Binaco Group, which was obtained from PT Makna Karya Bhakti for other bidders, namely CV Fadlan Prima, CV Citra Selaras Abadi and PT Cahaya Bulu Mampu. Therefore, there was a letter of support with the same reference number for PT Binaco Group, CV Fadlan Prima, CV Citra Selaras Abadi and PT Cahaya Bulu;
4. The Reported Party VII, PT Makna Karya Bhakti as a distributor for instrument of nutritional surveillance on the request of CV Risa has committed a negligence in issuing a letter of support for PT Binaco Group as the pseudo competition of CV Risa.

As per the duties of the Commission as provided for in Article 35 point e of Law Number 5 Year 1999, the Commission's Assembly in its decision has made some recommendations to the Commission as follows:

1. That, the Reported Party I, A. Wahab Sjahranie Regional Hospital and the Reported Party IV, CV Fadlan Prima have been cooperative during the examination process;
2. That, the Reported Party II CV Risa, the Reported Parties III PT Binaco Group, PT Citra Selaras Abadi and PT Cahaya Bulu Mampu have been not cooperative in the examination process, thereby hindering the examination.

Based on the results of the examination and the Assembly's session, the Commission's Assembly recommended as follows :

1. That, there was a conspiracy in the tender for the procurement of instrument of nutritional surveillance in the year 2006 which inflicted a financial loss to the state. Therefore, the Commission's Assembly recommended that the District Court of Samarinda examine all related parties in the stated tender;
2. That, there is an unofficial letter of support submitted by CV Fadlan Prima, CV Citra Selaras Abadi and PT Cahaya Bulu in their administrative and technical documents. Therefore, the Commission's Assembly recommended to the National Police of the Republic of Indonesia, c.o. Samarinda Police, to examine all parties related to the issuance of such letter of support.

The recommendation was provided in order to encourage a professional goods procurement and development of new business actors throughout Indonesia as well as to guarantee a fair business climate.

Based on the facts found during the examination, the Commission's Assembly decided:

1. To declare the Reported Party I, the Reported Party II, the Reported Party the Reported Party III, the Reported Party IV, the Reported Party V, the Reported Party VI, and the Reported Party VII are proved to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999 on Conspiracy.
2. To order the Reported Party II and the Reported Party III to a fine in the amount of Rp. 1,000,000,000.- (one billion Rupiah), jointly or severally, which shall be payable to the State Treasury Office as the State Revenue from Violation Fine in Business Competition, Ministry of Finance, Directorate General of Budget, State Treasury Office (KPKN) Jakarta I, having its address on Jl. Ir. H. Juanda No. 9, Jakarta Pusat through any Government-run banks, with the Account Code of 423491;
3. To order the Reported Party IV, the Reported Party V, and the Reported Party VI not to participate in any goods and service procurement administered by all hospitals owned by Provincial Government of East Kalimantan for a period of two (2) years, if they failed to comply with this decision, they shall be subject to a fine in the amount of Rp. 1,000,000,000.- (one billion Rupiah) jointly or severally, which shall be payable to the State Treasury Office as the State Revenue from Violation Fine in Business Competition, Ministry of Finance, Directorate General of Budget, State Treasury Office (KPKN) Jakarta I, having its address on Jl. Ir. H. Juanda No. 9, Jakarta Pusat through any Government-run banks, with the Account Code of 423491;
4. To order the Reported Party VII not to supply the instruments of nutritional surveillance through any third party whose procurement offered through a tender at all hospitals owned by Provincial Government of East Kalimantan, Samarinda, for a period of one (1) year;
5. To order the Reported Party I to immediately improve the management of hospitals, particularly with regard to the goods and service procurement in accordance with the applicable laws and regulations.

KPPU has examined and made decision to the above case independently (impartially) and solely in rendering the supervisory mandate on the implementation of Law Number 5 Year 1999 in order to establish business certainty and fair and effective business competition for all business actors. The Case Decision Number 10/KPPU-L/2006 was pronounced in a Commission's Assembly Session open to public on Thursday, July 20, 2007 at the KPPU's Building, Jl. Ir. H. Juanda No. 36 Jakarta Pusat.

Case Decision Number 03/KPPU-L/2007 Tender for Construction of Building of Padangsidempuan District Court, North Sumatra

KPPU has completed the examination in accordance with the applicable laws and regulations and decided the case Number 03/KPPU-L/2007 on alleged violation of Law Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition related to the alleged conspiracy in the tender for Construction of Building of Padangsidempuan District Court, North Sumatra, which was held from March to June, 2006.

The Case Number 03/KPPU-L/2007 derived from a report submitted by the business actor to KPPU. Based on the report and a series of examinations conducted by the Examination Team, the Commission's Assembly was in the opinion that a conspiracy had been committed by the Reported Party I (Head of Tender Committee) and the Reported Party II (CV Mentari Jasa Mulia). The tender committee had assisted the Reported Party II to win the tender. As a consequence, such action had annulled PT Adhikarya Teknik Perkasa as the bidder with lower price due to unreasonable reasons, as follows :

- a. The terms and conditions on the Quotation Guarantee Period which was not clearly specified in the tender document;
PT Adikarya Teknik Perkasa was annulled for having unable to fulfill the guarantee period. As a matter of fact, there was difference requirements on the guarantee period as specified in the tender document and tender meeting resolution, it led to uncertainty with regard to the quotation guarantee as required for the bidders;
- b. The unreasonable terms and conditions on the Unit Price Coefficient;
The Commission's Assembly found and was in the opinion that a conspiracy had been committed by the bidders, i.e. among the Reported Party II, the Reported Party III (PT Menara Kharisma Internusa) and PT Winda Pratama Karya (in this case, acting as a witness). The conspiracy was conducted in the form of price agreement and arrangement among the bidders which were the members of North Sumatra Construction Companies Association (ASPEKSU), the Reported Party II, the Reported Party III and PT Winda Pratama Karya were the members of ASPEKSU.

Based on the results of examination, the Commission's Assembly also found other matters which are deemed necessary to be conveyed in its decision, namely:

1. That, the Reported Party I (Head of Tender Committee) has no knowledge in administering a tender and was unable to describe the tender chronology;
2. That, the Reported Party I in performing its duties was assisted by the members who should have held responsible for the tender process as well;
3. That, the capacity of the Reported Party IV (PT Tribina Adyasa Consultant) was a consultant to the Tender Committee in the preparation of the tender document for use by the Tender Committee in administering the tender, further the Reported Party IV did not involve in the evaluation of the bidding document;
4. That, there was a bid price different in the amount of Rp. 394,617,000.- between the quotation submitted by the Reported Party II as the tender winner and the quotation submitted by PT Adhikarya Teknik Perkasa as the lowest bid price. It has potentially inflicted a financial loss to the state;

Pursuant to the duties of the Commission as provided for in Article 35 point e of Law Number 5 Year 1999, the Commission's Assembly in its decision has made some recommendations to the Commission as follows:

1. To provide advice the Head of Padangsidempuan District Court to impose a sanction to Soaloon Siregar due to his negligence in performing its duties as the Chairman of the Tender Committee for the Procurement of Goods and Services in the Judicial and other Law Enforcing Bodies' Performance Improvement Program at the Padangsidempuan District Court.
2. To provide advice to the Head of Padangsidempuan District Court to pay more attention to the competencies of the Tender Committee in the administering the procurement of goods and services at Padangsidempuan District Court.
3. To provide advice to the Minister of Public Works to establish the guidelines for unit price coefficient in order to promote an efficient project implementation.

The recommendation was provided in order to encourage a professional goods procurement and development of new business actors throughout Indonesia as well as to guarantee a fair business climate.

Based on the facts found during the examination, the Commission's Assembly decided

1. To declare that the Reported Party I, the Reported Party II, the Reported Party III were proven to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999 on Conspiracy.
2. To declare that the Reported Party IV was not proven to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999 on Conspiracy;
3. To order the Reported Party II and the Reported Party III to pay a fine in the amount of Rp. 1,000,000,000.- (one billion Rupiah), jointly or severally, which shall be payable to the State Treasury Office as the State Revenue from Violation Fine in Business Competition, Ministry of Finance, Directorate General of Budget, State Treasury Office (KPKN) Jakarta I, having its address on Jl. Ir. H. Juanda No. 9, Jakarta Pusat through any Government-run banks, with the Account Code of 423419;
4. To order Bob Nasution, S.E., as the Director of the Reported Party II and any companies affiliated with the Reported Party II, not to participate in any tender for all government agencies in North Sumatra Province for a period of two (2) years as from this decision becomes enforceable;

KPPU has examined and made decision to the case Number 03/KPPU-L/2007 independently (impartially) and solely in rendering the supervisory mandate on the implementation of Law Number 5 Year 1999 in order to establish business certainty and fair and effective business competition for all business actors. The above stated Case Decision was pronounced in a Commission's Assembly Session open to public on Friday, August 31, 2007 at the KPPU's Building, Jl. Ir. H. Juanda No. 36 Jakarta Pusat.

Case Decision Number 04/KPPU-L/2007 Procurement Tender of LCD at the Area Administration Bureau, Secretariat of Provincial Government of Jakarta, Fiscal Year of 2006

KPPU through its Commission's Assembly comprising Prof. Dr. Tresna P. Soemardi (Chairperson), Didik Akhmadi, Ak., M.Comm., and Yoyo Arifardhani, S.H., MM., LL.M., respectively as Members, have completed the examination and investigation to the case Number 04/KPPU-L/2007 on alleged violation of the provisions stipulated in Article 22 of Law Number 5 Year 1999 on Conspiracy with regard to the Procurement Tender of LCD at the Secretariat of Provincial Government of Jakarta. The alleged violation of Article 22 in this case was committed by PT Sima Agustus (the Reported Party I), PT Tiga Permata Hati (the Reported Party II), PT Buana Rimba Raya (the Reported Party III), TENDER COMMITTEE FOR PROCUREMENT OF GOODS AND SERVICES AT THE AREA ADMINISTRATION BUREAU OF PROVINCIAL GOVERNMENT OF JAKARTA (the Reported Party IV), Head of the Area Administration Bureau, Secretariat of Provincial Government of Jakarta (the Reported Party V).

Deriving from a report filed a business actor to KPPU, the case Number 04/KPPU-L/2007 was handled in accordance with the applicable procedure. The results of the examination indicated that the tender for the procurement of 267 units of LCD was awarded to PT. Tiga Permata Hati (the Reported Party II) with the bid price of Rp 5,185,860,900,- (five billion one hundred eighty five million eight hundred sixty thousand and nine hundred Rupiah). PT.Tiga Permata Hati (the Reported Party II) and PT. Buana Rimba Raya (the Reported Party III) which were also the bidders offer the LCD with the brand of Mega Power, type ML 164 SE, whose sole distributor was PT. Sima Agustus (the Reported Party I). Considering this conditions, the Commission's Assembly needs to assess the behaviors of the Reported Parties in a conspiracy involving other parties.

Furthermore, on the basis of the findings from a series of examinations conducted by the Examination Team, the Commission's Assembly is in the opinion that :

- a. PT Tiga Permata Hati (the Reported Party II) and PT. Buana Rimba Raya (the Reported Party III) were companies whose names were temporarily used by Muhammad Bahri, Moh. Iqbal, and Jeffry Bunyamin jointly in offering the LCD, brand Mega Power, type ML 164 SE, whose sole distributor was PT. Sima Agustus (the Reported Party I) in participating in the LCD tender at the Area Administration Bureau of Jakarta Provincial Government.
- b. The tender document of PT. Tiga Permata Hati (the Reported Party II) and PT. Buana Rimba Raya (the Reported Party III) were prepared and made by Muhammad Bahri and Moh. Iqbal by involving Jeffry Bunyamin, in which the bid price was arranged in a such manner that PT. Tiga Permata Hati (the Reported Party II) was the winner of the tender.
- c. Although in their defense, PT. Tiga Permata Hati (the Reported Party II) and PT. Buana Rimba Raya (the Reported Party III) declared that they did not involved, either directly or indirectly, nor being aware of their companies being used in the tender process, such reason could not be used as legal reference by the Reported Parties in escaping from their responsibilities on the involvement of their companies in such tender conspiracy.
- d. The conspiracy between PT. Sima Agustus (the Reported Party I), PT. Tiga Permata Hati (the Reported Party II), PT. Buana Rimba Raya (the Reported Party III), TENDER COMMITTEE FOR PROCUREMENT OF GOODS AND SERVICES AT THE AREA ADMINISTRATION BUREAU OF PROVINCIAL GOVERNMENT OF JAKARTA (the Reported Party IV), Head of the Area Administration Bureau, Secretariat of Provincial Government of Jakarta (the Reported Party V), which involved Muhammad Bahri, Moh. Iqbal, and Jeffry Bunyamin was proven through the determination of technical specification which was precisely the same as that of Mega Power brand, ML 164 SE Type, which solely distributes by PT. Sima Agustus (the Reported Party I), the obtaining of the letter of support prior to the tender meeting (aanwijzing), similar document, invalid reason to annul certain bidders, appointment of the winner prior to the expiry of

the objection period, and payment of down payment prior to the issuance of the Job Commencement Order.

In consideration of the evidence on the involvement of Jeffrey Bunyamin, Moh. Iqbal, and Muhammad Bahri in the procurement tender of LCD at the Area Administration Bureau in the fiscal year 2006, then the Commission's Assembly deems it necessary to impose a sanction to these three persons.

Pursuant to the duties of the Commission as stated in Article 35 point e of Law Number 5 Year 1999, the Commission's Assembly in its decision has recommended to the Commission and provided advice and opinions to the Provincial Government of Jakarta as follows :

1. To impose an administrative sanction to the GOODS AND SERVICE PROCUREMENT COMMITTEE OF AREA ADMINISTRATION BUREAU OF JAKARTA PROVINCIAL GOVERNMENT (the Reported Party and Head of Area Administration Bureau of the Secretariat of Jakarta Provincial Government (the Reported Party V) in accordance with application laws and regulations.
2. To evaluate the recruitment of the parties involved in the procurement of goods and services at the Jakarta Provincial Government with an objective of eliminating any tender conspiracy.
3. To order the bidders to avoid the use other companies and any intermediaries in the tender process at the Provincial Government of Jakarta..

Based on the evidences as above described, the Commission's Assembly decides:

1. To declare that the Reported Party I, the Reported Party II, the Reported Party III, the Reported Party IV, and the Reported Party V are proved to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999.
2. To prohibit the Reported Party I participate in any goods and service procurement at Jakarta Provincial Government for two (2) years as of this decision is enforceable.
3. To prohibit the Reported Party II and the Reported Party III participate in any goods and service procurement at Jakarta Provincial Government for two (2) years as of this decision is enforceable.
4. To prohibit Muhammad Bahri, Moh. Iqbal, dan Jeffrey Bunyamin participate in any goods and service procurement at Jakarta Provincial Government for two (2) years as of this decision is enforceable.
5. To order the Reported Party I to pay a fine to the State in the amount of Rp. 250,000,000.- (two hundred and fifty million Rupiah) which shall be payable to the State Treasury Office as the State Revenue from Violation Fine in Business Competition, Ministry of Finance, Directorate General of Budget, State Treasury Office (KPKN) Jakarta I, having its address on Jl. Ir. H. Juanda No. 9, Jakarta Pusat through any Government-run banks, with the Account Code of 423491 (State Revenue from Violation Fine in Business Competition).
6. To order the Reported Party II and the Reported Party III to pay a fine to the State in the amount of Rp. 50,000,000.- (fifty million Rupiah) which shall be payable to the State Treasury Office as the State Revenue from Violation Fine in Business Competition, Ministry of Finance, Directorate General of Budget, State Treasury Office (KPKN) Jakarta I, having its address on Jl. Ir. H. Juanda No. 9, Jakarta Pusat through any Government-run banks, with the Account Code of 423491 (State Revenue from Violation Fine in Business Competition).

The decision was pronounced in the Commission's Assembly's meeting open to public on Friday, November 9, 2007 at the KPPU's Building, Jl. Ir. H. Juanda no. 36 Jakarta Pusat.

Case Decision Number 05/KPPU-L/2007 Tender for Dredging Work of the Draft at Belawan Seaport in the year 2006

KPPU through the Commission's Assembly comprising Dr. AM Tri Anggraini, S.H., M.H. (Chairperson), Ir. H. Mohammad Iqbal and Prof. Dr. Ir. Ahmad Ramadhan Siregar, M.S., respectively as Members, have completed the examination and investigation to the case No. 05/KPPU-L/2007 on the alleged violation of Article 22 of Law Number 5 Year 1999 with regard to the tender for dredging work of the draft at Belawan Seaport in the year 2006.

Case Number 05/KPPU-L/2007 is a case derived from a report submitted by the business actors to KPPU. In this case, the Commission's Assembly deemed it necessary to assess the behavior of PT. (Persero) Pengerukan Indonesia and PT. Inai Kiara Indonesia particularly with regard to the horizontal conspiracy, and with regard to the behavior of PT.(Persero) Pelindo I, the Commission's Assembly deemed it necessary to review the requirements stipulated in the Work Plan and Requirements (RKS) and evaluation process in determining the winner which was directed to PT. (Persero) Pengerukan Indonesia (vertical conspiracy).

