

インドネシア
競争政策プロジェクト
(フェーズ2)
詳細計画策定調査報告書

平成21年12月
(2009年)

独立行政法人国際協力機構
公共政策部

インドネシア
競争政策プロジェクト
(フェーズ2)
詳細計画策定調査報告書

平成21年12月
(2009年)

独立行政法人国際協力機構
公共政策部

序 文

日本政府は、インドネシア共和国政府の要請に基づき、同国の事業競争監視委員会の機能強化ならびに審査官の能力向上を支援することを決定し、独立行政法人国際協力機構は平成 21 年 7 月 26 日から 7 月 31 日まで詳細計画策定調査団を派遣しました。

本調査では、事業競争監視委員会他関係機関との協議を通じて先方協力ニーズの確認を行い、プロジェクトの枠組みについて認識の共有を図りました。これら協議内容は議事録 (M/M) としてまとめられ、署名・交換されました。また、同議事録はインドネシア政府において関係省庁に諮られ、9 月には協議議事録 (R/D) の署名がなされました。

本報告書が、今後のプロジェクトの円滑な実施、ならびに関係者の参考として活用されれば幸いです。終わりに、調査にご協力とご支援をいただいた関係各位に対し、心より感謝申し上げます。

平成 21 年 12 月

独立行政法人国際協力機構
理 事 新 井 泉

地 图



目 次

序文
地図
目次

| | |
|--|----|
| 第1章 詳細計画策定調査団の派遣 | 1 |
| 1. 調査の背景 | 1 |
| 2. 調査目的および対処方針 | 1 |
| 3. 団員構成 | 1 |
| 4. 調査日程 | 2 |
| 第2章 協議結果の概要 | 3 |
| 1. プロジェクトの内容等 | 3 |
| 2. 調査団所見 | 6 |
| 第3章 事業競争監視委員会（KPPU）と競争法概要 | 8 |
| 1. 事業競争監視委員会（KPPU）の概要 | 8 |
| 2. 事業競争監視委員会の業務概要 | 10 |
| 3. 競争法概要と執行手続き | 10 |
| 4. 関連ドナーによる取り組み動向 | 16 |
| 第4章 事業競争監視委員会の競争法執行上の課題と我が国支援のあり方 | 17 |
| 1. 競争法執行上の課題（法整備面や執行上の問題点） | 17 |
| 2. 事業競争監視委員会の課題（人材、予算などキャパシティ面の問題） | 18 |
| 3. 我が国支援のあり方 | 19 |
| 第5章 プロジェクトの概要 | 22 |
| 1. プロジェクトの基本計画 | 22 |
| 2. 事前評価結果 | 27 |
| 資料 | |
| ・署名済 M/M、R/D、PDM、PO | 31 |
| ・質問表と KPPU 回答 | 67 |
| ・Basic Survey on Competition Policy in Indonesia(2008年JICAインドネシア事務所実施) | 93 |

第1章 詳細計画策定調査団の派遣

1. 調査の背景

インドネシアは、1997年のアジア金融・経済危機以降、国際通貨基金（IMF）等からの支援を得て、健全な市場経済化に向けた多くの取組を行ってきた。その取組の一つとして、1999年3月に競争法（「独占的行為及び不公正な事業競争の禁止に関するインドネシア共和国法1999年第5号」）が制定・公布された。また、競争法を執行する機関として、事業競争監視委員会（Komisi Pengawas Persaingan Usaha; KPPU）が設立されたが、執行面での経験・ノウハウの不足、人材と予算の不足、ガイドラインの未整備等、KPPUが抱える課題は多い。

KPPUの審査能力、政策立案能力の向上を目指し、JICAは2004年7月から2007年7月にかけて「競争政策プロジェクト」を実施したが、今後、市場経済化の一層の進展により審査件数が増えることが想定され、また、KPPUは組織拡大の途上にあり人員を増やしていることから、引き続きKPPUの審査能力等の向上を支援していく必要がある。以上のような背景の下、インドネシア政府は2008年、「競争政策プロジェクト（フェーズ2）」として、競争政策実施に係るキャパシティ向上のための技術協力プロジェクトを日本に要請した。我が国公正取引委員会の理解と協力を得て案件は採択され、早期のプロジェクト立ち上げを目指し、2009年7月末に詳細計画策定調査団を派遣し、プロジェクト枠組みと取り組み内容についてKPPUと協議を行った。

2. 調査目的および対処方針

KPPU他インドネシア国関係機関と、プロジェクト実施の妥当性及び課題を確認し、協力内容と枠組みの詳細を協議した上で詳細計画策定調査を行う。また、協議結果を議事録（M/M）にまとめ、R/D案、PDM案、PO案について協議する。

3. 団員構成

| 氏名 | 担当分野 | 所属 | 調査期間 |
|--------|------|----------------------------|----------|
| 阿部 裕之 | 総括 | JICA 公共政策部 財政・金融課長 | 7/26-8/1 |
| 櫻井 裕介 | 競争政策 | 公正取引委員会事務総局 審査局 審査専門官 | |
| 五十嵐 俊之 | 競争政策 | 公正取引委員会事務総局 官房国際課 国際経済調査係長 | |
| 黒田 龍二 | 協力調整 | JICA インドネシア事務所 企画調査員 | |
| 大久保 真紀 | 協力企画 | JICA 公共政策部 財政・金融課 ジュニア専門員 | |

4. 調査日程

| 月 | 日 | 内容 |
|----|--------|--|
| 7月 | 26日（日） | 14:10 成田発 19:50 ジャカルタ着 |
| | 27日（月） | 午前：大使館表敬 午後：KPPUとの協議 |
| | 28日（火） | 終日：KPPUとの協議 |
| | 29日（水） | 午前：MM署名 午後：報告書案作成作業 |
| | 30日（木） | 午前：経済調整大臣府（CMEA ; Coordinating Ministry for Economic Affairs）訪問 午後：ファイサル・バスリ氏（IRSA ; Indonesia Research and Strategic Analysis） |
| | 31日（金） | 午前：報告書案作成作業 午後：大使館報告 22:15 ジャカルタ発 |
| 8月 | 1日（土） | 07:45 成田着 |

第2章 協議結果の概要

1. プロジェクトの内容等

(1) プロジェクト実施の妥当性の明確化

インドネシアにおいては、徐々に競争法の運用体制の拡充が図られているとはいえ、KPPU の経験・ノウハウの不足等により、活発な競争法執行がなされているとは言い難い状況である。そのため、KPPU はフェーズ 1 の実施を経て、引き続き我が国からの協力を強く希望している。

一方で、KPPU に対しては JICA の協力の他にもドイツ技術協力公社 (GTZ) 等他ドナーが協力を実施してきており、KPPU 内部でも協力成果の有効活用や職員間での共有等を進めてきたことから、一定程度の能力は有しているものと思われる。本件プロジェクトを実施するにあたっては、先方と十分な協議を行った上で、どの程度のレベルにターゲットを当てて協力を行うのかを検討していくこととなる。

(2) KPPU の組織概要、所掌業務の調査

KPPU は 2000 年の設立後、職員数を年々増やしており、現在は約 250 名である。また、競争法改正案やガイドライン案の作成を独自に進め、競争政策に関する提言数も増加しているなど、設立後約 10 年を経て組織としての能力が高まってきていることが伺える。一方で、審査官の不足や法の未整備による権限の制限、他の規制官庁との調整不足といった課題を抱えており、KPPU がその使命や職務を全うするには更なる組織強化が必要と思料される。

(3) 上位目標、プロジェクト目標

それぞれ次のとおり合意した。

上位目標：「インドネシア国内の市場において公正・公平な競争が促進される」

プロジェクト目標：「効果的な競争法執行・競争政策を実施するための KPPU の組織体制が強化される」

(4) プロジェクト成果および活動に係る協議

プロジェクト成果と活動項目・内容をそれぞれ以下のとおり協議し、合意した。

【成果 1】 競争法改正案がレビューされ、必要なガイドライン案が策定される。

1-1 KPPU により作成済みである競争法改正案のレビューを行い、必要であれば修正案を提示する。

KPPU によれば、2007 年頃より改正案の作成を開始しているとのこと。同作成案につき専門家がレビューを行い、必要であれば修正案を提示する。

1-2 KPPU により作成済みであるガイドライン案につき助言を行い、KPPU のリクエストに応じて新しいガイドライン案の作成につき情報の提供、助言を行う。

KPPU によれば、既に約 10 程度のガイドライン案 (行政措置 (制裁) について定めた競争法第 47 条に係るガイドライン等) を作成済みであり、KPPU 内部の承認待ちであるとのこと。同作成案につき専門家が助言を行い、KPPU 側から要望があった場合、これから新しく作成するガイドライン案についても情報の提供、助言を行う。

【成果2】KPPUの審査能力が向上する。

2-1 審査活動の現状分析により問題点を特定し、解決策を提言する。

2-2 審査官のための審査マニュアルの作成を支援し、同マニュアルを利用した職員向けワークショップの開催を支援する。

執務効率・能力水準の底上げ・均質化を図るため、専門家とKPPUが共同で審査活動マニュアルを作成する。また、同マニュアルを利用したワークショップを開催する。

2-3 ターゲット市場における競争政策上の問題点を把握するための市場調査の実施を支援するとともに、調査手法についての研修を実施する。

ターゲットとする市場の動向を把握し審査をよりの確なものにするため、また、各セクターにおける競争政策との調整を図るため市場調査支援を実施する。加えて、調査手法についての研修を、現地或いは本邦研修において実施する。

2-4 上記活動を基にした人材育成システムの構築を支援する。

【成果3】政府内、企業、消費者、アカデミック層、裁判官等に対し、競争政策に関する知識が啓蒙・普及される。

3-1 アドボカシーを担当するワーキンググループの組織設置を支援する。

3-2 効果的なアドボカシーの方法について提言する。

3-3 3-2に基づきアドボカシー活動の実施を支援する（セミナー、ワークショップ、リーフレット作成等）。

一般の競争法の認知度が低いことから、その向上を図ることとする。対象者は広く消費者から裁判官まで含むこととする。

(5) ミニッツ、R/D案に係る協議

・協力期間

本邦リソースである公正取引委員会より、長期専門家の派遣は最大で3年間であるということを伝えられており、右条件下でプロジェクト期間について先方と協議をしたところ、先方からは、プロジェクト立ち上げや実施計画の調整に時間を要することを考えると3年間では効果を上げることが難しく、3年以上の協力は必要であり、4年間が望ましいとの意向が表明された。一方、プロジェクトの円滑な実施のために業務調整員の投入を当方から提案し、先方もこれを了承したことから長期専門家が3年の任期を了して帰国してもプロジェクトの維持には差し支えないと判断したこと、長期専門家の任期終了後も短期専門家派遣や本邦研修受入等で公正取引委員会からの協力が引き続き期待できること、また、3年間では長期研修員（後述）を1回しか派遣できず複数回実施するためには4年間

は必要なこと等から、多少イレギュラーではあるものの、プロジェクト期間を4年とすることで合意した。従って、プロジェクトの残り1年間に係る投入要素の検討について、長期専門家が在任中に固めておくとともに、業務調整員が現地との円滑な窓口の役割を果たすことが必要となってくる。

・ 投入

① 日本人専門家

競争法政策の長期専門家1名の派遣（3年間）にあたり、公正取引委員会の協力を得ている。長期専門家が対応しかねる特定課題については、必要に応じて公正取引委員会の協力を得て短期専門家を派遣し、セミナーやワークショップ等の開催を検討する。

② 業務調整員（4年間）

③ 本邦研修（年1回、10名・2週間程度）

④ 長期研修（修士課程、2010年度・2011年度にそれぞれ2名入学を予定。KPPU側で本邦大学に対する何らかのコンネクションがあるのであれば事前に知らせてほしい旨要請。尚、公正取引委員会におけるインターンシップの希望も先方は有していたが、公正取引委員会で受け入れが難しいため見送りとするので了承。）

⑤ 供与機材

・ 供与機材

初日の協議の冒頭、現在の建屋をリノベーションして事情聴取用に25の部屋と公開審査用に3部屋を作る予定のところ、パソコンやボイスレコーダー、情報公開用のモニター、それらを結ぶLAN回線等の機材供与を先方から要請された。当方からは、機材の導入は可能ではあるものの、あくまでも本件は技術協力が主目的であり、機材はその目的に資するものでなくてはならず、プロジェクトのどのような活動について必要なのかについてしっかりした正当性をつけて頂きたいこと、右については長期専門家と十分協議してほしいことを伝えた。具体的な機材リストを活用した活動について今後の検討が必要である。

・ 実施体制の構築

- ① KPPUに暫定的な専門家執務室を確保済み。リノベーション後の建屋においても同様に用意されることを確認した。
- ② Project Director、Project ManagerについてはMM署名時には未定だったが、RDにおいて、それぞれMokhamad Syuhadhak 事務総長、Ahmad Junaidi 広報局長とすることが確認された。
- ③ 合同調整委員会（JCC）については、MM署名時には未定だったが、RDにおいて、KPPUが議長となることが確認された。他のインドネシア側メンバーは未定であり引き続きフォローが必要であるが、既に協力関係にある汚職撲滅委員会や情報通信省、KADIN（商工会議所）、大学・研究機関、裁判所が考えられる。各セクターの規制官庁をどこまで取り込むのかについてはKPPUの意向を確認する必要がある。

・ 情報の取り扱い

今回の協議の中で、競争法やガイドラインに対する専門的知見からのアドバイスについてはあく

までも KPPU からの要請に基づき行われること（本件プロジェクトの成果 1）、プロジェクト実施を通じて得た情報を第三者と共有する場合は必ず KPPU の事前の承認が必要であること、といったことが先方から要請された。このことは、プロジェクトの実施に必要な情報といえども KPPU 側が開示しないこともあり得ることを意味するものであり、状況によっては事業の円滑な実施に影響を与える可能性も想定される。但し、これは競争政策という分野の性質上仕方がないところでもあり、情報の取り扱いには十分留意するとともに、無理のない範囲で対応するよう検討したい。

（6）その他関係機関訪問、情報収集

- ・ 経済担当調整大臣府（CMEA ; Coordinating Ministry for Economic Affairs）：経済関連省庁の政策調整を行う大統領直轄機関。マクロ経済、農業・水産業、エネルギー、貿易、インフラ、国際経済の 6 分野につきそれぞれ担当の次官がいる。また、法律・制度、貧困問題、IT 等に関する大臣付専門家も 6 名おり、今回は、競争政策の担当者と面会を行い競争政策における CMEA の体制についてヒアリングを行った。
- ・ CMEA は、KPPU が作成したエネルギー、食料品等の CMEA が担当する経済分野に関する競争政策に係る提言につきコメントしており、また、CMEA 自身も提言を作成し KPPU に対して執行を要請していることから、KPPU との連携・協力が重要であり今後も情報共有を図ることとした。
- ・ 本プロジェクトに期待することとして、他国の競争政策を知ることが KPPU の能力向上につながっていくと思うので、国営企業の民営化を進めるにあたって日本政府がどのような競争政策を実施したかといった事例について紹介してほしいとの要望があった。
- ・ ファイサル・バスリ氏：第 1 期委員であり（2000 年-2005 年）、現在はコンサルタント会社 Indonesia Research and Strategic Analysis に勤める傍ら、インドネシア大学経済学部の客員教授も務める。インドネシア市場における競争状況等についてのヒアリングを行った。
- ・ 農業セクターにおいてはインフレ率がネガティブなのに対し、GDP 成長率への寄与度が高まっている製造業セクターにおいては価格が上昇傾向であり、どちらのセクターにおいても公正な競争が行われているのかどうか疑問。適正な競争環境整備に向け、まだまだ改革の余地が残っている。また、証拠収集権限強化等の観点から競争法改正が必要であること、よりの確な審査のため保険や金融といった分野についても KPPU 職員が知識を向上させることが重要であるとのコメントがあった。
- ・ 本プロジェクトへの協力に関し、現地セミナーへの講師としての参加協力を依頼したところ快諾を得た。引き続き情報交換を図ることとした。

2. 調査団所見

インドネシアにおいて、上述の通り JICA は本プロジェクトのフェーズ 1 として 2004 年 7 月から 3 年間をかけて競争政策に関する協力を実施してきており、カウンターパートである KPPU の折衝能力や政策立案能力の向上に一定の成果を得、裁判所における KPPU の勝利率上昇、被疑事件の申告件数の増加、アドボカシー活動を通じた KPPU の存在意義・認知度の向上、競争政策の市場への浸透に一定の貢献を果たしてきた。

一方、インドネシアでは市場経済の一層の進展により審査案件が増えることが予想されること、海外直接投資の呼び込みのために事業環境を整備していく必要があること、そのために KPPU は組織拡大を図っており、早急かつ適切な人材育成が急務であること等により、更なる KPPU の能力向上が必要とな

っており、右を目的とした要請されてきた「競争政策フェーズ 2」が時宜を得たものであることを今般の調査によって確認した。

調査結果の詳細については他に譲るとして、ここでは今後の円滑な取り組みを図るための一助とすることを目的として本プロジェクトを実施するにあたっての留意すべき点等を述べる。

- ・ KPPU の能力の現状を踏まえた上での協力の必要性、他ドナーとの連携

KPPU に対しては、JICA の他にも ADB や OECD、GTZ 等他ドナーが協力を実施してきており、KPPU 内部でも協力成果の有効活用や職員間での共有等を進めてきたことから、一定程度の能力は有しているものと思われる。本プロジェクトを実施するにあたっては、先方と十分な協議を行った上で、どの程度のレベルにターゲットを当てて行うのかを検討することが必要だろう。今回の協議の中でも、「KPPU が競争法執行・競争政策を効果的に実施できる組織となる (establish)」というプロジェクト目標を当方から提案したところ、体制的には既にある程度整えられているので組織的な発展 (improve) を目標にしたというカウンタープロポーザルが先方より示され、これを了承したところである。

また、特に GTZ が協力した内容は、ドイツとインドネシアの競争法に関する比較研究、KPPU スタッフに対するトレーニング、アドボカシー等 JICA の協力との類似性が見られる。GTZ の協力によって基礎的な知識を多くの職員が習得している他、トレーナー養成も行われてきたようである。但し、本協力は年内に終了し、今後は地域協力にシフトしていくとのことであり、JICA の協力が GTZ の協力成果をいかに引き継いでいけるか検討することはプロジェクトの円滑な実施のためにも有効であると思われる。GTZ との情報交換を密に図っていくことが肝要である (GTZ の協力では、インドネシア人のプロジェクトマネージャーを契約で雇用して KPPU 内に駐在させており、来年以降も継続する模様)。

- ・ 技術移転の方法

KPPU は、2000 年の競争法執行とともに誕生した比較的若い組織であり、職員数も年々増加傾向にある。組織的には大統領が委員のメンバーを選定することになっており、他省庁からの独立性を有している反面、成果発現については大統領に対して直接的な責任を負うことになる。現在のところ、予算については商業省からの交付を受けているようだが、2010 年には国会に対して独自に予算申請が出来るようになるとのことで、こうした KPPU を取り巻く現状を反映してか本プロジェクトに対する先方の期待は相当大きなものがあり、本調査を通じて先方からは技術移転の重要性が度々指摘された。

具体的な技術移転の投入方法についてはプロジェクト開始後に長期専門家と KPPU の間で詰めていくことになると思われるが、概ね次の点に留意が必要であろう。本邦研修では一定程度の人数 (10 数名) を少なくとも年に 1 回は本邦に招聘することとし、その期間もなるべく長く (2 週間~1 ヶ月) 取ること、実施内容についてはより実践的なものとするのが先方の期待に応えるものになるのではないかと思われる。また、短期専門家派遣により現地における実践的な技術移転の機会を多くしてほしいという先方の要望については理解しつつも、リソースの観点から検討が必要であるが、年に複数回・複数人数の派遣は確保したいところである。尚、本邦リソースでカバーできない分野については現地や第三国のリソースを活用する等代替案を検討することも可能と思料する。今回の協議で先方が拘っていたこととして市場調査や政策研究の実施とその手法修得が挙げられる。ターゲットとする市場の動向を把握して審査を行うとともに、各セクターにおける競争政策との調整や政策提言を行うためには市場調査能力や政策研究能力を有することが欠かせないとして、プロジェクトの活動に是非入れてほしいと再三要請された。本件実施にあたっては、日常の OJT の他に外部リソースを活用したパイロット的な調査を通じた技術移転も検討したい。

第3章 事業競争監視委員会（KPPU）と競争法概要

1. 事業競争監視委員会（KPPU）の概要

（1）沿革

KPPUは、競争法の執行機関として、Presidential Decree No.75/1999により設立された。他の政府機関の指揮・監督を受けない独立行政機関であり、大統領に対して責任を負う。委員会は、9名以上の委員により構成され、任期は5年。委員の互選により、委員長・副委員長各1名が選出される。現在、11名の委員がおり、委員長はBenny Pasaribu氏、副委員長はDidik Akhmadi氏である。委員会には事務局が置かれており、約250名の職員が在籍している。

（2）KPPUの主な任務

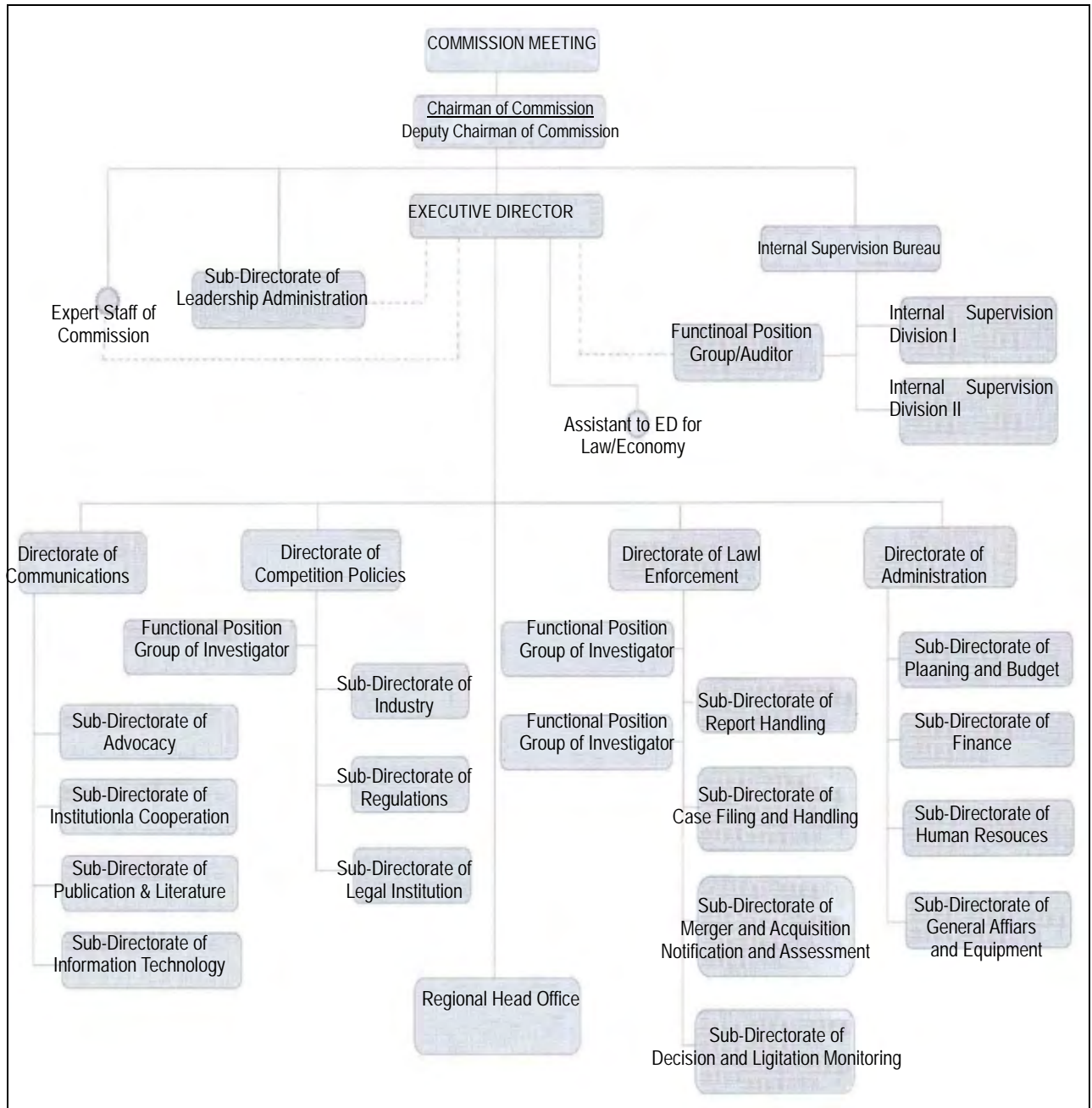
- ・ 競争法に規定された独占的行為、及び／又は、不公正な事業競争をもたらす可能性のある協定、事業活動、事業者の行為に関する調査を行う。
- ・ 政府の競争政策に関し提言を行い、競争法に係るガイドライン等の策定を行う。
- ・ 大統領及び国会に対し、活動報告書を定期的に提出する。

（3）KPPUの主な権限

- ・ 市民からの報告或いは事業者からの申告、又は、委員会の調査により発覚した独占的行為、及び／又は、不公正な事業競争が疑われる事案につき調査を行う。
- ・ 違反が疑われる事業者を召喚し、また、証人も召喚する。
- ・ 上記調査に関して、関係政府機関に情報提供を要求する。また、証拠品を取得し調査する。
- ・ 上記調査の結果、公益を損なったかどうかについて判断し決定する。
- ・ 独占行為、及び／又は、不公正な取引競争を行った事業者に対し決定を通知し、行政的制裁として行為の停止命令等の行政的措置を行う。

(4) 組織、人員、財務状況

KPPU の組織図を以下に示す。



出所：KPPU

KPPU の地域事務所は、メダン（2004 年設立、職員数 6 名）、スラバヤ（2004 年設立、職員数 3 名）、マカッサル（2006 年設立、職員数 3 名）、バリクパパン（2006 年設立、職員数 4 名）、バタム（2006 年設立、職員数 4 名）の 5 ヲ所にある。

KPPU の人員は約 250 名で、今後職員数は増員予定である。現在、審査官は 25 名おり、そのうち 16 名が競争法執行課 (Directorate of Law Enforcement)、9 名が競争政策課 (Direcotrate of Competition Policies) に在籍している。

予算は、2007年約850億ルピア（約900万米ドル）、2008年約869億ルピア（約920万米ドル）、2009年約821億ルピア（約870万米ドル）となっている。

2. 事業競争監視委員会の業務概要

KPPUの4つの課の主な機能は、以下の通りである。

(1) 競争法執行課 (Directorate of Law Enforcement)

- ・ 事業競争の監視
- ・ 違反が疑われる事案についての報告
- ・ 違反行為に関する証拠・情報収集、分析
- ・ 調査報告書の作成
- ・ KPPUによる決定・制裁措置の実施状況の監視等
- ・

(2) 競争政策課 (Directorate of Competition Policies)

- ・ 市場調査
- ・ 競争政策に係る調査・分析（競争政策が市場に及ぼす影響等）等

(3) 広報課 (Directorate of Communication)

- ・ 競争政策に係る啓蒙・普及活動
- ・ パンフレット等の作成
- ・ 競争政策に関する外部機関との調整

(4) 管理課 (Directorate of Administration)

- ・ 総務業務、予算管理、人材管理

3. 競争法概要と執行手続き

(1) 競争法概要¹

インドネシアの競争法は、「独占的行為及び不公正な事業競争の禁止に関するインドネシア共和国法1999年第5号 (Law of the Republic of Indonesia Number 5 of the Year 1999 Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition)」であり、1999年3月に制定・公布され、1年半の施行準備期間の後、2000年9月から施行された。競争法は53条から成り、その構成は以下の通り。

第1章 (第1条) : 総則

第2章 (第2条・第3条) : 原則及び目的

第3章 (第4条～第16条) : 禁止される協定

第4章 (第17条～第24条) : 禁止される活動

第5章 (第25条～第29条) : 市場支配的地位

第6章 (第30条～第37条) : 事業競争監視委員会 (KPPU)

第7章 (第38条～第46条) : 事件処理手続

¹ 公正取引委員会ホームページ : <http://www.jftc.go.jp/worldcom/html/country/indonesi.html>

第8章（第47条～第49条）：罰則

第9章（第50条・第51条）：その他の規定（適用除外規定）

第10章（第52条）及び第11章（第53条）：雑則

インドネシアの競争法は行為類型毎に詳細な規定が置かれる形となっている。

【禁止される協定】

ア．寡占（共同支配）（第4条）

事業者が、他の事業者との間で、商品又はサービスの生産又は販売を共同で支配することを目的として、結果的に独占行為又は不公正な事業競争を生じることとなる協定を締結することは禁止されている。2又は3の事業者若しくは1の事業者のグループが特定の商品又はサービスに関し当該市場の75%以上を支配している場合には、当該事業者は、上記に該当するものと推定される。