Based on series of examinations conducted by the Examination Team, the Commission's Assembly is in the opinion that:

1. There was a change to the requirements on the possession of the Hopper dredging ship as agreed in the minutes of tender meeting (aanwizjing), which was intended to enable the administration of the tender for the dredging work at the draft of Belawan seaport with the required number of bidders (at least five bidders) as stipulated in the Decree of the Board of Directors of PT. (Persero) Pelindo I, Number : PP.21/1/10/PI-99, dated September 1, 1999 on the Provisions on Goods and Services Procurement at PT. (Persero) Pelindo I;
2. The action taken by PT. (Persero) Pelindo I to agree with the scheme of the Joint Operation (JO) as offered by PT. (Persero) Pengerukan Indonesia which is not in accordance with the scheme of JO as specified by the Tender Committee in the Work Plan and Requirements (RKS), represented a facilitation to PT. (Persero) Pengerukan Indonesia to enable it to participate in the tender for the dredging work for the draft at Belawan Seaport;
3. PT. (Persero) Pelindo I was in negligence in performing its duties as it did not state the change to the requirements on the possession of the Hopper dredging ship in the addendum to the Work Plan and Requirements (RKS) and the minutes of the tender meeting;
4. PT. (Persero) Pelindo I made a mistake in evaluating and determining the winner of the tender by only referring to the lowest bid price, without combining the points obtained by each bidders in the technical and price evaluation. This act had been more beneficial to PT. (Persero) Pengerukan Indonesia in winning the tender;
5. PT. (Persero) Pelindo I had made a mistakes in application of the bid capacity requirements in the form of:
 - a. PT. (Persero) Pelindo I agreed with the bid capacity of PT. (Persero) Pengerukan Indonesia in the form of money transfer records, instead of bank letter of support;
 - b. PT. (Persero) Pelindo I was inconsistent in evaluating the bid capacity which should have been done at the administrative evaluation phase, but at the technical evaluation;
 - c. PT. (Persero) Pelindo I in evaluating the bid capacity did not refer to the bid price of each bidder, but to its own requirements;

6. Stating the requirements on the possession of the Hopper-type dredging ship in the tender announcement and the provisions of Work Plan and Requirements (RKS) as per the agreement between PT. (Persero) Pelindo I up to PT. (Persero) Pelindo IV and PT. (Persero) Pengerukan Indonesia, made on December 20, 2005, indicates the intention of PT. (Persero) Pelindo I to assist and direct the winner of the tender for the work to PT. (Persero) Pengerukan Indonesia as an effort to save PT. (Persero) Pengerukan Indonesia;
7. PT. (Persero) Pelindo I had assisted and directed PT. (Persero) Pengerukan Indonesia to win the tender by giving it the highest points with regard to the work implementation knowledge and bid capacity;
8. There was an excess margin of Rp 2,214,060,158.- (two billion two hundred fourteen million sixty thousand one hundred and fifty-eight Rupiah) received by PT. (Persero) Pengerukan Indonesia, it was enjoyed by PT. Mitha Tirta Wijaya;
9. Based on this excess margin, it indicates that OE value specified by the tender committee was too higher and potential to cause financial loss and/or inefficiency to PT. (Persero) Pelindo I;
10. The bid price offered by PT. Inai Kiara Indonesia amounted to Rp 20,200,-/m³ (twenty thousand and two hundred Rupiah per cubic meter) was the price based on the capabilities of PT. Inai Kiara Indonesia at that time, instead of intending for the price adjustment nor pseudo-competition with PT. (Persero) Pengerukan Indonesia.

Before making a decision to this case, the Commission's Assembly had considered as follows:

- a. PT. (Persero) Pelindo I firstly administered the tender for dredging work for the draft at Belawan seaport;
- b. There was some mistakes and negligence committed by PT. (Persero) Pelindo I in the administration of the stated tender;
- c. Based on the acknowledgement of PT. (Persero) Pengerukan Indonesia, in performing the dredging work for the airport draft through direct appointment method (from the year 2001 to 2005), it had suffered from a financial loss as the price calculation was not based on the market price, but on the Project Allocation (DIP) and agreement between PT. (Persero) Pelindo I up to PT. (Persero) Pelindo IV and PT. (Persero) Pengerukan Indonesia;
- d. The price agreement made by PT. (Persero) Pelindo I up to PT. (Persero) Pelindo IV and PT. (Persero) Pengerukan Indonesia in the dredging work of seaport draft has caused financial loss to PT. (Persero) Pengerukan Indonesia, which has also indirectly caused a loss to the state in the term of utilization of the ships owned by PT. (Persero) Pengerukan Indonesia and lack of maintenance of the seaport draft in Indonesia;
- e. The dredging price of Rp 14.165,-/m³ (fourteen thousand one hundred and sixty five Rupiah per cubic meter) at the tender for dredging work of the draft at Belawan Seaport in the year 2006, PT. (Persero) Pengerukan Indonesia had an excess margin of Rp 2.214.060.158,- (two billion two hundred fourteen million sixty thousand one hundred and fifty-eight Rupiah), but it was enjoyed by PT. Mitha Tirta Wijaya who did not directly involved in the implementation of the work;
- f. With the establishment of a JO between PT. (Persero) Pengerukan Indonesia and PT Mitha Tirta Wijaya, the effort to save PT. (Persero) Pengerukan Indonesia as agreed by the State Ministry for State Enterprises and PT. (Persero) Pelindo I up to PT. (Persero) Pelindo IV dengan PT. (Persero) Pengerukan Indonesia on December 20, 2005 could not be realized;
- g. Based on the results of an analysis conducted by the Commission's Assembly, PT. (Persero) Pelindo I determined the OE value which is potential to cause financial loss and/or inefficiency to the Reported Party I.

As per the duties of the Commission as provided for in Article 35 point e of Law Number 5 Year 1999, the Commission's Assembly in its decision has made some recommendations to the Commission as follows:

1. To PT. (Persero) Pelindo I to establish and implement the tender requirements in accordance with the prevailing regulation with due observance to the principles of fair competition;
2. To request the State Minister for State Enterprise to improve the corporate management of PT. (Persero) Pengerukan Indonesia with due observance to the principles of Good Corporate Governance;
3. To request the Supreme Audit Agency (BPK) and Corruption Eradication Commission (KPK) to investigate the excess margin received by PT. (Persero) Pengerukan Indonesia which was enjoyed by PT. Mitha Tirta Wijaya in the tender for the dredging work of the draft of Belawan Seaport in the year 2006.

On the basis of the evidences, facts and conclusions as above described, the Commission's Assembly on September 19, 2007 has decided:

1. To declare that the Reported Party I and the Reported Party II are proven to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition;
2. To declare that the Reported Party III is not proven to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition;
3. To order the Reported Party I and the Reported Party II to pay a fine in the amount of Rp 2,000,000,000.- (two billion Rupiah), jointly or severally, which shall be payable to the State Treasury Office as the State Revenue from Violation Fine in Business Competition, Ministry of Finance, Directorate General of Budget, State Treasury Office (KPKN) Jakarta I, having its address on Jl. Ir. H. Juanda No. 9, Jakarta Pusat through any Government-run banks, with the Account Code of 423491.

Case Decision Number 06/KPPU-L/2007 Procurement Tender of Fogging Machine at the Area Administration Bureau, Provincial Government of Jakarta, Year 2006

KPPU has completed the examination in accordance with the applicable laws and regulations and decided the case Number 06/KPPU-L/2007 on the alleged violation of Article 22 of Law Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition in the Procurement Tender of Fogging Machine at the Area Administration Bureau, Provincial Government of Jakarta, Year 2006. The violation in this case was allegedly committed by PT. Bhakti Wira Husada (the Reported Party I), PT. Perusahaan Perdagangan Indonesia (the Reported Party II), PT. Tri Mitra Sehati (the Reported Party III), PT. Rama Mandiri (the Reported Party IV), PT. Penta Valent (the Reported Party V), and PT. Anugerah Multi Perkasatama (the Reported Party VI), Tender Committee for Goods and Procurement at the Area Administration Bureau (“Biro ADWIL”) of Provincial Government of Jakarta (the Reported Party VII), and Head of Area Administration Bureau of Secretary of Provincial Government of Jakarta (the Reported Party VIII).

The case Number 06/KPPU-L/2007 derived from a report submitted to KPPU. Following up the report, the Examination Team had conducted a series of examinations. In handing the case, it was identified that the procurement tender of 2,000 units of fogging machines was won by the Reported Party I with the bid price of Rp 29,700,000,000 (twenty-nine billion and seven hundred million Rupiah).

It was also identified that the Reported Party I, the Reported Party II, the Reported Party III, the Reported Party IV, and the Reported Party V were the bidders which offered the same type of fogging machines (BlancFog), as offered by the Reported Party VI, with the facilitation of M. Bahri, Ahmad Hidayat, Jeffry Bunyamin, and Sugiarto Santoso. Therefore, the Commission’s Assembly deems it necessary to review the behaviors of the business actors (the Reported Party I, the Reported Party II, the Reported Party III, the Reported Party IV, the Reported Party V, and the Reported Party VI) in a horizontal conspiracy as facilitated by other parties.

Based on a series of examinations conducted by the Examination Team, the Commission’s Assembly is in the opinion that:

- a. The Reported Party I, the Reported Party II, the Reported Party III, the Reported Party IV and the Reported Party V were companies whose names were used by M. Bahri, Ahmad Hidayat, Jeffry Bunyamin and Sugiarto Santoso. These companies had jointly offered the Blancfog fogging machines owned by the Reported Party VI in participating in the tender ender of fogging machine at the Area Administration Bureau, Provincial Government of Jakarta with a free for the use of the companies’ names).
- b. The bidding documents submitted by the Reported Party I, the Reported Party II, the Reported Party III, the Reported Party IV and the Reported Party V were prepared by M. Bahri, Ahmad Hidayat, Jeffry Bunyamin and Sugiarto Santoso, so the bid prices to be offered by each party were arranged in such a way that one of the five companies of the reported parties would be the winner of the tender.
- c. Although in the defense of the Reported Party II, the Reported Party III, the Reported Party IV and the Reported Party V mainly stated that they did not directly nor indirectly involve nor know the use of their companies in the tender, such reasons cannot be used as a legal basis by the reported parties to escape from their responsibilities for their companies’ involvement in the tender conspiracy.
- d. The use of the reported parties’ companies’ names by M. Bahri, Ahmad Hidayat, Jeffry Bunyamin and Sugiarto Santoso was not justified as it can eliminate the competition and inflict a loss to other business actors who had participated in the tender in accordance with the specified procedure.
- e. The conspiracy between the Reported Party VI and the Reported Party I, the Reported Party II, the Reported Party III, the Reported Party IV and the Reported Party V was facilitated by M. Bahri, Ahmad Hidayat, Jeffry Bunyamin and Sugiarto Santoso through the offer of the same brand fogging machine

(Blancfog) and even the Reported Party VI had ordered such fogging machine long before the determination of the tender winner.

- f. Based on the testimony given by the Reported Party VI as a sole agent for Blancfog fogging machine that such fogging machine does not have a complicated technology, the Commission's Assembly is therefore in the opinion that Reported Party VII had excessively forced the application of the Merit Point System in the tender process;
- g. The Commission's Assembly finds a fact that the Reported Party VIII stated the Blancfog-brand fogging machine complete with its specification in its request for the price reference to the Facility and Infrastructure Bureau of the Provincial Government of Jakarta on the basis of the Circular of the Secretary of Provincial Government of Jakarta Number 6/SE/2004, dated March 3, 2004 on the Request for Unit Price Reference (Permohonan Usulan Patokan Harga Satuan).
- h. The Circular of the Secretary of Provincial Government of Jakarta Number 6/SE/2004, dated March 3, 2004 on the Request for Unit Price Reference is potential to substantially eliminate the competition.

Prior to making a decision in this case, the Commission's Assembly had considered as follows:

1. As the BlancFog fogging machines had been distributed to all villages throughout Jakarta Province, the Commission's Assembly did not annul the tender for procurement of the fogging machines.
2. That the Circular of the Secretary of Provincial Government of Jakarta,
3. Number 6/SE/2004, dated March 3, 2004 2004 on the Request for Unit Price Reference does not comply with the Decree of Jakarta Governor Number 108 of 2003 on Procedure of Implementation of Budget and Expenditure Plan of Jakarta Province and is potential to hinder a competition as the user of goods/services shall have stated the brand of the goods including its complete specification when requesting its unit price reference to Facility and Infrastructure Bureau of the Provincial Government of Jakarta.

As per the duties of the Commission as provided for in Article 35 point e of Law Number 5 Year 1999, the Commission's Assembly in its decision has made some recommendations to the Commission as follows :

4. To recommend the Secretary of Jakarta Provincial Government to annul the Circular Number 6/SE/2004, dated March 3, 2004 on Proposal for Unit Price Reference.
5. To recommend the Directorate General of Taxes of the Republic of Indonesia to investigate the tax returns submitted by the Reported Party I and the Reported Party VI with regard to the procurement tender of fogging machines at the Area Administration Bureau of Jakarta Special Province in the year 2006.

Based on the above described evidences, on September 20, 2007, the Commission's Assembly had decided:

1. To declare that the Reported Party I, the Reported Party II, the Reported Party III, the Reported Party IV, the Reported Party V, and the Reported Party VI are proved to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999;
2. To declare that the Reported Party VII, and the Reported Party VIII are not proved to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999;
3. To order the Reported Party I, the Reported Party II, the Reported Party III, the Reported Party IV, and the Reported Party V not to participate in any procurement tender administered at the Jakarta Provincial Government for a period of two (2) years as of this decision becomes enforceable;

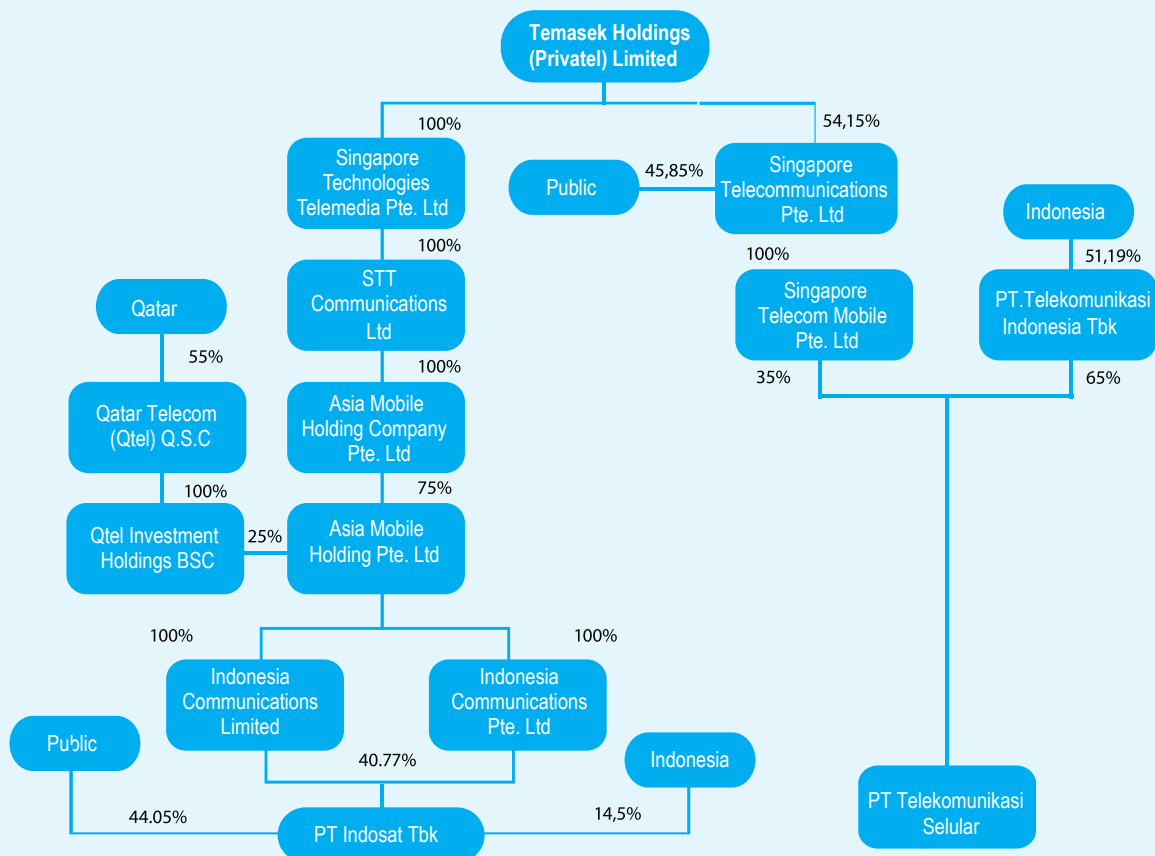
4. To order the Reported Party VI not to supply any goods/services to the Jakarta Provincial Government for a period of two (2) years as of this decision becomes enforceable;
5. To order M. Bahri, Ahmad Hidayat, Jeffry Bunyamin and Sugiarto Santoso not to involve, either directly or indirectly, in any procurement tender at the Jakarta Provincial Government for a period of two (2) years as of this decision becomes enforceable;
6. To order the Reported Party I to pay a compensation in the amount of Rp 100,000,000 (one hundred million Rupiah) which shall be payable to the State Treasury Office as the State Revenue from Violation Fine in Business Competition, Ministry of Finance, Directorate General of Budget, State Treasury Office (KPKN) Jakarta I, having its address on Jl. Ir. H. Juanda No. 9, Jakarta Pusat through any Government-run banks, with the Account Code of 423491;
7. To order the Reported Party II to pay a compensation in the amount of Rp 10,000,000 (ten million Rupiah) which shall be payable to the State Treasury Office as the State Revenue from Violation Fine in Business Competition, Ministry of Finance, Directorate General of Budget, State Treasury Office (KPKN) Jakarta I, having its address on Jl. Ir. H. Juanda No. 9, Jakarta Pusat through any Government-run banks, with the Account Code of 423491;
8. To order the Reported Party IV to pay a compensation in the amount of Rp 15,000,000 (fifteen million Rupiah) which shall be payable to the State Treasury Office as the State Revenue from Violation Fine in Business Competition, Ministry of Finance, Directorate General of Budget, State Treasury Office (KPKN) Jakarta I, having its address on Jl. Ir. H. Juanda No. 9, Jakarta Pusat through any Government-run banks, with the Account Code of 423491;
9. To order the Reported Party V to pay a compensation in the amount of Rp 15,000,000 (fifteen million Rupiah) which shall be payable to the State Treasury Office as the State Revenue from Violation Fine in Business Competition, Ministry of Finance, Directorate General of Budget, State Treasury Office (KPKN) Jakarta I, having its address on Jl. Ir. H. Juanda No. 9, Jakarta Pusat through any Government-run banks, with the Account Code of 423491;
10. To order the Reported Party VI to pay a compensation in the amount of Rp 100,000,000 (one hundred million Rupiah) which shall be payable to the State Treasury Office as the State Revenue from Violation Fine in Business Competition, Ministry of Finance, Directorate General of Budget, State Treasury Office (KPKN) Jakarta I, having its address on Jl. Ir. H. Juanda No. 9, Jakarta Pusat through any Government-run banks, with the Account Code of 423491.

Case Decision Number 07/KPPU-L/2007 Cross-Ownership by Temasek Business Group and Monopolistic Practice by Telkomsel

KPPU through the Commission’s Assembly comprising Dr. Syamsul Maarif, S.H., LL.M as the Chairperson, Prof. Dr. Tresna P. Soemardi, Didik Akhmadi, Ak, M.Comm, Erwin Syahril, S.H. and Dr. Sukarmi, S.H., M.H. respectively as Members, have examined and make decision to the case on the alleged violation of Article 27 point a of Law Number 5 Year 1999 in relation to the cross-ownership by Temasek Holdings, STT, STT Communication, Asia Mobile Holdings Company, Asia Mobile Holdings, Indonesia Communication Limited, Indonesia Communication Pte. Ltd., SingTel, SingTel Mobile (“Temasek Business Group”) and Article 17 paragraph (1) and Article 25 paragraph (1) point b of Law Number 5 Year 1999 in relation to the monopolistic practices and abuse of dominant position by Telkomsel.

Relating to Violation of Article 27 point a of Law Number 5 Year 1999

At the end of 2002, the divestment of Indosat which was won by STT, a subsidiary whose 100% of its shares is controlled by Temasek, had caused a cross-ownership structure in cellular telecommunication industry in Indonesia. Prior to such divestment, the shares of Telkomsel, the largest cellular operator in Indonesia, had been owned by Temasek through its subsidiaries, Singtel and SingTel Mobile; therefore, Temasek Business Group has indirectly controlled the Indonesia’s cellular market by indirectly controlling Telkomsel and Indosat. The scheme of the cross-ownership can be illustrated as below :



The market shares of Telkomsel and Indosat have jointly shown a steady growth as from such cross-ownership as illustrated in the following table:

	Year	Collective Market Shares of Telkomsel and Indosat	Collective Operational Income (in billion)	Operational Income of XL (in billion)	Market Shares of XL
	2001	76.34%	6,688	2,073.03	23.66%
	2002	83.58%	10,845	2,130.41	16.42%
Cross-Ownership Period : 2003-2006	2003	88.09%	16,264	2,198.06	11.91%
	2004	89.74%	22,107	2,528.48	10.26%
	2005	90.97%	29,778	2,956.38	9.03%
	2006	89.64%	38,373	4,437.17	10.36%
Average	2003-2006	89.61%			

The control by Temasek Business Group over Telkomsel and Indosat had caused a slow-down of the Indosat's growth which is not effectively competitive with Telkomsel. Such a condition had also resulted in less competitive cellular industry market in Indonesia

The slowing growth of Indosat was indicated by the growth of its BTS which was relatively going down, if compared to that of Telkomsel and XL, the other two leading operators in Indonesia.

Relating to Violation of Articles 17 (1) and 25 (1) b of Law Number 5 Year 1999

Cross-ownership structure by Temasek Business Group had caused a price-leadership in telecommunication industry in Indonesia. Telkomsel as a leader market had then fixed the cellular telecommunication price excessively. As a consequence, the operator was enjoying an excessive profit, and on the other hand, the consumers suffered from a loss (consumer loss). The calculation made by the Commission's Assembly indicates that the loss suffered by consumers of cellular telecommunication services in Indonesia since the year 2003 through 2006 ranged from Rp 14.76498 trillions to Rp 30.80872 trillions. However, pursuant to the provisions stipulated in Law Number 5 Year 1999, the Commission's Assembly, in this case, has no authorities to impose a sanction for the consumer compensation. Further, during the session, the Commission's Assembly did not find any evidences that Telkomsel had limited the technological advancement in cellular industry in Indonesia, so it has not violated the provisions stipulated in Article 25 (1) b of Law Number 5 Year 1999.

Based on the facts and evidences found during the Commission's Assembly's session, the Commission's Assembly made a decision on November 19, 2007 as follows :

1. To declare that Temasek Holdings, Pte. Ltd. together with Singapore Technologies Telemedia Pte. Ltd., STT Communications Ltd., Asia Mobile Holding Company Pte. Ltd, Asia Mobile Holdings Pte. Ltd., Indonesia Communication Limited, Indonesia Communication Pte. Ltd., Singapore Telecommunications Ltd., and Singapore Telecom Mobile Pte. Ltd are proved to have violated the provisions stipulated in Article 27 point a of Law Number 5 Year 1999.
2. To declare that PT. Telekomunikasi Selular is proved to have violated the provisions stipulated in Article 17 paragraph (1) of Law Number 5 Year 1999.
3. To declare that PT. Telekomunikasi Selular is not proved to have violated the provisions stipulated in Article 25 paragraph (1) point b of Law Number 5 Year 1999.
4. To order Temasek Holdings, Pte. Ltd., together with Singapore Technologies Telemedia Pte. Ltd., STT Communications Ltd., Asia Mobile Holding Company Pte. Ltd, Asia Mobile Holdings Pte. Ltd., Indonesia

- Communication Limited, Indonesia Communication Pte. Ltd., Singapore Telecommunications Ltd., and Singapore Telecom Mobile Pte. Ltd to cease the cross-ownership at PT. Telekomunikasi Selular and PT.Indosat, Tbk. by way of transferring all of its shares at one of the companies, PT. Telekomunikasi Selular or PT.Indosat, Tbk. within a period of no later than two (2) years as from this decision becomes enforceable.
5. To order Temasek Holdings, Pte. Ltd., together with Singapore Technologies Telemidia Pte. Ltd., STT Communications Ltd., Asia Mobile Holding Company Pte. Ltd, Asia Mobile Holdings Pte. Ltd., Indonesia Communication Limited, Indonesia Communication Pte. Ltd., Singapore Telecommunications Ltd., and Singapore Telecom Mobile Pte. Ltd to decide which company will transfer its shares and to dispose the voting rights and the rights to appoint the Board of Directors and Board of Commissioners at one of the companies whose shares shall be transferred, PT. Telekomunikasi Selular or PT.Indosat, Tbk. until the transfer of all shares as ordered in point 4 above.
 6. The transfer of rights as stated in point 4 above shall be done under the following terms and conditions:
 - a. each buyer shall only buy maximum 5% of the total shares to be transferred.
 - b. buyer shall not be associated with Temasek Holdings, Pte. Ltd. nor other buyers in any kinds whatsoever.
 7. To order Temasek Holdings, Pte. Ltd., Singapore Technologies Telemidia Pte. Ltd., STT Communications Ltd., Asia Mobile Holding Company Pte. Ltd, Asia Mobile Holdings Pte. Ltd., Indonesia Communication Limited, Indonesia Communication Pte. Ltd., Singapore Telecommunications Ltd., and Singapore Telecom Mobile Pte. Ltd to respectively pay a fine in the amount Rp.25,000,000,000.00 (twenty-five billion Rupiah) which shall payable to the State Treasury Office as the State Revenue from Violation Fine in Business Competition, Ministry of Trade, Secretariat General of Work Unit of KPPU through any Government-run banks, with the Account Code of 423491.
 8. To order PT. Telekomunikasi Selular to cease the application of higher tariff and offer the cellular service tariff of at least fifteen (15) percent lower than that applicable at the time of pronouncing this decision.
 9. To order PT. Telekomunikasi Selular to pay a fine in the amount of Rp. Rp.25,000,000,000.00 (twenty-five million Rupiah) which shall payable to the State Treasury Office as the State Revenue from Violation Fine in Business Competition, Ministry of Trade, Secretariat General of Work Unit of KPPU through any Government-run banks, with the Account Code of 423491).

Case Decision Number 08/KPPU-L/2007 Garden and Cemetery Agency (Dinas Pertamanan dan Pemakaman) of Bengkulu Municipality

After conducting an examination for approximately four (4) months, KPPU in this case, the Commission's Assembly has made a decision to the Case Number: 08/KPPU-L/2007, in a Commission's Assembly's meeting held on Tuesday, August 28, 2007, and pronounced the decision in a meeting open to public on Wednesday, August 29, 2007, held at the KPPU's Building, in Jakarta.

In this case, the Tender Committee for Goods and Services Procurement at the Garden and Cemetery Agency of Bengkulu Municipality (the Reported Party I), PT. Multiyasa Anekadharm (the Reported Party II), CV Lisma (the Reported Party III), CV Arma Putra (the Reported Party IV), PT. Taruna Bhakti Perkasa (the Reported Party V) are proved to have committed both horizontal and vertical conspiracy in the five packages for the tender for the Procurement and Installation of Public Road Lighting and Decorative Lamps at the Garden and Cemetery Agency of Bengkulu Municipality, in the year 2006.

These five packages of the tender were the Procurement and Installation of Public Road Lamps at the road median from Simpang Pd. Harapan to Simpang Km 8 with the amount of Rp 945,387,000.- (Package 1); from Simpang Km 8 to Simpang Polda with the amount of Rp 600,454,000.- (Package 2); from Simpang Polda to Simpang Pagar Dewa with the amount of Rp 454,159,000.- (Package 3); Procurement and Installation of Decorative Lamps at Rayon Teluk Segara with the amount of Rp 667,500,000.- (Package 3); and at Rayon Nusa Indah with the amount of Rp 467,500,000.- (Package 5). The tender for packages 1 and 3 were won by PT. Multiyasa Anekadharna, Package 2 by CV Lisma, and Packages 4 and 5 by CV Arma Putra.

The horizontal conspiracy among the bidders are evidenced by the fact on the use of the names of other companies and softcopies of the bid document owned by the reported parties.

PT. Multiyasa Anekadharna who participated in all five packages had proved to lend its company to Arief Sukarnawijaya (Packages 1, 2 and 3) and Zikrisa Oktova (Packages 4 and 5). The Branch Manager of PT. Multiyasa Anekadharna, Bengkulu, Gasman Hadi, lent his company's name by way of including Arief Sukarnawijaya and Zikrisa Oktova as the Assistant Managers of PT. Multiyasa Anekadharna, Bengkulu and Director's Attorney in the deed drawn up before the Mufti Nokhman, S.H., a Notary, in Bengkulu. The appointment of the Assistant Managers and Director's Attorney was not permanent and solely intended to enable them to participate in the above stated tender. The Assistant Managers and Director's Attorney respectively gave a fee of 2.5% of the tender amount to PT. Multiyasa Anekadharna if the former were successful in winning the tender.

In addition to borrowing the company name of PT. Multiyasa Anekadharna, Arief Sukarnawijaya also participated in the five packages of the tender by way of borrowing the company name of PT. Taruna Bhakti Perkasa and acted as its Director' Attorney. The participation of PT. Taruna Bhakti Perkasa in the tender was just to meet the requirements for the administration of the tender, namely the tender could be administered if there were three bidders participated in the tender. Since the beginning, PT. Taruna Bhakti Perkasa was estimated to fail in the tender as it had an "M - Middle" qualification, while the requirements of the tender provided for that the companies which were qualified for the tender should have a small qualification

In participating in the tender for Packages 4 and 5, CV Arma Putra also lent its company's name to Armen Junaedi by way of appointing him as the Director's attorney and such appointment was stated in a deed drawn up by Mufti Nokhman, S.H., a notary in Bengkulu. In participating in the tender, Armen Junaedi who was responsible for preparing the tender document, got the payment from Teddy Wirajaya, the Director of PT. Cipta Jaya. In addition to the use of other company's names, the reported parties (bidders) also exchanged their data on the discs or softcopies of the bidding documents as evidenced by similar bidding documents submitted by the reported parties, including the same typing error in such documents. As an example, there were similarity in the bidding documents submitted by CV Lisma dengan and Multiyasa Anekadharna, and by CV Arma Putra abd PT. Multiyasa Anekadharna, where Armen Junaedi representing CV Arma Putra gave the softcopies of its bidding documents to Zikrisa Oktova representing PT. Multiyasa Anekadharna.

The tender committee for the procurement of goods and services of the Gardening and Cemetery Agency of Bengkulu Municipality had involved in a vertical conspiracy by facilitating the bidders to commit a horizontal conspiracy. Such conspiracy was committed by not stating the name of job owner or parties who should directly submit the bidding documents in the technical specification or minutes of tender meeting. These two things had become the reasons by the tender committee to disqualify the bidders.

In the tender, the Committee did not carry out in-depth review on the bidding documents, so it did not notice that Arief Sukarnawijaya participated in the tender for Packages 1, 2, and 3 by using two companies, namely PT. Taruna Bhakti Perkasa and PT Multiyasa Anekadharna. The committee did not suspect a similarity in the typing errors in some bidding documents submitted by the bidders which indicates a conspiracy among the bidders.

In making a decision in this case, the Commission's Assembly had considered the results of examination, including the testimonies of all reported parties and witnesses, defenses of the reported parties and related documents. The Commission's Assembly then decided that the reported parties are proved to have violated the provisions stipulated in Article 22 of Law Number 5 Year 1999 on conspiracy and has ordered PT. Multiyasa Anekadharna, CV. Lisma, CV. Arma Putra and PT. Taruna Bhakti Perkasa not to participate in any tender offer by all offices at Bengkulu Municipality for a period of two (2) years as from this decision becomes enforceable. If this decision is violated, the Commission's Assembly will order each reported party to pay a fine in the amount of Rp 1,000,000,000.- (one billion Rupiah).