イ．価格拘束（第5条～第9条）

事業者が、競争者又は他の事業者との間で、自らが提供する商品又はサービスにつき、次の内容の協定を締結することは禁止されている。

- ・ 販売価格の決定（第5条）
- ・ 差別対価（第6条）
- ・ 独占を目的とする不当廉売（第7条）
- ・ 再販売価格維持（第8条）

ウ．市場分割（第9条）

事業者は、自らが提供する商品又はサービスにつき、販売地域又は市場の分割を目的とする協定を締結することは禁止されている。

エ．排他的行為（第10条）

事業者が、競争者との間で、他の事業者が国内市場又は国外市場において同一の事業を行うことを妨害することとなるような協定を締結することは禁止されている。

事業者が、競争者との間で、他の事業者が提供する商品又はサービスについて、当該他の事業者に損失を与える又は与えることとなる、若しくは当該他の事業者の当該市場における販売又は購入を制限することとなる協定を締結することは禁止されている。

オ．カルテル（前記ア～エを除くものをいう。）（第11条）

事業者が、競争者との間で、商品又はサービスの生産数量又は販売数量を調整することにより価格に影響を与えることとなる協定を締結することは禁止されている。

カ．トラスト（第12条）

事業者が、競争者との間で、商品又はサービスの生産又は販売を支配することを目的として、合弁会社又はより大規模な会社を設立し、又は個々の会社の存続を確保することにより、独占的行為又は不公正な事業競争をもたらすこととなる協定を締結することは禁止されている。

キ. 買手寡占 (第 13 条)

事業者が、他の事業者との間で、共同で商品又はサービスの購入又は需要を支配することによりその価格を支配することを目的として、独占的行為又は不公正な事業競争をもたらすこととなる協定を締結することは禁止されている。

2 又は 3 の事業者若しくは 1 の事業者のグループが特定の商品又はサービスに関し当該市場の 75% 以上を支配している場合には、当該事業者は、上記に該当するものと推定される。

ク. 垂直的統合 (第 14 条)

事業者が、他の事業者との間で、特定の商品又はサービスの、直接又は間接の生産工程に含まれている複数の製品の生産を支配することを目的として、不公正な事業競争又は社会的な損失をもたらすこととなる協定を締結することは禁止されている。

ケ. 閉鎖的協定 (第 15 条)

事業者が、他の事業者との間で、自らが提供する商品又はサービスについて、次の内容の協定を締結することは禁止されている。

- ・ 当該商品又はサービスの需要者に対する顧客又は販売地域の制限
- ・ 当該商品又はサービスの需要者に対する他の商品又はサービスの抱き合わせ

また、事業者が、他の事業者との間で、商品又はサービスの価格等について決定することにより、当該商品又はサービスの需要者に対し、

- ・ 他の商品又はサービスの抱き合わせ 又は
- ・ 同一又は類似の商品又はサービスについての排他条件付き取引を強いることとなる協定を締結すること

コ. 外国事業者との協定(第 16 条)

事業者が、外国事業者との間で、独占的行為又は不公正な事業競争をもたらすこととなる内容を含む協定を締結することは禁止されている。

【禁止される行為】

ア. 独占 (第 17 条)

事業者が、商品又はサービスの生産又は販売を支配することにより、独占的行為又は不公正な事業競争をもたらすことは禁止されている。

次のいずれかに該当する場合には、上記に該当するものと推定される。

- ・ 当該商品又はサービスの代替品が存在しない場合
- ・ 他の事業者の新規参入が不可能である場合
- ・ 単独の事業者又は事業者のグループが一定の商品又はサービスに関し当該市場の 50% 以上を支配している場合

イ. 購入独占

事業者が、同一の関連市場における商品又はサービスについて、その購入を支配し、又は唯一の購入者となることにより、独占的行為又は不公正な事業競争をもたらすことは禁止されている。

ウ. 市場支配（第 19 条～第 21 条）

事業者が、単独で又は他の事業者と共同して、独占的行為又は不公正な事業競争をもたらすこととなる、次の内容の行為のいずれか又は複数の行為を行うことは禁止されている。

- ・ 他の事業者の新規参入阻害
- ・ 需要者に対する排他条件付き取引
- ・ 商品又はサービスの流通又は販売の制限
- ・ 特定の事業者に対する差別行為

また、事業者が、競争者を排除することを目的として、その原価を下回る価格又は著しく低い価格により商品又はサービスを提供することは禁止されている。

エ. 共謀（第 22 条～第 24 条）

事業者が、他者（other party）との間で、次のような共謀行為を行うことは禁止されている。

- ・ 入札に際しての受注予定者の決定
- ・ 競争者の事業上の入手
- ・ 競争者による商品又はサービスの生産又は販売の妨害

【市場支配的地位の濫用（第 25 条）】

事業者が、直接的又は間接的に、次のような行為をもってして市場支配的な地位を行使することは禁止されている。

- ・ 消費者が競合する商品又はサービスを購入することを妨害する目的での取引条件の決定
- ・ 市場及び技術開発の制限

新規参入の阻害

次のいずれかに該当する場合、事業者は、上記の市場支配的地位を有するものとみなされる。

- ・ 単独の事業者又は事業者グループが、特定の商品又はサービスに関し当該市場の 50%以上を支配している場合
- ・ 2 又は 3 の事業者又は 1 の事業者グループが、特定の商品又はサービスに関し当該市場の 75%以上を支配している場合

【企業結合】

ア. 役職の兼任（第 26 条）

同一人が、競争関係等にある複数の会社の取締役又は監査役を兼任することは禁止されている。

イ. 株式所有（第 27 条）

事業者は、競争者の株式の過半を所有することにより、上記（3）の市場支配的地位に該当する市場構造をもたらすことは禁止されている。

ウ. 合併等

事業者が、他の会社と合併又は提携し、若しくは他の会社の株式を取得することにより、独占的行為又は不公正な事業競争をもたらすことは禁止されている。(第 28 条)

合併等については、資産額又は売却価額が一定規模を超えるものについては、委員会に対する届出義務が規定されているものの(行為日から 30 日以内)(第 29 条)、届出基準額に係る政令が整備されていない。

【適用除外規定(第 50 条)】

次に該当する場合、競争法の適用が除外されている。

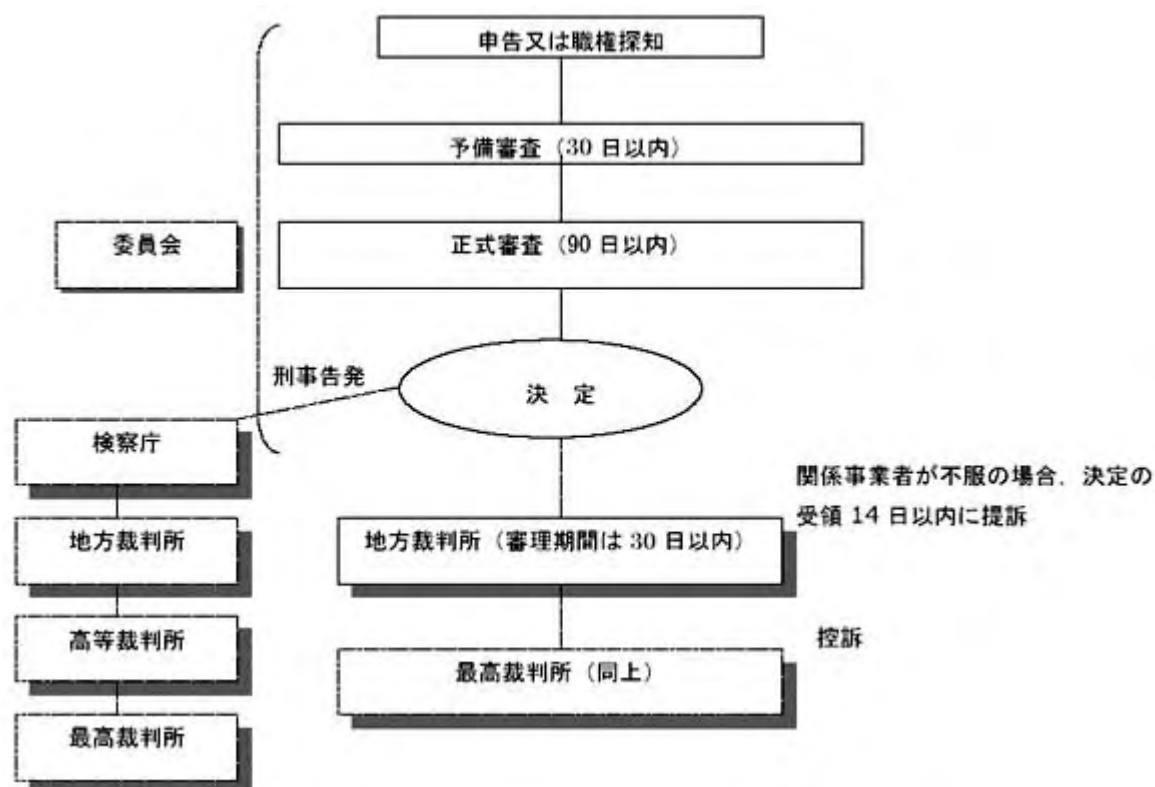
- ・ 他の法律の規定を遵守するための協定及び行為
- ・ 知的財産権(フランチャイズ契約も含む。)に係る協定
- ・ 競争を制限/阻害しない商品又はサービスの標準技術化
- ・ 再販売価格維持を条件としない代理店契約
- ・ 福祉増進を目的とする共同研究協定
- ・ インドネシア政府が締結した国際協定
- ・ 国内市場の需要又は供給を阻害しない輸出に係る契約及び行為
- ・ 小規模事業に分類される分野の事業者
- ・ 組合員に対する便宜の供与のみを目的とする協同組合の活動

(2) 法執行手続²

競争法の執行手続を図で説明する。

² 公正取引委員会ホームページ : <http://www.jftc.go.jp/worldcom/html/country/indonesi.html>

図：競争制限的行為に該当する場合の手続



出所：公正取引委員会ホームページ： <http://www.jftc.go.jp/worldcom/html/country/indonesi.html>

制裁措置等

(ア) 行政的制裁 (第47条)

委員会は、競争法の違反行為に対し、行政的制裁として当該行為の排除命令を行えるほか、10億ルピア以上250億ルピア以下（およそ1,000万円以上2.5億円以下の行政制裁金を賦課することが出来る。

(イ) 刑事制裁 (第48条～第49条)

上記(2)のとおり、委員会は、自らの審査の結果、当該事案に対し刑事制裁が必要であると認めるときには、検察庁（各地方検察庁）に対し刑事告発を行う。検察庁は自らの判断により起訴を行い、この起訴を受け裁判所が当該事案について審理し、刑事制裁の内容を判断する。刑事制裁の内容については、行為類型（適用法条）ごとに次の通り規定されている。

| 行為類型 | 内容 |
|---|-----------------------------------|
| 寡占、市場分割、排他的行為、カルテル、トラスト、垂直的統合、独占、市場支配、支配的地位の濫用、株式取得及び合併違反 | 250億ルピア以上1000億ルピア以下の罰金又は5か月以下の禁固刑 |
| 価格拘束、不当廉売、再販売価格維持、差別価格、入札談合、共謀及び役職兼任等 | 50億ルピア以上250億ルピア以下の罰金又は5か月以下の禁固刑 |

出所：公正取引委員会ホームページ： <http://www.jftc.go.jp/worldcom/html/country/indonesi.html>

また、追加的な刑事制裁として、事業免許の取消、2年以上5年以下の期間の役員就任の禁止等が規定されている。

4. 関連ドナーによる取り組み動向

第2章の「2. 調査団所見」で前述した通り、主に協力を行っているのはドイツ技術協力公社（GTZ）である。2005年から2008年にかけてフェーズ1、2008年から2009年にかけてフェーズ2が実施された（フェーズ2は2009年以内に終了予定）。KPPUの他、最高裁判所もカウンターパートとなっており、KPPU審査官用マニュアルの作成（略奪的価格設定・カルテル審査について）、競争法施行手続きをスムーズにするための提言を含むKPPU・最高裁判所共同報告書の作成、最高裁判所内・KPPU内のトレーナーの養成等の活動を行っている。

その他、他ドナーが開催する国際会議、セミナー、ワークショップにKPPU職員が出席している。実績を以下の表にまとめる。

表：競争法に関する支援

| ドナー | 日時 | 場所 | 内容 |
|--|---|-----------------------------------|---|
| AEGC(ASEAN Experts Group on Competition) | 2007年3月19日～22日 | ハノイ（ベトナム） | 研修を実施。 |
| OECD-KCP(Korea Policy Center) | 2007年2月、4月、6月、10月、12月計5回それぞれ3日間のワークショップを実施。 | ソウル、チェジュ島（韓国） | ワークショップを実施。 |
| OECD-KCP | 2008年3月、4月、6月、11月、12月計5回それぞれ3日間のワークショップを実施。 | シンガポール、ソウル、チェジュ島（韓国） | カルテル、リニエンシー制度、競争と規制の関係、独占的地位の濫用、定量的分析、水平的合併とジョイントベンチャー、反トラスト等をテーマとするワークショップを実施。 |
| AEGC | 2008年7月28日～29日、12月2日～4日 | シンガポール、東京（日本） | 競争政策とアドボカシーに係る研修、“競争当局の設立と新組織の優先事項”に係るワークショップを実施。 |
| OECD | 2009年6月22日～24日 | ジャカルタ（インドネシア） | 競争アセスメントに係るワークショップを実施。 |
| UNCTAD-GTZ | 2009年5月14日～15日 | ジャカルタ（インドネシア） | 合併規制に係るワークショップ、トレーナーマニュアルに係るワークショップを実施。 |
| AEGC | 2009年5月18日～19日、7月7日～8日、7月30日～31日 | クアラルンプール（マレーシア）、シンガポール、パリ（インドネシア） | 競争政策のコストとベネフィット、競争政策に係る地域的ガイドラインの整備に係るワークショップを実施。 |
| ADB | 2009年6月29日～30日 | ウランバートル（モンゴル） | 第5回東アジア競争法、競争政策会議 |

出所：KPPU

第4章 事業競争監視委員会の競争法執行上の課題と我が国支援のあり方

1. 競争法執行上の課題（法整備面や執行上の問題点）

（1）法改正

KPPU は、2009年7月現在、競争法改正の準備中である。今回の改正は、インドネシア政府の行政システムにおける KPPU の制度面を強化することが目的とされており、競争法の執行に権限をもつ政府機関として KPPU の地位を向上させることに主眼が置かれているということである。具体的には、①法第1条の一般規定（用語の定義など）、②法第3条の法の目的、③事件処理手続（審査期間の制限についての見直しも含む）、④法35条（e）に基づく政府の政策に対する助言及び意見の提出、⑤KPPU のステータスの5点が主要な改正点として検討されているとのことである。

この競争法改正作業は、三年前に始まっており、フェーズ1においても、長期専門家から既に日本における考え方や経験の紹介がなされているが、法改正の作業は、各方面からの貢献を考慮するため、見直し及び調査の段階に入っており、KPPU における目下の課題として、この法改正案について再度検討を行い、実際に法改正を行うことが挙げられる。

また、フェーズ1の終了時評価においては、競争法の問題点として、特に、KPPU の証拠収集権限が十分ではない点が挙げられている。KPPU に現状の証拠収集権限について聞いたところ、問題点として、特に、証拠を得るための検査権限及び事業者の出頭を強制する権限がないことを挙げた。KPPU は、我が国において公正取引委員会が行っているような立入検査を行う権限がないが、これはインドネシアにおいては司法当局にしか捜査権限がないことによるとのことである（警察に捜査を委託することは可能のようであるが、これまでに一度も行われたことはない。）。また、事情聴取のため事業者に出頭を求めても、事業者がこれに応じなければ何の制裁もなく、他に出頭を確保する手段がないとのことである。

なお、KPPU との協議において口頭で伝えられた情報ではあるが、Benny 委員長から、リーニエンシー・プログラムの導入を検討しているという発言があり、Deswin 氏からも、できれば来年に導入できればよいという話があった。リーニエンシー・プログラムの導入に当たり法改正を行うのかなど詳細は不明であるが、リーニエンシー・プログラムが、執行能力の強化につながることは我が国でも既に実証済みであり、KPPU における執行能力の強化にとっても有力なツールとなると考えられる。

（2）ガイドライン

KPPU は、2009年7月27日現在、7つのガイドライン（合併等の事前届出規則に添付のガイドラインを含む）を策定・公表しており、今回の詳細計画策定調査の最中である7月28日にも政府所有企業による独占的行為に関するガイドラインを新たに公表した。この8つのガイドラインのほかに、ドラフトを作成中のガイドラインが複数あるとのことである。このうち、特に、事件処理手続に関するいくつかのガイドラインを作成中とのことであり、これは、法律に規定された事件処理手続が概括的にすぎ、法執行に当たり複数の解釈の余地があること、競争法の事件処理は KPPU における手続の後、裁判所に移行される場所、ガイドライン策定により、インドネシアの司法当局の理解と解釈を支援する必要があることなどから検討されているものである。

(3) 審査期間について

KPPU が、審査活動を行う上で障害となっているものとして挙げている事項としては、前記の証拠収集権限のほかに、法律に規定されている審査期間がある。インドネシア競争法の特徴の一つとして、法律それ自体において、審査手続に係る期間が明確に規定されている点が挙げられる。すなわち、KPPU が一般からの申告を受けた場合における、申告受理から予備審査終了までの期間、正式審査の審査期間、正式審査の終了から決定までの期間が法律において規定されており、当該規定から、審査に認められる期間をみると、最大で 150 日となっている。例えば日本では、除斥期間が 3 年（平成 21 年改正法が施行されれば 5 年に延長される。）であり、EU・アメリカなどと比べても、インドネシアの審査期間は短く規定されている印象を受ける。さらに、インドネシア競争法においては、審査手続の各段階における期間が細かく規定されている。

なお、前記のとおり、KPPU は、現在検討中の競争法改正法案において、審査期間の制限など審査手続の見直しを挙げているようである。改正案の内容は不明であるが、この法改正によって、審査期間の制限が KPPU の審査活動の制約要素とならないものとなるか、注視が必要と考えられる。

2. 事業競争監視委員会の課題（人材、予算などキャパシティ面の問題）

(1) KPPU スタッフのキャパシティ・ビルディング

インドネシア政府の方針として公正な事業競争の確立が求められ、国民の KPPU に対する要求が高まる中、KPPU におけるヒューマン・リソースの不足に対処することは喫緊の課題となっている。KPPU は、スタッフのキャパシティ・ビルディングに関して、人事部局による内部計画を策定中である。KPPU は、スタッフの教育及びトレーニングは、実際の事件審査の経験とともに、事業競争の基本原則及び概念についての理解を向上することに主眼が置かれるべきと考えているが、KPPU スタッフの大多数は、産業組織や競争法に関する基礎知識に関して十分な教育を受けていない現状にある。スタッフの審査経験や政策を分析する能力は、依然として限られたものであるが、予算の制約もあって、スタッフ全体にキャパシティ・ビルディングの施策が行き渡っていない現状にある。

KPPU は、キャパシティ・ビルディングの一環としての本プログラムに基づく本邦研修に関して、職員 2 名による日本の大学院への留学を新たに要望している。なお、KPPU は、「啓蒙教育」というプランを検討しており、これは、本邦研修を受けた職員が、プレゼンテーション及び質疑応答の形で他の職員と議論を行うことにより、知識の伝達を行うというものである。

(2) 新規採用職員の能力向上

近年、KPPU の職員数は増加してきており、2006 年に 100 名強だった職員数が、2009 年現在、250 人前後と、ここ数年で二倍以上急増している。KPPU は、昨今直面している問題の一つとして、毎年の大幅増員が十分な教育やトレーニングによって支えられていないことを挙げており、その結果、新規採用職員はその業務と機能を最大限に発揮する知識や技術を有しておらず、多数の新規採用職員に対する教育及びトレーニングが適切にアレンジされていないことを挙げている。

(3) 競争アドボカシーの向上

KPPU によるインドネシア競争法の執行等の活動については、着実に伸張してきているものの、インドネシア国内全体における競争政策、競争規範の普及・定着について、引き続き注力していく

必要がある。KPPU は、競争アドボカシーの向上によって、①政府の他の規制当局が競争促進的な政策を策定すること、②事業者が競争法を遵守して行動すること、③アカデミック層が競争法の批判及び情報を提供する役割を担い、また、学生に競争法を教えること、④競争促進的な事業者が価格その他の面で国民に利益を与えることが期待されるとしている。

KPPU は、現在、2009 年末までを実施期間として、ドイツ GTZ とプロジェクトを行なっているところ、プロジェクトの主体に最高裁判所が含まれており、裁判所における競争法及び手続に係る理解の向上が企図されているようである。KPPU は、決定に対する取消訴訟において、近年、勝訴できるようになってきており、この点は、KPPU の事件審査能力の向上も示すものともいえるが、KPPU においては、裁判所を含めた競争アドボカシーの推進が引き続き重要であると考えられている。

3. 我が国支援のあり方

(1) 競争法改正法案及び各種ガイドラインの作成支援

前記のとおり、KPPU は、既に競争法改正案の作成を終えており、現段階では、各方面からの貢献を考慮するため、見直し及び調査の段階に入っているとのことであるので、この改正法案について、再度日本での経験を踏まえた助言を行うことが考えられる。また、KPPU の証拠収集権限の強化に関しては、我が国で行っているような立入検査権限を導入することが考えられるが、元 KPPU 委員の Faisal Basri 教授及び KPPU の Deswin 氏によれば、捜査権限が行政機関に与えられていないことはインドネシアの法制全体に係るものであることから、この点はかなり難しい課題であるとも考えられる。したがって、立入検査権限の導入が難しい場合は、事業者の出頭や事業者からの報告を確実にするための方策など、日本における行政調査権限も参考にして、どのような権限強化が可能かを検討することが必要と考えられる。

なお、リーニエンシー・プログラムの導入が実際に検討されるのであれば、我が国において平成 17 年に導入された同プログラムの内容や経験を伝えることは、KPPU にとって非常に有益と考えられる。

ガイドラインについては、KPPU は、既に策定・公表した 8 つのガイドラインのほかに、複数のガイドラインについてドラフトを作成中とのことであるので、これらのガイドラインについても、フェーズ 1 と同様に、日本のガイドラインや運用を踏まえた作成支援を行うことが有益と考えられる。

(2) KPPU における審査能力の向上

KPPU による競争政策の普及活動の結果、近年においては、申告件数が急増してきている（2004 年以前においては年間 100 件にも満たなかったが、2007 年以降は年間 200 件を超えている）。前記の審査期間の制限も踏まえると、KPPU の審査官は今後多くの事件処理を行っていかねばならないと考えられる。また、KPPU においては、近年、新規採用職員が急増してきていることから、これらの職員に対する適切なキャパシティビルディングを含め、引き続き、審査官の能力向上を図ることが必要となってきた。

したがって、この点について支援を行う必要があるが、その場合、インドネシア側が支援終了後も自律的に人材強化を図っていくことができるような支援を行うことが、より持続性のある発展に

資するものと考えられることから、この点も配慮した支援を行うべきである。具体的には、次のとおりである。

イ. 日々の審査活動の支援

前記の背景事情も踏まえ、まずは KPPU による審査手続の現状を分析し、KPPU にとっての課題及び必要性を確認する必要がある。また、KPPU の求めに応じて、秘密事項を除く事件処理上の技術的問題に関して、必要な情報や助言を提供することが有益である。

なお、この点に関して、KPPU 委員長から、事件調査における関連市場の確定などにあたって、市場調査を行うことが重要であり、本プロジェクトにおいては、市場調査に関する審査官へのトレーニングなども行ってほしい旨要望があった。この点、日本の公正取引委員会が行っている市場調査は、いわゆる取引実態調査であり、特定の市場における取引の実態を調査し、競争政策上の問題点を把握するという観点から行われているものであって、審査活動に直接用いる目的で行われるものではない。むしろ後記の（KPPU がいう）政策調査に類似の目的も併せもつものである。この点については公取委側から説明しているが、市場調査に関して実際に支援を行う際には、KPPU 側のニーズを改めて確認し、それに適応する支援等を行うことが必要と考えられる。

ロ. 審査手続に関する知識・経験の共有化

各審査官が、個別の事件を通じて知識・経験を得ていくことは、最も基本的な能力向上の手段である。しかしながら、一つの事件に関わる審査官の数は限られているため、個別の事件を通じた教訓などが他の審査官に共有されなければ、組織としてのレベル向上を効率的に行うことは困難である。また、審査を行う際の手続について、ある程度の標準化を図り、審査官の間で共有することは、審査自体の効率化にもつながる。

この点に関して、KPPU は、2009 年 7 月現在、事件処理手続に関するいくつかのガイドラインを検討中とのことであり、まずはそれらのガイドラインが適切に策定されるよう、日本の事件処理も踏まえた助言を行うことが適当である。これらのガイドラインの内容は不明であるが、ガイドラインとして外部に公表する以上、審査官が日々行う審査業務の詳細までが規定されているとは想定されない。したがって、これらガイドラインに記載されなかった情報について、どの程度まで審査官全体で共有化は図ることが必要かを KPPU との間でよく確認した上で、必要に応じて、マニュアル等の形式により、情報の共有を図ることが検討されてもよい。

ハ. 本邦研修

前回のプロジェクトと同様に、KPPU スタッフのキャパシティ・ビルディングとして、短期の本邦研修は非常に有益である。また、KPPU は、職員 2 名による日本の大学院への留学を新たに要望しているが、KPPU 職員の中に、日本法の研究経験を有する者が育つということは、KPPU 自身による持続的なキャパシティ・ビルディングにつながる可能性もあり、我が国のインドネシア競争当局に対する将来の支援のあり方にも示唆を与えるものとして興味深い。受け入れる大学院について検討は必要であるが、実施が検討されてよい。

(3) 競争アドボカシーの向上

イ. 競争アドボカシーの実施支援

KPPU は、アドボカシー活動として、メディアへの PR、アカデミック層とのセミナー、企業とのフォーラム、政府機関や裁判所とのセミナーといった PR 活動を挙げている。プロジェクトに

においては、まずはワーキンググループにおいて、日本のアドボカシー手法についても適宜紹介しながら、どのような手段が適当であるかについて検討を行った上で、必要かつ可能な支援を行うことが考えられる。

なお、裁判所に対するアドボカシーについては、ドイツ GTZ によるプロジェクトによって達成されたものが何かを確認し、必要かつ適切な方策を検討していく必要がある。

ロ．政府の政策に対する提言機能の強化

KPPU の任務の一つとして、独占的行為及び不公正な事業競争に係る政府の政策に関し助言及び意見を提出することが挙げられている（35 条（5））。KPPU 側は、このような提言を行うための調査をポリシー・リサーチとし、このリサーチについても、KPPU と JICA の共同により実施能力向上を図ることを要望している。我が国においても、過去において、競争政策と産業政策の対立は大きな問題となった時期があり、また、近年においても規制改革の観点から、多くの提言を行ってきた。このような経験を紹介することも有益であろう。

なお、KPPU によるこのような活動は、競争アドボカシーのための能力向上のほか、KPPU 自身の政策立案能力の向上に資することとなる。

第5章 プロジェクトの概要

1. プロジェクトの基本計画

(1) 案件名

(和文) インドネシア「競争政策プロジェクト (フェーズ2)」

(英文) The Project for Competition Policy (Phase 2) in Indonesia

(2) 協力概要

イ. プロジェクト目標と成果

本プロジェクトは、効果的な競争法執行・競争政策を実施するための KPPU の組織体制強化を目的とし、1) 競争法改正案がレビューされ、必要なガイドラインが策定される、2) KPPU の審査能力が向上する、3) 政府内、企業、消費者、アカデミック層、裁判官等に対し、競争政策に関する知識が啓発・普及される。

ロ. 協力期間

2009年10月～2013年9月末

ハ. 協力総額 (日本側)

2億円未満 (小規模案件)

ニ. 協力相手先機関

事業競争監視委員会 (KPPU)

ホ. 国内協力機関

公正取引委員会

ヘ. 裨益対象者及び規模等

1) 直接的裨益者

競争政策関連部門に携わる KPPU の職員

2) 間接的裨益者 (最終裨益者)