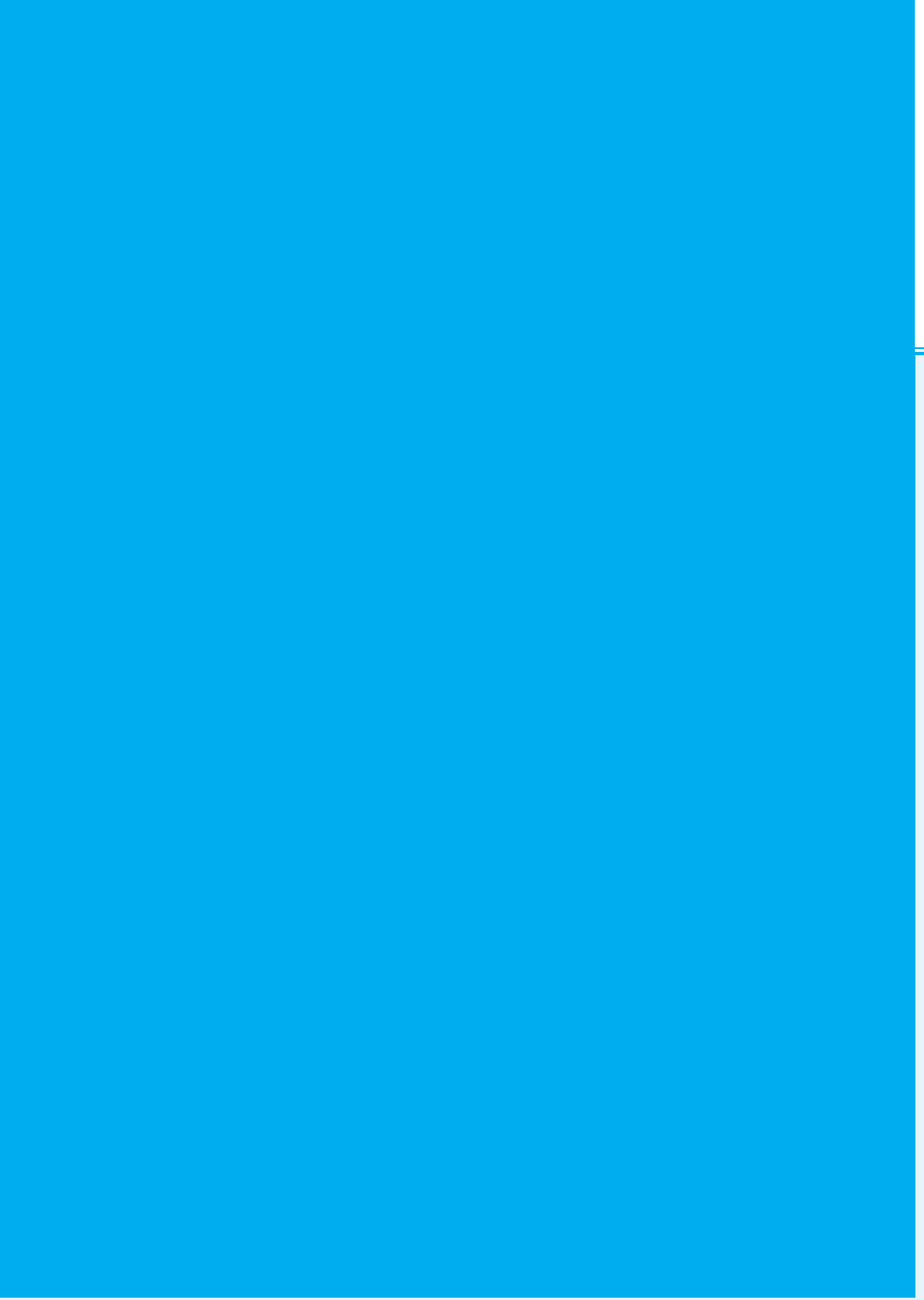
*Report Handling Progress in the Period Of
January – December 2007*

02

Annual Report 2007

Appendix





Report Handling Progress Period of January – December 2007

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
1	of Modern Market on Terminal Area of Prabumulih City	<p>The reporting party expressed statement of position relating to the plan to construct modern market (mall) on terminal area of Prabumulih City in Palembang.</p> <p>The reporting party refused the construction of modern market with the following reasons: The mall to be constructed directly faces a traditional market.</p> <p>The construction of mall violates the Ministerial Decree of Industry and Trade Number 420/MPP/Kep/10/1997 concerning the Guidelines for the Arrangement and Development of Market and Shopping Center. Violating the Ministerial Decree of Industry and Trade Number 261/MPP/Kep/7/1997 concerning the Formation of Market and Shopping Complex Arrangement and Development Team.</p>	Secretariat Investigation	Non-Report
2	Alleged unlawful conspiracy	<p>The reporting party allegedly suspected unlawful conspiracy as follow;</p> <p>The reporting party possesses an empty area in Margahayu Sub-District, Bandung and submitted an application to build a Gas Station to PT Pertamina.</p> <p>At the same time, there was another party (Agus Sadikin) who submitted an application to build a Gas Station near to the area owned by the reporting party.</p> <p>PT Pertamina refused both applications, however they authorized a third party on the area owned by Agus Sadikin.</p>	Secretariat Investigation	Tender conspiracy
3	Alleged tender conspiracy on the procurement of Motor Vehicle Testing Device in Transportation Office of Labuhan Batu Regency, North Sumatera	<p>The reporting party reported alleged tender conspiracy on the procurement of Motor Vehicle Testing Device in Transportation Office of Labuhan Batu Regency, with the following indications; Qualified bidders were only 3 companies. The prices offered by the three companies were not significantly different and not too far from the specified limit. Tender requirements specified that the bidders must be supported by manufacturer and the three bidders were supported by the same manufacturer. The project value was Rp 2 Billion</p>	–	Tender conspiracy

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
4	Alleged conspiracy in the tender of Forest Plant and Fruit Seeds Procurement in River Basin Management Center of Cimanuk, Citanduy.	<p>The reporting party reported alleged conspiracy in the tender of Forest Plant and Fruit Seeds Procurement, with the following indications;</p> <ol style="list-style-type: none"> a. The Head of River Basin Management Center of Cimanuk Citanduy and the Bid Committee made unreasonable bid requirements. b. Before the tender was made, the conspiracy had took place as certain packages had been attributed with specific requirements namely for one regency/municipality the seeds must be the same but their certificates must be different. c. The Bid Committee together with the Head of River Basin Management Center of Cimanuk Citanduy changed some of the content of Bid Documents. <p>The tender was divided into 15 Packages amounted to Rp 10 Billion.</p>	-	Tender conspiracy
5	Alleged bid conspiracy on the procurement of Oil Boom, Oil Dispersant and CCTV in the Directorate of Marketing and Commerce of PT. Pertamina	<p>The reporting party reported the alleged conspiracy on the procurement of Oil Boom, Oil Dispersant and CCTV in the Directorate of Marketing and Commerce of PT Pertamina, with the following indications:</p> <ol style="list-style-type: none"> 1. The tender announcement and Pre-qualification Briefing did not mention any brand, specification and so forth. 2. Following the pre-qualification, the bidders bought tender document and the Tender Document mentioned acceptable brand that lead to a certain product. 	-	Tender conspiracy
6	Alleged conspiracy in tender implementations held by several government institutions in West Sumatera	<p>The reporting party reported the alleged conspiracy in several tenders performed by government institutions in West Sumatera Province throughout 2006.</p> <ol style="list-style-type: none"> 1. Medical Equipments Procurement Tender at Regional General Hospital of Dr. Muh Zein, Painan, with the following indications; <ol style="list-style-type: none"> a. The tender winner was that who proposed higher bid price. b. The Sole Agent gave different technical requirements between tender winner and other partners. 2. Laboratory Device Procurement Tender for Junior High School and Senior High School in Education Office, with the following indications; 3. Whereas the Reporting Party was disqualified because the Company owned by the reporting party did not have 3 years experience. 4. Computer procurement tender for Senior High School and Vocational High School in Education Office, with the indication that the Reporting Party was disqualified by the Committee during the opening of bidding document because the cover of document submitted by the reporting party was not bound. 5. Tender on the Procurement and Distribution of Clothes, Shoes, Bags, Books and so forth for Minority and Poor Elementary Schools in Education Office, with the indication that until the present time, the tender winner has not been announced either orally or in writing. 6. HPCL (High Performance Liquid Chromatography) Procurement Tender in Food Crops and Horticulture Agricultural Office with the indication that the winner was that who offer much higher bid price. 	-	Tender conspiracy

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
		<p>7. Livestock/Cow Aid Procurement Tender for Poor People's Productive Economic Effort (UEP) amounting to 300 households in Solok, Limapuluh Kota and Pasaman Regencies performed by Social Affairs Office with the following indications;</p> <p>Whereas qualified bidders were those proposing price above Rp 6 billion.</p> <p>There were some bidders which manipulated their work experiences. tion of Market and Shopping Complex Arrangement and Development Team.</p>	Secretariat Investigation	Non-Report
7	Alleged conspiracy in Palm Oil Seeds Procurement Tender conducted by Plantation Office in South Kalimantan	<p>The reporting party reported the presence of conspiracy to win CV Borneo Interprise Native as the tender winner, with the following indications;</p> <p>The reporting party was disqualified because the Technical specification was included in technical proposal, while the evaluation system applied by the Committee was Merit Point.</p> <p>CV Borneo Interprise Native as the tender winner received Supply Warranty in the form of cooperation from Karya Bersama Cooperative which constituted Civil Servant Cooperative under the Plantation Office of South Kalimantan Province.</p> <p>The technical requirements had been specified in the RKS, namely the minimum size of polybag of 30 cm, however the fact in the field indicated that the polybag size of the winner (CV Borneo Interprise Native) did not fulfill the minimum requirement.</p> <p>The letter issued by the Committee was improper, namely the letter number was the same but with different dates of letter. The Self-Assessed Price of the tender was Rp 4,404,892,800.-</p>	-	Tender conspiracy
8	Report on unfair competition in tenders performed in Bangka Belitung Province	<p>The reporting party reported the blocking by a group of people in the front door of a room to Submit Tender Offer for Road and Bridge Betterment Package Project in Bangka Belitung Province for National Revenue and Expenditure Budget 2007.</p>	-	Tender conspiracy
9	Alleged tender manipulation in Contract Division - Jasrum of PT Pertamina UP V, Balikpapan	<p>The reporting party suspected a manipulation to determine winners in tender implementation performed by Contract Division - Jasrum of PT Pertamina UP V, Balikpapan.</p> <p>The reported indications are as follows:</p> <p>During tender implementation, the committee was regarded violating the provision of Decree Letter of the President Director of Pertamina No. 036/C0000/2004-So.</p> <p>The Committee charged the documents with different amounts depended on project amount.</p> <p>The implemented evaluation system was unclear and did not refer to Presidential Decree No. 80/2003 and Decree Letter No. 036/C00000/2004/So.</p>	Secretariat Investigation	Tender conspiracy

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
10	Alleged conspiracy on the tender implementation of Fertilizer and Rubber Seed Procurement performed by Plantation Office of Banjar Martapura Regency	<p>The reporting party suspected a conspiracy on the tender implementation of tablet fertilizer, herbicide and grafting rubber seed in Plantation Office of Banjar Martapura Regency.</p> <p>The reported indications are as follows: There was mutual agreement to determine the winner which was made two days before document submission. The agreement was as follows;</p> <ul style="list-style-type: none"> a. Fertilizer Package was won by CV IRMA; b. Herbicide Package was won by CV Yunita; c. Grafting Rubber Seed Package was won by CV Bina Karya <p>The meeting took place at Lesehan Restaurant near to the irrigation of Banjar Regency and was led by Ir. Suyadi, a Civil Servant of Banjar Regency. The meeting also agreed the allocation of compensation fund to bidders which did not win the tender amounting to 5% of the total contract value and all winners were companies residing at Banjar Regency.</p> <p>During document submission, the committee did not provide bid document box. However they brought out the box on the last day of bid document submission, where the box had contained some bid document submitted by the bidders which attended the agreement meeting. The reporting party did not submit bid document because he was blocked by a group of people and the box was unavailable.</p> <p>After the submission of bid documents was over, Mr. Ardiansyah, the Director of CV Yunita, gave money in the amount of Rp 825,000 to registered bidders.</p>	Secretariat Investigation	Tender conspiracy
11	UPS installation and procurement tender in PT Geo Dipa Energy	<p>The reporting party suspected the violation of Article 22 of Law Number 5 Year 1999 in the process of UPS installation and procurement tender in PT Geo Dipa Energy in 2006.</p> <p>The reported indications are as follows: The committee did not explain either the fund limit or estimated price of the expected UPS. During the opening of bid documents, the committee did not involve any witness from the bidder. All documents were examined by the committee themselves. The committee validated a bid document from the bidder which offered goods with AMITEK brand; however the support letter provided by the Authorized Distributor of other brand. The committee had delayed winner announcement with reason that the fax number of the reporting party was wrong. Therefore the reporting party was not able to submit its objection as the period was over. PT Erico as the tender winner was only a company borrowed by Mr. Sudarsono.</p> <p>Complaint by Soaraja Botto Cempaka Foundation in Dua Pitue Sub-District, Sidenreng Rappang Regency, South Sulawesi Province concerning the alleged blockade against financial aid application.</p>	Report examination	Tender conspiracy

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
12	Complaint against the blockade of aid application	Complaint by Soaraja Botto Cempaka Foundation in Dua Pitue Sub-District, Sidenreng Rappang Regency, South Sulawesi Province concerning the alleged blockade against financial aid application.	Incomplete Report	Not the authority of the KPPU
13	Auction of Manulife Shares	<p>The reporting party suspected the violation of Article 22 of Law Number 5 Year 1999 by PT Dharmala Sakti Sejahtera in the auction process of shares of PT. Asuransi Jiwa Manulife Indonesia (AJMI).</p> <p>The reported violation indications are as follows: The content of tender announcement was contradictory to the content of Minutes of Tender. The Minutes of Tender specified that the auction request was proposed by Ari Ahmad Effendi, acting as the curator, however in the announcement published on Suara Pembaruan Daily, the auction was performed upon the request of General Meeting of Shareholder of PT Asuransi Jiwa Manulife Indonesia. Interval between auction implementation and auction announcement on mass media was only one week, so that it was deemed too short to perform due diligent. The auction bidder was only one namely The Manufactur Life Insurance Company (MLIC) with bid price of Rp 170,000,000,000.-</p> <p>PT AJMI and MLIC were known as having obtained approval from the Ministry of Finance for the application of shares take over of PT. Dharmala Sakti Sejahtera, two weeks before the auction was announced</p>	Secretariat Investigation	Tender conspiracy
14	RTender for Cleaning service work at Angkasa Pura II	<p>The reporting party suspected of unfair competition on the implementation of the tender for Cleaning Service Work at Terminal II of Soekarno Hatta Airport of Cengkareng in 2006.</p> <p>The reported indications are as follows: a. The tender winner was the bidder who won the tender for 4 consecutive years. b. The value offered by the winner was considered as unreasonable, because according to the calculation of the reporting party, the tender winner would not be able to perform the work according to the provision specified in the RKS.</p>	Incomplete Report	Tender conspiracy
15	Distribution of Imported Sugar	<p>Alleged monopolistic practice in the distribution of imported sugar in Central Sulawesi. The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. PT. PN XI always unloads imported sugar for Central Sulawesi province in the amount of 4,000 ton at Soekarno-Hatta Port in Makassar, instead of in Pantoloan Port in Palu. 2. PTPN XI only provided information concerning the due date of 1st payment amounted to 40% of the total compensation price to PT Padi Mas Prima Makassar. A sugar distributor company in Palu was recommended by Industry, Trade and Cooperative Office of Central Sulawesi. 	Secretariat Investigation	Tender conspiracy

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
16	Tender of Master Plan Study Consultant for Sumatera System in PLN P3B Sumatera	<p>The reporting party suspected that the pre-qualification process for the tender of Master Plan Study Consultant for Sumatera System performed by PT. PLN P3B Sumatera was uncompetitive.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. The APS Consultant from Malaysia was suspected had given "Service" to the officials of PLN during their visit to Malaysia. 2. It was suspected that the APS Consultant constituted the winner of consultant tender for Java-Bali Interconnection Study. 3. PT. PLN would perform direct appointment for individual consultant service at PLN Headquarter where some of their works were similar to the work scope of Java-Bali interconnection. 	Secretariat Investigation	Tender conspiracy
17	Unfair business competition by PT Dinamika y	<p>The reporting party suspected PT. Dinamika Indonusa Prima (DIP) had committed unfair business competition. PT DIP is the producer of AIRLAND spring bed.</p> <p>The reporting party is the supplier of spring bed for PT Badak Natural Gas Liquefaction. Pursuant to Purchase Order Number 004/BM40/2007-412 concerning the order of 190 units of Airland spring bed with silent or equal provision.</p> <p>The reporting party then bought the Koala by Airland spring bed to PT DIP in cash. However these goods were rejected by PT. Badak with a reason that the brand was not Airland as that specified in the Purchase Order.</p>	Secretariat Investigation	Tender conspiracy
18	Request for Response to Business Dispute between PT Starcom Solusindo and PT Telkom Indonesia	<p>The reporting party conveyed the occurrence of business dispute :</p> <ol style="list-style-type: none"> 1. Whereas the reporting party is a business actor engaged in the field of internet protocol based multimedia providing broadband internet to overseas operator. 2. Whereas the reporting party and PT. Telkom Indonesia have signed the Contract on Telecommunication Connection Subscription Model Tel-2. 	Secretariat Investigation	-
19	Alleged conspiracy in the tender for 145 Job Packages at the National Education Office of North Sumatera	<p>Regional Representative Office of Medan filed the report resume on the alleged conspiracy in the tender for 145 Job Packages at the National Education office of North Sumatera.</p> <p>The indication of the conspiracy are as follows;</p> <ol style="list-style-type: none"> 1. The tender for 145 job packages was announced on 21 October 2006 which fell on Saturday / holiday, instead of being announced on business days. 2. The tender committee kept the bid document for 3 days from the closing of document submission causing the alleged post bidding. 3. From information received, there was unauthorized company borrowing which was proved by different company addresses. <p>The tender amount was Rp 70,264,459,000,-</p>	Secretariat Investigation	Tender conspiracy

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
20	Unfair Business Competition in Soft Shell Turtle Export in East Kalimantan	<p>business competition in Soft Shell Turtle Export in East Kalimantan with the following indications:</p> <ol style="list-style-type: none"> 1. Whereas, the quota of soft shell turtle export is determined by the Decree of the Director General of Forest Protection and Conservation effective since 1 January 2006 up to 31 December 2006. 2. Whereas the reporting party suspected the monopoly of soft shell turtle export committed by Ting Ham (CV Agro Asia Tunggal). 3. It was alleged that CV Agro Asia Tunggal hampered the entry of UD Daisa Sagena as its competitor in soft shell turtle export. 	Investigation	–
21	Tender Cancellation Report	<p>The reporting party reported the improprieties occurred in the tender process of contracting work for the implementation of post-earthquake education building rehabilitation in Central Java Province and the development of Polyclinic of Indonesian Red Cross Klaten Branch as follows:</p> <ol style="list-style-type: none"> 1. The registration announcement was conducted on 5 - 8 February 2007 and the tender meeting (aanwizjing) was conducted on February 8, 2007. 2. The committee did not hold the aanwizjing for field orientation purpose. 	Secretariat Investigation	Tender conspiracy
22	Report on alleged violation of Law Number 5 Year 1999 committed by EMI Music South Asia, EMI Indonesia, Arnel Affandy.	<p>The reporting party reported the alleged violation of Law Number 5 Year 1999 committed by EMI Music South Asia, EMI Indonesia, Arnel Affandy as follows:</p> <ol style="list-style-type: none"> a. EMI Asia, EMI Indonesia supported by Arnel Affandi took over the exclusive management of Dewa 19 and other efforts to take over Ari Lasso. b. EMI Asia and EMI Indonesia together committed anti-competitive action by raising rival cost in order to hamper Aquarius in performing the same activity in the concerned market. c. EMI Asia, EMI Indonesia and Arnel Affandy conspired to collect all information on anything related to agreement with artists, particularly between Dewa 19, Ari Lasso and Aquarius. 	Incomplete Report	Market Domination
23	Report on the violation of Article 19 of Law Number 5 Year 1999 committed by PT Krakatau Lampung Tourism Development	<p>The violation of article 19 of Law Number 5 Year 1999 committed by PT. Krakatau Lampung Tourism Development with the following indications;</p> <ol style="list-style-type: none"> i. The cancellation and blockade of PLN electricity network establishment to the business premises of the Reporting Party. ii. PT. Krakatau Lampung Tourism Development and the regional government objected to the establishment of electricity network because most areas have not been acquired. 	Secretariat Investigation	Market Domination

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
24	Direct appointment on the Rehabilitation of Elementary School Buildings in North Sumatera	<p>The reporting party suspected the violation of Law Number 5 Year 1999 on the implementation process of rehabilitation project for 46 Elementary School Buildings in North Sumatera Province in 2006.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> The project was conducted with direct appointment system, while the budget was more than Rp 7 Billion. The direct appointment process was not conducted transparently. It was suspected that among 46 companies which won the project, only 7 of them having Business Enterprise Certificate registered in the LPJK of North Sumatera, 6 companies with Business Enterprise Certificate that were being questioned and 33 companies without Business Enterprise Certificate. 	Secretariat Investigation	Tender conspiracy
25	Unfair competition in tender for Badak Catering and Room Service at PT. Vico Indonesia, East Kalimantan	<p>The reporting party suspected the occurrence of unfair competition in the tender for Badak Catering and Room Services.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> The reporting party had registered as bidder, however they was not invited to attend pre-bid meeting. The committee then performed re-tender upon the objection of the reporting party. However, the committee then cancelled the re-tender and appointed PT. Anugerah Jasa Caterindo as service provider for the period of 3 moths. Afterward, new tender was performed where the reporting party initially won the tender, but then the disqualified due to the absence of certificate from expert staff, whereas other bidders were not required to enclose such certificate. It was suspected that the committee committed discrimination against the reporting party as well as the alleged conspiracy between the committee and PT. Anugrah Jasa Caterindo. 	Book of Report Termination List	Tender conspiracy
26	Double Positions concurrently in PT. Medan Andalas and PT. Sumatra Raya in Jakarta	<p>The reporting party reported the violation of Law No. 5 Year 1999 concerning double positions and shareownership in PT. Medan Andalas and PT. Sumatera Raya established in Jakarta.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> On 5, November 2001, PT. Medan Andalas was founded in Jakarta, engaged in taxi transportation namely Family Taksi. In this case, the reported party is the shareholder and Director of PT Medan Andalas. On February 25, 2005, PT. Sumatera Raya was founded in Jakarta, engaged in the same business, namely taxi transportation. In this case, the 1st Reported Party is the shareholder and the President Commissioner of PT. Sumatera Raya, while the 2nd Reported Party is the shareholder and the Director of PT. Sumatera Raya. 	Secretariat Investigation	Double Positions and Shareownership

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
27	Double Positions and Share-ownership	<p>The reporting party reported the conspiracy between the reported party and certain persons who were the personnel of Labuhan Batu Regency government.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. The reporting party had received the order for teaching aids and text books funded by Special Allocation Fund (DAK) that had been signed by some principals and school committees in Labuhan Batu Regency. 2. However the order was executed due to the intervention of the reported party who was suspected as having special relationship with certain people from the government of Labuhan Batu Regency, where the reported party forced some Principals to transfer the DAK fund source to his bank account. 	Secretariat Investigation	Tender conspiracy
28	Alleged conspiracy in the tender for car procurement for public health centers in Health Office of Bondowoso	<p>The reporting party suspected the conspiracy in the procurement process of 3 units of car for mobile public health center in Health Office of Bondowoso Regency in 2007 amounting to Rp 591,750,000.-</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. It was suspected that there was not any tender announcement. 2. It was not executed through public tender. 	Secretariat Investigation	Tender conspiracy
29	Request for Response from the Minister of State Apparatus Empowerment	<p>Letter from the Deputy of Supervision of the Minister of State Apparatus Empowerment concerning the request for the respond to the complaint letter from Mr. Ichwan delivered through P.O.Box 5000.</p> <p>The secretariat has replied the letter of application.</p>	Incomplete Report	Non-Report
30	Alleged Violation of Law No. 5 Year 1999 on the reconstruction of Melawai Market, Blok M	<p>The reporting party suspected unfair business competition in the appointments of Developer for the reconstruction of Melawai Market, Blok M.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. The appointment of PT. Melawai Jaya Realty as the developer was not executed transparently. 2. The paid-in capital of PT. MJR was Rp 400 Million while the amount of the project was Rp 494 Billion. 3. PT. MJR was previously named PT. Inter Buana Semesta established 4 months before the Melawai market was set to fire. 4. PT. MJR was established 4 days before PD Pasar Jaya announced the reconstruction of Melawai Market. 5. Two and half months after being appointed as the developer, PT. Mega Kiran Sentosa as the shareholder of PT. MJR sold all of their shares to PT. Sunter Agung and PT. Wijaya Wisesa. 	Secretariat Investigation	Market Domination

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
31	Reptile Hide Export Monopoly	<p>The reporting party suspected that Indonesian Reptile and Amphibi Trade Association (IRATA) had committed monopolistic practice in the reptile hide export in Indonesia.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. Every March, the Director General of Forest and Natural Resources of the Ministry of Forestry issued the quota for reptile hide export. 2. Currently, almost 80% of the quota is dominated by small part of IRATA members. 3. The abovementioned group is the colleagues of George Saputra as the chairman of IRATA. 	Secretariat Investigation	Monopoly
32	Alleged conspiracy in the tender for road betterment in Banyuasin Regency, South Sumatera	<p>The reporting party suspected the occurrence of conspiracy in the tender process of road betterment by Public Work Office of Banyuasin Regency, South Sumatera. The work packages which were being tendered are as follows: Lubuk Lancang – Teluk Betung – Tanah Kering; Pangkalan Balai – Pengumbuh; Pangkalan Balai – Lubuk Saung; Sp Tanjung Beringin – Rimba Alai dan Sp. Rambutan Mendal – Mendil.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. The reporting party as the lowest bidder was disqualified in 3 packages. 2. There were some bidders who were disqualified in one package but became the winner in other package. 3. The reporting party was not given clarification. 4. The committee did not have reasonable reason in disqualifying the reporting party 	Book of Report Termination List	Tender conspiracy
33	Alleged violation of Law Number 5 Year 1999	<p>The reporting party suspected the violation of Articles 19 and 25 of Law Number 5 Year 1999 by PT. Inti Cemerlang Agung in clean water management business and IKK at Kemang Pratama Housing Complex, Bekasi.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. The reported party prohibited the entire residents of RW 36 to manage their own clean water and security. 2. The reported party constitutes the only clean water and security organizer at Kemang Pratama housing complex. 	Secretariat Investigation	Market Domination
34	Advice to National Development Planning Agency relating to Presidential Decree Number 80 Year 2003	Advice from H. Nandang Suhdana concerning the revision of Presidential Decree Number 80 Year 2003 to the Head of National Development Planning Agency.	Incomplete Report	Non-Report
35	Tender for Health Equipments at Regional General Hospital of Brebes from ABT APBD (Regional Revenue and Expenditure Budget) fund of Brebes Regency in 2006	<p>The reporting party suspected the occurrence of conspiracy in the tender for health equipments at the Regional General Hospital of Brebes for Fiscal Year of 2006, the source of fund was ABT APBD of Brebes Regency in the amount of Rp 2,183,000,000.-</p> <p>The reported indications are as follows:</p>		Tender conspiracy

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
		<p>1. Tender document was not made by the Committee but it was prepared by Commitment Maker Official (PPK) assisted by the staff of PT. Graha Ismaya.</p> <p>2. Self-Assessed Price (HPS) data was suspiciously made by the staff of PT. Graha Ismaya and delivered to PPK through facsimile.</p> <p>3. PT. Graha Ismaya also delivered draft of tender announcement advertising to the PPK.</p> <p>The committee disqualified the bids submitted by CV ULS, PT. Pamiko and PT. Samudera with a reason that they did not mention “the validity of this bid is 30 business days since bid submission.” However the committee allowed PT. Candi Prambanan (the tender winner) although they did not mention the same sentence as abovementioned.</p>		
36	Tender for Road Betterment in West Kalimantan	<p>The reporting party suspected problem arising in the tender for road betterment for Nanga Tepuai - Putussibu package in 2007 for Particular Non-Vertical Work Unit Project of Road and Bridge Construction at the Border West Kalimantan executed by the Directorate General of Highways of the Ministry of Public Work.</p> <p>The reported indications are as follows:</p> <p>1. The committee disqualified the reporting party with a reason that their Basic Capability was not sufficient. The reporting party considered that committee’s calculation was wrong, as according to the reporting party, their Basic Capability value was sufficient.</p>	Secretariat Investigation	Tender conspiracy
37	Refusal of Ciledug Carrefour Construction	The reporting party refused the plan to establish Carrefour modern market at Central Business District (CBD) of Ciledug, as the distance to Plaza Baru Ciledug was only +/- 100 m.	Secretariat Investigation	Non-Report
38	Unfair Business Competition in Insurance Procurement of PT Telkom	The reporting party suspected unfair competition in the tender for insurance in PT. Telkom Tbk. PT. Sarana Janesia Utama which is the subsidiary of PT. Telkom was suspected to receive certain privileges to win the tender	Incomplete Report	Tender conspiracy
39	Distortion of Tender Process at PT PLN	<p>The reporting party suspected the distortion of tender process at PT. PLN (Persero) W.S2JB in 2007 for the implementation of work package 005, 006 and 007.RKS/P3BJN/W.S2JB/2007.</p> <p>The reported indications are as follows:</p> <p>1. Tender document was not signed by the General Manager of PLN.</p> <p>2. Minutes of Clarification was considered as invalid as it was made and signed on March 23, 2007 but the implementation was on March 26, 2007.</p> <p>3. There were requirements which were not mentioned and being added.</p> <p>3. The committee committed discrimination.</p> <p>4. Collusion was suspected to occur.</p>	Secretariat Investigation	Tender conspiracy

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
40	Response to Complaint Letter	The secretariat received copy letter concerning the complaint filed by Mr. Haerul S. Aminoto from Cempaka Pratama SME Cooperative.	Incomplete Report	Non-Report
41	Application for Law Protection	<p>The reporting party suspected a monopolistic practice in Mentawai Regency associated to the issuance of memorandum of understanding between the Regional Government of Mentawai Islands and Mentawai Marine Tourism Association (MMTA).</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. On December 11, 2006, the Regent, the Head of Regional Parliament of Mentawai Regency and Mr. Anom Suheri (as the business actor) issued Simakang Declaration intended to establish a marine tourism association in Mentawai Islands Regency namely Mentawai Marine Tourism Association (MMTA). 2. The primary member of MMTP was five legal entities which did not yet possess resort license nor boats. 3. The membership is divided into two categories. Primary Member which consists of 5 business actors and Regular Member. 4. To be the member of MMTA, business actor must pay Rp 2 million and retribution amounting to Rp 15 million for the first 3 months. The business actor who applies for membership should receive membership certificate, but they did not receive any certificate. 5. MMTA is suspected that it will determine which business actor that will or not operate their business and. Therefore, this determination will hamper other business actors. 6. MMTA only protects the interests of its primary members. 	Secretariat Investigation	Monopoly
42	Tender Conspiracy in North Maluku	<p>The reporting party suspected tender conspiracy practice by the Settlement and Regional Infrastructure Office of North Maluku in 500 M3 reservoir construction work tender.</p> <p>The reported indications are as follows: The reporting party as the lowest bidder was not allowed to be the winner.</p>	Secretariat Investigation	Market Domination
43	Direct Appointment in Piping Project from Teras - Rewulu	<p>The reporting party suspected the occurrence of direct appointment practice committed by PT. Pertamina (Persero), BPKP (Financial and Development Supervisory Board) and PT. Meta Epsi Engineering in contract settlement of Piping Project Work from Rewulu to Teras including the Construction of Teras Depot owned by PT. Pertamina.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. PT. Meta Epsi Engineering as the main contractor has committed default under the content of previous contract (SPB 266/C00000/2002 - S5) 	Incomplete Report	Non-Report

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
		<p>dated April 10, 2002, without finishing the project on October 9, 2004. The indication of loss experienced by Pertamina was @ Rp 19 billion and equivalent up to 2007 in the amount of Rp 40 billion.</p> <p>2. Contract for the rest of the work (10.28%) left by PT. Meta Epsi Engineering was not implemented through open tender (beauty contest, price bidding and due diligence).</p> <p>3. It was conducted with the following reason; to expedite adaptation process and encourage PT. Meta Epsi Engineering to hold responsibility although causing corporate loss experienced by PT. Pertamina (Persero) and neglecting applicable law and regulation.</p> <p>4. There was increased project amount of Rp 29,764,539,414 and US\$ 2,153,389 without holding open tender. And it obviously indicated tender conspiracy and violated Law Number 5 Year 1999 Article 22.</p>		
44	Conspiracy in the tender for PVC Pipe Procurement in Riau Islands Province	<p>Report on alleged violation of Article 22 Law Number 5 Year 1999. In the tender of PVC 6", 4", 2" Pipes Procurement by Public Work, Minino and Energy Service of Riau Islands Province.</p> <p>The allegation report was submitted by the KPD Head of Batam based on the report filed by PT Mitratama Daya Alam Bintan.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. In the opening of bid document, there were only 3 (three) bidders which passed the administration, technical and qualification requirements, namely PT. Mitratama Daya Alam Bintan, PT. Sumber Alam Sejahtera and PT Flopen Sejahtera. 2. The bidder which was supposed to win the tender was PT. Mitratama Daya Alam Bintang with lowest bid amounting to Rp 1,887,583,000.-, however, in fact the bidder which won the tender was PT. Alfatama Anugrah Sari Albaqi. 3. It was suspected that the tender committee had committed conspiracy with PT. Alfatama Anugrah Sari Albaqi which did not pass the technical and qualification evaluation. 	Secretariat Investigation	Tender conspiracy
45	Monopoly of electricity supply by the Management of ITC Mega Grosir Surabaya	<p>The report was submitted by Merchant Association of ITC Mega Grosir Surabaya which had been forwarded by KPD Surabaya where the initial issue was the alleged monopoly and unfair business competition in the management of ITC Mega Grosir Surabaya.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. The association of the reporting party was Merchant Association which occupied the Upper Ground of ITC Mega Grosir Surabaya with leasing system for 25 years period of time. 	Secretariat Investigation	Monopoly

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
		<p>2.The Upper Ground, according to the leasing agreement and product knowledge of ITC, was intended for the selling of garments, Moslem wears, batik and textile. The management of ITC consistently manages the issue so that every tenant on this floor must sell their products according to floor allocation.</p> <p>3.The management of ITC has unilaterally shifted the allocation of ITC lower ground which was previously allocated for shoes, bank, toys and services stalls to goods commodities stalls as those sold on Upper Ground stalls.</p> <p>4.The merchants on lower ground were freed from stand/stall lease so that they were free from fixed cost as those assumed by the merchants of Upper Ground. PT. Citra Agung Tirta Jatim silently made an agreement with the merchants on lower ground.</p> <p>5. Every month the merchants should pay electricity retribution and service charge according to the agreement made between the merchants and PT. Citra Agung Tirta Jatim, if there is any delay in payment, the merchants should be fined in the amount of 3%.</p> <p>6.The electricity supply is monopolized by PT. Citra Agung Tirta Jatim, with extremely high tariff, which is supposed to be paid directly to PLN (State Electricity Company), however the payment of electricity charge should be done to the account of PT. Citra Agung Tirta Jatim.</p> <p>7. There is additional cost for for key guarantee in the amount of Rp 2,000,000 per stall where the management or the allocation of the money is not organized transparently.</p>		
46	Unfair business competition in Roll Outsourcing Project by PT. Out CMS, PLN East Java Distribution	<p>The reporting party suspected unfair business competition in the process of customer management system implementation in PT. PLN East Java Distribution.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. PT. PLN East Java Distribution had committed direct appointment to PT Altelindo Karya Mandiri as the contractor which would execute CMS implementation project. 2.PT. Altelindo, in cooperation with PT. Netway Utama, executed the project. 3.It is suspected that the similar practice committed by PLN Jakarta Distribution which has been punished by the KPPU, is repeated by PLN East Java Distribution. 	Report examination	Market Domination
47	Unfair business competition committed by Interface Heuga Singapore Ltd.	The reporting party suspected that Interface Heuga Singapore Ptd Ltd had committed unfair business competition in the selling of carpet from Interface and Heuga brands.	Secretariat Investigation	Market Domination