インドネシア国民および企業

(3) 協力の必要性・位置付け

イ. 現状及び問題点

インドネシア政府は、1997年のアジア金融・経済危機以降、国際通貨基金 (IMF) 等からの支援を得て、健全な市場経済化に向けた多くの取り組みを行ってきた。その取り組みの一つとして1999年3月に競争法 (「独占的行為及び不公正な事業競争の禁止に関するインドネシア共和国法1999年第5号」) が制定・公布された。同競争法は、1年半の施行準備期間の後、2000年9月から志向されている。また、競争法を執行する機関として、事業競争監視委員会 (Komisi Pengawas Persaingan Usaha; KPPU) が設立された。

しかしながら、法律は施行されたものの、法の効果的な執行のための不十分な体制、執行面での経験・ノウハウの不足、人材と予算の不足、ガイドラインの未整備等 KPPU が抱える課題は多い。また、市場経済化に向けた規制緩和が進められてきているとはいえ、インドネシアでは、国営企業が主要産業（原油・ガス、情報通信、交通、鉄鋼、プランテーション等）の中心であり、GDP の40%を占めるとの推定もあり、競争という概念が根付いていないのも事実である。また、企業・国民の企業競争政策に対する理解も低い状況にある。

一方で、経済がグローバル化する中、インドネシア同様、他の発展途上国・新興国も競争法を導入し、事業環境の整備を進めているが、インドネシアでは海外直接投資が低迷しており、経済危機前の水準に戻っていない。より一層の経済成長の実現のためには、投資の回復・拡大は不可欠であり、投資をインドネシアに呼び戻していくため、他国同様或いは他国以上に競争法・競争政策の適用強化を図り事業環境を整備していくことが必要となっている。インドネシア政府としても、中期国家開発計画（2004-2009）の中で「多くの産業サブセクターで独占・寡占状態に近い不健全な競争環境が存在すること」を問題として認識しており、投資・輸出拡大のための開発プログラムの一つに競争法・競争政策の適用強化による事業競争環境整備を掲げている。

JICA は、2004 年 7 月から 2007 年 7 月にかけて、「競争政策プロジェクト」を実施した。同プロジェクトでは、審査能力、政策立案能力の向上を目指し所定の成果は達成されたが、今後市場経済化の一層の進展により審査件数が増えることが想定され、また、KPPU は組織拡大の途上にあり人員を増やしていることから、引き続き KPPU の審査能力等の向上を支援していく必要がある。

ロ．相手国政府国家政策上の位置付け

上述のとおりインドネシアの競争法は施行されてから 10 年しか経過しておらず、執行体制の整備・人材育成に係るニーズは未だ高い。また、これも上述のとおりインドネシア政府は自国の不健全な競争環境につき認識しており、競争法・競争政策の実施機関である KPPU の組織体制を強化する本プロジェクトは、市場競争の環境整備を促進させようとしているインドネシア政府の方針に合致しているものと判断される。

ハ．我が国援助政策との関連、JICA 国別事業実施計画上の位置付け

本プロジェクトは、競争法・競争政策の定着により、公正な競争環境の確立を目指すものである。公正な競争環境の確立は、民間投資の促進、継続的な経済発展を目指すものであり、我が国のインドネシア国別援助計画における「民間主導の持続的な成長」実現のための支援に合致している。

(4) 協力の枠組み

[主な項目]

イ．協力の目標

a) 協力終了時の達成目標（プロジェクト目標）と指標・目標値

プロジェクト目標は「効果的な競争法執行・競争政策を実施するための KPPU の組織体制が強化される」こととした。

プロジェクトの目標の達成度を測る指標については、次のような指標が考えられる。

- ・ KPPU が公表した競争政策に係る勧告数
- ・ KPPU の位置付け・体制・予算・人員の推移

高い審査能力を持った職員が増え、KPPU の組織体制が強化されれば、他関係省庁との調整能力も向上し、KPPU が公表する競争政策に係る勧告数も増えるはずである。また、競争法・競争政策を効果的に実施する体制となるためには、政府内での位置付けの強化や十分な予算と職員数が必要である。

b)協力終了後に達成が期待される目標（上位目標）と指標・目標値

「インドネシア国内の市場において、公正・公平な競争が促進される」を上位目標とした。これは本プロジェクトの実施の結果、KPPU が競争法・競争政策を効果的に執行していくことにより、不公正な競争が是正され、市場の参加者が競争市場の重要性を認識し、法を遵守することによって達成されると思われる。また上位目標を測る指標を以下に示す。

- ・ 制裁措置発動件数（社数・課徴金納付額）
- ・ 社会での浸透の度合い

KPPU 職員の審査能力が向上し審査件数が増えれば、処罰の件数は増加すると思われる。KPPU の活動の結果、社会における競争法および KPPU の認知度は向上すると期待される。

c)成果と活動

本プロジェクトにおける具体的な成果として、「競争法改正案がレビューされ、必要なガイドラインが策定される」と「KPPU の審査能力が向上する」、「政府内、企業、消費者、アカデミック層、裁判官等に対し、競争政策に関する知識が啓蒙・普及される」の三つを実現することを想定している。競争法を執行するには、実施細則である各種ガイドラインの策定が不可欠である。また、審査機能は KPPU の中心的機能であり、審査機能が強化されることにより競争法・競争政策を執行するための体制が一部強化されることになる。一方で、競争法・競争政策に関する知識が啓蒙・普及することにより、公正・公平な競争を企業・人々が認識することが出来るようになる。これにより違反事件の申告も増えるものと期待される。活動については、第4章「3. 我が国支援の在り方」を参照。

[成果 1]

競争法改正案がレビューされ、必要なガイドラインが策定される。

[成果 1 の指標]

- ・ 策定されたガイドライン案

[活動 1]

1-1 KPPU により作成済みである競争法改正案のレビューを行い、必要に応じ修正案を提示する。

1-2 KPPUにより作成済みであるガイドライン案につき助言を行い、KPPUのリクエストに応じて新しいガイドライン案の作成につき情報の提供、提言を行う。

[成果 2]

KPPUの審査能力が向上する。

[成果 2 の指標]

- ・分析された具体的審査件数
- ・審査活動に関する提言数
- ・作成された審査用参考資料数（マニュアル等）
- ・ワークショップ、セミナー実施数
- ・本邦・現地研修実施数
- ・人材育成システムの制定

[活動 2]

- 2-1 審査活動の現状分析により問題点を特定し、解決策を提言する。
- 2-2 審査官のための審査マニュアルの作成を支援し、同マニュアルを利用した職員向けワークショップの開催を支援する。
- 2-3 ターゲット市場における競争政策上の問題点を把握するための市場調査の支援を実施するとともに、調査手法についての研修を実施する。
- 2-4 上記活動を基にした人材育成システムの構築を支援する。

[成果 3]

政府内、企業、消費者、アカデミック層、裁判官等に対し、競争法に関する知識が啓蒙・普及される。

[成果 3 の指標]

- ・アドボカシーに関するセミナー実施数
- ・作成・公表されたアドボカシー用資料数（リーフレット等）
- ・違反行為の申告・探知件数
- ・政策調査実施数

[活動 3]

- 3-1 アドボカシーを担当するワーキンググループの組織設置を支援する。
- 3-2 効果的なアドボカシーの方法について提言する。
- 3-3 3-2に基づきアドボカシー活動を実施する（セミナー、ワークショップ、リーフレット作成等）。
- 3-4 競争政策上の問題点を把握するため、政策調査の支援を実施するとともに調査手法を指導する。

d)投入

【日本側】

- * 専門家派遣
 - 長期：競争政策
 - 短期：必要に応じて派遣（セミナーやワークショップの開催）
- * 業務調整員
- * 供与機材：パソコン等
- * 本邦研修：年1回程度
- * 長期本邦研修
- * 在外事業強化費：各種ワークショップ／現地セミナーの開催、マニュアル等印刷、プロジェクト事務所経費等

【インドネシア側】

- * カウンターパート配置：Project Director、Project Manager、技術カウンターパート
- * 専門家のための執務室
- * 光熱費、KPPU 職員旅費など

(5) 外部要因（満たされるべき外部条件）

イ. 成果（アウトプット）達成のための外部条件

- ・カウンターパートが継続してプロジェクト業務に従事する。

すべての職員の離職を止めることはできないが、組織強化の過程で、今後職員数が増えていくことはあっても、目標達成が困難になるほど職員が離職することは想定していない。

ロ. プロジェクト目標達成のための外部条件

- ・競争法執行に関し、KPPU が十分な予算が与えられる。
- ・訓練した職員が離職しない。

ハ. 上位目標達成のための外部条件

- ・KPPU の競争政策に係る取り組み方針が一般に支持される。
- ・KPPU の独立性が保たれる。

KPPU の独立性については、第2章の2. で述べたとおり、大統領が委員のメンバーを直接選定することになっており、他省庁からの独立性を有している。また、予算についても現在は商業省からの交付を受けているとのことだが、KPPU によれば 2010 年からは国会に対して独自に予算申請が出来るようになるとのことであり、独立性は高まると考えられる。

ニ. 案件実施の前提条件

- ・インドネシアの競争政策の方向性が変わらないこと。
- ・KPPU に、プロジェクト活動に影響を及ぼすような組織改正や再編がないこと。

上記 1 (3) ロ. で述べたように、インドネシア政府は市場競争の環境整備を進めようとしていることから、同国の競争政策の方向性は変わらないと考えられる。また組織改編についても、現在体制を整備・強化している段階であり、プロジェクト活動に悪影響を及ぼすような大きな変化はないと思われる。

2. 事前評価結果

(1) 妥当性

KPPU は、設立から約 10 年が経過し、競争法改正案やガイドライン案の作成を独自に進め、競争政策に関する提言数も増加しているなど、組織としての能力が高まってきていることが伺える。一方で、今後市場経済化の一層の進展により審査件数が増えることが想定され、また、組織拡大の途上にあり人員を増やしており、引き続き KPPU の審査能力等の向上を支援していく必要があり本プロジェクトの妥当性は高い。

競争政策は、インドネシアの重要な政策課題の一つとして位置付けられている。中期国家開発計画（2004 年-2009 年）では、製造業の競争力強化にあたって多くの産業サブセクターで独占・寡占状態に近い不健全な競争環境が存在することが指摘されている。また、投資・輸出拡大のための開発プログラムの一つに競争政策・競争法の適用強化による事業競争環境整備が掲げられており、政策的にも本プロジェクトによる支援の優先度は高い。

本プロジェクトは、競争政策の定着により公正な競争環境の確立を目指すものである。公正な競争環境の確立は、民間投資の増加、ひいては継続的な経済発展につながるものであり、我が国の対インドネシア国別援助計画における「民間主導の継続的な成長」実現のための支援に合致する。

(2) 有効性

プロジェクト目標は、効果的な競争法執行・競争政策を実施するための KPPU の組織体制が強化されることである。このプロジェクト目標の達成は、必要なガイドラインが整備され、審査機能が向上することによって KPPU が社会的に信頼される機関になること、また社会における競争法の認知度を高めることによって、企業や市民が競争環境を整備していくことに関心を持つことによってもたらされるものと考えられる。

外部条件である「インドネシア政府の競争政策の方向性が変わらないこと」に関しては、既にフェーズ 1 を実施済みであり、また上記妥当性の部分で前述したとおり、事業競争環境整備に力を入れているなど政府のコミットメントが高いことから、満たされる可能性が高い。

(3) 効率性

フェーズ1において、審査能力向上、アドボカシー活動等においてひとつおりの成果が発現されていることから、本プロジェクトにおいて計画されている活動についても、本プロジェクトの趣旨についてKPPU側の十分な理解と協力が得られ、高いオーナーシップが発揮されれば効率的にアウトプットが産出されることが期待される。

公正取引委員会から派遣されている長期専門家1名に加え、業務調整員1名を配置し長期専門家を補佐する体制であり、本プロジェクトの活動を効率的に進めていくことが期待できる。

本プロジェクトはJICAが実施している他のキャパシティ向上プロジェクトの予算規模と比べて大きな違いはなく、コスト面が過大であるとは言えない。

(4) インパクト

本プロジェクトの各活動の適切な実施によって、KPPUが競争法を効率的に運用・執行できるようになれば、社会からの信頼も得られ上位目標「インドネシア国内の市場において、公正・公平な競争が促進される」が達成されることが見込まれる。また、事業環境が整備された結果、民間企業の発展や外資企業の誘致にもつながり、インドネシアの経済発展に寄与すると思われる。

(5) 自立発展性

政策・財政面：インドネシア政府は、2006年に投資環境改善のための政策パッケージ、2007年には新投資法を発出するなど、外国投資の回復に力を入れている。投資環境改善の重要なコンポーネントである競争法・競争政策の適用強化による事業環境整備も引き続き重要政策として進められていくと考えられ、継続的な政府予算も確保できる。

技術面：本プロジェクトでは、プロジェクトで作成予定の審査マニュアル等を用いた人材育成システムの構築も活動に含まれており、プロジェクト終了後も同システムにより組織強化が継続されることが期待される。

(6) 貧困・ジェンダー・環境等への配慮

該当せず。

(7) 過去の類似案件からの教訓の活用

2004年-2007年に実施したフェーズ1プロジェクトの成果と同プロジェクトの終了時評価の際、指摘された課題は以下の通り。

【成果】

汚職撲滅委員会と情報通信省との情報提供にかかる協力締結が結ばれ、また、入札談合ガイドラインが策定されたことから、KPPUの折衝能力、政策立案能力向上に関しては一定の成果があった。また、事件処理件数の増加や、KPPUの決定を不服として地方裁判所に控訴された場合のKPPU勝利率の上昇から、審査能力についても向上したと言える。加えて、事業者からの被疑事件の申告件

数も大きく増加しており、アドボカシー活動についても成果があった。

【課題】（専門家業務終了報告書、終了時評価における指摘事項）

- ・ 政策立案能力の一層の向上：競争法改正（特に KPPU の証拠収集権限の強化）、ガイドライン整備の必要性
- ・ 審査能力の一層の向上、組織全体のキャパシティの向上
- ・ アドボカシーの一層の向上：特に、地方における認知度向上の必要性

（8）今後の評価計画

イ．中間評価：2011 年 9 月

ロ．終了時評価：2013 年 3 月

MINUTES OF MEETING
BETWEEN JAPAN INTERNATIONAL COOPERATION AGENCY
AND
AUTHORITIES CONCERNED OF THE GOVERNMENT
OF THE REPUBLIC OF INDONESIA
ON JAPANESE TECHNICAL COOPERATION PROJECT
FOR
COMPETITION POLICY PROJECT(PHASE 2)
IN INDONESIA

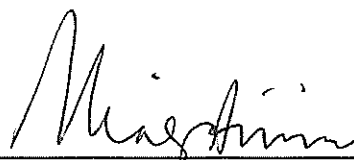
The Government of the Republic of Indonesia (hereinafter referred to as “the GOI”) officially requested the Government of Japan to implement the project named “Competition Policy Project (Phase 2) in Indonesia” (hereinafter referred to as “the Project”) in August 2008. In response to the request, the Detailed Planning Survey Team (hereinafter referred to as “the Team”) organized by the Japan International Cooperation Agency (hereinafter referred to as “JICA”) was dispatched and had a series of discussions with the authorities concerned of the GOI from 27th July to 29th July, 2009 for the purpose of working out the details of the contents of the Project.

The both parties agreed on the matters referred to in the document attached hereto.

Jakarta, July 29th, 2009



Mr. Hiroyuki Abe
Director
Fiscal and Financial Sector Management
Division
Public Policy Department
Japan International Cooperation Agency
Japan



Ms. R.Kurnia Sya'ranie
Executive Director
Commission for the Supervisory of Business
Competition
The Republic of Indonesia

THE ATTACHED DOCUMENT

1. General nature of the Project

Both Japanese and Indonesian sides confirmed the following general features of the Project as a basis for further exchanges of opinions.

(1) Background of the Project

The Competition Law came into effect in September 2000 and the Commission for the Supervisory of Business Competition (Komisi Pengawas Persaingan Usaha; hereinafter referred to as “KPPU”) as an enforcement authority was established in the same year. KPPU is in operation for 9 years but has been making efforts to address and enforce the Law across the country. However, the limitation of KPPU’s capacity in terms of number of staffs, technical know-how and budget have prevented KPPU from implementing the Law and competition policy in a more strategic and effective way.

Although Indonesian economy continues to grow, the increase in foreign direct investment is necessary for more stable and sustainable economic development. In order to improve fair competition and business environment, it is important for Indonesia to implement competition policy properly and sufficiently. KPPU is therefore expected to perform its functions and duties fully. Although JICA conducted “Competition policy project (Phase 1)” from July 2004 to July 2007 in order to enhance KPPU’s policy planning and investigation policy, there still are challenges KPPU face, and continuing cooperation is necessary. KPPU understands the purpose and the overall goal of the Project.

(2) Ownership and Outputs of the Project

It was confirmed that the Project would be conducted as an integral part of strengthening the capacity of the organization and its staff and as a part of KPPU’s long term vision. The Japanese expert(s) dispatched by JICA would be playing as an advisor and therefore KPPU bears the ownership of the Project. KPPU understands that the Project is designed by the following outputs:

- Draft amendment of Competition Law is reviewed and drafts of necessary guidelines are made
- The function of investigation of KPPU is enhanced
- The knowledge regarding competition policy is promoted and disseminated among governments, enterprises, consumers, academics and judges.

The Project purpose is to be achieved through output-oriented activities conducted by the joint work of KPPU and Japanese expert(s), rather than resources solely input by JICA. Through such joint works, substantial and tangible outputs shall be produced in the course of the Project implementation.

(3) Purpose and target service of the Project

Both sides agreed to set the Project purpose as follows: “The operational framework of KPPU is improved for effective enforcement of the Competition Law and policy”. The Project will focus on the capacity building of KPPU’s policy planning function in amending the Competition Law and making guidelines, investigators in handling the competition cases, and on raising the awareness of competition policy among the businesses and the people in Indonesia. These three pillars are considered the major and most important activities of KPPU. KPPU acknowledges that the resident Japanese expert would be the key resource in accomplishing such objectives.

2. Contents of R/D, PDM and PO

Based on the above general recognition, both sides roughly formed common understanding on the draft of Record of Discussion (hereinafter referred to as “R/D”), Project Design Matrix (hereinafter referred to as “PDM”) and Plan of Operation (hereinafter referred to as “PO”) as attached. The detailed contents of these documents are subject to change based on further internal consideration within both Indonesian and Japanese sides and mutual negotiations. With regard to the specific contents of the R/D, PDM and PO, the following points were confirmed by both sides.

(1) Project duration

The termination of the Project will be set at the end of September 2013. However, both sides agreed that the assignment of Japanese long-term expert will be terminated at the end of June 2012. The activities such as the dispatch of short-term experts and trainings in Japan will be taken into consideration during remaining period up to the end of the Project. Project coordinator dispatched by JICA, who will be assigned at the beginning of the Project, will be remaining in KPPU after Japanese long-term expert leaves at the end of June 2012.

(2) Project outputs

Output 1: “Draft amendment of Competition Law is reviewed and drafts of necessary guidelines are made”

Although it has been ten years from the promulgation of Competition Law in 1999, development of guidelines have been delayed. In order to improve and make investigation procedures smooth, establishment of necessary guidelines is necessary.

The Project will review and suggest the revision of the draft amendment of Competition Law if necessary. The Project will provide advice and comments on available drafts, and also will provide information and advice for making new drafts of guidelines based on the requests from KPPU.

Output 2: The function of investigation of KPPU is enhanced.

As the consequence of the rise in the level of awareness of competition law (as described in Output 3 below), it is predicted that KPPU may receive many more complaint files, with diverse cases. While the Competition Law provides precise schedules to be met for investigation, KPPU must enhance the knowledge and skills of KPPU investigators who are expected to handle more cases at one time.

At the beginning of the activity, the Project will examine and scrutinize the current situation of KPPU with regards to investigation procedures so as to find out challenges and necessities for KPPU. The Project will then jointly consider methods for such improvement. Based on the requests from KPPU in relation to technical matters in case handling which does not include confidential matters, Japanese expert will provide necessary information and advice to KPPU.

The Project will develop manuals for investigators while most of KPPU investigators lack experience. The investigators would need to comprehend the investigation procedures from the Law/Decrees level into their actual practice and to clarify the interpretation of provisions in Law/Decrees based on their actual cases. The manuals developed should be useful and will be updated by KPPU as necessary. The manuals will also be utilized in the training programs.

Market survey is important for the purpose of (1) analyzing market share of targeted sectors to grasp the current market structure and (2) overcoming conflicts between competition policy and sector policy. Since such market survey would be helpful for the promotion of competition policy, the Project will implement the market survey in the targeted market to find out the issues in competition. In addition, the Project will provide trainings on survey methods.

Output 3: “The knowledge regarding competition policy is promoted and disseminated among governments, enterprises, consumers, academics and judges.”

The major issue in this regard is that many people and enterprises do not know about the competition policy. It is clearly understood that the activities under this output is very much necessary in order to promote fair competition in the Indonesian market.

For its sustainable framework of advocacy activity, the Project will form the working group including the Japanese expert to discuss and develop the effective methods of competition advocacy such as seminar or workshop for businesses, leaflets, and KPPU website in English in accordance with its necessity and availability.

Policy research is important for the purposes of (1) analyzing the impact of the government’s policies on competition and (2) overcoming conflicts between competition policy and sector policy. Since such research would be helpful for the promotion of competition policy, the Project will implement the policy research to find out the issues in competition policy.

3. Implementing structure of the Project

(1) Joint Coordination Committee

To ensure smooth collaboration among relevant organizations of the Indonesian side and the Japanese expert(s), and to monitor the progress of the Project, the Joint Coordination Committee, chaired by KPPU, shall be held in a timely manner. The Committee shall be composed of representatives of the Indonesian concerned parties, Japanese expert(s), JICA Indonesia Office and other relevant organizations. KPPU will decide the members on the Indonesian side before the signing of the R/D.

(2) Working group

To conduct the Project smoothly and efficiently, and to realize effective technology transfer for the counterparts in the course of the Project implementation, the working group shall be organized by KPPU. The working group shall be composed of the staff of concerned departments of KPPU head office, branch(es) and center(s) in order to actively contribute to the achievement of the Project purpose as well as to provide data and information necessary for the implementation of the Project inclusive of the followings:

- a. Policy issues
- b. Investigation procedures
- c. Market data/statistics
- d. Data of specific enterprises as necessary
- e. Human Resources Development

(3) Coordination with other international donors

The Project will be implemented paying due attention to coordination with other international donors for the purpose of avoiding any duplication and maximizing complementary effects. The Project will share information with those concerned parties as and if necessary after the approval by KPPU.

4. Logistic arrangements

(1) Work space for Japanese expert(s)

KPPU agreed to provide the Japanese expert(s) with an adequate office space with enough furnishing, telephone line(s) and access to the Internet that would be needed to carry out the Project.

(2) Counterpart budget

KPPU will ensure sufficient allocation of counterpart budget required for the implementation of the Project activities.

5. Training in Japan

Both sides agreed to carry out the training program in Japan. However, the Team stressed that the main activities of the Project will be and could be implemented in Indonesia with support of the Japanese long-term expert. Detailed contents and the number of participants will be discussed during the course of the Project.

6. Administration of the Project

Executive Director of KPPU, as the Project Director, will bear overall responsibility for the administration and management of the Project.

Director of Communication of KPPU, as the Project Manager, will be responsible for the managerial and technical matters of the Project.

7. Sustainability of the Project

The Indonesian side will take necessary measures to ensure that the self-reliant operation of the Project will be sustained during and after the period of the Japanese technical cooperation, through the full and active involvement in the Project by all related authorities and institutions so that the technologies and knowledge acquired by KPPU staff will ultimately contribute to the economic and social development of Indonesia.

8. Joint Evaluation

Both sides confirmed that the mid-term evaluation will be conducted jointly by JICA and the Indonesian side at the middle point of the Project duration, and final evaluation before the completion of the Project. The progress of the Project, including the necessity of the change of PDM and PO will be examined in the mid-term evaluation, and the level of achievements of the Project purpose(s) will be examined in the final evaluation.

Annex 1: Draft of Record of Discussions

Annex 2: Draft of PDM

Annex 3: Tentative Plan of Operation

RECORD OF DISCUSSIONS
BETWEEN JAPAN INTERNATIONAL COOPERATION AGENCY AND
AUTHORITIES CONCERNED OF THE GOVERNMENT
OF THE REPUBLIC OF INDONESIA
ON JAPANESE TECHNICAL COOPERATION PROJECT
FOR
COMPETITION POLICY PROJECT(PHASE 2)
IN INDONESIA

In response to the request of the Government of the Republic of Indonesia, the Government of Japan has decided to implement Japan-Indonesia Technical Cooperation Project for “Capacity Development for Trade-related Administration in Indonesia” (hereinafter referred to as “the Project”).

Accordingly, the Japan International Cooperation Agency (hereinafter referred to as “JICA”), the official agency responsible for the implementation of the technical cooperation program of the Government of Japan, will cooperate with the authorities concerned of the Government of Indonesia in implementing the Project.

JICA and the authorities concerned of the Government of the Republic of Indonesia had a series of discussions on the framework of the Project. As a result of the discussions, JICA and the authorities concerned agreed on the matters referred to in the document attached hereto.

Jakarta, [Date], 2009

Mr.

Japan International Cooperation Agency
Japan

Ms.

The Republic of Indonesia

Witnessed by

Mr.

The Republic of Indoneisa

THE ATTACHED DOCUMENT

I. COOPERATION BETWEEN JICA AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

1. The Government of the Republic of Indonesia will implement the Project in cooperation with JICA.
2. The Project will be implemented in accordance with the Master Plan which is given in Annex I.

II. MEASURES TO BE TAKEN BY JICA

In accordance with the laws and regulations in force in Japan, as the executing agency for technical cooperation by the Government of Japan, will take, at its own expense, the following measures according to the normal procedures of its technical cooperation scheme.

1. DISPATCH OF JAPANESE EXPERTS

JICA will provide the services of the Japanese experts as listed in Annex II.

2. PROVISION OF MACHINERY AND EQUIPMENT

JICA will provide such machinery, equipment and other materials (hereinafter referred to as “the Equipment”) necessary for the implementation of the Project as listed in Annex III.

3. TRAINING OF INDONESIAN PERSONNEL IN JAPAN

JICA will receive the Indonesian personnel connected with the Project for technical training in Japan.

III. MEASURES TO BE TAKEN BY THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

1. The Government of the Republic of Indonesia will take necessary measures to ensure that the self-reliant operation of the Project will be sustained during and after the period of Japanese technical cooperation, through full and active involvement in the Project by all related authorities, beneficiary groups and institutions.

2. The Government of the Republic of Indonesia will ensure that the technologies and knowledge acquired by the Indonesian nationals as a result of the Japanese technical cooperation will contribute to the economic and social development of the Republic of Indonesia.
3. The Government of the Republic of Indonesia will grant, in the Republic of Indonesia, privileges, exemptions and benefits to the Japanese experts referred to in II-1 above and their families.
4. The Government of the Republic of Indonesia will take the measures necessary to receive and use the Equipment provided by JICA under II-2 above and equipment, machinery and materials carried in by the Japanese experts referred to in II-1 above.
5. The Government of the Republic of Indonesia will take necessary measures to ensure that the knowledge and experience acquired by the Indonesian personnel from technical training in Japan will be utilized effectively in the implementation of the Project.
6. The Government of the Republic of Indonesia will provide the services of Indonesian counterpart personnel and administrative personnel as listed in Annex IV.
7. The Government of the Republic of Indonesia will provide the buildings and facilities as listed in Annex V.
8. In accordance with the laws and regulations in force in Republic of Indonesia, the Government of the Republic of Indonesia will take necessary measures to supply or replace at its own expense machinery, equipment, instruments, vehicles, tools, spare parts and any other materials necessary for the implementation of the Project other than the Equipment provided by JICA under II-2 above.
9. In accordance with the laws and regulations in force in the Republic of Indonesia, the Government of the Republic of Indonesia will take necessary measures to meet the running expenses necessary for the implementation of the Project.

IV. ADMINISTRATION OF THE PROJECT

1. Executive Director of the Commission for the Supervisory of Business Competition (Komisi Pengawas Persaingan Usaha, hereinafter referred to as “KPPU”), as the Project Director,

will bear overall responsibility for the administration and implementation of the Project.

2. Director of Communication, as the Project Manager, will be responsible for the managerial and technical matters of the Project.
3. The Japanese expert will provide necessary recommendations and advice to the Project Director and the Project Manager on any matters pertaining to the implementation of the Project.
4. The Japanese experts will give necessary technical guidance and advice to Indonesian counterpart personnel on technical matters pertaining to the implementation of the Project.
5. For the effective and successful implementation of technical cooperation for the Project, a Joint Coordinating Committee will be established whose functions and composition are described in Annex VI.

V. JOINT EVALUATION

Evaluation of the Project will be conducted jointly by JICA and the Indonesian authorities concerned during the last six months of the cooperation term in order to examine the level of achievement.

VI. CLAIMS AGAINST JAPANESE EXPERTS

The Government of the Republic of Indonesia undertakes to bear claims, if any arises, against the Japanese experts engaged in technical cooperation for the Project resulting from, occurring in the course of, or otherwise connected with the discharge of their official functions in the Republic of Indonesia except when the relevant authorities of the two Governments agree that such claims arise from the willful misconduct or gross negligence of the Japanese experts.

VII. MUTUAL CONSULTATION

There will be mutual consultation between JICA and the Government of the Republic of Indonesia on any major issues arising from, or in connection with this Attached Document.

VIII. MEASURES TO PROMOTE UNDERSTANDING OF AND SUPPORT FOR THE PROJECT

For the purpose of promoting support for the Project among the people of the Republic of Indonesia, the Government of the Republic of Indonesia will take appropriate measures to make the Project widely known to the people of the Republic of Indonesia.

IX. TERM OF COOPERATION

The termination of the Project will be set at the end of September 2013. However, both sides agreed that the assignment of Japanese long-term expert will be terminated at the end of June 2012. The activities such as the dispatch of short-term experts and trainings in Japan will be taken into consideration during remaining period up to the end of the Project. Project coordinator dispatched by JICA, who will be assigned at the beginning of the Project, will be remaining in KPPU after Japanese long-term expert leaves at the end of June 2012.

| | |
|-----------|---|
| ANNEX I | MASTER PLAN |
| ANNEX II | LIST OF JAPANESE EXPERTS |
| ANNEX III | LIST OF MACHINERY AND EQUIPMENT |
| ANNEX IV | LIST OF VIETNAMESE COUNTERPART AND ADMINISTRATIVE PERSONNEL |
| ANNEX V | LIST OF BUILDINGS AND FACILITIES |
| ANNEX VI | JOINT COORDINATING COMMITTEE |

ANNEX I

MASTER PLAN

Overall Goal:

Fair competition is promoted in the market of Indonesia.

Project Purpose:

The operational framework of KPPU is improved for effective enforcement of the competition policy.

Outputs:

- 1 .Draft amendment of Competition Law is reviewed and drafts of necessary guidelines are made
- 2 The function of investigation of KPPU is enhanced.
- 3 The knowledge regarding the competition policy is promoted and disseminated among governments, enterprises, consumers, academics and judges.

Activities:

- 1-1 Review and suggest the revision of the draft amendment of Competition Law if necessary.
- 1-2 Provide advice and comments on available drafts, and also will provide information and advice for making new drafts of guidelines based on the requests from KPPU.
- 2-1 Analyze the present situation of investigation activities to identify the issues, and propose solutions.
- 2-2 Make necessary manuals for investigators, and conduct workshops based on those manuals.
- 2-3 Implement the market survey in the targeted market to find out the issues in competition, and also provide trainings on survey methods.
- 2-4 Build a human resource development system based on activities 2-1 to 2-3.
- 3-1 Organize working group(s) in charge of advocacy activities.
- 3-2 Review and discuss methods of effective advocacy.
- 3-3 Conduct advocacy activities based on the activity 3-2(e.g. seminars, workshops, leaflets, etc).
- 3-4 Implement the policy research to find out the issues in competition policy, and teach research methods.

ANNEX II

LIST OF JAPANESE EXPERTS

1. Long-term Expert
2. Short-term experts when necessity arises
3. Project coordinator

Note: The fields, number and terms of assignment of short-term experts will be decided in consideration of the progress of the Project through mutual consultations.

ANNEX III

LIST OF MACHINERY AND EQUIPMENT

1. Equipment necessary for the implementation of the Project, if any.

Note:

The contents, specifications and quantity of the above mentioned equipment will be decided through mutual consultation within the allocated budget during the project period.

ANNEX IV

LIST OF INDONESIAN COUNTERPART AND ADMINISTRATIVE PERSONNEL

1. Counterpart Personnel

(1) Project Director

(2) Project Manager

(3) Technical Counterparts

2. Administrative Personnel

(1) Administrative Assistant

(2) Supporting Staff

3. Other personnel mutually agreed upon as necessary

ANNEX V

LIST OF FACILITIES

1. Office spaces and facilities necessary for the Japanese experts
2. Facilities necessary for the implementation of the Project
3. Other facilities mutually agreed upon as necessary

ANNEX VI

JOINT COORDINATING COMMITTEE

1. Functions:

The Joint Coordinating Committee (hereinafter referred to as “JCC”) will be established and convened at least once a year and whenever necessity arises in order to fulfill the following functions:

- (1) advise on the relevance of an annual work plan of the Project based on the Plan of Operations within the framework of the R/D.
- (2) participate in the monitoring and evaluation exercises on the progress of the Project and provide advice on the results of the annual work plan, and
- (3) discuss and advise on major issues that arise during the implementation period of the Project.

2. Compositions

The Joint Coordinating Committee shall be composed of:

1. Chairperson: ___ of KPPU

2. Members:

1. Indonesian side:

- (1) Project Director
- (2) Project Manager
- (3) Representative (s) of _____
- (4) Other personnel concerned with the Project decided by the Indonesian side, if necessary

2. Japanese side

- (1) Project Expert(s)
- (2) Representative (s) of JICA Indonesia Office
- (3) Official (s) of Embassy of Japan, if necessary
- (4) Other personnel concerned to be decided and/or dispatched by JICA, if necessary

Note: Persons who are nominated by the Chairperson may attend the JCC meetings.

Project Design Matrix (Draft)

Project Title: Project for "Competition Policy" (Phase 2)
 Target Group: KPPU staff involved in competition policy
 Target Area: Indonesia
 Project Duration: September 2009 –September 2013

| Narrative Summary | Objectively Verifiable Indicators | Means of Verification | Important Assumptions |
|--|---|--|--|
| <p>Overall Goal Fair competition is promoted in the market of Indonesia.</p> | <ul style="list-style-type: none"> - Number of sanction (number of enterprise, total amount of fines) - The level of awareness in the society | | |
| <p>Project Purpose The operational framework of KPPU is improved for effective enforcement of competition policy.</p> | <ol style="list-style-type: none"> 1. Number of competition policy recommendations with publication 2. The trend of position, structure, budget and number of skilled staff of related to competition policy of KPPU | <ol style="list-style-type: none"> 1. KPPU internal references 2. KPPU internal references, Decree etc. | <ul style="list-style-type: none"> - The public supports the activities of competition policy. - The independence of KPPU is maintained. |
| <p>Outputs</p> <ol style="list-style-type: none"> 1. Draft amendment of Competition Law is reviewed and drafts of necessary guidelines are made. 2. The function of investigation of KPPU is enhanced. 3. The knowledge regarding competition policy is promoted and disseminated among governments, enterprises, consumers, academics and judges. | <ol style="list-style-type: none"> 1-1. Drafts of guidelines 2-1. Number of investigation cases which are studied and analyzed 2-2. Number of proposed solutions for investigation activity of KPPU 2-3. Number of reference materials made for investigation including manuals 2-4. Number of conducted seminars and workshops 2-5. Number of training courses conducted both in Japan and Indonesia 2-6. System of human resource development 3-1. Number of seminars for advocacy 3-2. Number of published leaflets for advocacy 3-3. Number of lodgment of complaints and detection 3-4. Number of consultation 3-5. Number of conducted research | <ol style="list-style-type: none"> 1-1. Project reference 2-1. Project reference 2-2. Project reference 2-3. Reference materials 2-4. Project reference 2-5. Project reference 2-6. Project reference 3-1. Project reference 3-2. Project reference 3-3. KPPU internal references 3-4. KPPU internal references 3-5. Project reference | <ul style="list-style-type: none"> - Sufficient budget is allocated for KPPU to enforce competition policy - The trained counterparts do not leave the office. |
| <p>Activities</p> | <p align="center">Input</p> | | |

| | |
|---|---|
| <p>1-1 Review and suggest the revision of the draft amendment of Competition Law if necessary.</p> <p>1-2 Provide advice and comments on available drafts, and also provide information and advice for making new drafts of guidelines based on the requests from KPPU.</p> <p>2-1 Analyze the present situation of investigation activities to identify the issues, and propose solutions.</p> <p>2-2 Make necessary manuals for investigators, and conduct workshops based on those manuals.</p> <p>2-3 Implement the market survey in the targeted market to find out the issues in competition, and also provide trainings on survey methods.</p> <p>2-4 Build a human resource development system based on activities 2-1 to 2-3.</p> <p>3-1 Organize working group(s) in charge of advocacy activities.</p> <p>3-2 Propose methods of effective advocacy.</p> <p>3-3 Conduct advocacy activities based on the activity 3-2 (e.g. seminars, workshops, leaflets, etc).</p> <p>3-4. Implement the policy research to find out the issues in competition policy, and teach research methods.</p> | <p><u>Indonesian side</u></p> <ul style="list-style-type: none"> - Allocation of counterpart: <ul style="list-style-type: none"> - Project Director - Project Manager - Technical Counterpart - Office space for Japanese expert(s) - Travel fee for KPPU staff and other necessary expense <p><u>Japanese side</u></p> <ul style="list-style-type: none"> - Expert(s): <ul style="list-style-type: none"> - Long-term: Capacity building for the enforcement of competition policy - Short-term: when necessity arises -Project coordinator - Equipment: as required - Training in Japan: - Project expense: necessary costs to implement the project |
| <p>Preconditions</p> <ul style="list-style-type: none"> - The direction of competition policy in Indonesia does not change. - The organization of KPPU is not reformed/rearranged that may affect the project activities. | |

**RECORD OF DISCUSSIONS
BETWEEN JAPAN INTERNATIONAL COOPERATION AGENCY AND
AUTHORITIES CONCERNED OF THE GOVERNMENT
OF THE REPUBLIC OF INDONESIA
ON JAPANESE TECHNICAL COOPERATION PROJECT
FOR
COMPETITION POLICY PROJECT (PHASE II)
IN INDONESIA**

In response to the request of the Government of the Republic of Indonesia, the Government of Japan has decided to implement Japan-Indonesia Technical Cooperation Project for Competition Policy Project (Phase II) (hereinafter referred to as "the Project").

Accordingly, the Japan International Cooperation Agency (hereinafter referred to as "JICA"), the official agency responsible for the implementation of the technical cooperation program of the Government of Japan, will cooperate with the authorities concerned of the Government of Indonesia in implementing the Project.

JICA and the authorities concerned of the Government of the Republic of Indonesia had a series of discussions on the framework of the Project. As a result of the discussions, JICA and the authorities concerned agreed on the matters referred to in the document attached hereto.

Jakarta, 30 September, 2009



Takashi SAKAMOTO
Chief Representative
Japan International Cooperation Agency
Japan, Indonesia Office



Mokhamad Syuhadhak
Acting Secretary General
Commission for the Supervision of Business
Competition,
The Republic of Indonesia

Witnessed by



Ahmad Junaidi
Head, Public Relations Bureau
Commission for the Supervision of Business
Competition,
The Republic of Indonesia

THE ATTACHED DOCUMENT

I. COOPERATION BETWEEN JICA AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

1. The Government of the Republic of Indonesia will implement the Project in cooperation with JICA.
2. The Project will be implemented in accordance with the Master Plan which is given in Annex I.

II. MEASURES TO BE TAKEN BY JICA

In accordance with the laws and regulations in force in Japan, as the executing agency for technical cooperation by the Government of Japan, will take, at its own expense, the following measures according to the normal procedures of its technical cooperation scheme.

1. DISPATCH OF JAPANESE EXPERTS

JICA will provide the services of the Japanese experts as listed in Annex II.

2. PROVISION OF MACHINERY AND EQUIPMENT

JICA will provide such machinery, equipment and other materials (hereinafter referred to as "the Equipment") necessary for the implementation of the Project as listed in Annex III.

3. TRAINING OF INDONESIAN PERSONNEL IN JAPAN

JICA will receive the Indonesian personnel connected with the Project for technical training in Japan.

III. MEASURES TO BE TAKEN BY THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

1. The Government of the Republic of Indonesia will take necessary measures to ensure that the self-reliant operation of the Project will be sustained during and after the period of Japanese technical cooperation, through full and active involvement in the Project by all related authorities, beneficiary groups and institutions.

2. The Government of the Republic of Indonesia will ensure that the technologies and knowledge acquired by the Indonesian nationals as a result of the Japanese technical cooperation will contribute to the economic and social development of the Republic of Indonesia.
3. The Government of the Republic of Indonesia will grant, in the Republic of Indonesia, privileges, exemptions and benefits to the Japanese experts referred to in II-1 above and their families.
4. The Government of the Republic of Indonesia will take the measures necessary to receive and use the Equipment provided by JICA under II-2 above and equipment, machinery and materials carried in by the Japanese experts referred to in II-1 above.
5. The Government of the Republic of Indonesia will take necessary measures to ensure that the knowledge and experience acquired by the Indonesian personnel from technical training in Japan will be utilized effectively in the implementation of the Project.
6. The Government of the Republic of Indonesia will provide the services of Indonesian counterpart personnel and administrative personnel as listed in Annex IV.
7. The Government of the Republic of Indonesia will provide the buildings and facilities as listed in Annex V.
8. In accordance with the laws and regulations in force in Republic of Indonesia, the Government of the Republic of Indonesia will take necessary measures to supply or replace at its own expense machinery, equipment, instruments, vehicles, tools, spare parts and any other materials necessary for the implementation of the Project other than the Equipment provided by JICA under II-2 above.
9. In accordance with the laws and regulations in force in the Republic of Indonesia, the Government of the Republic of Indonesia will take necessary measures to meet the running expenses necessary for the implementation of the Project.

IV. ADMINISTRATION OF THE PROJECT

1. Executive Director of the Commission for the Supervisory of Business Competition (Komisi Pengawas Persaingan Usaha, hereinafter referred to as "KPPU"), as the Project Director,

will bear overall responsibility for the administration and implementation of the Project.

2. Director of Communication, as the Project Manager, will be responsible for the managerial and technical matters of the Project.
3. The Japanese expert will provide necessary recommendations and advice to the Project Director and the Project Manager on any matters pertaining to the implementation of the Project.
4. The Japanese experts will give necessary technical guidance and advice to Indonesian counterpart personnel on technical matters pertaining to the implementation of the Project.
5. For the effective and successful implementation of technical cooperation for the Project, a Joint Coordinating Committee will be established whose functions and composition are described in Annex VI.

V. JOINT EVALUATION

Evaluation of the Project will be conducted jointly by JICA and the Indonesian authorities concerned at the middle point of Project duration in order to examine the progress of the Project including the necessity of the change of PDM and PO and during the last six months of the cooperation term in order to examine the level of achievement.

VI. CLAIMS AGAINST JAPANESE EXPERTS

The Government of the Republic of Indonesia undertakes to bear claims, if any arises, against the Japanese experts engaged in technical cooperation for the Project resulting from, occurring in the course of, or otherwise connected with the discharge of their official functions in the Republic of Indonesia except when the relevant authorities of the two Governments agree that such claims arise from the willful misconduct or gross negligence of the Japanese experts.

VII. MUTUAL CONSULTATION

There will be mutual consultation between JICA and the Government of the Republic of Indonesia on any major issues arising from, or in connection with this Attached Document.

VIII. MEASURES TO PROMOTE UNDERSTANDING OF AND SUPPORT FOR THE PROJECT

For the purpose of promoting support for the Project among the people of the Republic of Indonesia, the Government of the Republic of Indonesia will take appropriate measures to make the Project widely known to the people of the Republic of Indonesia.

IX. TERM OF COOPERATION

The Project starts from the first arrival of Japanese long-term expert, and the termination of the Project will be set at the end of September 2013. However, both sides agreed that the assignment of Japanese long-term expert will be terminated at the end of June 2012. The activities such as the dispatch of short-term experts and trainings in Japan will be taken into consideration during remaining period up to the end of the Project. Project coordinator dispatched by JICA, who will be assigned at the beginning of the Project, will be remaining in KPPU after Japanese long-term expert leaves at the end of June 2012.

| | |
|-----------|---|
| ANNEX I | MASTER PLAN |
| ANNEX II | LIST OF JAPANESE EXPERTS |
| ANNEX III | LIST OF MACHINERY AND EQUIPMENT |
| ANNEX IV | LIST OF INDONESIAN COUNTERPART AND ADMINISTRATIVE PERSONNEL |
| ANNEX V | LIST OF BUILDINGS AND FACILITIES |
| ANNEX VI | JOINT COORDINATING COMMITTEE |

ANNEX I

MASTER PLAN

Overall Goal:

Fair competition is promoted in the market of Indonesia.

Project Purpose:

The operational framework of KPPU is improved for effective enforcement of the competition policy.

Outputs:

- 1 .Draft amendment of Competition Law is reviewed and drafts of necessary guidelines are made
- 2 The function of investigation of KPPU is enhanced.
- 3 The knowledge regarding the competition policy is promoted and disseminated among governments, enterprises, consumers, academics and judges.

Activities:

- 1-1 Review and suggest the revision of the draft amendment of Competition Law if necessary.
- 1-2 Provide advice and comments on available drafts, and also will provide information and advice for making new drafts of guidelines based on the requests from KPPU.
- 2-1 Analyze the present situation of investigation activities to identify the issues, and propose solutions.
- 2-2 Make necessary manuals for investigators, and conduct workshops based on those manuals.
- 2-3 Implement the market survey in the targeted market to find out the issues in competition, and also provide trainings on survey methods.
- 2-4 Build a human resource development system based on activities 2-1 to 2-3.
- 3-1 Organize working group(s) in charge of advocacy activities.
- 3-2 Review and discuss methods of effective advocacy.
- 3-3 Conduct advocacy activities based on the activity 3-2(e.g. seminars, workshops, leaflets, etc).
- 3-4 Implement the policy research to find out the issues in competition policy, and teach research methods.

ANNEX II

LIST OF JAPANESE EXPERTS

1. Long-term Expert
2. Short-term experts when necessity arises
3. Project coordinator

Note: The fields, number and terms of assignment of short-term experts will be decided in consideration of the progress of the Project through mutual consultations.

ANNEX III

LIST OF MACHINERY AND EQUIPMENT

1. Equipment necessary for the implementation of the Project.
 1. Seminar equipments, such Projector, Portable Printer, Laser Pointer, Sound Recorder, SLR Digital Camera, Audio Teleconference, Portable Speaker, Portable Hard disk, Video Camera (8mm) with tripod, and Notebook (laptop);

Note:

The contents, specifications and quantity of the above mentioned equipment will be decided through mutual consultation within the allocated budget during the project period.

If the necessity for other equipments arises, both JICA and KPPU will discuss accordingly.

ANNEX IV

LIST OF INDONESIAN COUNTERPART AND ADMINISTRATIVE PERSONNEL

1. Counterpart Personnel

- (1) Project Director (Mr. Mokhamad Syuhadhak, Acting Secretary General)
- (2) Project Manager (Mr. Ahmad Junaidi, Head of Public Relations Bureau)
- (3) Technical Counterparts (Mr. Deswin Nur, Head of Institutional Cooperation Division, Public Relations Bureau)

2. Administrative Personnel (could be determined by JICA)

- (1) Administrative Assistant
- (2) Supporting Staff

3. Other personnel mutually agreed upon as necessary

ANNEX V

LIST OF FACILITIES

1. Office spaces and facilities necessary for the Japanese experts
2. Facilities necessary for the implementation of the Project
3. Other facilities mutually agreed upon as necessary

ANNEX VI

JOINT COORDINATING COMMITTEE

1. Functions:

The Joint Coordinating Committee (hereinafter referred to as “JCC”) will be established and convened at least once a year and whenever necessity arises in order to fulfill the following functions:

- (1) advise on the relevance of an annual work plan of the Project based on the Plan of Operations within the framework of the R/D.
- (2) participate in the monitoring and evaluation exercises on the progress of the Project and provide advice on the results of the annual work plan, and
- (3) discuss and advise on major issues that arise during the implementation period of the Project.

2. Compositions

The Joint Coordinating Committee shall be composed of:

1. Chairperson: Chairman of KPPU

2. Members:

1. Indonesian side:

- (1) Project Director
- (2) Project Manager
- (3) Representative (s) from related organizations and institutions:
(to be determined by KPPU later)
- (4) Other personnel concerned with the Project decided by the Indonesian side, if necessary

2. Japanese side

- (1) Project Expert(s)
- (2) Representative (s) of JICA Indonesia Office
- (3) Official (s) of Embassy of Japan, if necessary
- (4) Other personnel concerned to be decided and/or dispatched by JICA, if necessary

Note: Persons who are nominated by the Chairperson may attend the JCC meetings.

**MINUTES OF MEETING
BETWEEN JAPAN INTERNATIONAL COOPERATION AGENCY AND
AUTHORITIES CONCERNED OF THE GOVERNMENT
OF THE REPUBLIC OF INDONESIA
ON JAPANESE TECHNICAL COOPERATION PROJECT
FOR
COMPETITION POLICY PROJECT (PHASE II)
IN INDONESIA**

Resident Representative of the Japan International Cooperation Agency (hereinafter referred to as "JICA") Indonesia Office and the Commission for the Supervisory of Business Competition (Komisi Pengawas Persaingan Usaha; hereinafter referred to as "KPPU") had a series of meetings for the purpose of the details of the technical cooperation program concerning the project named "Competition Policy Project (Phase II) in Indonesia" (hereinafter referred to as "the Project").

As a result of the discussions, JICA and KPPU make this Minutes of Meeting in order to confirm the mutual understanding reached through the discussions attached hereto, and agreed to recommend to their respective Governments the matters referred to in the Minutes of Meeting.

Jakarta, 30 September, 2009



Takashi SAKAMOTO
Chief Representative
Indonesia Office
Japan International Cooperation Agency
Japan



Mokhammad Syuhadhak ✓
Acting Secretary General
Commission for the Supervisory of Business
Competition
The Republic of Indonesia

ATTACHED DOCUMENTS

I. PROJECT DESIGN MATRIX

As a result of the discussions, both sides agreed upon the Project Design Matrix (hereinafter referred to as “PDM”) attached as ANNEX I. PDM may be modified upon the approval of the Joint Coordinating Committee (hereinafter referred to as “JCC”) within the framework of the Record of Discussions (hereinafter referred to as “R/D”) when necessity arises in accordance with the progress of the Project.

II. PLAN OF OPERATION

Both sides agreed upon the Plan of Operations (hereinafter referred to as “PO”) attached as ANNEX II which shows the timeframe for the Project implementation. PO may be modified upon the approval of the Joint Coordinating Committee (hereinafter referred to as “JCC”) within the framework of the R/D when necessary arises in accordance with the progress of the Project.

| | |
|----------|-----------------------------|
| ANNEX I | PROJECT DESIGN MATRIX (PDM) |
| ANNEX II | PLAN OF OPERATIONS (PO) |

Project Design Matrix

Project Title: Project for “Competition Policy” (Phase II)
Target Group: KPPU staff involved in competition policy
Target Area: Indonesia
Project Duration: October 2009 – October 2013

| Narrative Summary | Objectively Verifiable Indicators | Means of Verification | Important Assumptions |
|--|---|--|--|
| <p>Overall Goal Fair competition is promoted in the market of Indonesia.</p> <p>Project Purpose The operational framework of KPPU is improved for effective enforcement of competition policy.</p> | <ul style="list-style-type: none"> - Number of sanction (number of enterprise, total amount of fines) - The level of awareness in the society 1. Number of competition policy recommendations with publication 2. The trend of position, structure, budget and number of skilled staff of related to competition policy of KPPU | <ul style="list-style-type: none"> 1. KPPU internal references 2. KPPU internal references, Decree etc. | <ul style="list-style-type: none"> - The public supports the activities of competition policy. - The independence of KPPU is maintained. |
| <p>Outputs</p> <ol style="list-style-type: none"> 1. Draft amendment of Competition Law is reviewed and drafts of necessary guidelines are made. 2. The function of investigation of KPPU is enhanced. 3. The knowledge regarding competition policy is promoted and disseminated among governments, enterprises, consumers, academics and judges. | <ul style="list-style-type: none"> 1-1. Drafts of guidelines 2-1. Number of investigation cases which are studied and analyzed 2-2. Number of proposed solutions for investigation activity of KPPU 2-3. Number of reference materials made for investigation including manuals 2-4. Number of conducted seminars and workshops 2-5. Number of training courses conducted both in Japan and Indonesia 2-6. System of human resource development 3-1. Number of seminars for advocacy 3-2. Number of published leaflets for advocacy 3-3. Number of lodgment of complaints and detection 3-4. Number of consultation 3-5. Number of conducted research | <ul style="list-style-type: none"> 1-1. Project reference 2-1. Project reference 2-2. Project reference 2-3. Reference materials 2-4. Project reference 2-5. Project reference 2-6. Project reference 3-1. Project reference 3-2. Project reference 3-3. KPPU internal references 3-4. KPPU internal references 3-5. Project reference | <ul style="list-style-type: none"> - Sufficient budget is allocated for KPPU to enforce competition policy - The trained counterparts do not leave the office. |

| Activities | Input | |
|---|--|--|
| <p>1-1 Review and suggest the revision of the draft amendment of Competition Law if necessary.</p> <p>1-2 Provide advice and comments on available drafts, and also provide information and advice for making new drafts of guidelines based on the requests from KPPU.</p> <p>2-1 Analyze the present situation of investigation activities to identify the issues, and propose solutions.</p> <p>2-2 Make necessary manuals for investigators, and conduct workshops based on those manuals.</p> <p>2-3 Implement the market survey in the targeted market to find out the issues in competition, and also provide trainings on survey methods.</p> <p>2-4 Build a human resource development system based on activities 2-1 to 2-3.</p> <p>3-1 Organize working group(s) in charge of advocacy activities.</p> <p>3-2 Propose methods of effective advocacy.</p> <p>3-3 Conduct advocacy activities based on the activity 3-2 (e.g. seminars, workshops, leaflets, etc).</p> <p>3-4. Implement the policy research to find out the issues in competition policy, and teach research methods.</p> | <p><u>Indonesian side</u></p> <ul style="list-style-type: none"> - Allocation of counterpart : - Project Director - Project Manager - Technical Counterpart - Office space for Japanese expert(s) - Travel fee for KPPU staff and other necessary expense <p><u>Japanese side</u></p> <ul style="list-style-type: none"> - Expert(s): - Long-term: Capacity building for the enforcement of competition policy - Short-term: when necessity arises -Project coordinator - Equipment: as required - Training in Japan: - Project expense: necessary costs to implement the project | <p>Preconditions</p> <ul style="list-style-type: none"> - The direction of competition policy in Indonesia does not change. - The organization of KPPU is not reformed/rearranged that may affect the project activities. |

Questionnaire

1. Framework and contents of the project

- 1) According to your request (application form), project duration is 3 years (from 2009.4 to 2012.3), but you requested 4 years for country focused training. Which duration is appropriate for the achievement of the project purpose?

- 2) You requested the support for amendment of the competition law and establishment of guidelines.
 - How many regulations/guidelines/manuals have been established so far? Please specify the names of them with their description.
 - Do you have any expected/scheduled amendment?
 - Do you have any expected/scheduled guidelines/manuals?
 - In “Phase 1”, proposal for amendment was made by the expert (Mr.Igarashi). Please specify if there is any law and regulations amendment of which is drafted by referring to the proposal.
 - The expert commented on the internal draft of the Government Decree on Merger Notification. Has that Decree been established yet? If so, were comments by the expert considered when establishing the Decree?
 - The expert also commented on the draft Guideline on Collusive Tenders in “Phase 1”. Has that Guideline been established yet? If so, were comments by the expert considered when establishing the Decree?

- 3) You requested the support for capacity building of KPPU staffs.
 - Do you have your own capacity building plan? If so, please explain its goal and the progress or achievements of capacity building.
 - Which division of KPPU is responsible for capacity building?
 - You requested a training program in graduate schools in Japan as a long-term training. Do you have any idea about which school would be appropriate? How can the achievement of training (long-term and short-term) in Japan be shared and utilized in your organization?
 - You also requested capacity building of stakeholders. What exactly do you mean by this request? Gaining their recognition through advocacy?
 - Please explain how KPPU coordinates with specific sector regulators on

competition matters.