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
		<p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. The reporting party is the distributor of Interface Heuga Singapore Ltd. in Indonesia since 1992 to sell carpet product from Interface and Heuga brands. 2. Whereas, PT. Kencana Arind Murni then sold carpet from Interface and Heuga brand in Indonesia. 3. Whereas, the import parallel practice committed by PT. Kencana has disturbed the position of the reporting party as main distributor in Indonesia. 4. Whereas, Interface Heuga Singapore Ptd Ltd then gave more support to PT. Kencana rather than to the Reporting Party. It has been proved in some tenders where Interface Heuga Singapre Ptd Ltd gave their supports to PT Kencana and asked the Reporting Party to withdraw. 		
48	Cargo service monopoly in Hasanuddin Airport Makassar	The reporting party suspected that PT. Angkasa Pura through its subsidiaries had committed monopolistic practice in cargo management in Hasanuddin Airport Makassar.	Secretariat Investigation	Monopoly
49	Conspiracy in Milk and Biscuit Tender for Fiscal Year of 2006	<p>The reporting party suspected conspiracy between PT. Sekawan Pangan Jaya and the committee of Goods and Services Procurement in Health Service of Tangerang Regency in the tender of Milk and Biscuit Package for Fiscal Year of 2006.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. The tender winner, PT. Sekawan Pangan Jaya (PT SPJ) is the distributor of PT Nestle; 2. In goods specification Part of tender document, the specification of goods to be offered by bidders were as follows: <ol style="list-style-type: none"> a. The product to be offered was directed to the product of PT. Nestle, namely Lactogen 2 Milk and Nestle baby biscuit; b. The specifications were too detailed, while the allocation of Milk and Biscuit was intended to overcome malnutrition in under-5 children. 3. Referring to tender document and aanwijzing dated September 5, 2006, the bid submitted by PT. SPJ should be disqualified, however PT. SPJ remained to be the winner although: <ol style="list-style-type: none"> a. Bid Bond was less than the specified period of time, namely 45 business days; PT. SPJ also enclosed invalid bid bond, because the bid was valid since 15 September 2006, while the bid opening was on 12 September 2006. b. The validity of bid letter was less than the specified period of time namely 45 business days, because the bid letter of PT. SPJ was only valid for 30 business days. 	Secretariat Investigation	Monopoly

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
50	Unfair business competition in the tender of goods procurement in Central BKKBN (National Family Planning Coordination Board)	<p>Report on indications of conspiracy in tender executed by Central BKKBN (National Family Planning Coordination Board).</p> <p>The indications are as follows:</p> <ol style="list-style-type: none"> 1. Required goods specifications were directed to certain manufactured product, such as ADS, implant, injection and contraception pill products; 2. The manufacturer only supported certain companies, and did not support other bidders. It was obvious from Work Instruction Letter and the minutes of procurement tender; 3. For certain goods procurement, the manufacturer participated in the tender to procure Contraception Pill, etc.; 4. In preparing ADS products tender requirements, the committee included WHO E8 specification, whereas the code is intended for immunization category. While the code used for mothers as ADS receptors, the contraception injection should be categorized as therapy with E 13 code; 5. In the tender requirements, the committee did not mention Basic Capability requirement, whereas this requirement is obliged by Presidential Decree Number 80 Year 2003 as the requirement to follow tender for Non-Small Trade Business License with minimum Basic Capability value of 5 NPT (NPT: highest achievement value) 6. Price bid in every tender of these goods was deemed inefficient, causing state loss up to Rp 30 Billion; 7. For the procurement of ADS, the product being used is Onejack, although Onejack product constitute local content and produced domestically however the price is higher than similar product imported from the USA namely BIDY. Whereas local product is not subject to inter-country distribution cost and not subject to imported goods duty from the customs. 8. Device and medicine procurement with 3 ml specification is no longer referred by the WHO, it should not be mentioned in BKKBN program, however, in fact Central BKKBN still allocated fund from APBN (State Revenue and Expenditure Budget) to buy the injection device 	Secretariat Investigation	Tender conspiracy
51	Tender conspiracy in the procurement of health equipments in Regional General Hospital of Sam Ratulangi in Tondano Minahasa, Tondano.	<p>There was a report on alleged tender conspiracy in the procurement of health equipments in Regional General Hospital of Sam Ratulangi, with the following indications:</p> <ol style="list-style-type: none"> 1. On April 20, 2007, the tender committee held re-aanwijzing at the hall of Regional General Hospital of Tondano because the first tender had been postponed, during the discussion of tender requirements, the specification was protested by the bidders/entrepreneur partners where the items specifications were directed to certain product and supplied by certain distributor. And this issue was acknowledged by the committee, therefore the committee suspended the aanwijzing meeting; 	Report examination	Market Domination

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
		<p>2. In the implementation of re-aanwijzing on April 20, 2007, it was obvious that the new specifications in tender requirements as promised by the committee were only attended by removing several items in each specification. The specifications of the equipment were still similar to the old tender requirements as they were still directed to certain product and certain supplier/distributor;</p> <p>3. The reporting party is of the opinion that a tender conspiracy has occurred between the committee and a third party by determining certain equipment specifications, therefore it is necessary to trace and investigate the presence of alleged violation of Law Number 5 Year 1999, Article 22.</p>		
52	APBN (State Revenue and Expenditure Budget) Tender Conspiracy in Settlement and Regional Infrastructure Office of Jambi Province	<p>There was alleged conspiracy in determining the tender winner of APBN (State Revenue and Expenditure Budget) in Settlement and Regional Infrastructure Office of Jambi Province with the following indications:</p> <ol style="list-style-type: none"> 1. The number of bidders which took tender document and followed aanwijzing was extremely different compared to the number of bidders submitting their bids. The violation was coordinated by certain irresponsible person who had been cooperated with irresponsible person from the committee. 2. During tender implementation on March 2, 2007 at the office of Settlement and Regional Infrastructure Office of Jambi Province, action to block bidders which would submit their bids was committed by a group of people through gangster's action. 3. The submitted bid value based on fund limit provided by the government constituted uncompetitive price. 	Secretariat Investigation	Tender conspiracy
53	Unfair business competition in the tender of construction work project in Public Work Office of Cilacap, Central Java	<p>The reporting party suspected that the tender of construction work project Number 602.1/1801/35/2007 in Public Work Office, Jl. MT Haryono Number 167 Cilacap, Central Java, was implemented unfairly and had been monopolized among partner contractors. The indications are as follows:</p> <ol style="list-style-type: none"> 1. Strict guarding was committed by certain irresponsible persons who prohibit the entire bidders of goods/services procurement tender to enter the office of Public Work Office of Cilacap Regency in order to register their participation. 2. The bidders who wished to register were directed to a canteen to receive money, amounting to Rp 500,000 per company, in order to withdraw from the tender process. 	Secretariat Investigation	Tender conspiracy
54	Conspiracy in building demolition tender in PT. Matahari Putra Prima, Tbk.	<p>Report on alleged conspiracy in determining the winner of building demolition tender of PT. Matahari Putra Prima Tbk, with the following indications:</p> <ol style="list-style-type: none"> 1. PT. Matahari Putra Prima, Tbk. unilaterally can 	Secretariat Investigation	Tender conspiracy

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
		<p>celled the tender winner and held re-tender.</p> <p>2.The tender winner did not constitute bidders and did not fulfill the terms and conditions of the tender namely the company was not yet a legal entity or registered at SISMINBAKUM (Legal Entity Administration System) of the Ministry of Law and Human Rights of the Republic of Indonesia.</p> <p>3.The Re-Tender held by PT. Matahari Putra Prima, Tbk. was considered as invalid and did not have legal entity as the Tender Committee was not consistent in applying the terms and conditions of the tender.</p>		
55	Appointment of the Winner of Catering Service in CNNOC SES, Ltd	<p>The reporting party suspected unilaterally termination of contract agreement committed by CNNOC SES, Ltd. The indications are as follows:</p> <ol style="list-style-type: none"> 1. CNNOC SES Ltd suddenly terminated catering service provision before the end of contract term without any clear reason or previous notifications. 2.It is alleged that the sudden termination has been well-planned. It is obvious from the termination date which is very short as well as the availability of successor catering service company without a transparent tender process. 3.The reporting party asked the Management of CNNOC SES, Ltd to cancel the catering service contract with the new catering service company and hold re-tender, as well as continuing the current catering service provision until the re-tender process is finished. 	Secretariat Investigation	-
56	Submission of Demonstration Result	<p>The reporting party submitted the result of peace demonstration of the aspiration of Eastern Sidrap-South Sulawesi people. The themes of the demonstration are relating to:</p> <ul style="list-style-type: none"> - The refusal or cancellation against the planning of other party or a group of people to relocate old market to a new place. - The objection against the presence of other party which claimed and admitted and even put fence around Tanru Tedong Central Market whereas they did not have any visible evidence, and this action resulting in the obstruction of market construction and the economy of surrounding community. The reporting party requested the Executive, Legislative and Judiciary bodies to take firm legal action. - To immediately perform Tanru Tedong central market according to initial commitment. - To secure the safety of the government and tender winner in the construction of Tanru Tedong market. - To apply to the Regional Parliament to immediately convey to the Government in order to provide response and doctrine in writing upon the aspiration of eastern people. 	Secretariat Investigation	Not the authority of the KPPU

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
57	Letter of Objection from Consulting Engineer to the Committee of Goods and Service Procurement of National Development Planning Agency	<ol style="list-style-type: none"> 1. According to the Result of Technical Evaluation which has been announced by the committee on May 3, 2007, the result obtained during the opening of technical document was that PT. Azimuth Utama Consultant did not affix stamp duty on Expert Staff Form, where it constituted absolute requirement specified in the Tender Requirement. 2. According to the comprehension of the Reporting Party, PT Azimuth Utama Consultant should be disqualified. 	Secretariat Investigation	Tender conspiracy
58	Complaint on Forced Insurance Participation	<p>The reporting party reported forced insurance participation for condominium unit bought by the reporting party.</p> <ol style="list-style-type: none"> 1. According to applicable banking regulation, the unit should be insured and had been insured by Lippo General Insurance since December 2006. 2. In fact, the unit was no longer managed by the building management so that they no longer reserved the right to insure the condominium unit bought by the Reporting Party. 3. The building management did not willing to refund the collective insurance premium that had been debited from monthly Service Charge deposited by the user. 	Secretariat Investigation	Not the authority of the KPPU
59	Tender Manipulation Causing State Loss up to Billions Rupiah	<p>Report on alleged conspiracy in determining tender winner which proposed extremely high bid price. The reporting party filed objection letter sent by three partners or bidders which felt harmed by Tender Committee Officials and Budget Executor in General Tender of Goods and Services Procurement funded by Regional Revenue and Expenditure Budget in Public Work, Mining and Energy Service of Riau Islands.</p> <ol style="list-style-type: none"> 1. Three bidders had never been invited for verification and clarification purposes, and until the present time they have never received any reply for the objection letter, whereas the three bidders had delivered objection letter to the tender committee as well as to budget executor. 2. With the issuance of the objection letter from the three bidders, the reporting party considered that the tender committee officials of Public Work, Mining and Energy Service of Riau Islands Province were not consistent. 3. The reporting party doubted the entire work packages in the tender project (31 packages) and suspected the presence of procedure manipulation by disqualifying lowest bidder. 	Secretariat Investigation	Tender conspiracy
60	Violation of Law Number 5 Year 1995 and Presidential Decree Number 83 Year 2003 and Fatal Breach of Integration Fact	<p>Report on alleged tender conspiracy to win certain bidder in West Kalimantan.</p> <p>The reporting party was blocked by the tender committee to buy tender document by hiring gangsters while the reporting party felt that they had fulfilled all requirements and qualifications as those mentioned in tender announcement.</p>	Secretariat Investigation	Tender conspiracy

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
61	Alleged Deviation in DAK (Special Allocation Fund) Procurement Project in Education Office of Labuhan Batu Regency for Fiscal Year of 2006	<p>Report on alleged deviation in Procurement Project of Books and Teaching Aids for Elementary School in Education Office of Labuhan Batu Regency for fiscal year of 2006.</p> <ol style="list-style-type: none"> 1. The reporting party intended to participate in the procurement tender of Textbooks and Teaching Aids, and had obtained partner for the goods procurement according to required specifications, namely PT. GEORAI. 2. The reporting party then performed promotion activities to several school principals. From the promotion activities, the reporting party obtained goods purchase orders from 15 schools among 52 schools available in Labuhan Batu Regency. The purchase order was then sent to PT. GEORAI. 3. Unfortunately, the reporting party was not able to realize the order due to the following reasons: <ul style="list-style-type: none"> - The Head of Sub-District Level Office who controlled the Principals who had put their orders to the reporting party had been threatened to lose his position by the Wife of the Owner of ANPU Book Store (who acted as the Secretary of Family Welfare Movement of Labuhan Batu Regency) if he did not put the orders to ANPU Book Store. - During the fund disbursement, the Principals were forced by the Head of Branch Office and ANPU Book Store to directly transfer the goods purchase fund to the bank account of ANPU Book Store. - Until the present time, taxes relating to the goods procurement have not been paid by ANPU Book Store to State Cash. 	Secretariat Investigation	Tender conspiracy
62	Unfair Business Competition by PT. Angkasa Pura II (Persero) and Puskopau Taxi Service in Pekanbaru, Riau	<p>The reporting party reported alleged violation by PT (Persero) Angkasa Pura II and Puskopau Taxi Service.</p> <ol style="list-style-type: none"> 1. PT. (Persero) Angkasa Pura II only appointed 1 (one) meter-based taxi company namely Puskopau Taxi Service to serve the passengers in the airport. 2. PT. (Persero) Angkasa Pura II did not allow any other taxies including the taxi fleet owned by the reporting party to enter and operate in Sultan Syarif Kasim Airport II, Pekanbaru. 3. The reporting party considered that the reason brought forward by PT. (Persero) Angkasa Pura II concerning the abovementioned issue which was due to limited parking area was unreasonable. 4. The action committed by PT. (Persero) Angkasa Pura II was considered as limiting the customers in selecting their preferred transportation, besides indicating monopolistic and unfair business competition among Meter Taxi Service companies. 	Secretariat Investigation	Monopoly, Market Domination and Dominant Position
63	Tender in Research and Development Center of Agricultural Biotechnology and Genetic Resources Official's Child in North Sulawesi	The reporting party suspected a conspiracy in goods/services procurement tender in Settlement and Infrastructure Service and River Center Regional I of North Sulawesi.	Secretariat Investigation	Tender conspiracy

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
		<p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. There was a contractor who won 8 work packages in the amount of over Rp 1 billion each. 2. PT Soilex won the consultant service work in Human Settlement Service for big, medium and small qualification works. 3. Some works were won by companies brought forward by government officials' children. 		
64	Project Monopoly and Attitude of Government Official's Child in North Sulawesi	<p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. There was a contractor who won 8 work packages in the amount of over Rp 1 billion each. 2. PT Soilex won the consultant service work in Human Settlement Service for big, medium and small qualification works. 3. Some works were won by companies brought forward by government officials' children. 	Secretariat Investigation	Tender conspiracy
65	Monopolistic practice in the distribution and selling of alcoholic drinks in West Irian Jaya	<p>The reporting party suspected the occurrence of monopolistic practice in the trade, distribution and the selling of alcoholic drinks in West Papua (West Irian Jaya) region.</p> <p>The indications reported by the reporting party are as follows:</p> <ol style="list-style-type: none"> 1. Governor Letter Number 503/157/GJB/2007 dated 9 March 2007 to the Regent of Sorong stated that companies which did not receive any recommendation from the Governor were not allowed to supply alcoholic drinks. 2. Whereas, by the issuance of the letter, the opportunities for these companies, which were not recommended by the governor, were closed to run their business in that field. 	Secretariat Investigation	Monopoly
66	Memo of the Head of Regional Representative Office of Balikpapan concerning computer and printer procurement in Education Office of Balikpapan	<p>A letter was addressed to the Head of Regional Representative Office of Balikpapan concerning alleged unfair business competition in the Tender of Computer and Printer Procurement in Education Office of Balikpapan year 2007 amounting to Rp 4,334,000,000</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. The bidding document of the tender winner was not addressed to the committee. 2. The winner's bid price was higher (Rp 4,007,300,000) rather than the reporting party (Rp 3,341,415,000). 	Secretariat Investigation	Tender conspiracy
67	Alleged tender conspiracy of irrigation channel construction in Pematang Siantar	The reporting party suspected the occurrence of fraudulent action in the tender process of village irrigation channel construction work in Pematang Siantar. The reported indications were the seizure of tender documents by unknown people and this incident was ignored by the committee although it happened in the committee room.	Secretariat Investigation	Tender conspiracy
68	Dipasena Tender	The reporting party suspected the occurrence of fraudulent action in the implementation of Selling Program of Credit).	Secretariat Investigation	Tender conspiracy