- Please explain how KPPU involves into the process of making of regulations in specific sectors.
- Are there any formal procedures to coordinate with specific sector regulators, or to express opinions to them?
- Are there any provisions to give KPPU the mandate to coordinate with specific sector regulators?

4) You requested the support for research and advocacy activities.

- Have you conducted any research before? If so, which topics have been covered in that research?
- Which topic would be covered in the research activity in this project? What purpose would you use the results of research for?
- Have you conducted PR activities? (If so, please explain with the examples and provide us if you have any brochures or publications made by KPP.)
- Do you have any plan of PR activities? If so, please explain its goal and actual PR activities (data, place, target and number of participants, contents) you have done so far.
- Do you have your own web-site? If so, please explain how you operate and manage the site. Do you have any difficulty in its operation and management?

2. Status of the KPPU (Commission for the Supervision of Business Competition)

- 1) Please provide us the latest general information of KPPU (number of staffs, number of investigators, breakdown of budget by usage and by year etc.)
- 2) Please provide us the latest organization chart and information about the function of each department, name of the head of each department.
Please provide the latest information about staff recruitment of recent years. (According to the report of "Phase 1", KPPU hired 81 new staffs in 2007 and total number of KPPU increased double from 110 to 191. How about 2008 and 2009?) (Providing the latest information by KPPU is appreciated, though JICA received information during the survey in March 2009)
- 3) Do you have any problem or challenge faced because of the rapid increase of the number of staffs?
- 4) Do you have any recruitment plan as whole and as according to each department? Which department do you intend to strengthen in the future?

- 5) Please provide us a list of Commissioners.
- 6) When would 3rd term Commissioners be assigned?
- 7) You have 5 regional offices. Please specify the places and activities and assignments of those offices. Do you have any plan to increase the number of regional offices?

3. Indicator of activities (figures in each year 2007, 2008, 2009(so far))

- 1) Number of reports to KPPU on suspected violations.
- 2) Number of signs of violation being detected by KPPU.
- 3) Number of preliminary investigation conducted by KPPU.
- 4) Number of official investigation conducted by KPPU.
- 5) Number of cases under investigation right now.
- 6) Number of hearing organized by KPPU.
- 7) Number of decisions of cases made by KPPU.
- 8) Status of investigation activities (difficulties or challenges faced during investigating violation cases)
- 9) Number of complaints appealed to the court. Number of cases of which KPPU won.
- 10) Please provide us summaries of some actual cases dealt with so far.
- 11) Number of administrative preventing measures imposed by KPPU.
- 12) Number of warnings, total amount of fines, number of additional sanctions and remedying measures imposed for unfair competitive practices/practices in restraint of competition.
- 13) Please provide us examples of actual cases of exemptions and their reasons.

4. Activities of other donors

Please describe other donors' assistances from 2007 (including dispatching your staffs to overseas trainings or seminars).

Name of the donor, name of the program/project, period/duration, purpose, major activities and achievements...

5. Expectation on this project

- 1) JCIA conducted "Phase 1" from 2004 to 2007.
 - How did you evaluate that project? any good point or point needed to be modified in this project? Based on the Final Report for the Phase 1 project, the

mission would like to reconfirm advantage and output etc. of the project which was useful for capacity building of KPPU.

- .
 - What did your staffs acquire from “Phase 1” project?
 - How have achievements of “Phase 1” been utilized in your organization?
- 2) How to maintain your ownership with this project “Phase 2”
- Please explain how KPPU would participate in this project. Please explain the administrative framework of the project (Joint Coordinating Committee / Steering Committee, Task Force, Cooperation with other ministries concerned).
 - How many staffs would be able to participate in this project?
 - Do you have budget allocation for this project?
- 3) KPPU’s expectation on main goal and outputs (achievements) of this project.

Responses to JICA Questionnaires related to Project for Competition Policy – KPPU

1. Framework and contents of the project

a. Project Duration

As agreed upon at the meeting held between JICA and KPPU on July 1, 2009, JICA Phase 2 (Project for Competition Policy – KPPU) Project will be conducted for the duration of 4 years (2009 – 2013).

b. Amendment to Competition Law and Issuance of Guideline

Up to 2009, KPPU (the Commission for the Supervision of Business Competition) has ratified 5 Guidelines (Guidelines for Articles of Law No.5/1999), namely:

- (i) Guidelines for Article 22 of Law number 5 year 1999 concerning Prohibition of Tender Conspiracy
- (ii) Guidelines for Article 50a of Law number 5 year 1999 concerning Exception to Indonesian Legislation System
- (iii) Guidelines for Article 47 of Law number 5 year 1999 concerning Administrative Action
- (iv) Commission Regulation No. 1 Year 2009 concerning Pre-Notification on Merger, Consolidation and Acquisition
- (v) Guidelines for Article 50b of Law number 5 year 1999 concerning Exception of the Application of Law No. 5 Year 1999 to Franchise-related Agreement
- (vi) Guidelines for Article 50b of Law number 5 year 1999 concerning Exception of the Application of Law No. 5 Year 1999 to Agreement related to Intellectual Property Right
- (vii) Guidelines for Article 1 paragraph 10 of Law number 5 year 1999 concerning Relevant Market

KPPU is currently preparing to issue several guidelines for Articles in Law No. 5/999, namely Articles 38 to 43 concerning the procedures for case handling (CHAPTER VII). Guidelines for the abovementioned Articles need to be prepared since the procedures for handling business competition cases as set forth in Law No. 5/1999 are considered too general and have the potential for creating multi-interpretation in enforcing law on business competition in Indonesia. Meanwhile,

the process of handling business competition cases is also administered by Indonesian judicial authority as a continuation of the process of case handling administered by KPPU. It is expected that the issuance of technical and systematic guidelines on procedures for case handling can assist understanding and interpretation of Indonesian judicial authority (namely the District Court and Supreme Court) in applying the rules and Articles set forth in Law No.5/1999.

Meanwhile in respect of amendment to Law No.5/1999, KPPU is presently processing the amendment. Amendment to the Law is aimed at strengthening the institutional aspect of KPPU in the Government's administrative system in Indonesia. The main purpose of making the foregoing amendment is to strengthen the position and KPPU as a Government institution which is assigned with the duty and authority to supervise the implementation of competition law. In the process of preparing this amendment, KPPU receives inputs and responses from JICA, especially to share views related to the law contents and text as well as experiences in amending and drafting laws in Japan which are adjusted to the condition in Indonesia. These views and experiences were shared in a correspondence discussion by using e-mail. At present, the process of making amendment to Law 5/99 has entered review and research phase in order to consider several relevant contributing factors to the implementation of competition law in Indonesia.

On May 2009, KPPU has ratified regulation on merger in the Commission Regulation No. 1 year 2009 concerning Pre-Notification on Merger, Consolidation and Acquisition. Up to now, JFTC experts have been actively involved in sharing their views and experiences in the process of preparing the regulation. Sharing of views and experiences refers to the Japanese Antimonopoly Act (AMA) which is subsequently adjusted to the condition in Indonesia. Several points in the Commission Regulation No. 1 Year 2009 affected by AMA include technical points on merger assessment as well as guidance about technicalities of merger assessment in relation to technicalities of pre-notification and merger process assessment.

With regard to the regulation on tender conspiracy as set forth in Article 22 of Law No.5/1999, KPPU has issued guidelines (technical guidance) related to the application of the aforementioned rules. No inputs given by JFTC experts are included in these guidelines. Guidelines for Article 22 of Law No. 5/1999 have been distributed to all stakeholders of KPPU. The guidelines contain technical

rules to handle cases related to tender conspiracy, including among other activities which may be categorized as conspiracy, types of conspiracy as well as guidance as to find evidence and handle the foregoing tender conspiracy case.

c. Assistance with regard to Capacity Building Activities for KPPU Staff

With regard to capacity building, KPPU is currently devising a plan for internal capacity building implemented by the Sub-Directorate of Human Resources. The plan is set forth in education and training curriculum and modules of KPPU. In line with the development of the institution, the education and training curriculum and modules need to be adjusted.

The ultimate objective to be achieved by devising the plan for internal capacity building is to improve the performance of KPPU. KPPU performance is measured from its success in implementing the objectives of Law No. 5 Year 1999, namely (a) To maintain public interest and increase the efficiency of national economy as an effort to improve people's welfare; (b) To create a conducive climate through fair business competition so as to ensure equal business opportunity for large, medium and small-scale business actors; (c) To prevent monopoly practices and or unfair business competition arising from business actors; (d) To strive to create effectiveness and efficiency in business activities. Therefore, education and training are focused on the effort to improve understanding on the basic principles and concept of business competition as well as experiences in case handling. The majority of KPPU staffs have not received sufficient education with regard to basic knowledge on industrial organization and business competition law. Their experience in conducting monitoring and examination in relation to alleged violation to Law Number 5 Year 1999 and their ability to analyze policies related to business competition in Indonesia are still limited. Hence at present, the capacity building directed toward KPPU staff is not evenly distributed due to limited budget from the Government.

In the organizational structure of KPPU, the Sub-Directorate of Human Resources is responsible for internal capacity building related to general staff development however technical development and development related to routine principal duties and functions will be delegated to the superior of respective staff.

In respect of plan for organizing training program in the form of post-graduate (S2) education in Japan, KPPU has made reference to several post-graduate schools, namely: The University of Tokyo, Kyoto University, Tsukuba University,

Osaka University, Nagoya University and GRIPS (National Graduate Institute for Policy Studies)

Furthermore, KPPU is planning to disseminate and apply the results of training conducted in Japan by organizing an “enlightenment” education and training, namely an interactive discussion in the form of presentation and question-answer session held by the staffs who have attended training in Japan for other staff in KPPU (transfer of knowledge).

In addition to internal circle, KPPU identifies the need for organizing a capacity building program directed at the external stakeholders of KPPU, such as judges, business actors, academicians and public. Capacity building is necessary to improve the understanding of related stakeholders on business competition law. Better understanding on competition law will minimize violation to competition law. With regard to long-term objective, a better understanding on competition will have the following impacts:

- (i) Government (regulator) will issue pro-competition policies and regulations and or which are in line with the principles of fair competition.
- (ii) Business actors will engage in their business by complying with the principle of fair competition and maintain their conduct so as not to violate Law No.5/1999.
- (iii) Academicians will be able to assume roles as a critic and source of information related to the development of business competition law. They also serve as changing leader by way of teaching students business competition law.
- (iv) Pro-competition business actors will benefit the general public due to competitive price and equal and wide opportunity as well as varied selection of products.

KPPU as an institution assigned with the duty of guarding Law No.5/1999 constantly makes an effort to coordinate with various State institutions (regulator) in the process of formulating regulation drawn up by the Government, particularly that of related to the aspect of business competition. In the foregoing process, KPPU plays a role to provide inputs in the form of recommendations and considerations to be used as reference by the Government in formulating related regulations. KPPU also provides recommendations and considerations for several Government-owned enterprises (BUMN) in order to internalize the principles of fair competition to actualize an effective, efficient and strong BUMN.

In addition, KPPU also gives recommendations and considerations to a number of Regional Government Heads particularly so that competition law may be used as reference by Regional Government in formulating policies related to business world.

In providing recommendations and considerations to the Government and other related institutions with regard to the formulation of a regulation, KPPU takes the following matters into account:

1. Implication of the regulation to competition situation, the benchmark used is the extent to which the foregoing regulation affects business competition climate.
2. Implication of the regulation to the products manufactured by several business actors.
3. Implication of the regulation to economic efficiency of business actors targeted by the foregoing regulation.
4. Implication of the regulation to innovation, the benchmark used is the extent to which the foregoing regulation affects the innovation and creativity of economic actors.

KPPU is actively involved in the process of formulating regulation in several sectors, including among other:

1. The Coordinating Ministry for the Economy engaged KPPU to jointly formulate several regulations in economic sector, particularly policies related to effort to improve the economy of Indonesian community.
2. Government engaged KPPU to provide recommendations and considerations for business competition issues which are used as reference in formulating regulations related to economic bilateral cooperation established by the Government of Indonesia. For example when the Department of Trade involved KPPU in formulating the framework of policy on bilateral trade administered by the Government of Indonesia and Japan.
3. In telecommunication sector, KPPU together with the Department of Telecommunication and Informatics as well as Indonesian Telecommunication Regulatory Body (BRTI) formulate regulations in telecommunication industry sector as well as oversee the telecommunication industry in Indonesia.

In establishing coordination with the Government (Regulator), KPPU devises several procedures. These are not standard/formal procedures. However they serve as main reference for KPPU in expressing its view/opinion related to a regulation. The phases of the procedures are as follows:

1. KPPU invites the relevant Regulator to come to KPPU (or vice versa) and discuss about a specific regulation. In the foregoing discussion, KPPU will question the reasons and objectives for issuing a regulation as well as ask for an explanation on points included in the regulation which are potentially anti-competition.
2. After conducting FGD with the regulator, KPPU will prepare recommendations in the form of Recommendations and Considerations addressed to the Government (relevant regulator) and deliver them formally through official letter.

KPPU does not establish any specific binding procedures/requirements related to coordination activity with the Government (Regulator).

d. Assistance with regard to Research and Advocacy Activities

KPPU is actively involved in conducting continuous researches (reviews) related to business competition in Indonesia, such as research on industry sector, business organization, business activity and Government regulation. Several researches conducted by KPPU are as follows:

In 2004

1. Industry and Trade Review in Banking Sector
2. Industry and Trade Review in Retail Sector
3. Industry and Trade Review in Banking Sector
4. Industry and Trade Review in Oil and Natural Gas Sector

In 2005

1. Industry and Trade Review in Pharmaceutical Sector
2. Industry and Trade Review in Seaport Sector
3. Industry and Trade Review in Retail Sector

In 2006

1. Industry and Trade Review on Fertilizer Industry
2. Industry and Trade Review on Insurance Industry
3. Industry and Trade Review on Airport Industry

In 2007

1. Industry and Trade Review in the Sector of Rice Industry
2. Industry and Trade Review in the Sector of Retail Industry
3. Industry and Trade Review in the Context Mapping Industrial Structure in Indonesia

In 2008

1. Industry and Trade Review in the Sector of Oil and Natural Gas Upstream Industry
2. Industry and Trade Review in Logistic Sector
3. Industry and Trade Review in the Sector of Pharmaceutical Industry

In 2009

1. Industry and Trade Review on Financing and Insurance
2. Industry and Trade Review with regard to Business Competition in Indonesian Economic Management
3. Industry and Trade Review in BUMN management
4. Industry and Trade Review in Electricity Sector
5. Industry and Trade Review in Medical Services

With regard to the proposal of Project for Competition Policy, KPPU intends to conduct research and review on several sectors, namely:

1. Telecommunication Sector; in relation to ICT (information, communication and telecommunication) Convergence
Telecommunication sector in Indonesia was initially monopolized by BUMN. The issuance of telecommunication law changed the structure of Indonesian telecommunication sector from monopoly to competition. As the law came into effect, competition became the spirit of the telecommunication sector. Indonesian telecommunication sector is currently heading toward convergence so as to result of a separation between service and infrastructure providers. However as a result of previous policies, there are dominant companies which are integrated into telecommunication sector. This indeed may affect the competition, particularly with regard to companies which only provide certain services. Therefore, it is necessary to conduct review on impact analysis, best practice, and regulation in order to address the impact and on feasible policies for increasing competition in telecommunication sector.

2. Transportation Sector; in relation to urban transportation and land transportation system

Traffic as well as minimum public transportation facilities in urban areas in Indonesia are one of the problems which have not been solved up to now. This also includes the low quality of services provided by the public transportation providers. Devising a system for urban transportation sector in the future becomes one of priority agenda for regional government authorities. However, there are still several obstacles found in its implementation, such as harmonization of related policies, route system, as well as synchronization of fleet and lane in the form main and feeder lanes. In the perspective of competition, selection as well as management of public transportation facilities still pose a problem. For example, the case of Busway system in DKI Jakarta, where the establishment of single consortium consisting of all of the existing bus operators only lead to mark up and conspiracy of procurement of bus fleet along with its facilities. There is also a problem with fuel supply and determination of rate which is still dominated by the operator's interest. The focus of review on urban transportation system is directed toward the analysis on mass transportation facilities management in urban areas by using the parameters such as operator designation, procurement process as well as process and calculation with regard to rate determination (based on distance or zone). It is possible to conduct comparative study with transportation facilities system in several other cities particularly in Japan to adapt the model of public transportation facilities management in urban areas which has been successfully implemented in proper manner. Through this review, it is expected that an appropriate method and model of public transportation facilities for the characters of urban areas in Indonesia can be formulated.

3. Regulatory Reform

KPPU is actively involved in conducting Public Relations (Advocacy) activities which are aimed at improving the stakeholders' understanding on the existence of KPPU and Competition Law (Law No.5 Year 1999). PR activities are addressed to Regulator (the Government in its capacity as policy-maker), Regional Government, Business Actor, BUMN, academicians and general public. PR activities conducted by KPPU have been planned on the previous year.

To carry out the aforementioned advocacy activities, KPPU produces several materials for publication (in Indonesian language and English versions), including among other: DVD and VCD of KPPU Profile, Book on Law No. 5 Year 1999, Book on KPPU Profile, Book on Annual Report of KPPU, Cartoon Book on Competition, Book on compilation of articles by KPPU;s Commissioners, Book on Guidelines for Articles of Law No.5 Year 1999 and *Majalah Kompetisi* (Competition Magazine) (in Indonesia language) and *Kompetisia* (Competition) (in English)

In formulating PR activities, KPPU always conducts advocacy program planning for the following year. This planning includes areas serving as the target for dissemination, targeted stakeholders as well as topics to be discussed in the aforementioned dissemination activities. The advocacy activity planning is translated into the following PR activities:

1. Journalist Forum (organized on a weekly basis)
2. Media Visit to printed and electronic media (organized on a monthly basis)
3. Seminar with Academicians
4. Interactive Dialog through electronic media
5. Discussion Forum with business actors (both at central and regional levels)
6. Seminar with Governments (both at central and regional levels)
7. Audience with business actors and Government in KPPU
8. Seminar with Judges (both at central and regional levels)

KPPU has a separate website containing various types of information on KPPU, Business Competition Law (Law No. 5 Year 1999) and competition situation in Indonesia. The website is accessible through <http://www.kppu.go.id/>. It is operated and managed by the Sub-Directorate of Publication. On a periodical basis, publication staff uploads activities conducted by and news on KPPU on website, translates the news into English, serves as administrator for online discussion forum as well as updates new features on the website in accordance with the development of KPPU's needs. At present, publication staff still requires technical training related to the management of this website so that they may show more smooth performance and managed the website in more optimum manner. Up to now, technical problems must be solved jointly with the Sub-Directorate of Technology and Information.

2. Status of KPPU

General Information of KPPU is as follows:

a. Total Staff (per May 31, 2009)

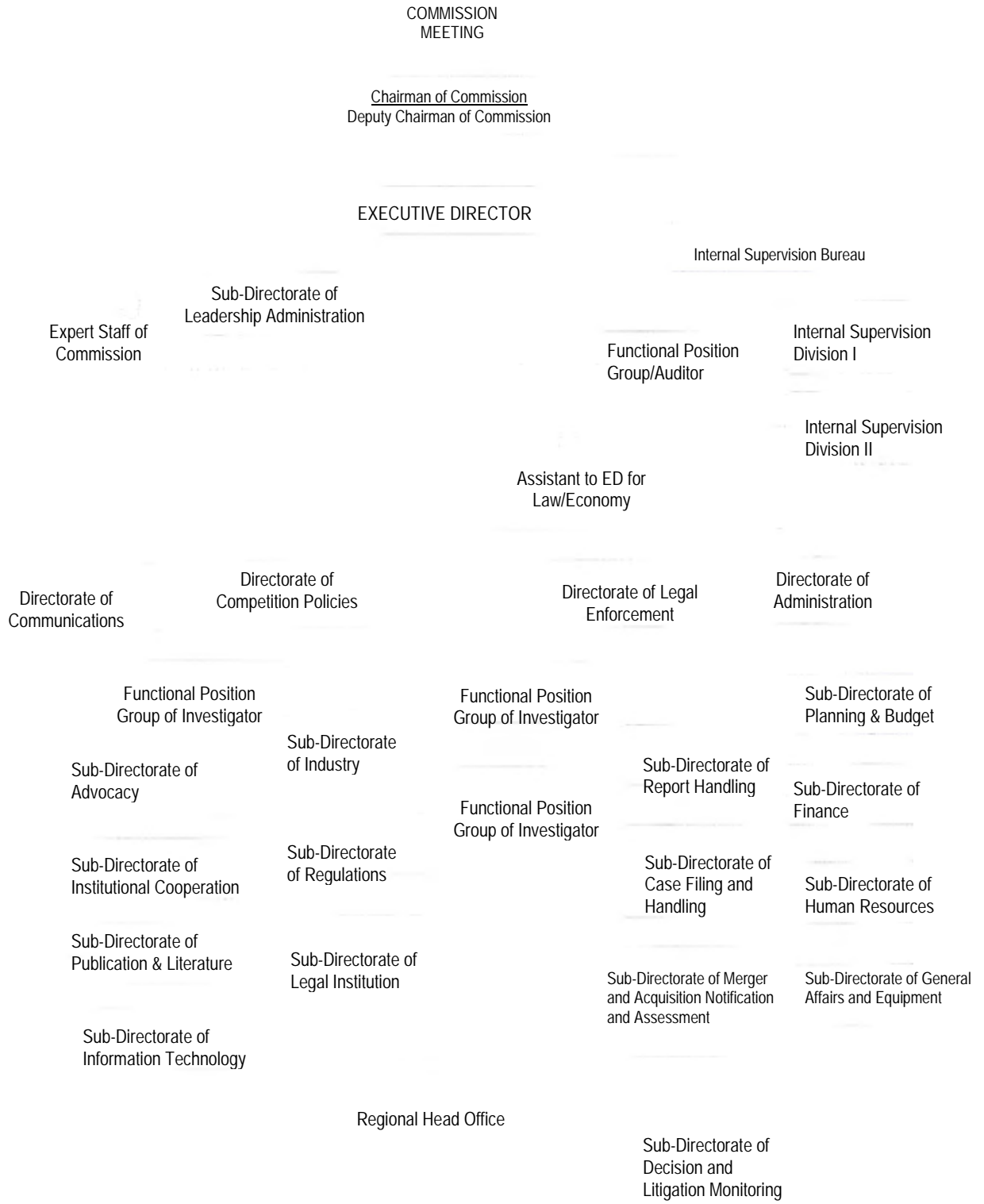
| Year | Total Staff | Investigator (Directorate of Law Enforcement) | Investigator (Directorate of Competition Policies) |
|------|-------------|---|--|
| 2007 | 183 | 18 | 10 |
| 2008 | 232 | 15 | 9 |
| 2009 | 285 | 16 | 9 |

Budget Allocation (per June 30, 2009)

| Year | Total (in Rupiahs) | In US\$ (currency Rp. 12.000/US\$) | By Usage | | Percentage From Annual Budget |
|------|--------------------|--|------------------|-------------|-------------------------------------|
| | | | Total | In US\$ | |
| 2007 | 85.000.000.000,- | 7083333 | 34.207.427.964,- | 2850618.997 | 40,24% |
| 2008 | 86.939.983.000,- | 7244999 | 47.664.794.001,- | 3972066.17 | 54,83% |
| 2009 | 82.089.300.000,- | 6840775 | 16.461.524.163,- | 1371793.68 | 20,05% |

b. Organizational Structure of KPPU

Organizational Structure of KPPU by virtue of the Decision of KPPU Number 58/Kep/KPPU/III/2009 concerning the Organization and Work Procedures of the Secretariat of KPPU is as follows:



The functions of each KPPU Directorate

(i) Executive Director (Mrs. R. Kurnia Sya'ranie)

The executive director has the duty to act as the top management control within the circle of KPPU Secretariat. The duty of the Executive Director is to ensure the availability of technical and administrative supports for KPPU. In this matter, the Executive Director as the top leadership in KPPU Secretariat is responsible directly to KPPU.

(ii) Directorate of Law Enforcement (Director: Ismet Fadillah)

The Directorate of Legal Policies has the duty to ensure the administration of legal enforcement, case handling, notification and assessment on mergers and acquisitions related to alleged violation of Law No. 5 Year 1999. The Director of Law Enforcement is administratively responsible to the Executive Director.

(iii) Directorate of Competition Policies (Director: Taufik Ahmad)

The duties and functions of the Directorate of Competition policies are to ensure the management of study on industrial and or business competition policies, the monitoring of business actors, legal institutions of business competition, and to give suggestions and considerations of the Commission to the Government and related institutions with respect to the implementation of Law Number 5 Year 1999. The Director of Competition Policies is administratively responsible to the Executive Director.

(iv) Directorate of Communications (Director: Ahmad Junaidi)

The duties and functions of the Directorate of Communications is to ensure the development and management of communications, business competition advocacy, cooperation of both national and international institutions, publication and literature, and information technology. In this matter, the Director of Communications is administratively responsible to the Executive Director of KPPU.

(v) Directorate of Administration (Director: Ani Pudyastuti)

The duties and functions of the Directorate of Administration is to ensure the management of planning and budget, human resources, as well as general affairs and equipment. In this matter, the Director of Administration is administratively responsible to the Executive Director of KPPU.

The list of number of new staff recruits (year 2007-2009) along with the total employees of KPPU following the recruitment process is as follows:

| No | Year | Number of Employees | Number of Recruits | Resigned | Total of Employees |
|----|------|---------------------|--------------------|----------|--------------------|
| 1 | 2006 | 117 | 82 | 3 | 196 |
| 2 | 2007 | 196 | 40 | 7 | 229 |
| 3 | 2008 | 229 | 40 | 20 | 249 |
| 4 | 2009 | 249 | 0 | 7 | 242 |

c. The impact of the relatively rapid growth of KPPU staff

The aforementioned table indicates that the number of KPPU employees increases every year by a relatively large number. The problem presently faced by KPPU is the growth rate which is not balanced by sufficient education and training. As a result, employees do not have sufficient knowledge and skills to perform their main duties and functions maximally. Institutional development in recruitment and the formulation of process standards, in the organization of education and training, in the planning of career pattern, and in knowledge transfer management has not been arranged properly.

d. The Process of KPPU Staff Recruitment

The planning of recruitment in the context of increasing the number of human resources (HR) of KPPU Secretariat is conducted in several phases. The recruitment process is implemented based on a HR need analysis in each directorate, taking into account the future work load and performance planning of each directorate. Subsequently, a proposal for additional HR is submitted to the Director of Administration for the assessment of needs and work load record of the directorate. Upon obtaining the approval of the Director of Administration, the proposal for recruitment is to be forwarded to the Chairman of Commission Secretariat (Executive Director). Afterward, an Internal Meeting is held in the Directorate discussing additional HR within the circle of KPPU Secretariat. After being approved in the Meeting, the proposal is to be submitted to the

Commission, which will form a Recruitment Team. This Recruitment Team is to conduct a HR need analysis within KPPU Secretariat by considering the allocation of need and budget stipulated by KPPU Secretariat, and the qualification of HR needed.

e. List of Commissioners

In accordance with the **Decree of the President of the Republic of Indonesia Number 59/P Year 2006** regarding the Dismissal and Appointment of Members of the Business Competition Supervisory Commission (KPPU), the names of the members of the Business Competition Supervisory Commission are as follows:

1. Dr. Ir. H. Ahmad Ramadhan Siregar, M.S.
2. Erwin Syahril, S.H.
3. Dr. Syamsul Maarif, SH, LL.M.
4. Dr. Ir. Benny Pasaribu, M, Ec.
5. Ir, Dedie S. Martadisastra, S.E, M.M.
6. Ir. H. Moh. Iqbal
7. Ir. M. Nawir Messi, M.Sc.
8. Yoyo Arifardhani, S.H., M.M., LL.M.
9. Didik Akhmadi, Ak., M.Com.
10. Sukarmi, S.H., M.H.
11. Ir. H. Tadjuddin Noersaid
12. Dr. Anna Maria Tri Anggraini, S.H., LL.M.
13. Dr. Ir. Tresna Priyana Soemardi, SE., MS.

In 2009, there are 11 Commissioners of KPPU after Ir. H. Moh. Iqbal and dr. Syamsul Maarif, S.H, M.M, LL.M have been declared inactive as Commissioner. For the 2009-2010 term of office, the position of the Chairperson of KPPU is held by Dr. Ir. Benny Pasaribu, M, Ec., Ph.D. and the Deputy Chairperson of KPPU by Mr. Didik Akhmadi, Ak., M.Com.

The selection and appointment of members of the Commission for the third period is to be stipulated by the Government following the completion of the second period of the term of office of KPPU members, namely in 2011.

f. Regional Representative Office of KPPU

KPPU has 5 regional representative offices (KPD) functioning to support the implementation of KPPU's duties in regions. Based on the **Decision of KPPU Number 58/Kep/KPPU/III/2009**, KPD is a representative office of the Commission which carries out the main duties and administrative functions of the Commission Secretariat in a Region. KPD has a duty to provide technical, operational, and administrative supports in the performance of the duties and authorities of the Commission Secretariat in Regions in accordance with the designated areas. For other areas where there is no KPD-KPPU or not covered in the work area of the KPD-KPPU of a region, the Central KPPU is to cover such areas.

Every KPD-KPPU is led by a Head of KPD who is responsible to the Executive Director of KPPU. The profile of each KPD is as follows:

- (i) KPD KPPU Medan, inaugurated on July 27, 2004, and located at Jl. Juanda No. 9-A Medan. The work area of KPD-KPPU Medan covers the provinces of Nangroe Aceh Darussalam, North Sumatra, and West Sumatra.
- (ii) KPD KPPU Surabaya, inaugurated on August 25, 2004, and addressed at Gedung Wisma Mandiri, 7th Floor, Suite 703, Jl. Jenderal Basuki Rachmat, Surabaya. The work area of KPD-KPPU Surabaya covers the provinces of East Java, Bali, NTB, and NTT.
- (iii) KPD KPPU Makassar, inaugurated on February 15, 2006, and located in Menara Makassar, 1st Floor Block-B, Jl. Nusantara No.1 Makassar. The work area of KPD-KPPU Makassar covers the provinces of South Sulawesi, West Sulawesi, Southeast Sulawesi, Gorontalo, North Sulawesi, Moluccas, North Moluccas, Papua, and West Papua.
- (iv) KPD KPPU Balikpapan, inaugurated on March 15, 2006, and located at Gedung BRI, 8th Floor, Jl. Jenderal Sudirman No.37 Balikpapan. The work area of KPD-KPPU Balikpapan covers the provinces of East Kalimantan, South Kalimantan, West

Kalimantan, and Central Kalimantan.

- (v) KPD KPPU Batam, inaugurated on December 4, 2006 and located at Graha Pena Batam, Floor 3A, Jl. Raya Batam Center, Batam. The work area of KPD-KPPU Batam covers Riau islands, Riau, Jambi, and Bangka Belitung.

The number of KPPU employees in each KPD is as follows:

| No | KPD | Total |
|----|------------|-------|
| 1 | Medan | 6 |
| 2 | Surabaya | 3 |
| 3 | Makassar | 3 |
| 4 | Balikpapan | 4 |
| 5 | Batam | 4 |

Sub-Directorate of Human Resources has a plan to recruit additional staff for KPDs in the next 2-3 years. Each KPD must have 10 (ten) employees at the least.

3. Indicator of Activities (year 2007-2009 so far)

| Statistical data of Case Handling in 2000 – May 2009: | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | May 2009 | TOTAL |
|---|------|------|------|------|------|------|------|------|----------|-------|
| Report | 31 | 48 | 58 | 77 | 183 | 139 | 244 | 231 | 56 | 1074 |
| Dismissed | 26 | 40 | 49 | 68 | 160 | 121 | 213 | 163 | 45 | 890 |
| Case handled | 5 | 8 | 9 | 9 | 23 | 18 | 31 | 68 | 11 | 184 |
| Decision | 4 | 4 | 5 | 7 | 18 | 12 | 27 | 49 | 14 | 142 |
| Summary of Judgment | 1 | 4 | 2 | 2 | 4 | 6 | 4 | 19 | 0 | 42 |
| Objection | 0 | 1 | 3 | 5 | 8 | 3 | 11 | 21 | 0 | 52 |
| Hearing | 3 | 4 | 1 | 1 | 4 | 3 | 3 | 7 | 2 | 29 |

- a. Number of official investigation conducted by KPPU
Attachment 1.

b. Status of investigation activities

In performing its duties to enforce the competition law in Indonesia, KPPU is facing several obstructions, namely:

- Limited authority of KPPU, especially in conducting search (to obtain evidence) and in using coercion to present a business actor (in an examination process).
- Limited data owned by KPPU.
- Limited time (deadline) in conducting examination, as regulated in Law No.5/1999.
- Unequal competence of KPPU's human resources.

c. Number of complaints appealed to the court

| Year | Total Cases in Court | Total Cases Lost in Court | Total Cases Won in Court |
|------|----------------------|---------------------------|--------------------------|
| 2007 | 9 | 4 | 7 |
| 2008 | 9 | 2 | 7 |
| 2009 | 1 | | 1 |

d. The example of cases being handled by KPPU

(as attached in e-mail: Catalogue of KPPU Decisions)

e. Number of administrative preventing measures imposed by KPPU

| Year | Fine | Compensation | Conditional Fine | Total |
|------|-----------------|---------------|------------------|-----------------|
| 2007 | 349,505,000,000 | 4,404,749,520 | 21,000,000,000 | 374,909,749,520 |
| 2008 | 19,434,494,090 | | | 19,434,494,090 |

f. The example of cases included in the exception of Law No. 5 Year 1999.

In each stipulation of case, KPPU always conducts preliminary assessment first to consider whether the reports received are qualified to become cases. The points considered include the points in the exception article. Therefore, reports considered meeting the exception points will automatically not be stipulated as cases. One of the examples of the exception of Law No. 5/1999 involves SME in various government procurement activities.

Activities of other Donor

g. Year 2007:

| | |
|----------------------------------|---|
| JICA (in coordination with JFTC) | <ol style="list-style-type: none"> 1. JICA-Net Video Conference Lectures for Indonesian Competition Policy - Economic Basis of Competition Policy (February 2007, in Jakarta) 2. Seminar for KPPU new Commissioners (March 2007, in Tokyo and Osaka) 3. Country Focus Training Course to KPPU Staff Members (3 weeks in February 2009, Nagoya and Tokyo, Japan) 4. Seminar with a Short Term Expert on "Role of Regional Offices of Competition Authority" (March 2007, in Batam) 5. Seminar with a Short Term Expert on "Role of Regional Offices of Competition Authority" (March 2007, in Medan) 6. Judicial Seminar with a Short Term Expert on "Standard of Proof on Competition Law Infringements (on Cartel/Bid Rigging)", (March 2007, in Medan) 7. Seminar with a Short Term Expert on "Contribution to the Development of Regional Economy by Regional Office of Competition Authority" (May 2007, in Makassar) 8. Seminar with a Short Term Expert on "Regulatory Reform and the Role of Competition Policy" (June 2007, in Jakarta) |
| AEGC (was ACFC) | <ol style="list-style-type: none"> 1. ACFC Training (Hanoi, Vietnam, 19-22 March 2007) |
| OECD - KCP | <ol style="list-style-type: none"> 1. Regional Antitrust Workshop (7-9 February 2007, Seoul, Korea) 2. Regional Antitrust Workshop (4-6 April 2007, Seoul, Korea) 3. Regional Antitrust Workshop (27-29 June 2007, Jeju, Korea) 4. Regional Antitrust Workshop (10-12 October 2007, Seoul, Korea) 5. Regional Antitrust Workshop (5-7 December 2007, Seoul, Korea) |

h. Year 2008:

| | |
|------------|---|
| OECD – KCP | <ol style="list-style-type: none"> 1. Regional Antitrust Workshop on Cartels, Leniency Program and the Interface between Competition and Regulation (5-7 March 2008, Singapore) 2. Regional Antitrust Workshop on Abuse of Dominance (23-25 April 2008, Seoul, Korea) 3. Regional Antitrust Workshop on Quantitative Methods (18-20 June |
|------------|---|

| | |
|-----------------------------------|---|
| | <p>2008, Jeju Island, Korea)</p> <p>4. Regional Antitrust Workshop on Horizontal Mergers and Joint Ventures (12-14 November 2008, Seoul, Korea)</p> <p>5. Regional Antitrust Workshop on Anti-Cartel Enforcement (10-12 December 2008, Seoul, Korea)</p> |
| JICA ((in coordination with JFTC) | <p>1. Country Focused Training on Competition Law and Policy (3 weeks in March 2008, Nagoya and Tokyo, Japan)</p> <p>2. JFTC technical assistance (4 weeks in September 2008, Tokyo, Japan)</p> |
| AEGC | <p>1. AEGC Training on Competition Policy and Advocacy (28-29 July 2008, Singapore)</p> <p>2. AEGC Training Workshop on "Setting Up an Effective Competition Agency and the Priorities of a New Competition Agency" (2-4 December 2008, Tokyo, Japan)</p> |

i. Year 2009:

| | |
|--------------|--|
| OECD | OECD Workshop on Competition Assessment (22-24 June 2009, Jakarta, Indonesia) |
| OECD-KCP | <p>1. OECD – Korea Policy Center Program, Workshop on Abuse of Dominance, Korea, 2009</p> <p>2. OECD Korea Policy Center Program - Workshop on quantitative methods, Korea, 2009</p> |
| UNCTAD - GTZ | <p>1. Merger Control Workshop (14-15 Mei 2009, Jakarta, Indonesia)</p> <p>2. KPPU Training of the Trainer Manual on Competition Law (Validation Workshop) (18-20 Mei 2009, Jakarta, Indonesia)</p> |
| AEGC | <p>1. 3rd AEGC Workshop : Cost and Benefits of Competition Policy, Law and Regulatory Bodies (18 – 19 Mei 2009, Kuala Lumpur, Malaysia)</p> <p>2. TREATI Workshop on Competition Policy (Singapore, 7-8 July 2009)</p> <p>3. 1st Workshop of Work Group on Developing Regional Guidelines on Competition Policy (30-31 July 2009, Bali, Indonesia)</p> |
| ADB | <p>1. The 5th East Asia Conference on Competition Law and Policy (29 June 2009, Ulaanbataar, Mongolia)</p> <p>2. The 5th Top Level Officials' Meeting on Competition Policy (30 June 2009, Ulaanbataar, Mongolia)</p> |

In addition to the aforementioned donor activities, KPPU is having cooperation with GTZ (German Technical Cooperation) in the Implementation of Competition Law (ICL) project. This cooperation also involves the Supreme Court as KPPU's partner in the

implementation of the competition law in Indonesia. The aforementioned cooperation is implemented in 2 periods, namely the first period (year 2005-2008) and the second period (year 2008-2009). The objectives to be achieved in the implementation of the aforementioned project are assessed based on several indicators, namely:

- (i) The formulation of a draft manual for predatory pricing and cartel investigation which may be used as guidelines by KPPU investigators.
- (ii) The formulation of draft joint background paper between KPPU and the Supreme Court in relation to the improvement of the procedure of the competition law.
- (iii) Approximately 200 judges from certain district courts and at least 70% of KPPU employees obtain the certification of basic level qualification in the competition law. At least 5 Justices and all KPPU Commissioners participate in various seminars on business competition law.
- (iv) At least 10 trainers from the Supreme Court and 20 trainers from KPPU obtain certification to be able to teach/train internal staff on the business competition law.

The activities conducted include:

- (i) Comparative Study to Germany for KPPU Commissioners and Staff
- (ii) Training of KPPU internal staff
- (iii) Publication Assistance
- (iv) Dissemination Assistance

Attachment 1

| | | RECAPITULATION OF CASE HANDLING BUSINESS COMPETITION SUPERVISORY COMMISSION JUNE 2000 - 14 JULY 2009 | | | | | | | | | | | | | | | | | | | | |
|------------------------|------------------------------------|--|----|----|----|----|----|----|----|----|----|---------------------------|----|----|----|----|----|----|----|----|-------|------|
| | | CASES BASED ON REPORTS | | | | | | | | | | CASES BASED ON INITIATIVE | | | | | | | | | TOTAL | |
| YEAR | | 00 | 01 | 02 | 03 | 04 | 05 | 06 | 07 | 08 | 09 | 00 | 01 | 02 | 03 | 04 | 05 | 06 | 07 | 08 | 09 | CASE |
| STIP ULA TION | NO INDICATION | 0 | 1 | 4 | 2 | 1 | 4 | 2 | 1 | 16 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 33 |
| | CHANGE OF BEHAVIOR | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 2 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 1 | 0 | 0 | 10 |
| DECI SION | GUILTY | 1 | 0 | 1 | 2 | 6 | 11 | 6 | 24 | 41 | 0 | 1 | 1 | 1 | 4 | 1 | 4 | 0 | 1 | 1 | 0 | 105 |
| | NOT GUILTY | 0 | 2 | 0 | 1 | 0 | 3 | 6 | 1 | 6 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 21 |
| CASE IN PROGRESS | SUGGESTION AND CONSIDERATION | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 14 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 14 |
| TOTAL | | 1 | 4 | 5 | 5 | 7 | 18 | 15 | 28 | 66 | 14 | 1 | 1 | 3 | 4 | 2 | 4 | 3 | 3 | 2 | 0 | 186 |
| | | 163 | | | | | | | | | | 23 | | | | | | | | | | |

1

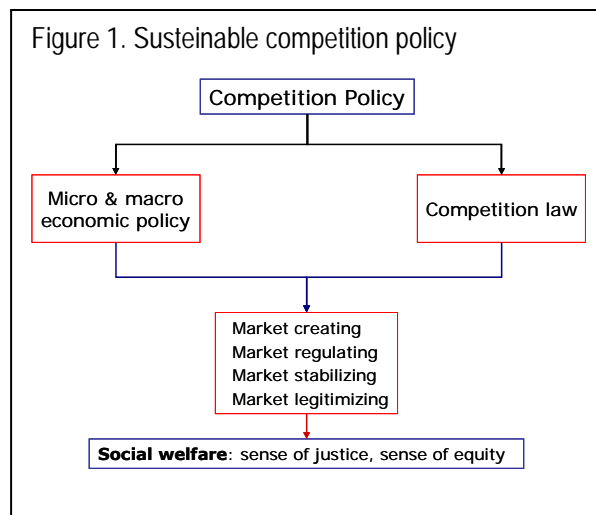
Competition Policy and Law in Indonesia

1.1 The concept of competition policy and law

Competition policy is often used as synonym of competition law. But actually, the terms are different in meaning. Competition policy is a broader concept in which competition law consists. Competition policy is inherent on the government policies and regulation such as trade policy, investment policy, fiscal policy, licensing and privatization of SOEs.

Hoekman dan Mavroidis (2002) defines competition policy as a set of measures and instruments that may be pursued by governments to enhance the contestability of markets. Thus, competition policy disciplines constrain both private and government actions, whereas competition law pertain to the behavior of private entities¹.

Competition law can be defined as the set of rules and disciplines maintained by governments aiming to counteract attempts to monopolize the market (and thus ensure that competition is guaranteed). Hence, competition law is a component of the broader set of policies affecting competition on markets that are pursued by governments².



As shown at Figure 1, the objective of competition policy is to enhance social welfare by developing market institutions. According to Rodrik & Subramanian (2003) the following market institutions play important role to determine level of income or welfare. *Market creating* institutions that protects property rights and ensure that contracts are enforced. Without such institutions, markets either do not exist or perform very poorly.

¹ Hoekman, Bernard & Mavroidis, Petros C. Economic Development, Competition Policy and the WTO. World Bank Policy Research Working Paper 2917, October 2002.

² Ibid.

To sustain the growth momentum, build resilience to shocks and facilitate socially acceptable burden sharing in response to such shocks, the other types of institutions are required. These are *market regulating*, those that deal with externalities, economies of scale, and imperfect information; *market stabilizing*, those that ensure low inflation, minimize macroeconomic volatility, and avert financial crisis; *market legitimizing*, those that provide social protection and insurance, involves redistribution and manage conflict.

1.2 Formulation of competition policy and execution system

1.2.1 Competition policy making

During the Soeharto era, policies were established through a well-coordinated system under the Deregulation Policy Team that announced reform packages every six months or so. This team had a very strong inter-ministerial coordination at both the technical and policy levels; and the reform package was signed by the president. However, this well-coordinated system was not supported by a transparent process. It also lacked the broad-based involvement of stakeholders and an independent advisory board.³

The centralized arrangements of the Soeharto era have disintegrated; and new central governmental structures and processes have now emerged. For example, the composition of the cabinet now more explicitly represents political party interests. Further, the government does not necessarily speak with one voice on key economic policy issues; and sectoral ministries (such as agriculture and industry) often have divergent interests. The discipline to forge a united view seems much more difficult.⁴

The implementation of regional autonomy in 2001 has also shifted power from the central government to local government. Coordination between central and local governments is evolving; but it is often unpredictable, especially among the larger, richer and more remote regions that have a tendency to ignore the central government. Moreover, regional autonomy mandates that each region raise its own budget, which typically brings about a proliferation of sub-national taxes.

³ More detail explanation on difficulties for policy formulation during reformation era, See Soesastro, Hadi. Soejachmoen, Moekti P. (2007). Towards an Effective Trade Policy Challenges for Indonesia. EU-Indonesia Trade Support Programme.

⁴ Soesastro & Soejachmoen (2007)

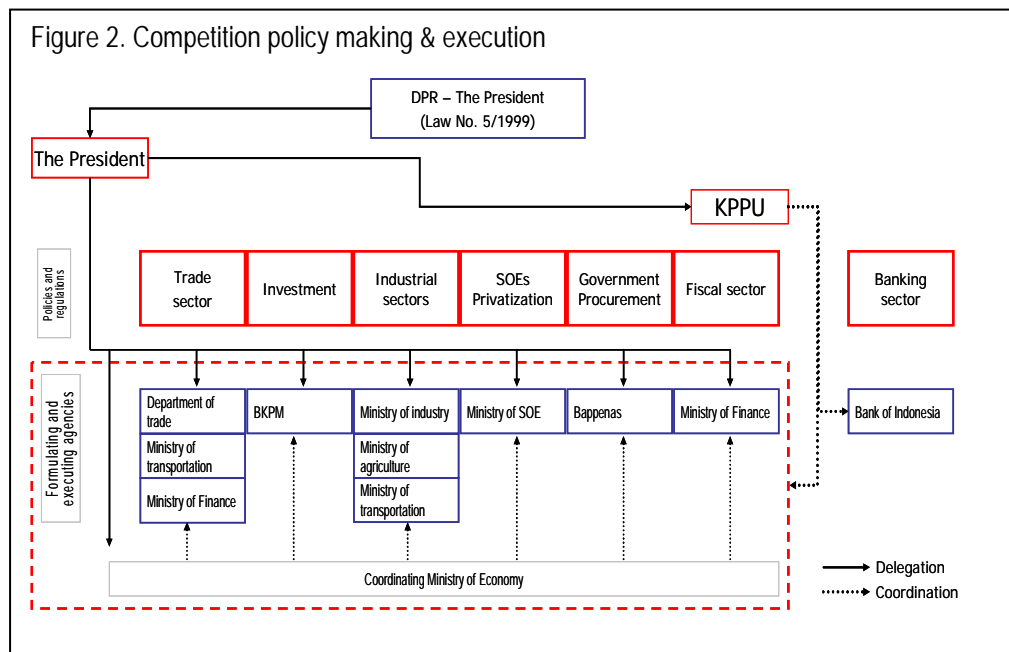
The Law No. 25/2004 on National Development Planning System provides framework for administrative aspect of government planning. Article 3(2) of the Law stated that “national development planning consists of plans formulated by the ministries or institutions and local government.” Referring to the Law, government policies (in which the competition policy includes) are formulated by the related ministries or government’s institution and local government. The ministries are responsible for government policy formulation and implementation and regulation in the area in which they are mandated.

There are fifteen ministries and institution with functions and duties to formulate and execute government policies in the area of economy. For example, The Ministry of Finance is responsible for determining any trade policy that has budgetary implications such as tariffs. The Ministry of Trade is responsible for coordinating trade policy and trade regulations that can be proposed and implemented by sectoral ministries such as Agriculture, Forestry, and Fisheries. The Investment Coordinating Board (Badan Kordinasi Penanaman Modal – BKPM) is responsible for national investment policy formulation.

All of these ministries and institutions are under coordination of The Coordinating Ministry for the Economy (CME). The CME’s main function is to assist the president in coordinating and synchronizing the preparation and formulation of economic policies and their implementation. Since, the cabinet members sometime have different sectoral priorities; some of them are very liberal, while some of them are very protective of domestic industries;⁵ the most daunting challenge to policy formulation coordination is the different interest between ministries or institutions.

The institution of the CME Cordinating Ministry for Economic has six expert’s staff; one of them is focus on business competition with duty to provide analysis for the Minister regarding competition issue. But, it is not clear whether the expert’s staff has also the task to coordinate competition policy in the ministries and institutions under coordination.

⁵ Ibid.



1.2.2 General view of competition policy

The government policy is always ambiguous at best, such as in industry, the government tends to be protective and in trade, the government tries to adopt the concept of the World Trade Organization (WTO) by providing equal treatments to all business actors. Up to now, the government monopolizes several sectors of economy or awarded monopoly right to several SOEs.

Some efforts have been done to reduce monopolistic practices (especially by SOEs) and to promote fair competition among business actors. To promote competition, regulatory frameworks on several important economic sectors, such as oil and gas, transportation, telecommunication and on investment have been reformed.

1.2.3 Competition law (Law No. 5/1999) enactment⁶

Indonesia's Competition Law (Law No. 5/1999 on the Monopolistic Practices Prohibition and Unfair Business Competition) was enacted on March 5, 1999.⁷ Prior to the enactment of the

⁶ Discussion on this section mostly taken from Juwana, Hikmahanto (2002). An Overview of Indonesia's Antimonopoly Law. Washington University Global Studies Law Review Vol. 1:185 pp 193.; Maarif, Syamsul (2001). Competition Law and Policy in Indonesia, ASEAN Competition Law Project. Maarif, Syamsul (2004). Competition Law in Indonesia: Experience to be taken for the Development of Competition Law in China. Washington University Global Studies Law Review, Vol. 3:333.

Law, Indonesia virtually has no comprehensive legal framework for business competition policies⁸ and legal provisions governing competition were scattered throughout numerous laws.⁹ Law No. 5/1999 provides specific provisions governing competition between business actors.¹⁰

The idea of formulating a comprehensive policy regarding business competition first appeared in the mid 1980s¹¹. Many scholars, political parties, non-governmental organizations, and even certain government institutions discussed and proposed developing an antimonopoly law. Unfortunately, the political and economic environment was not conducive to such an initiative. There was insufficient political commitment to pursuing the eradication of monopolistic practices.¹²

The Letter of Intent (LoI) between the Government of Indonesia (GoI) and the International Monetary Fund (IMF) played a major role in accelerating the formulation of competition law in Indonesia.¹³ On the Letter of Intent the GoI agree to present Bill on Business Competition by no later than the end of December 1998.¹⁴ At this point The GoI became serious about introducing an antimonopoly law, which was due in part to the public demand for an end to monopolistic practices. In addition, the government viewed the law as a means of taming the public outcry to end corruption, collusion, and cronyism.¹⁵

Law No. 5/1999 is the result of the Indonesian Parliament's inaugural exercise of its right to initiate the drafting of the law. Despite the fact that the Ministry of Trade already had prepared a draft, in the process of law enactment the bill was formally initiated by the legislative body (Dewan Perwakilan Rakyat- DPR). Such process of law enactment subsequently raises a

⁷ Undang-Undang Republik Indonesia Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Tidak Sehat [Law of the Republic of Indonesia, No. 5/1999, Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition], 33 LEMBARAN NAGARA [STATE GAZETTE] (1999) [hereinafter Law No. 5/1999]. English version (unofficial translation) is available at <http://www.kppu.go.id/ENG/docs/UU/MonopolJD.pdf> (last visited April 28, 2008) and a version in Bahasa is available at: http://www.kppu.go.id/docs/UU/UU_No.5.pdf (last visited April. 28, 2008).

⁸ Maarif (2001)

⁹ Juwana, Hikmahanto (2002). An Overview of Indonesia's Antimonopoly Law. Washington University Global Studies, Law Review Vol. 1:185 pp 193.

¹⁰ The content of the Law is provided in detail at section 1.3.1 of this report.

¹¹ Maarif (2004)

¹² Juwana (2002)

¹³ Juwana (2002); Maarif (2001)

¹⁴ Letter of Intent and Memorandum of Economic and Financial Policies by the Indonesian Government dated July 29, 1998.

¹⁵ Juwana op.cit

problem on who should formulate further provisions such as Government Regulation (Peraturan Pemerintah - PP) or Presidential Decree (Keputusan Presiden - Kepres) under the law. As will be described in section **xxx**, the lack of government regulation regarding merger & acquisition¹⁶ is because of no ministry that responsible to formulate such regulation.

1.3.1 Essential Contents of the Competition Law

As stated in the Article 3 the objective of the Competition Law (Law No. 5/1999) is to safeguard the public interest and improve economic efficiency, to create a favorable business climate for ensuring equal business opportunity, to prevent monopolistic practices and unfair competition.¹⁷ The Law defines monopolistic practices as “centralization of economic power by one or more business actors, resulting in the control of the production and or marketing of certain goods and or services thus resulting in unfair business competition and potentially harmful to the interests of the public.”¹⁸ Unfair competition is defined as “competition among business actors in conducting activities for the production and or marketing of goods and or services in an unfair or unlawful or anti-competition manner.”¹⁹ According to Nakagawa (2006), the definition on monopolistic practice is slightly complicated; and the definition of unfair business competition is slightly simple. (See Box 1 on the Features of Indonesian Competition Law)

In general, the Law consists of 11 chapters and 53 articles, covers wide-ranging matters: from actions that constitute violations, the Commission that supervise the implementation of the law to provisions regarding sanctions. Table 1 summarized the contents of the Law based on chapter and the number of article and paragraph in each chapter. The monopolistic practices and unfair competition activities which are targeted by the Law are divided into three main areas. These are prohibited agreements or contracts, prohibited activities and the particular situation of a dominant position²⁰. This section attempts to summarize the content of the Law related to particular prohibitions which are imposed upon monopolistic enterprises and unfair competition and some particular situation on abusive dominant position.

¹⁶ Mandated by Article 28(1) of the Law.

¹⁷ Summarized from Article 3 of the Law.

¹⁸ Article 1(2).

¹⁹ Article 1(6).

²⁰ Indonesia's Anti-Monopoly and Unfair Business Competition Law, Makarim & Tiara S. Memorandum, unpublished.

Box 1. The Features of Indonesian Competition Law

The features of Indonesian Competition Law are as follows.

- (1) Many specific provisions on prohibited agreements.
In total, 12 articles prohibit 16 specific types of agreements including horizontal ones and vertical ones. Among them, 7 types such as horizontal price fixing agreement are provided for as per se illegal; and 9 types such as minimum resale price maintenance agreement as rule of reason.
- (2) Rather complicated definition of monopolistic practices.
- (3) Amalgamation of cartel and abuse of market dominance in monopolistic practices
- (4) Inclusion of unfair business competition in one of the elements of monopolistic practices
- (5) Rather simple definition of unfair business competition.
- (6) Deeming provisions based on market shares.
Two thresholds are adopted: over 50% and over 75%. The over 50% market share threshold is used on production or marketing control [Article 17(2c)], purchase control [Article 18(2) and dominant position [Article 25(2a)]. The over 75 % market share threshold is used on production or marketing joint control agreement [Article 4(2)], joint purchase control agreement [Article 13(2)] and dominant position [Article 25(2b)].
- (7) Per Se Illegal provisions and Rule of Reason provisions.
Eight articles are Per Se Illegal provisions which prohibit 11 types of activities outright such as price fixing agreement. Eighteen articles are Rule of Reason provisions which regulate 20 types of activities such as market division agreement and predatory pricing.
- (8) Independent Enforcement Agency, KPPU
KPPU is the sole enforcement agency of Indonesian competition law and policy. It is a so called "independent administrative commission". It is free from the government and other party's influence and authority and is responsible to the president (Article 30). It consists of a chairperson, a deputy chairperson and not less than 7 other members. All of them are appointed and dismissed by the President upon the approval of the Peoples Legislative Assembly. The term of office of any member is 5 years. (Article 31) The Commission is assisted by a secretariat (Article 34). One of the causes for the termination of the membership is "dismissal" (Article 33 f).
The President has the power to appoint and dismiss all the members of KPPU, including a chairperson and a deputy chairperson. Therefore, KPPU may not be completely free from the influence of the President.
KPPU has amalgamation of powers, conducting investigation, evaluating alleged violation, issuing decisions, imposing administrative sanctions and providing advice and opinion on government policies related to anti-competitive conducts. (Article 35, 36 and 47)
- (9) Broad Exemption provisions (Article 5(2) and 50 a. and b.)
- (10) Very strict procedural time constraints on KPPU [Article 43(1) and 43(2)] and courts [Article 45(2) and 45(4)].