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
		<p>Asset and Shares of Dipasena Group with Revitalization Security executed by PT. Perusahaan Pengelolaan Aset (Persero).</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. Proof of Financial Capability of Neptune Consortium was only in the form of check, therefore it was not in accordance with the TOR. 2. It was alleged that Neptune Consortium as the tender winner did not fulfill the administrative requirements therefore they should have not been allowed to follow the tender process. 	Secretariat Investigation	Tender conspiracy
69	Business Obstruction committed by Indonesian Building Maintenance Association	<p>The reporting party suspected the occurrence of unfair business competition committed by the Central Representative Council of Indonesian Building Maintenance Association in the field of build maintenance business in Samarinda, East Kalimantan.</p> <p>The reported violation indications are as follows:</p> <ol style="list-style-type: none"> 1. The Central Representative Council of Indonesian Building Maintenance Association revoked the membership and Business Entity Certificate of the reporting party without implementing mechanism pursuant to Articles of Association. 2. The revocation was experienced by CV Sepakat Permai, CV Perwira Karya, CV Sungai Mahakam and CV Byrastio. 3. In addition, the Central Representative Council of Indonesian Building Maintenance Association did not issue any Business Entity Certificate for business entities which have fulfilled administration requirements and financial obligation. 	Secretariat Investigation	Discrimination
70	Tender for Submarine Transmission Cable in Seribu Islands	<p>The reporting party suspected the occurrence of unfair business competition in pre-qualification process of submarine cable procurement for electricity transmission to Seribu Islands in Mining Office of DKI Jakarta Province in 2007.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. The reporting party had been disqualified by the committee as it was considered to have not fulfilled the tender requirements, whereas, in fact they had provided the said requirements. 2. There were other bidders which did not fulfill the pre-qualification requirements but they were declared passed by the committee. 3. It was suspected that the committee manipulated the cable specifications so that they could only be fulfilled by certain cable producer. 	Secretariat Investigation	Tender conspiracy
71	Memo of DKP on Building Cleaning Service Work Tender in General Affair and Public Relation Bureau of the Ministry of Communication and Information	<p>The reporting party suspected the occurrence of unfair business competition in the tender process of Building Cleaning Service Work in General Affair and Public Relation Bureau of the Ministry of Communication and Information in 2007.</p>	Secretariat Investigation	Tender conspiracy

NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
		<p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. There was difference between the appendices of tender document received and those explained by the tender committee; 2. The tender committee only attached Appendix 2 of tender document (cost details) and did not attach Appendix 1 of tender document (example of bid letter) as that explained in the aanwijzing 		
72	Bridge and Road Maintenance Tender by Public Work, Mining and Energy Office of Riau Islands Province in Tanjung Pinang	<p>The reporting party suspected the occurrence of unfair business competition in the tender process of Bridge and Road Maintenance held by Public Work, Mining and Energy Office of Riau Islands Province in Tanjung Pinang in 2007.</p> <p>The reported indications are as follows:</p> <ol style="list-style-type: none"> 1. Some bidders had never been invited for verification and clarification purposes; 2. There was bidder which did not fulfill the requirements (they did not enclose Operational Cooperation) but they were declared as the winner; 	Secretariat Investigation	Tender conspiracy
73	Goods and Services Procurement Tender in Road Betterment Service and Periodic Maintenance Work of Gekbrong Road, Tegallega - Cianjur	<p>The reporting party suspected the occurrence of unfair business competition in the tender process of Goods and Services Procurement in Road Betterment Activity and Periodic Maintenance Work of Gekbrong Road, Tegallega - Cianjur in 2007.</p> <p>The reported indications are as follows:</p> <p>The reporting party proposed lowest bid amount but they were declared as 1st Reserved Winner or Second Winner.</p>	Secretariat Investigation	Tender conspiracy
74	Infrastructure Work Tender of Multi Years Contract in Provincial Government of South Sumatera (Regional Revenue and Expenditure Budget of 2005 - 2008)	<p>The reporting party suspected / indicated the occurrence of tender conspiracy in infrastructure work tender of multi years contract in Provincial Government of South Sumatera (Regional Revenue and Expenditure Budget of 2005 - 2008)</p> <p>The reported indications are as follows:</p> <ul style="list-style-type: none"> - The tender committee only announced the tender in the Rakyat Merdeka Newspaper that did not circulate in Palembang (August 16, 2005) - The tender was held only for 2 days prior to Islamic Idul Fitri holiday 	Secretariat Investigation	Tender conspiracy
75	Fixing of tariff selling price at Sorong port as mutually agreed among expedition companies (Indonesian Forwarders and Expedition Companies Association)	<p>The reporting party suspected the violation against Law Number 5 Year 1999 with the presence of selling price agreement among expedition companies at Sorong Port.</p> <p>Attached is letter of selling price change which is effective since May 12, 2007.</p>	Secretariat Investigation	Tender conspiracy
76	SMS Tariff (BRTI & ATSI)	Appeal for avoiding any agreement, appeal or anything associated to price fixing for SMS tariff	Secretariat Investigation	Price fixing

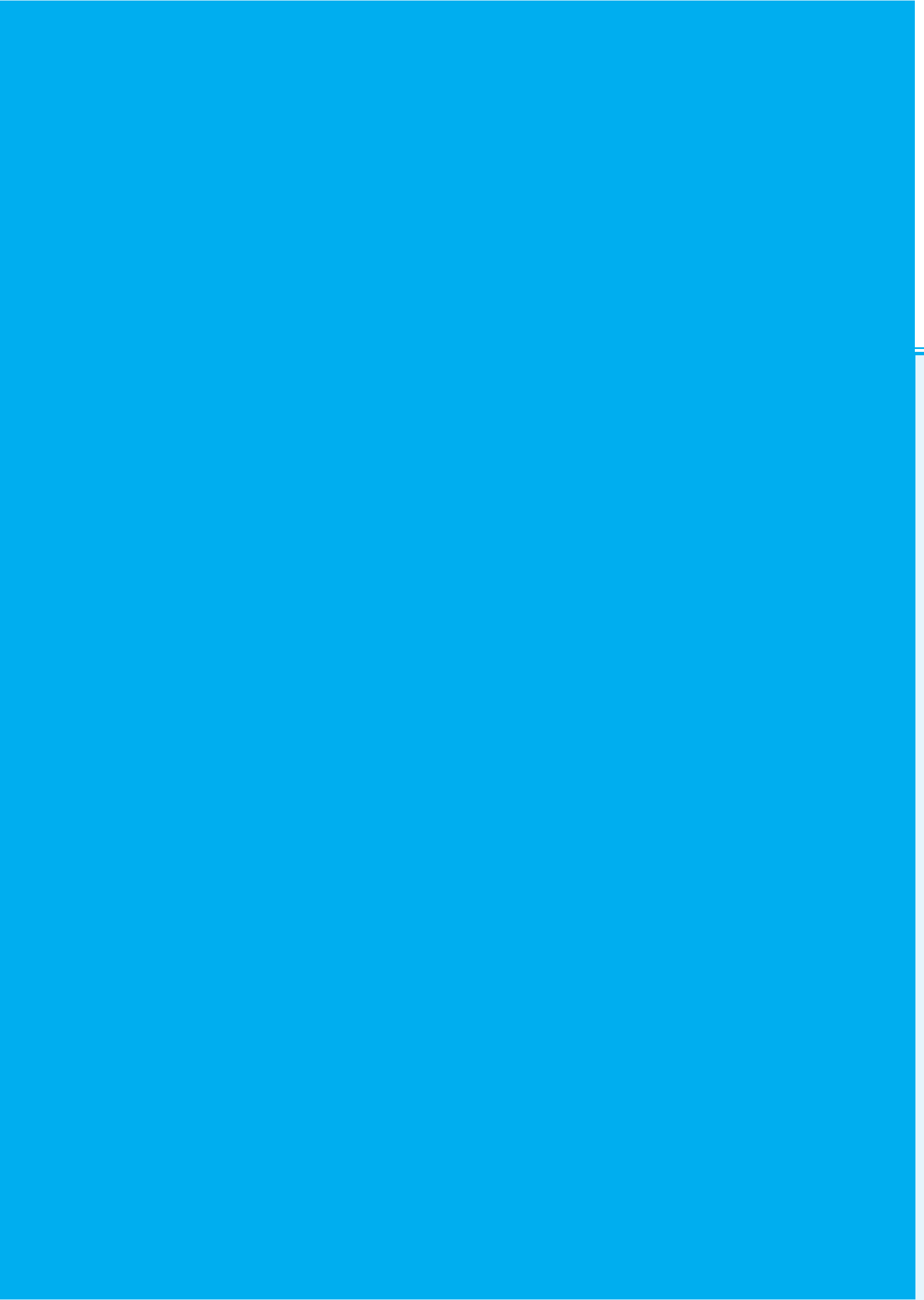
NO	SUBJECT	REPORT SUBSTANCE	STATUS	REPORT CATEGORY
77	Violation on the use of School Operational Aid Fund and manipulation in the process of textbook selling	Indication of the violation of Ministerial Decree Number 11 Year 2005 and the occurrence of the organized Collusion, Corruption and Nepotism in the use of School Operational Aid Fund (BOS) in 2006 amounting to Rp 84,000,000,000 in Lampung Province.	Secretariat Investigation	-
78	Alleged monopoly in policy arrangement for the implementation of CIS PLN 2006 Application	The reporting party suspected the occurrence of unfair business competition (Article 25) in the implementation of CIS (Customer Information System) Application by PLN in the year 2006 to be used to execute the roll out throughout Indonesia territory.	Secretariat Investigation	Dominant Positiony
79	Report and request for assistance by Joint Secretariat of Merchants of Tanah Abang Market which one of them associates to the construction of Blocks B, C, D, E of Tanah Abang Market	The reporting party suspected the occurrence of several violations in the construction of Tanah Abang Market. Indication: Direct appointment of PT. Priamanaya Djan Int'l without holding tender in order to rebuild Block A. Until the present time, PT. Priamanaya Djan Int'l remains acting as the market management which is supposed to be performed by PD Pasar Jaya.	Secretariat Investigation	Tender conspiracy
80	Complaint against monopolistic practice in the socks market through the registration of trade mark and industrial design by the owner of MUNDO brand	The reporting party suspected the occurrence of socks market domination by the owner of MUNDO brand by registering their sock designs to the Directorate General of Intellectual Property Rights. Meanwhile, according to the reporting party, the design as that published on KOMPAS newspaper had been used since the presence of socks machine.	Secretariat Investigation	Market Domination
81	Discrimination in tire tender held by Container Terminal of Koja	The reporting party indicated the occurrence of discrimination in the tender for procurement of RTG tire, head truck and chassis at Container Terminal of Koja. The reported indications are as follows: The company of the reporting party was disqualified from the list of bidder without clear reason.	Secretariat Investigation	Tender conspiracy
82	Corruption and abuse of power committed by irresponsible official of PT. Angkasa Pura (Persero)	The reporting party indicated the occurrence of conspiracy and manipulation in the tender of advertisement boards management at Juanda Airport by PT. Angkasa Pura I The reported indications are as follows: After the announcement of tender winner, some strategic locations of advertisement boards were found but were not included in the tender (direct appointment) with lower rental price rather than reasonable rental price which caused state loss.	—	Tender conspiracy
83	Complain on the Violation of Tender Procedure in the Construction of Archives Building of BATAN (National Atomic Energy Agency)	PT. Satria Guna Utama won the tender although it did not fulfill administrative requirements in its bid document. Meanwhile, PT Mugapes failed as it did not enclose technical specification document although it proposed lower bid price.	—	—



*Resume of the Kppu's Advice and Opinions for the
Period of January - December 2007*
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Appendix



Resume of The Kppu's Advice and Opinions For The Period of January - December 2007

No./Date of Letter/ Addressee	Source, Policy Material, and Business Competition Issue	Advice and Opinions	Note
1	2	3	4
1. Letter Number 77/K/III/2007 dated 9 March 2007 to the President of Republic of Indonesia	Source: Absence of regulation on equal playing field between small/traditional retailer and supplier and big capital retailer and supplier	<p>With regard to the policy, the KPPU conveys several points as follows:</p> <ol style="list-style-type: none"> 1. The KPPU support the regulation substance executed to protect small and traditional retail business as well as to protect modern retail supplier. With regard to the regulation substance, the KPPU understand that the issue constitutes government authority. 2. In several regulation substances, the KPPU expects the government to take into account the potentials of unfair business competition as regulated in Law Number 5 Year 1999 related to the regulation on the limitation of the number of business actors based on analysis of supply and demand. It is expected that the limitation of the number of business actors does not serve as an instrument to be used by business actor to commit monopoly practice and unfair business competition through customer exploitation. 3. With regard to the relationship between modern supplier and retailer, it is proposed that the issue shall not only consider small supplier but also medium and large supplier, considering the extremely high bargaining power of modern retailer does not only influence small business actors but medium and large business actors as well. It is also necessary to emphasize in the regulation that any form of transaction relationship between modern supplier and retailer should not be in contradiction with the principles of fair business competition. 4. In the event the involvement of the KPPU will be defined explicitly in the regulation substance, therefore it is proposed to mention additional clause in separate section/article as follows: <p>Prohibition of Monopoly Practice and Unfair Business Competition</p> <ol style="list-style-type: none"> 1. Retail business actor is prohibited to commit any acts that cause monopoly practice and unfair business competition. 2. The prohibition as referred to in par (1) is pursuant to Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition 	There is no official response yet from the government toward the advice proposed by the KPPU to include additional clauses in separate section/article.

No./Date of Letter/ Addressee	Source, Policy Material, and Business Competition Issue	Advice and Opinions	Note
1	2	3	4
<p>2. Letter Number 80/K/III/2007 dated 15 March 2007 to the President of Republic of Indonesia</p> <p>Concerning: Advice toward the MoU between Microsoft and Indonesian Government which is represented by the Minister of Communication and Information</p>	<p>Source: Memorandum of Understanding between the Government represented by the Minister of Communication and Information and Microsoft</p>	<p>With regard to the policy, the KPPU conveys several points as follows:</p> <ol style="list-style-type: none"> 1. The KPPU understands and supports government effort to eradicate illegal software in Indonesia, particularly in government institutions as the basis of the MoU policy. Software piracy process has reached apprehensive condition at present and has become disincentive for business actors in the field of software industry in Indonesia. As a result, innovation in software industry is threatened to stagnant or even stop at all, which in turn will shut down the innovation and potential of the industry itself. 2. However, with regard to government policy to execute the MoU with Microsoft as the part of effort to eradicate the piracy, the KPPU is of the opinion that the action is not appropriate as it contradicts to the principles of unfair business competition as regulated in Law Number 5 Year 1999. In its implementation, the MoU will be executed in the form of agreement, if it is followed up, the consequences would be as follows <ol style="list-style-type: none"> a. To provide additional market power for Microsoft that factually has achieved dominant position by dominating over 90% market share of operating system software (through Microsoft Windows) and office application software (through Microsoft Office). The big market power has a potential to be misused. There is potential for the MoU to be used as customer (Government Institution) exploitation media by Microsoft as the only Software provider (operating system and office application). b. It closes the opportunity for other providers of operating system software and office applications in Indonesia besides Microsoft in order to market their products to government institutions. It will be a disincentive to software development in Indonesia. The sustainability of Indonesian innovator and entrepreneur is threatened; therefore market attraction is no longer available. c. To eliminate the alternative of operating system software and office application software for government institutions besides Microsoft products. In the long term, this issue will close the efficiency of software procurement process in government institutions. Government institutions no longer have incentives to obtain software that actually can replace the function of Microsoft software with lower cost. 	<p>There is no official response yet from the government toward the advice proposed by the KPPU to include additional clauses in separate section/article.</p>

No./Date of Letter/ Addressee	Source, Policy Material, and Business Competition Issue	Advice and Opinions	Note
1	2	3	4
		<p>3. By considering the abovementioned issues, the KPPU is of the opinion that the solution to overcome piracy by executing the MoU with Microsoft is considered as inappropriate considering that the actual root of software piracy is relating to the issue of law enforcement of law and regulation on existing intellectual property rights.</p> <p>4. Solution to eradicate the piracy can only be conducted through firm law enforcement. Although it takes longer time and harder effort, however the KPPU believes that if the entire elements of this country have willingness to realize it, then it can certainly be implemented.</p> <p>By considering the foregoing issues, the KPPU suggests the Government to seek for other model of policy with broader impact against software piracy eradication and unfair business competition. With fair business competition, it is expected to be able to overcome digital divide in the development of knowledge based economy in the long term, due to the innovation of open system based software and office application as well as other special applications which are more affordable for wider community. The KPPU also suggests the Government to follow up the MoU with Microsoft in the form of agreement as well as revoking the MoU in order to avoid the potentials of unfair business competition in software industry in Indonesia.</p>	
<p>3.163/K/V/2007 dated 25 May 2007 to the President of the Republic of Indonesia</p> <p>Concerning: Advice and Opinions of the KPPU toward the Circular Letter of the Ministry of Communication and Information Number 01/SE/M/Kominfo/1/2007</p>	<p>Source: Circular Letter of the Minister of Communication and Information Number 01/SE/M/Kominfo/1/2007 concerning Letter Delivery</p>	<p>1. The response and advice of the KPPU are as follows: From the view of business competition, the issuance of the Circular Letter is believed will hamper business climate and competition in postal service providing, considering the discriminative nature of the content of the Circular Letter against certain business actors, its potential to hamper other business actors to perform their business in the market (entry barrier) as well as its potential to hamper the customers of postal service particularly non-individual company customer. It is concerned that the condition will negatively impact the overall performance of economy.</p> <p>2. The Circular Letter has indirectly returned or confirmed the monopoly position of PT. Pos Indonesia. It is obvious for the KPPU that the condition is appropriate to that mandated in Law Number 6 Year 1984 concerning the Post. However, it is also obvious for the KPPU that during the time the Government allows or</p>	