Source: Masanao Nakagawa. "Challenges of Indonesian Competition Law and Some Suggestions for Improvement -- From the Japanese Experiences" The University of Oxford Centre for Competition Law and Policy Working Paper (L) 05/06

Table 1 General contents of Law No. 5/1999

| Chapter's Number | Number of parts and articles () | Contents |
|------------------|---------------------------------|--|
| I | (1) | Definition of the terms used in the Law |
| II | (2) | Law principles and purposes. |
| III | 10 (13) | Prohibited agreements: oligopoly, price fixing, market allocation, boycott, cartel, trust, oligopsony, vertical integration, closed agreement, and agreements with foreign parties. |
| IV | 4 (8) | Prohibited activities: monopoly, monopsony, market control, and conspiracy. |
| V | 4 (5) | Dominant position: general provisions, double position, shareholding, merger, amalgamation and takeovers. |
| VI | 5 (8) | Status, membership, membership requirements, duty, authority of and funding for KPPU. |
| VII | (9) | Case handling procedures: processing of reports, preliminary and advanced investigation, investigation on business actors and evidence, duration of investigation, Commission's decision, legal power of Commission's decision, and legal means. |
| VIII | 3 (3) | Sanctions: administrative actions, primary criminal sanction, and additional criminal sanction. |
| IX | (2) | Other provisions containing exemptions under the Law and monopoly by state owned enterprises (BUMN). |
| X | (1) | Transitional provisions: business actors are given 6 months as of the enactment of the Law to apply adjustments. |
| XI | (1) | Concluding provisions: date the Law will come into effect (one year after its promulgation, 5 March, 2000). |

Source: Summarized from Law No. 5/1999 on the Monopolistic Practices Prohibition and Unfair Business Competition. KPPU (2007).

- *Prohibited Agreements*

Article 1(7) of Law No. 5/1999 defines agreement as

“... an action taken by one or more business actors to bind themselves with one or more other business actors under any name, either made in writing or otherwise”.

Definition of agreement as mentioned above can be considered clear without being read in context with actions taken under agreements which are regulated in subsequent articles. The parties in an agreement are business actors, might be individuals or business entities, whether in form of legal entities or otherwise [Article 1 (5)].

In total, there are 13 articles (Article 4 – 16) in the Law that prohibits 16 specific types of agreements (Table 2). Business actors shall be prohibited from making agreements with other parties to jointly control production or marketing of goods or services that could result in the occurrence of anti-competitive practices or unfair competition. Among prohibited agreements, price fixing, price discrimination, boycott, and closed agreements are per se illegal. Oligopoly practices, predatory pricing, divisions of territory, cartels, trusts, and agreements with foreign parties are prohibited on a rule of reason basis.

Table 2 Agreements prohibited by Law No.5/1999

| Agreements prohibited | Concepts and conditions or exemptions | Type of provision |
|--|---|----------------------------------|
| Oligopoly Article 4 point 1 | Jointly controlling the production and marketing. <u>Condition:</u> 2 or 3 business actors to have control over 75% of production and marketing. Article 4(2). | Rule of reason |
| Price Fixing Article 5 point 1 | <ul style="list-style-type: none"> Fixing the price <u>Exemption:</u> in the context of a joint venture or based on the prevailing laws | Per se illegal |
| Article 6 Article 7 | <ul style="list-style-type: none"> Forcing a buyer to pay a different price Fixing the prices below market prices which may potentially result in unfair competition. <u>Cause:</u> resulting unfair competition | Per se illegal Rule of reason |
| Article 8 | <ul style="list-style-type: none"> Setting forth the condition that the parties receiving goods or services shall not sell or re-supply goods or services received by them, at a price lower than the contracted price. <u>Cause:</u> causing unfair competition | Rule of reason |
| Market Allocation Article 9 | Dividing marketing areas or market allocation. <u>Cause:</u> causing monopolistic practices or unfair competition. | Rule of reason |
| Boycotts Article 10 point 1 | <ul style="list-style-type: none"> Preventing other business actors from engaging in the same business. | Per se illegal |
| Article 10 point 2 | <ul style="list-style-type: none"> Refusing to sale any goods or services <u>Cause:</u> causing a loss or may be suspected causing a loss to other business actors | Rule of reason |
| Cartel | Arranging production or marketing to influence the price | Rule of reason |

| Agreements prohibited | Concepts and conditions or exemptions | Type of provision |
|--|---|--------------------------|
| Article 11 | <u>Cause</u> : causing monopolistic practices or unfair competition. | |
| Trusts Article 12 | Controlling production and marketing by: <ul style="list-style-type: none"> • establishing a joint company or larger company • keeping and maintaining the continuity of each company or its members. <u>Cause</u> : resulting monopolistic practices or unfair competition. | Rule of reason |
| Oligopsony Article 13 | Controlling prices by jointly controlling the purchase or acquisition of supplies. <u>Condition</u> : two or three business actors control over 75% of the market. <u>Cause</u> : resulting monopolistic practices or unfair competition. | Rule of reason |
| Vertical Integration Article 14 | Controlling production chain <u>Cause</u> : resulting unfair competition or be harmful the society. | Rule of reason |
| Closed agreements Article 15 | <ul style="list-style-type: none"> • Stipulating the parties shall only supply (re-supply) to certain parties or places. • Stipulating the parties must be prepared to buy goods or services from a certain suppliers. • Setting forth the prices (discount) with the condition to buy other goods or services or not to buy from other suppliers. | Per se illegal |
| Agreements with foreign parties Article 16 | Setting forth conditions <u>Cause</u> : monopolistic practices or unfair competition. | Rule of reason |

Source: Summarized from Law No. 5/1999 concerning the Monopolistic Practices Prohibition and Unfair Business Competition. KPPU (2007).

Some agreements are exempted from all provisions mentioned above. Article 50 of the Law excludes agreements as the following:

- a. Agreements created to implement a provisions of laws or regulations;
- b. Agreements related to Intellectual Property Rights (IPR),
- c. Agreements to establish a certain technical standard,
- d. Agency agreements.
- e. Research agreements with the aim of improving living standards,
- f. Ratified international agreements, and
- g. Export-oriented agreements without any disruption to domestic needs and supplies.

- *Prohibited Activities*

In addition to agreements mentioned above, the Law also prohibits several activities. Business actors shall be prohibited from controlling the productions or marketing through supply control, market control, or other mean that lead to anti-competitive practices or unfair competition. Among the prohibited activities, conspiracy is per se illegal. Monopoly, monopsony, and market control are prohibited on a rule of reason basis. In total, eight articles in the Law (Article 17-24) provide provisions regarding activities these are prohibited.

Table 3 Activities prohibited by Law No. 5/1999

| Activities prohibited | Concept of activities and conditions | Type of provisions |
|--------------------------------|--|--------------------|
| Monopoly Article 17 | Controlling the production and/or marketing. <u>Conditions:</u> <ul style="list-style-type: none"> • the good and/or service has no substitute; or • other business actors cannot penetrate in the business competition for the same good and/or service; or • one business actor or a group thereof controls more than 50% of the market share of one type of good or service. Reason: monopolistic practices or unfair competition | Rule of reason |
| Monopsony Article 18 | Controlling the receipt of supply or become a sole purchaser. <u>Condition:</u> one business actor or business entity or a group thereof controls more than 50% of the market share. | Rule of reason |
| Market control | | |
| Article 19 | (1) Preventing any business actors or business entity to conduct the same activities; (2) preventing consumers of competitors to conduct business with the said competitors; (3) limiting the distribution and/or sale any good and/or service in; (4) discriminating any business actors or business entity. <u>Cause:</u> monopoly or unfair competition | Rule of reason |
| Article 20 | (5) Cheat in determining production costs and other costs which form part of price components and which may cause unfair business competition. <u>Cause:</u> monopoly or unfair competition | Rule of reason |

| Activities prohibited | Concept of activities and conditions | Type of provisions |
|-----------------------------------|--|--------------------|
| Article 21 | (6) Cheat in determining production costs and other costs which form part of price components and which may cause unfair business competition. <u>Cause</u> : monopoly or unfair competition | Rule of reason |
| Conspiracies Article 22 | (1) Arranging the winner of a tender thus causing unfair business competition; | Per se illegal |
| Article 23 | (2) Obtaining confidential information on business activities of its competitors; | Per se illegal |
| Article 24 | (3) Preventing the production and/or marketing of any good and/or service of its business competitor so that the good or service offered or supplied in the relevant market decreases both in number, quality and punctuality. | Per se illegal |

Source: Summarized from Law No. 5/1999 concerning the Monopolistic Practices Prohibition and Unfair Business Competition. KPPU (2007).

- *Abuse of dominant position*

Articles 25 to 29 of the Law stipulate the provisions regarding dominant position. The prohibition against the abuse of a dominant position centers on interlocking directorates, share ownership, and mergers, acquisitions, and dissolutions.²¹ Basically dominant position is allowed as long as not result anti-competitive practices or unfair competition. A dominant position is considered to exist if one business actors or one group thereof control 50% or more of the market share two or more business actors or business entities control 75% or more of the market.²²

Husodo (2004) categorize the abuse of dominant position and cross-shareholding as per se illegal.²³ Article 25 of the Law prohibits business actors from taking direct or indirect advantage of their dominant position by imposing intentionally unfavorable trade terms to prevent consumer access to competitors' products, restricting development, or preventing potential competitors from entering the market.

²¹Juwana, Hikmahanto (2002). An Overview of Indonesia's Antimonopoly Law. Washington University Global Studies Law Review Vol. 1:185 pp 193. 2002

²²Article 25 (a,b), Article 27 (a, b).

²³Husodo (2004). Indonesia's Competition Policy. Paper presented at the APEC Training on Competition policy. Available at: <http://www.jftc.go.jp/eacpf/05/APECTrainingProgramAugust2004/indonesia.shuhodo.pdf>

Interlocking directorships is prohibited if found to cause unfair competition. Article 26 prohibits a person concurrently holding a position as the director or commissioner of two companies if the companies are in the same market or produce similar goods or services, or jointly capable of controlling the market share of certain goods and/or services.²⁴

Article 27 prohibits business actors from owning majority shares of, or unilaterally establish multiple firms that conduct the same or similar business activities in the same market if it causes one business actor (or his/her group) control at least 50% of the market share or two or three business actors control at least 75% of the market share.

Article 28 prohibits business actors from merging or dissolving companies, or acquiring shares of companies, if doing so would result in monopolistic practices or unfair competition. Article 28(3), recognizing the vagueness of Article 28(1) and (2), indicates that clarifying provisions to provide additional guidance may be found in unstipulated government regulations.

1.2.4 Competition authority

a. The KPPU

Chapter VII of the Law No. 5/1999 provides for the establishment of a Supervisory Commission on Business Competition whose job is to supervise the enforcement of the law. By Presidential Decree (PD) No. 75/1999, the Commission for the Supervisory of Business Competition (KPPU) was formed on July 8, 1999. The KPPU is an independent authority; the members are appointed and discharged by the President on approval of the House of Representatives (DPR); and reports directly to the President and the House of Representatives (DPR). Although as an organization KPPU is independent, financially it still has a high dependency on the Ministry of Trade. The budget should be approved under authority of Trade Minister.

The duties and authorities of the KPPU are set out in the Law No. 5/1999. According the law²⁵, the duties of the KPPU shall include the following:

- ✓ Evaluating agreements, business activities and the presence or abuse of dominant position, that may result in monopolistic practices and/or unfair business competition;
- ✓ Providing suggestions regarding governmental policies and drawing up guidelines and publications relating the Law; and
- ✓ Reporting periodically on its work to the President and DPR.

²⁴ Article 26.

²⁵ Summarized from the article 35 of Law No. 5/1999.

In carrying the tasks, the KPPU is charged with a wide-ranging authority to²⁶:

- ✓ considers allegation and investigate or examine reported cases of monopolistic practices or unfair business competition, and make conclusions in respect thereof;
- ✓ summons business alleged to have violated the Law, and present witnesses;
- ✓ seeks assistance from investigators, request information from government agencies and obtain and examine evidence, all in relation to their investigations;
- ✓ determines whether losses have occurred and impose sanctions on business found to be violating the Law.

b. Sector specific regulators

Banking sector

Indonesian banking sector is regulated and supervised by Bank Indonesia (the central bank). In conducting banking regulatory and supervisory task, Bank Indonesia issues regulation, grants and revokes bank's license or certain banking activities permit, conducts banking supervisory and imposes sanction to bank in accordance to the law of the land. In conducting these tasks, Bank Indonesia, with utmost prudence, is authorized to enact banking regulations.

In the context of the Bank's authority in bank licensing, asides from granting and revoking business license of the banking institutions, Bank Indonesia may grant permit in opening, closing and moving of bank's branch office, grant approval of bank's ownership and management, also grant permit to bank concerning particular business activities.²⁷

The Bank's supervisory authority takes the form of direct and indirect monitoring. Direct supervision is conducted through on-site examination regularly or randomly as needed. Indirect supervision is conducted through research, analysis and evaluation of submitted banks report.

Telecommunication sector

To ensure competition in the telecommunications market, the Gol established the Indonesian Telecommunications Regulatory Body or BRTI for short, on July 11, 2003. The body was expected to enable to guard the public interest (telecommunications users) and to support whilst protecting the telecommunications business competition thus becoming a fair, efficient business and attracts investors in telecommunication sector.

²⁶ Summarized from the article 36 of Law No. 5/1999.

²⁷ <http://www.bi.go.id/web/en/Tentang+BI/Sektoral/Perbankan>

BRTI consists of Telecommunications Regulatory Committee members and Directorate General of Posts and Telecommunications (exclude Directorate of Posts). BRTI is expected to perform greatly in order to speed the telecommunications industry development by bringing competitive environment, enhancing the efficiency and protecting public interest.²⁸

The BRTI conducts supervision of operational performance, competition safeguard and utilization of telecommunications tools and equipment. The BRTI also controls the operation of network and service operators on settlement of dispute between operators, utilization of telecommunications tools and equipment.

Oil and gas sector

Law 22/2001 on Oil and Gas, designated as the Oil and Gas Law, governs the oil and gas sector. The law states that the government holds exclusive right of oil and gas mining; and furthermore, that the oil and gas industry is competitive and promotes fair and transparent competition among businesses in exploration and exploitation of oil and gas; and in processing, transportation, storage and trade of oil and gas.

As for implementation of the Law two bodies were formed: Executive Board of Oil and Gas Upstream Business Operations (BP-Migas)²⁹ and Regulatory Body of Oil Based Fuel Supply and Distribution (BPH-Migas)³⁰. Among others, the mission of BP-Migas are to supervise and control the operation of Production Sharing Contract Contractors in order to guarantee the effectiveness and efficiency of oil and gas upstream business activities and to support a conducive climate environment investment for oil and gas upstream business activities.³¹ Such that the matter of supervising and establishing Cooperation Contract or Productions Sharing Contract activity which previously done by National Oil and Gas Company (Perusahaan Tambang Minyak Nasional – PERTAMINA) is now done by BP-MIGAS.

Realization of the oil fuel provisions and distribution in all Indonesian regions, and support of the utilization on natural gas in domestic market, a fair and transparent business competition are needed for the people's prosperity. The task of BPH-Migas is

²⁸ http://www.brti.or.id/index_en.php?mod=site&site=about, accessed on March 25, 2008

²⁹ GR No. 42/2002.

³⁰ Government Regulation (GR) No. 67/2002

³¹ BP Migas web, <http://www.bpmigas.com/English/default.asp>, accessed on March 25, 2008

independently and transparently regulating and supervising downstream activities of oil and sector.

Toll road sector

Part of government task to provide toll road concerning regulation, provision and supervision on corporation done by Toll Road Regulatory Bodies (Badan Pengaturan Jalan Tol - BPJT). BPJT was made based on Government Regulation No. 15/2005 as for implementation of Article 45 of Law No. 38/2004.

BPJT is the regulator and contracting authority, funded from the Ministry of Public Work (MPW) budget and is appointed by the Minister. The chairman of BPJT must be a civil servant, who has been released from his/her official duties. The tasks of BPJT include:

- To recommend the initial tariff and its subsequent adjustment to the minister;
- To take over toll roads upon expiry or revocation of the concession;
- To prepare the feasibility study and tender investment;
- To assist in the land acquisition process; and
- To monitor the concessionaire for compliance with the terms and conditions of the concession.

c. Relation between KPPU with sector specific regulators

As a competition authority, the main function of KPPU is to protect market from anticompetitive behavior. While the sector specific regulator such as Bank Indonesia and BRTI are responsible competition and technical regulation in the sectors. Since the sector specific regulators are assigned also to supervise the competition in their sector, there might be potential problems of overlapping tasks between the KPPU with the regulators. Any problems arise from those unclearly defined competition responsibility between these agencies would lead to policies which are incompatible or not in line with competition values.

1.2.5 Enforcement of competition policy and law

- Monitoring of competition policy implementation

The KPPU is one and only institution with the task and function to monitor and enforce competition policy implementation in Indonesia. Economic sectoral policy supervised by department or institution related. For example policy on banking sector supervised by Bank Indonesia (BI), policy on trade supervised by Ministry of Trade.

In several sector, there are some regulatory bodies that have function to supervised competition in the sector. BRTI has to supervise competition in telecommunication sector.

- **Monitoring of suspected violations to Competition Law**

As mandated by the Competition Law the duties of the KPPU shall include monitoring of competition law implantation by evaluating agreements, business activities and the presence of abuse of dominant position, that may result in monopolistic practices and/or unfair business competition. The KPPU is also mandated to provide suggestion on compliance of government policies and regulation with the competition law. This section describe competition law enforcement done by the KPPU including monitoring system on action of violation, handling of case of suspected violation, and system of execution of KPPU decision. To provide figures on how the duties are conducted the structure of the KPPU organization will be described first.

KPPU Organizational Structure

According to the Presidential Decree No. 75/1999 the KPPU institution consists of Commissioners and the Secretariat. The Commissioners consists of a chairman concurrently a Member, a Vice-Chairman concurrently a member, and nine other Members, all appointed by the president with the approval of the DPR. The Commissioners elect from and the chairman and the Vice-chairman.

In carrying out its functions and duties, the KPPU is supported by the Secretariat headed by an Executive Director. Organization of the Secretariat is divided into four directorates which are divided into some sub-directorates each [Figure 3]. To find evidences of suspected violation of competition law, the Secretariat is supported by group of investigators and some clerks are in charge to make investigation report and serve judicial administration and maintain the evidence. Table 4 summarizes the duties and function of the KPPU Secretariat.

In addition to the KPPU office in Jakarta, there are five regional offices locate in Surabaya, Medan, Balikpapan, Makassar, and Batam. The main functions of the regional offices are to receive reports on suspected violation from the public, to make a resume of the reports of suspected violation and competition law dissemination. The operation of the regional offices is limited since the person in charge is very small in number, averaging 3 persons each.

Table 4 The KPPU organizational functions – the summary (Based on the KPPU Decision No. 1/2006)

| Directorate | Areas of duty |
|-----------------------------------|--|
| Executive director | Overall The secretariate activities |
| Directorate of Administration | Administrative matter: general affair, finance and budgeting, and human resource. |
| <i>Sub directorate of:</i> | |
| General affair | Secretariat administration, protocol, business agenda, security, maintenance, and information system hardware. |
| Finance and planning | Finance and budgeting |
| Personel | Human resource management |
| Directorate of Law Enforcement | Competition Law enforcement |
| <i>Sub directorate of:</i> | |
| Report Handling | Filing reports on suspected violation |
| Monitoring | Monitoring of business actor activity |
| Case Handling | Handling the case of suspected violation |
| Litigation | Monitoring of implementation of the KPPU decisions and verdicts |
| Investigators | Finds evidences of action violations: Request and analyze data and/or information |
| Judicial clerks | Formulates Investigation report, serve judicial administration and maintain evidences |
| Directorate of Competition Policy | Industrial and competition policy analysis |
| <i>Sub directorate of:</i> | |
| Industry | Studies on business competition in several industries |
| Regulation | Studies on government regulations |
| Institution | Prepares and actuates activity interrelated with business competition law |
| Competition Policy Analysts | Competition policy and regulation |
| Directorate of Communication | Competition law dissemination, external relations |
| <i>Sub directorate of:</i> | |
| Public Advocacy | Competition law disseminations |
| Institution relationship | External relation |
| Publication | Documentation and publication |

- *Monitoring activities at the KPPU*

Monitoring activities by the KPPU is intended to enforce competition law implementation by business actors and to internalize competition value into government policies and regulations. Monitoring the implementation by business actors is done by collecting reports of suspected violation from any parties and conducting observation and analysis on the behavior of major business actors or those with significant market share.

Any parties can report the case of suspected violation to competition law by sending a letter to the Chairman of the KPPU.³² The report should contain: (1) The name of the company; (2) article(s) and activity in competition law violated; and (3) Identity of the sender. Report Handling division at the KPPU then handles the reports for verification. Since the KPPU has been operating, there were 645 reports received of which 305 reports are classified as expected violation to Article 22 of the law.³³

Surveillance of business actors' activities is focused on the business actor with dominant position in the market. Dominant position is achieved when a business player owns 50% or more market share, or if there are two or three business players own 75% or more market share. Monitoring is aimed at supervising dominant business players such that they do not abuse their dominant position that might result anti-competitive practices or unfair competition. There was 91 analysis conducted on the action of business actors of which 80 became the case of suspected violation.³⁴

In addition to the monitoring of implementation by business actors, the KPPU is also mandated to provide advice and suggestion to government for harmonizing government policies and regulation with competition law. These tasks are done by developing competition policy coordination system, policy evaluation. Since so many policies and regulations issued by the government and local government, policy monitoring is focused on policies and regulations which reported by the public or informed on mass media are suspected refuse to comply with competition law.³⁵

In terms of providing support for monitoring activities the KPPU has conducted cooperation with several government agencies and institutions. Currently the KPPU has signed memorandum of understanding (MOU) on agreement of sharing data and information with four agencies and institutions, these are National Statistical Body (BPS) the Ministry of Communication and Information Technology (DEPKOMINFO)³⁶, Commission for Eradication of Corruption (KPK)³⁷, Capital Market and Financial Institution

³² Article 38(1), 38(2).

³³ See Annex 1 for the summary of report handling by the KPPU.

³⁴ See Annex 2 for the list of studies done by the KPPU.

³⁵ See Annex 3 for the list of suggestion provided to the government.

³⁶ The Memorandum of Understanding between KPPU and Ministry of Communication and Information Technology (Depkominfo) was sign at October 16, 2006.

³⁷ Sign on February 6, 2006.

Supervisory Agency (Bapepam – LK). The MOU with Consumer Protection Body (BPKN) is currently in negotiation.

Table 5 The duties of the KPPU related to monitoring activities

| No. | Duties | Monitoring points | Method of monitoring | Responsible department |
|-----|--|--|--|-----------------------------------|
| 1 | Evaluates agreement | <ul style="list-style-type: none"> • Monopoly (Article 4) • Price fixing (Article 5) • Market allocation (Article 9) • Cartel (Article 11) • Boycott (Article 10) | <ul style="list-style-type: none"> • Receiving reports from the public; • Monitoring mass media news and features • Research, studies and assessments of the other agencies | Sub-directorate of monitoring |
| 2 | Evaluates business activities and or action of business actors | <ul style="list-style-type: none"> • Merger (Article 28) • Monopoly (Article 17) • Monopsony (Article 18) • Market block / concentration (Article • Conspiracies (Articles 22-24) | <ul style="list-style-type: none"> • Receiving reports from the public; • Monitoring mass media news and features • Research, studies and assessments of the other agencies | Sub-directorate of monitoring |
| 3 | Evaluates the existence of misuse of dominant position | <ul style="list-style-type: none"> • Multiple positions (Article 26) • Share ownership (Article 27) • Merger and acquisitions (article 28) | <ul style="list-style-type: none"> • Receiving reports from the public; • Monitoring mass media news and features • Research, studies and assessments of the other agencies | Sub-directorate of monitoring |
| 4 | Provides advice and opinion on government policies | <ul style="list-style-type: none"> • Government policies and regulations; • Bills | <ul style="list-style-type: none"> • Research, studies and assessments of the other agencies | Directorate of competition policy |

- *Procedure of cases handling by the KPPU*

The KPPU handles the case of suspected violation to the competition law based on the procedure manage by KPPU Regulation No. 1/2006³⁸. Duration and time limitation of each steps of case handling are as of Table 3. The steps of case handling procedure are as the following.

Step 1, Filing

³⁸ The procedure is the revision of case handling procedure which is previously regulated by the KPPU decree No. 5/2000.

Filing the case of suspected violation is to resume a report of suspected violation submitted the public or a finding of business actor monitoring done by the KPPU. Reports' filing is intended to evaluate the properness of the report including the completeness of the supporting documents. The filing process is stopped if the supporting document is incomplete.

The filing result in the form of "the Report of Suspected Violation" consists of information on (1) identity of violators (2) actions of violation (3) modus and/or impact of the violation (4) articles in the Law that have been violated and (5) suggestions regarding follow up.

Step 2, Report presentation

The Secretariat presents "The Report of Suspected Violation" in the Commissionaires' Meeting attended by a number of Members of the Commission reaching the quorum. At the KPPU this presentation is called as "Hearing"; in which the Commissionaires evaluate properness of the reports and decide whether the case should be further processed.

The process is stopped if the Commissioners fell the case is improper and/or supporting document is incomplete.

Step 3, Preliminary examination

To conduct preliminary examination the KPPU forms a team consisting three Commission Members (Commissioners). In conducting the examination, the team is supported by investigators. Preliminary examination is aimed to find early evidences by examining the suspected violators and parties that know the action of violation. Whenever need, the KPPU could request documents and other evidences.

"The Report on Results of Preliminary Examination" consists –at the minimum (1) suspected violation (2) testimony of the suspected violators and (3) suggestion regarding follow-up.

Based on the report, the Commission conducts a meeting to make a "KPPU Decision" ("Ketetapan KPPU") or conclusion against suspected violation of competition law, in determining if the case should proceed or not. The KPPU

then inform the verdict to the violators. The process of investigation is stopped if no violations found.

Upon the decision the violators can accept or refuse. If the violators accept the verdict (agree to stop the violation actions), investigation process is stopped; and the KPPU forms a team to monitor the implementation of the verdict.

Step 4, Follow-up examination

The follow-up examination is done if the violators refuse or fail to perform the KPPU verdict; and intended to find evidences on the suspected violation. The examination is done by a team consisting three Commission Members.

To find evidences the team of investigator conducts activities such as asking the suspected violators, witnesses, experts and government institutions for testimony, information, and documents; and investigating activities of the violators.

The suspected violator can commit defense by showing witness, experts and other evidences.