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		<p>even tends to facilitate the presence of private business actors in postal service sector besides PT. Pos Indonesia. In the perspective of competition, the issuance of the Circular Letter causes non-conductive business situation either against PT. Pos Indonesia, business actors, private courier service or customer. Short term impact for PT. Pos Indonesia in the increase of its performance by utilizing its monopoly rights. In the long term, PT. Pos Indonesia will be developed in monopoly situation that will be a disincentive for PT. Pos Indonesia to develop efficiently.</p> <p>3. Despite apprehensive condition of PT. Pos Indonesia, however the solution to improve the performance of PT. Pos Indonesia should not through the issuance of policy that tends to be in conflict with the principles of fair business competition. Anti-competitive policy even will harm the overall performance of postal service sector.</p> <p>4. The KPPU deems necessary a comprehensive revitalization program for PT. Pos Indonesia in order to improve and enhance its operational and service performance. Therefore, Government support is necessary in implementing the tasks of PT Pos Indonesia that does not possess economic value (Public Service Obligation). Meanwhile, for commercial activity, the management of PT. Pos Indonesia should be given flexibility to determine various operational and strategic policies, such as in the fixing of commercial service tariff and innovation of product and service for commercial customers. It is in line with the status of PT. Pos Indonesia (Persero) where one of its objectives is profit gaining (profit center).</p> <p>5. The Circular Letter is not appropriate to the Bill of Post that supports a change in managing Indonesia postal service sector from monopoly to competition.</p> <p>6. The KPPU expects that the discussion of the amendment of Law Number 6 Year 1984 can be finished immediately and that the Minister of Communication and Information will be reviewing the Circular Letter of the Minister of Communication and Information Number 01/SE/M/Kominfo/2007 in order to make it appropriate to the corridor of fair business competition.</p>	<p>There is no official response yet from the government toward the advice proposed by the KPPU to include additional clauses in separate section/article.</p>

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<p>4. Letter Number 188/K/VI/2007 dated 18 June 2007 to Coordinating Minister of Economy Concerning: Advice and Opinions against the Bill of Presidential Regulation concerning the Arrangement and Development of Modern Market Business and Modern Shop Business</p>	<p>Source: Bill of Presidential Decree on the Arrangement and Development of Modern Market and Modern Shop Business</p>	<p>The response and advice proposed by the KPPU are as follows:</p> <ol style="list-style-type: none"> 1. The KPPU support the regulation substance executed to protect small and traditional retail business as well as to protect modern retail supplier. With regard to the regulation substance, the KPPU understand that the issue constitutes government authority. 2. With regard to the regulation substances, the KPPU expects the government to take into account the potentials of unfair business competition as regulated in Law Number 5 of 1999 related to the regulation on the limitation of the number of business actors based on analysis of supply and demand. It is expected that the limitation of the number of business actors does not serve as an instrument to be used by business actor to commit monopoly practice and unfair business competition through customers exploitation, such as by committing cartel practice among limited number of business actors or even monopoly practice due to only one business actor in a region. 3. With regard to the relationship between modern supplier and retailer, it is proposed that the issue shall not only consider small supplier but also medium and large supplier, considering the extremely high bargaining power of modern retailer does not only influence small business actors but medium and large business actors as well In addition, it is also necessary to emphasize in the regulation that any form of transaction relationship between modern supplier and retailer should not be in contradiction with the principles of fair business competition. 4. In the event the involvement of the KPPU will be defined explicitly in the regulation substance, therefore it is proposed to mention additional clause in separate section/article as follows: Prohibition of Monopoly Practice and Unfair Business Competition: <ol style="list-style-type: none"> a. Retail business actor is prohibited to commit any acts that cause monopoly practice and unfair business competition. Unfair Business Competition 	
		<ol style="list-style-type: none"> <li value="2">b. The prohibition as referred to in par (1) is pursuant to Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and 	

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<p>5. .215/ K/ VII/ 2007 dated 10 July 2007 To: The President of the Republic of Indonesia</p> <p>Concerning: Advice and Opinions on the policy of Hajj Management</p>	<p>Source: The improvement of Hajj Management by the Government through Amendment Bill of Law No. 17 Year 1999 concerning Hajj Management.</p>	<p>With regard to the policy, the KPPU conveys several points as follows:</p> <ol style="list-style-type: none"> 1. During the time, the tariff of Hajj Pilgrimage Coordination is specified based on limited sources due to market obstructions against the participation of potential business actors in the concerned market. Tariff determination by the government of specific hajj segmentation does not encourage private sector to implement efficiency and fair competition. 2. The determination of the tariff of hajj pilgrimage coordination for regular hajj segment should be done through non-discriminative competition mechanism together with clear and transparent technical criteria implemented through open tender. 3. It is necessary to encourage programmed efficiency in special hajj market segment through reasonable cost reduction policy by determining tariff upper limit to be firmly monitored. 4. It is necessary that the Government hold open tender for hajj pilgrimage service in the field of transportation, service and catering by involving national private sector, so that it is expected to reduce the tariff of Hajj Pilgrimage Coordination. 5. The Government needs to perform G to G approach to the Government of Saudi Arabia in order to develop more strategic economic cooperation group between national private sector and private sector of Saudi Arabia, so that it will widen the role of national private sector in providing transportation and catering services, either at the embarkation or in Saudi Arabia. 6. Double function of regulation and operational assumed by the Government is the cause of inefficient hajj management. The relationship of operator-regulator should be vertical, because the existing double function causes difficulties in executing reward and punishment mechanism; as a result there is no responsibility mechanism assumed by the Ministry of Religion for every problem arises in hajj management. 7. The Government should implement regulator function, while the implementation function should be delegated to an agency specifically established by the Government in the form of Hajj Pilgrimage Coordination Agency. 	

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		<p>The determination of tariff of Hajj Pilgrimage Coordination by the President is based on the proposed tariff of Hajj Pilgrimage Coordination after approved by the Parliament.</p> <p>8. Each component of tariff of hajj pilgrimage coordination is organized by the Hajj Pilgrimage Coordination Agency by implementing a mechanism that considers the principles of fair business competition.</p>	
<p>6. 301/K/VIII/2007 Dated 30 August 2007</p> <p>Concerning: Advice and Opinions on National Textbook Policy</p>	<p>Source: Ministerial Regulation No. 11 Year 2005 concerning Textbook constitutes policy which is in line with the spirit of fair business competition. However in its implementation, the ideal framework of textbook industry pursuant to the policy is still far from that expected. One emerging issue is the occurrence of distortion against ideal system as expected by the Government and lack Government attention toward the implementation of policy as stipulated by the Ministry of National Education.</p>	<p>With regard to the policy, the KPPU conveys several points as follows:</p> <ul style="list-style-type: none"> b. 1. If the Government wishes to maintain the existing form of regulation, therefore the Government needs to reinforce the policy through the following measures: developing programs derived from the existing policy as follows: <ul style="list-style-type: none"> i. to develop technical regulation from the existing policy ii. to develop book store as the core of book industry b. to give sanction to party violating the stipulated provision, it is particularly addressed to officials and implementers of national education who distort the system through their authorities. 2. With regard to national textbook pricing policy, considering the high potential of oligopoly in book industry, therefore, in order to avoid customer exploitation, it is expected that the Government stipulate the upper limit of textbook price. It is executed in order to avoid the potential of student exploitation by business actor. In the other hand, the policy provides wider competition space so that business actor is still able to implement efficiency. 3. By considering textbook strategic value in national education and the weakness of current policy implementation, it is suggested that textbook regulations implemented by using higher law and regulation that binds every citizen who constitutes the object. The proper form of regulation suggested by the KPPU is Law. Therefore the KPPU suggests the Government to prepare the Bill of National Textbook 	<p>There is no response from the government.</p>

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<p>7. 302/K/VIII/2007 Dated 31 August 2007</p> <p>Concerning: Advice and Opinions of the KPPU in the Bill of Post</p>	<p>Source: The Amendment of Law Number 6 Year 1984 particularly that relating to Public Service Obligation of PT Pos Indonesia</p>	<p>With regard to the policy, the KPPU conveys several points as follows:</p> <ol style="list-style-type: none"> 1. It is necessary to provide clearer classification and specification for postal product or service associated to Public Service Obligation (PSO). The classification can be made based on the combination of three main criteria namely class of services, weight and tariff. 2. By referring to various postal policies applied in several countries, the category of obligatory product/service should be provided by the operator/country with affordable tariff. Meanwhile, postal service product such as express mail and other premium postal services constitute added value product/service including in commercial area and can be implemented competitively, either from service or tariff perspective, based on reasonable market mechanism. 3. The Bill of Post should mention the regulation of PSO of postal service in Indonesia. The new Law of Post should mandate the country in term of the provision of PSO of postal service with sufficient payment method and system. In this case, cross-subsidy method or practice between commercial postal service and non-commercial postal service (PSO) should be eliminated, because it will hamper the performance of operator as the implementer of PSO of postal service as well as causing obstruction against fair business competition climate. 4. The government needs to issue policy which provides concession rights to the operator of PSO in postal service through competitive and transparent process, so that the government can obtain the operator of PSO of postal service with lowest cost which is able to implement function and eliminate cross-subsidy between PSO service and commercial service. Therefore, it is necessary to perform evaluation either against the method of PSO funding or against the performance and the ability of operator candidate as the implementer of PSO of postal service. 5. It is important to emphasize the function and role of the regulator and supervisor in the new law of posts, particularly in term of law status, institutional arrangement and funding as well their authorities. In addition, the regulator and supervisor of postal implementation. 	<p>There is no official response from the government. However, from news in the mass media, it is known that the Government will try to accommodate the advice of the KPPU in the derivative regulation of Law No. 6 Year 1984.</p>

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		<p>should ensure the absence of distortion or linkage between commercial product/service, particularly from tariff policy perspective by the operator of PSO and other business actors</p> <p>6. In the Bill of Post, it is better to include various development and innovation in business sector, particularly in order to anticipate the trend to integrate logistic and postal service, so that it will increase the efficiency and innovation in supply chain that lead to the improvement of customer service quality with more competitive tariff.</p> <p>7. The provision in the Bill of Post remain takes into account the principles of fair business competition pursuant to Law Number 5 Year 1999 in order to overcome various issues in postal sector, such as vertical integration, access to postal network as well as unfair tariff fixing.</p>	
<p>8. 330/K/IX/2007 Dated 24 September 2007 to the President of the Republic of Indonesia</p> <p>Concerning: Advice and Opinions against the policy of oil palm plantation business</p>	<p>Source: Re-arrangement is necessary for the development of oil palm industry according to the expectation by accommodating the values of fair business competition in its development.</p>	<p>With regard to the policy, the KPPU conveys several points as follows:</p> <ol style="list-style-type: none"> 1. The KPPU suggests technical department or authorized institution associated to plantation business permit to perform evaluation against the utilization of oil palm plantation area by private large company 2. The provision in the Regulation of the Minister of Agriculture Number 26/Permentan/OT.140/2/2007 concerning the requirement in oil palm plantation business to fulfill at least 20% of the raw material supply from their own plantation, is suggested to be revoked. 3. Partnership pattern to be implemented should be based on open transactional principles. Therefore, it is suggested that the provision in the partnership agreement considers the provision on the prohibition of monopsony practice and exclusivity agreement as regulated in Law Number 5 Year 1999. 4. The KPPU suggests the department or institution authorized to implement the operational provision of the Regulation of the Minister of Agriculture Number 395/Kpts/OT.140/11/2005, not to misuse the regulation as the instrument to force market price uniformity in the concerned market. 	

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<p>9. 373/K/X/2007 Dated 29 October 2007</p> <p>Concerning: Advice and Opinions of the KPPU against the Management of Roll On-Roll Off Container Transportation between Batam - Singapore</p>	<p>Source: Currently, the utilization of Ro-Ro vessel as container transportation from Batam - Singapore has not been well-accommodated in the policy of transportation sector, so that the implementation causes the potential of unfair business competition which hamper national business actors who wish to operate Ro-Ro Vessel for Batam-Singapore route.</p>	<p>Basic problems with regard to the implementation of Ro-Ro system are as follows:</p> <ol style="list-style-type: none"> 1. During the time, there has never been bilateral agreement between the Government of the Republic of Indonesia and the Government of Singapore as the basis of law that regulates ferry transportation between both countries. The basis of law used during the time is in the form of MoU between the Government of the Republic of Indonesia and the Government of Singapore concerning economic agreement as well as Decree Letter of the Minister of Trade, the Minister of Finance and the Minister of Transportation. The absence of this basis of law becomes entry barrier for national business actors to enter into ferry transportation business with Ro-Ro system. The obstruction appears in the form of the absence of security for the sustainability of ferry transportation business with Ro-Ro system, and the rejection of the chassis of Indonesian vessel to enter Singapore with a reason that the chassis of Indonesia vessel is not appropriate to the chassis standard as applied by Singapore port authority. 2. There is various high-cost economy practices emerge in the ports located in Batam Island with regard to the operational of Ro-Ro vessels. There are costs which are not appropriate to the standard of national port that lead to illegal charge rather than revenue for the Government of Batam Island. <p>With regard to the foregoing issues, the KPPU conveys several points as follows:</p> <ol style="list-style-type: none"> 1. The KPPU suggests the Government to establish bilateral agreement between both countries that regulates these issues. The regulation should be implemented in a comprehensive manner in order to eliminate doubt experienced by national business actors to actively participate in ferry transportation business by using Ro-Ro vessel. 2. The regulation should also accommodate fair business competition as well as avoiding high-cost economy in the ferry transportation business. 	<p>There is official response addressed to the KPPU through the Letter of the Minister of State Secretary Number B-16/M.Sesneg/D4-/01/2008.</p> <p>In the letter, the Minister of State Secretary asks the Coordinating Minister of Economy to discuss the advice and opinions of the KPPU, by considering the signing of bilateral agreement with Singapore Government concerning Economic Cooperation in The Island of Batam, Bintan and Karimun on 25 June 2006. It is expected that the result of the discussion is reported to the President through the Minister of State Secretary.</p> <p>Based on the letter, according to the Minister of State Secretary, the policy that regulates the utilization of Ro-Ro Vessel for Batam-Singapore route has been accommodated in the Framework Agreement between the Republic of Indonesia and the Government of the Republic of Singapore on Economic Cooperation in the Islands of Batam, Bintan and Karimun.</p>

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<p>10. 390/K/XI/2007 Dated 9 November 2007</p> <p>Concerning: Advice and Opinions against the Policy in Construction Service Sector</p>	<p>Source: Most report on unfair business competi- tion submitted to the KPPU derives from construction service sector. Therefore, with these reports it is suspected that one of the roots of the problem is due to non-conductive policy</p>	<p>With regard to the policy, the KPPU conveys sev- eral points as follows:</p> <ol style="list-style-type: none"> 1. The regulation in construction service sector should be improved in order to avoid distor- tion in the implementation of Law No. 18 Year 1999. One of significant issue to be taken into account is validation effort against the element of business actors who serves as the administrator of Construction Service Develop- ment Institution. The government should encourage active role of the other elements of Construction Service Development Institution which are more independent such as elements of Government and Academician/Expert. 2. It is expected that the Government issues policy for validation process against construc- tion service association and company to be implemented in the Construction Service Development Institution as a selection process for the emergence of company and associa- tion that promote professionalism and serve as a media to produce business actor with high competitiveness. 3. Considering that the root of the problem in construction service sector resides on institutional format, therefore, for long term interest the KPPU suggests the Government to alter the institutional format of construction service sector. The appropriate format is by placing the Construction Service Development Institution as state official institution serving as regulator in construction service sector. This format promotes independence that will prevent the Construction Service Development Institution from conflict of interests of their members. Considering that the format change can only be realized by amending the Law No. 18 Year 1999, therefore the KPPU suggests the Government to prepare the Bill of Amendment of Law No. 18 Year 1999. 	
<p>11. 427/K/XII/2007 Dated 6 December 2007</p> <p>Concerning: Advice and Opinions against the Management of Airport Taxi</p>	<p>In the management of airport taxi, there is monopoly of taxi management by certain business ac- tors with the potential of monopoly power misuse through ex- tremely high tariff and apprehensive service quality. Meanwhile, it is obvious from</p>	<p>Observing the development of airport taxi man- agement that tends to be monopolized as well as lack of actual measures executed by several relevant institutions to improve the management of airport taxi to a better service with competitive price, the KPPU deems necessary concrete meas- ures taken by the Government to issue policy that promotes the values of fair business competition in airport taxi sector. In the event the Government wishes to obtain more comprehensive explana- tion from the KPPU, the KPPU will be ready to conduct audience with regard to these issues.</p>	<p>There is no official response from the government.</p>

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	the study result by the KPPU that open competition model is actually able to be implemented in the management of airport taxi by provid- ing opportunity to business actors who have competency in managing airport taxi		