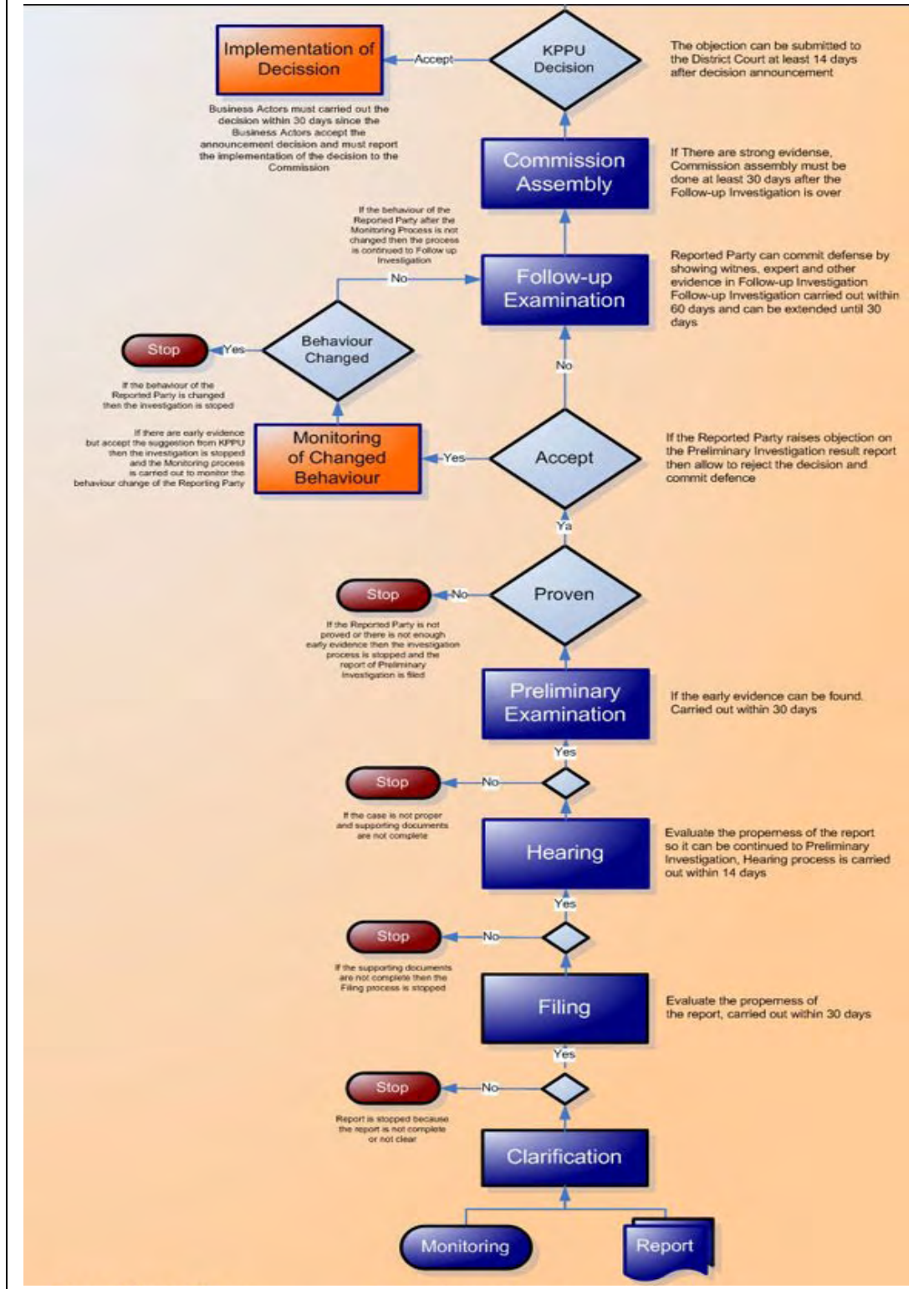
Step 5, The Commission Assembly

Decision regarding the occurrence of violation ("Putusan KPPU or the KPPU Verdict) is made in the Commissions' Assembly Session. In the session the suspected violators may commit a defense regarding the actions that are suspected as violations.

Table 6 Duration and time limit on each steps of case handling by the KPPU

| Step | Activities | Time limit |
|------|---|--|
| 1 | <ul style="list-style-type: none"> Monitoring business activities by the KPPU Receiving reports on suspected violation from the public, report verification | 90 working days with max. of 60 working days extension 60 working days with max. of 30 working days extension |
| 2 | <ul style="list-style-type: none"> Filing on monitoring reports Clarification of case reported | Max 30 working days Max 30 working days |
| 3 | Report presentation | Max 14 working days after step 2 finalized |
| 4 | Preliminary examination | Max 30 working days |
| 5 | Further examination | 60 working days with max. of 30 working days extension |
| 6 | Court of commission counsel | Decision announced on max. 30 working days |

Figure 4 Case handling procedures based on KPPU Regulation No. 1/2006



- *System of execution of the KPPU decisions*

Article 36(d) of law No. 5/1999 stated that KPPU Authority shall include "to make conclusions regarding the results of its investigations and or hearings as to whether or not there are any monopolistic practices and or unfair business competition". Based on the authority given by the law the KPPU may wish to decide whether the public reports on suspected violation to competition law. In relation with the case of suspected violation to competition law the KPPU can make two types of decisions which are "Ketetapan KPPU" (The KPPU Decision) and "Putusan KPPU" (KPPU Verdict).

Articles 54-56 of KPPU regulation No. 1/2006 provide quite clear provision on the procedure for formulation the verdicts. In the contrary, there is no precise stipulation on the procedure for making KPPU decision. Article 33(1) of KPPU Regulation No. 1/2006 stated that the decision is made in the commissioners' meeting. This provide enormous authority to the commission to decide whether any actions of violation. Further provision on case handling procedure, especially on formulating decision, is decisive to make more transparent decision making.

As stipulated by the KPPU Regulation, the decision or verdict is informed to the violators (or suspected violators).³⁹ Formally, the KPPU send a letter to violators (suspected violator) to inform the decision or verdict. The violators (or suspected violators) are assumed to have received the announcement in the day the decision or verdict is uploaded to KPPU website. For several cases being a focus for public attention, mass media conference is often used for exposing the verdict.

Box 2. The concept of Decision and Verdict

There are two types of conclusions regarding the case of suspected violation made by the KPPU which are "Ketetapan KPPU" (in this report the term is translated to KPPU Decision) and "Putusan KPPU" (translated to KPPU Verdict). These two concepts are defined as the following:

KPPU Decision is the conclusion KPPU made against suspected violation of competition law, in determining if the case should proceed or not.

KPPU Verdict is the judgments KPPU made against suspected violation of competition law, in determining if the suspect conducted the violation or not.

³⁹ KPPU Regulation No. 1/2006, article 34, 58, and 60.

Implementation of KPPU decision (“Ketetapan KPPU”) follows the procedure of case handling as regulated by KPPU Decision No. 1/2006. The KPPU forms a team to monitor the implementation by violators (whether they stop the actions of violation). If the violator fails to perform the decision, the KPPU take actions to further process the case of suspected of violation by conducting follow-up examination.

The implementation of KPPU Verdict (“Putusan KPPU”) is regulated by Article 44-46 of the Competition Law. The violators shall be obligated to implement the KPPU Verdict within 30 days from the time they receiving notice [Article 44(1)]. The KPPU Verdict shall be final, binding and enforceable if the violators did not raise an objection within a stipulated timeline. The violators may appeal to District Court during 14 days since they receive notification [Article 44(3)].

In case the violator is imposed to pay fine, fine should be transferred to the account of the office of state treasury to become non-tax income for the government. But, however, the KPPU has no authority to confiscate for those who unwilling to implement the verdict. In case the violator fails to perform the verdict (not appeal but not implement the verdict), Article 44(4) stipulates that “the KPPU shall submit such decision to an investigator for conducting investigation...” This stipulation is seemed to be controversy with Article 46 which stated that, if no appeal, “the execution of KPPU verdict shall be requested to District Court”.

Controversy between Article 44(3) and 46(2) raised a doubtful on enforcing verdict implementation by the KPPU; to submit the case to the police and/or the courts for criminal investigation and examination [Article 44(3)] or to exercise legal attempts as to request a stipulation of execution to the District Court [Article 46(2)].

Monitoring of implantation of KPPU verdict is done by sub-directorate of litigation of the KPPU. Basically, the KPPU utilizes internal resources on appealing the case to district court or cassation to Supreme Court. The KPPU has no budget for hiring lawyer for conducting legal effort in District or Supreme Court.

1.3.2 Some issues on Competition Law

The application of the Competition Law is facing several problems which are including the substances of the law itself and the procedure of law implementation. Some issues regarding the contents of Competition Law, the procedure of the implementation and guidelines for

implementation. There have been some factors constraining the effectiveness of competition law enforcement including those related to weaknesses inherent within the law.⁴⁰

- *On the contents of the Law*

There are several issues in terms of the contents of the law such as duplication of provision in the different part, contradiction between the articles and improper explanation for some definition of the provision.

- Article 6 of the Law (the provision regarding price discrimination) may be inapplicable.⁴¹ The agreements for setting lower prices (but not the predatory pricing) or providing a discount to several buyers are common practice especially for major buyer.⁴² The stipulations may be inappropriate with current business practices.
- Several articles in the law may be inapplicable since the lack of provision for implementation. Article 28 on Merger and Acquisition (M&A) and article 29 on Post Control on M&A need further provision for implementation in the form of Government Regulation.⁴³
- Various provisions regarding prohibited agreements and activities, dominant position and sanctions against the provisions offender are need more detail and obvious explanation. See next section for the detail of guideline formulation by the KPPU.
- Several articles in the law are seemed to be overlapping. Article 11 prohibits business actors to enter agreements with the intention of influencing prices by arranging production or marketing. Such provision is also provided on Article 9 (on division on market territory) and on articles 5 – 8 on price fixing. The provision of abusive practice of dominant position [Article 25(1)] partly regulated by Article 19.
- Some provisions should apply rule of reasons approach instead of per se illegal. Price discrimination and cross ownership should have adopted *rule of reason* instead of *illegal per se*. Vertical integration should not be prohibited as long as not cause monopolistic practice and unfair competition.⁴⁴
- Some issues of competition are not regulated in the law. The existing law has not addressed several competition issues such as rising rival cost—a business strategy to

⁴⁰ OECD (2006). Annual Report on Competition Policy Developments in Indonesia 2005.

⁴¹ Interview with the KPPU officer, February 22, 2008

⁴² Interview with Rikrik Rizkiana, February 23, 2008

⁴³ See section for detail explanation on the difficulties for formulating the GR.

⁴⁴ Interview with Rikrik Rizkiana

restrict competitors' access for production materials, causing higher product costs. The compensation for the loss caused by the actions of violation is also not regulated by the Law.

- The definition of unfair competition is too simple. A few clues to the patterns of conduct and degree of restraint of competition are shown. All is left to the reasonable interpretation. In practice KPPU can attain purposes mentioned above by utilizing its guideline issuing power. The definition of "monopolistic practices" is very complicated and difficult to understand what is prohibited in practice. It seems necessary to clarify by reasonable interpretation or preferably by amendment of the law.⁴⁵
- Several provisions on exemption⁴⁶ are problematic. It seems necessary to have them reviewed and more finely tuned; what conduct, in what manner and for what purpose is exempted and the case where exemption is denied or cancelled should be prescribed in the law.⁴⁷ Otherwise most of the effect of the competition law may be lost. Where the exemption is based on the prevailing laws, the relevant articles of such law should be clearly stipulated.

- *On the Procedural Law*

Procedural Laws used to process the violations of the Competition Law are:

- The competition law itself (Law No. 5/1999);
- KPPU Regulations No. 1/2006 regarding Case Handling Procedures, which revoked the KPPU Regulation on No. 5/2000;
- Supreme Court Regulation (Peraturan Mahkamah Agung – PerMA) No. 3/2005, which revoked PerMA No. 1/2003.

Case handling procedure of suspected violation is stipulated on article 38-46. On the procedure of case handling, the law determines that the KPPU is obligated to complete a follow-up investigation within 90 days [Article 43(1) & 43(2)]; district court must make a decision within 30 days from the commencement of the hearing [Article 45(2)]; and

⁴⁵ Nakagawa (2006).

⁴⁶ These are (1) article 5(2a) on agreement entered into in the context of a joint venture; (2) article 5(2b) on an agreement entered into based on the prevailing laws; (3) article 50a on actions and or agreements intended to implement applicable laws and regulations; (4) article 50b on agreements related to intellectual property rights, such as licenses, patents, trademarks, copyright, industrial product design, integrated electronic circuits, and trade secrets as well as agreements related to franchise; (5) article 50h on business actors of the small-scale group; and article 50i on activities of cooperatives aimed specifically at serving their members.

⁴⁷ Ibid.

Supreme Court must make a decision within 30 days from the time the appeal is received [article 45(4)]. The time constraints are too strict to follow in a very difficult and complicated case.

If it is interpreted as binding one in a sense that the procedure is null and void when these time constraint is not kept (for example, KPPU can't issue a decision when it can't complete the follow-up investigation within 90 days), the practical effects of such time constraint may strengthen the tendency that only easy cases are eliminated while difficult and one of the improvements is by interpretation, that is : the time constraints mentioned above are endeavor targets, and has no binding power in a sense that for example KPPU may issue a decision even if it can't complete a follow up investigation within 90 days in spite of its full force endeavor.⁴⁸

Although there are great improvements on legal procedure for appealing competition case by endorsement of Supreme Court Rules⁴⁹, further elaboration to the rule is needed for accommodating the application. The judicial procedures need further clarifications regarding the steps to be taken by KPPU in court proceedings.

- *Guidelines*

The application of the Law has been facing difficulties since the improper explanation for the definition of some provisions in the law. To provide proper explanation regarding agreements, activities and several condition of dominant position prohibited by the Law, the KPPU is mandated to prepare guidelines. The guidelines are aimed to increase transparency, clarity, and predictability of law and promote self compliance. The Law also mandated for formulating further provisions in the form of Government Regulation for implementation of Article 28 regarding merger, consolidation and acquisition and Article 29 regarding post monitoring of merger, consolidation and acquisition. But, however, until now the government as well as the KPPU has never finalized such regulation; and guideline for Article 22 on Collusive Bidding is the only guideline that has been issued

⁴⁸ Ibid. Nakagawa (2006).

⁴⁹ In 2003 the Supreme Court enacted regulation No. 1/2003 concerning the Procedure of Lodging Legal Efforts on Appealed Courts of KPPU Ruling. A further improvement is also made in 2005 by issuing Supreme Court Regulation No. 03/2005. After the enactment of Supreme Court Regulation No. 03/2005, for the appeal filed by more than one business player for the same KPPU decision, KPPU may submit an application to the Supreme Court allow the supreme court to appoint one of the proposed District Courts. Supreme Court Regulation No. 03/2005 has stipulated that the KPPU decision is not included as Public Administration Rules.

regarding provision of the Law. In the absence of the government regulation, articles 28 and 29 of Law No. 5/1999 cannot be implemented.

As for implementation of Article 28(3) and Article 29(2) of the competition law, the KPPU has conducted study on "Finding model of merger control in Indonesia".⁵⁰ The draft of the Government Regulation (GR) on Merger, Acquisition and Consolidation has already been submitted to the Ministry of Law and Human Rights (MLHR) on May 25, 2007. But however, the enactment of the GR is still uncertain. Since the Law is the resulted by the initiative right of the Parliament (DPR), enactment of the GR is facing procedural difficulties. The MLHR as well as the Ministry of Trade have unconscious of proposing the GR.

Table 7 Guidelines on Competition Law Provisions

| Number of articles in the Law | Provisions' area | Status |
|--------------------------------------|---|--|
| Article 22 | Collusive bidding | Available |
| Article 50a | Exception on actions and agreements intended to implement applicable laws and regulations | <u>Drafted</u> , in the process of public consultation |
| Article 47 | Administrative measures | <u>Drafted</u> , in the process of public consultation |
| Article 19 | Market control | <u>Drafted</u> , in the process of public consultation |
| Article 25 | Dominant position | <u>Drafted</u> , in the process of public consultation |
| Article 26 | Multiple positions | Being drafted |
| Article 27 | Share ownership | Being drafted |
| Article 50d | Exception on agency agreements | Being drafted |

Formulation of guidelines related to the Competition Law is one of duties mandated by the Law to the KPPU. Most of guidelines have been in the process of development. Up to the end of 2007 four guidelines have been drafted and in the process of endorsement by

⁵⁰ <http://www.kppu.go.id/>

Commissioners of the KPPU⁵¹. These are guideline for provision of Article 50a⁵², Article 19⁵³, Article 47, and Article 25. Some others (three guidelines) are in the process of drafting and disseminating for public consultation. These are the guideline for provision of article 26, article 27 and article 50d (Table 6).

- *Competition Law amendment (revision)*

The law revision is needed because of the substance law weakness inherent within the Law.⁵⁴ Revision to the Law No. 5/1999 is one of working programs stated on the National Mid-term Planning (Rencana Pokok Jangka Menengah Nasional- RPJM) 2004-2009. The draft for competition law revision is targeted could be finalized by the end of 2008.

In line with the intention to revise the Law, the KPPU has conduct a study to reexamine the current Competition Law (the Law No. 5/1999); and academic paper for law revision is currently in progress of formulation. The process of law amendment depends on the priority set by the government or DPR. So far, the competition law revision is out of list of the National Legislation Program (Program Legislasi Nasional – Prolegnas). This means that the competition law revision is not a priority for the time soon.

-000-

⁵¹ There is no formal procedure on guideline formulation by the KPPU. The guideline formulation needs studies by other parties and also long time for discussion by commissioners.

⁵² http://www.kppu.go.id/docs/pedoman_pasal_50.pdf

⁵³ <http://www.kppu.go.id/>

⁵⁴ BAPPENAS (2006). *Rencana Kerja Pemerintah 2006* (The Governments' Work Plan 2006) Chapter 16. p II.16-3

2 Government regulation and competition

2.1 Government Regulation

The following discussion is targeting at exploring government regulations and the impact on competition. In general, fair competition is based on the principle of equal opportunity for all business actors; it implies minimum intervention from the government. However, government interventions or restrictions are necessary under certain circumstances to ensure fair business practices and maximum benefits for the society.

Most monopolies in Indonesia have not been the result of unfair competition between firms, which is referred to as industrial monopoly. Rather, they have been the result of the government's intervention in the market.¹ This can be distinguished in three types of monopoly practices. The first type of monopoly practice has been for the government to grant economic privileges to firms that have close ties with high-ranking government officials. The second type resulted from State Owned Enterprises (SOEs) monopolizing various lines of business on the ground of the constitution. The third type of monopoly practice is firms involved in a sort of 'price fixing' as government frequently asked their association to give input on tariffs.²

Government interventions may come in the forms of trade and investment restriction, licensing, price control, market allocation. Such restrictions as well as the privileges awarded to certain business actors may have impacts on competition in the market and economic efficiency. The sections below summarize the governments policy on providing privileges and restrictions in several areas of economy. The monopoly by the state and SOE will be discussed first.

2.1.1 Public monopoly and SOEs

The excuse for the role of state in economy is based on the Article 33 of National Constitution (Undang-Undang Dasar 1945) which mandated the state to run production sectors or business activities in areas with strong bearing on public welfare. Verses 2 and 3 of the article stated that "branches of production essential to state and governing the life and living of the public" (cabang-cabang produksi yang penting bagi Negara dan menguasai

¹ Juwana, Hikmahanto (2004). Experience on Indonesia's Competition Law: Challenges Confronting the Enforcement of the Law. APEC Competition Training Program.

² Ibid.

hajat hidup orang banyak) as well as “land, water and natural riches contained” (bumi, air dan kekayaan alam yang terkandung di dalamnya) should be “controlled” (dikuasai) by the state.

The discourse is in two aspects which center on the interpretation of “to be controlled” (dikuasai) and branches of production essential to the state and governing the life and living of the public. The word “dikuasai” (to be controlled) by the state can be interpreted either “to be controlled which suggest that economic sector need not be necessarily owned by the state, but should be directed, supervised, controlled and evaluated by the government” or “to be owned by the state may be directly run by the government through public ownership”.³

The above second interpretation supported the idea of public monopoly in certain economic sectors. For instance, oil and gas industry is considered as “essential branch of production” that should be controlled by the government. Which sectors in economy should be considered as “essential” is subject to interpretation. Electricity, telecommunication, postal services, sea and airport, etc. are considered to be essential.

In practice, the state then delegated the right for controlling the essential sectors to particular state owned enterprises or government agencies designated to run governments’ function on providing goods and services and regulation in the sector. For example, the state handed over its monopoly in oil and gas sector to National Oil and Gas Company (PERTAMINA). The company is also awarded the right for regulating the sector, to make production-sharing contracts on oil and gas exploration.⁴ As in the oil and gas industry, the state monopoly in electricity, telecommunication,⁵ postal service,⁶ and several activities in transportation⁷ are also handed over to SOEs. Table 8 provides examples of public monopoly were handed over to SOEs.

³ Mardjana, I Ketut (1993), *Public Enterprises in Indonesia: Restructuring or Privatisation*; in: *The Indonesian Quarterly* Vol. XXI (1993) No. 1, pp.49-72.

⁴ Based on Law No. 44/1960 on Oil and Gas Mining and Law Law No. 8/1971 on PERTAMINA; this state owned oil and gas company (PERTAMINA) has an exclusive right for exploring, exploiting, refining and distributing oil and gas.

⁵ Based on Law No. 3/1989 mandated that The operation of telecommunication services is run by the government; the government then handed over the telecommunication services operation to designated state owned enterprise (GR No. 8/1993).

⁶ Law No. 6/1984 states that postal services are to be performed by the government, in which the implementation to be carried out by government appointed party.

⁷ Law No. 21/1992 cites that the operation of seaports is to be run by the government through a state-owned company. Law No. 15/1992 also mentions similar thing about airport operation, i.e. that the government has the authority over the location, the design and the construction of airports. Airport navigation facilities also belong solely to a state-owned company.

Table 8 Public Monopoly and SOEs

| Regulations | Areas of industry | SOE | Current Status |
|--|--|---|----------------------|
| Law No. 8/1971 on PERTAMINA | Oil and gas | handed over the state monopoly right on oil and gas sector to PERTAMINA | Reformed |
| Law No. 3/1989 on Telecommunication | Telecommunications The government own, develop and run telecommunication services | Hand over to implementing body | Reformed |
| Law No. 15/1985 | Electricity | PLN Monopoly in generating and distributing electricity | Reform was canceled |
| Law No 6/1984 on Postal Services | Postal services | | Reform is in process |
| Law No. 15/1992 | Airports services | | Reform is in process |
| Law No. 21/1992 | Seaports services | | Reform is in process |

Several regulations (law) that provide privileges to SOEs or certain institutions have been reformed.⁸ Oil and Gas sector as well as telecommunication are now opened for competition; the regulatory functions are now taken over by the government through a regulatory body. This provides a clear separation and avoids conflict of interest between actor and regulator, and generates transparency in the sector. Although, some challenges are daunting,⁹ reforms in other sector such as in postal services, and in transportations are in process.

In addition to monopoly of production of certain goods and services the government also considers marketing and distribution of several goods as strategic and need to be controlled. The state even could award monopoly right to private enterprises such as BPPC for clove distribution.¹⁰ To stabilize price of basic food commodities the State Logistical Agency (Badan

⁸ See next chapter for the detail on government efforts to relax government regulations that causing unfair competition.

⁹ For example, reform in electricity sector was delayed as the law on electricity was canceled by Constitutional Court. See Chapter 3.

¹⁰ In 1997, BPPC right for clove marketing monopoly was eliminated; and BULOG duty was reduced to become only maintaining price rice stability (see next chapter for detail). To ensure stability of price and continuity of food supply, especially with the reduced role of Bulog, the government formed a monitoring team through the Trade and Industry Ministry Decree No. 372/2004 on the

Urusan Logistik - BULOG) was founded for importing and distribution several commodities such as sugar, rice, soybeans, etc. In executing the tasks BULOG implements buffer stock strategy, which buys rice at floor price level during harvest season to adsorb supply to prevent declining price. In the past BOLOG had a monopoly on importing and distributing major bulk food commodities, such as wheat, rice, sugar, and soybeans, but now has the status of a state-owned enterprise with responsibility for maintaining rice stocks for distribution to the military and to low-income families, and for managing the country's rice stabilization programme. BULOG is no longer entitled to draw on Bank Indonesia credit lines and must use commercial credit and pay import duties.¹¹

As mentioned above, the state role on several economic sectors are handed over to SOEs. Some SOEs are established by nationalization of Dutch companies. Currently, SOEs are estimated to account for up to 40% of Indonesia's GDP, reflecting their key role in the oil, gas and electricity industries, their continued presence in various other industries, including cement, fertilizer, steel and mining, as well as in agricultural plantations, transport, banking, and telecommunications (Table 9).¹²

Box 3 Evolution of Regulation on Oil and Gas industry in Indonesia

Prior to 2001, PERTAMINA was both the state oil and Gas Company and the industry regulator. Oil and gas exploration took place through production-sharing contracts with PERTAMINA. These are now with the Government through BP MIGAS, the upstream industry regulator.

In 2005, PERTAMINA's downstream monopoly was lifted, while downstream regulation is supervised by BPH-MIGAS. Although the share is still considerably very small compared to PERTAMINA (less than 5% of fuel market), currently, three fuels distribution companies other than PERTAMINA has been operated, these are Elnusa, Shell and Petronas. The PERTAMINA monopoly on subsidized fuels distribution, including retail distribution, is still continued (the Ministry of Energy and Mineral Resources Regulation No. 3674/2005). PERTAMINA also retains LPG distribution monopoly for small businesses and for poor people, appointed through government regulation No. 104/2007.

formation of monitoring team to watch and evaluate the procurement process, distribution and price changes in rice, sugar, cooking oil, kerosene and fertilizer (Tim Monitoring Pengadaan, Pendistribusian dan Perkembangan Harga Beras, Gula Pasir, Minyak Goreng, Minyak Tanah Dan Pupuk).

¹¹ WTO Secretariat (2007). See next chapter for more detail on revocation of BULOG monopoly right.

¹² Ibid.

Table 9 Major state-owned enterprises, 2006

| Firm | Activity | State ownership (%) |
|---|--------------------|---------------------|
| Adhi Karya ^a | Construction | 51.00 |
| Angkasa Pura I ^a | Airport management | 100.00 |
| Antam Tbk | Mining | 65.00 |
| Asuransi Ekspor Indonesia | Insurance | 100.00 |
| Asuransi Kredit Indonesia ^a | Insurance | 45.00 |
| Bank Ekspor Indonesia | Banking | 100.00 |
| Bank Mandiri ^a | Banking | 68.90 |
| Bank Negara Indonesia ^a | Banking | 99.12 |
| Bank Rakyat Indonesia ^a | Banking | 57.37 |
| Danareksa ^a | Financial | 100.00 |
| Garuda Indonesia ^a | Airline | 100.00 |
| Indofarma ^a | Pharmaceuticals | 80.66 |
| Indosat | Telecommunications | 15.00 |
| Jakarta Industrial Estate ^a | Industry | 50.00 |
| Kawasan Berikat Nusantara ^a | Industry | 88.70 |
| Kereta Api Indonesia | Railway | 100.00 |
| Kimia Farma ^a | Pharmaceuticals | 90.03 |
| Krakatau Steel | Steel | 100.00 |
| Merpati Nusantara ^a | Airline | 93.20 |
| Pembangunan Perumahan ^a | Construction | 51.00 |
| Pertamina | Oil and gas | 100.00 |
| Perusahaan Umum Bulog | Logistics | 100.00 |
| Perusahaan Gas Negara ^a | Energy | 61.00 |
| Perusahaan Listrik Negara | Electricity | 100.00 |
| Pos Indonesia | Postal service | 100.00 |
| Semen Gresik | Cement | 51.00 |
| Surabaya Industrial Estate ^a | Industry | 50.00 |
| Tambang Batubara Bukit Asam | Coal mining | 69.24 |
| Telekomunikasi Indonesia ^a | Telecommunications | 51.19 |
| Timah Tbk | Mining | 65.00 |

Source: WTO Secretariat, Trade Policy Review: Indonesia 2007, Table III.4

The government commonly burdened SOEs with a dual mission, not only of earning profits but other motives such as providing social services. The excuse constantly cited for poor performance was that SOEs also had to carry out their social function.¹³ Many SOEs also received government privileges through exemptions and special access to certain markets. Import licensing is one of the areas in which SOEs retain a privilege. For instance, GR No.

¹³ Silalahi, Pande Radja ().

33/2002 provides value added tax exemptions for imported goods of strategic value, which are usually reserved for SOEs.

2.2 Government restriction

- Restrictions on trade

Restrictions on foreign trade are aimed to protect domestic industries from foreign competitors. As many countries in the world, Indonesia applied restriction on foreign trade in the forms of tariff and non-tariff barriers. Tariffs are applied to several goods in several tariff rates. Table 9 outline the tariff applied for importing goods from Most Favored Nation. As seen in the table, tariff rate for agricultural products and textiles and clothing are higher than average; indicating the government intentions to provide higher protection for the sectors.

Table 10 Structure of the MFN tariff, 2002-06
(Per cent)

| | 2002 | 2003 | 2004 | 2005 | 2006 |
|---------------------------------|------|------|------|------|------|
| Simple average applied rate | 7.2 | 7.2 | 9.9 | 9.9 | 9.5 |
| Agricultural products (HS01-24) | 8.6 | 8.6 | 11.6 | 11.8 | 11.4 |
| Industrial products (HS25-97) | 7.0 | 7.0 | 9.6 | 9.6 | 9.2 |
| WTO agricultural products | 8.6 | 8.6 | 12.1 | 12.2 | 11.8 |
| WTO non-agricultural products | 7.0 | 7.0 | 9.6 | 9.6 | 9.2 |
| Textiles and clothing | 10.5 | 10.5 | 10.8 | 10.8 | 10.9 |

Source: WTO Secretariat, Trade Policy Review: Indonesia 2007, Table III.2

Other forms of trade restriction are special licensing requirements and prohibitions. Import licensing system is implemented to protect health, safety, security, the environment, and public morals as well as to meet certain socioeconomic objectives including enhancing domestic competitiveness and preventing smuggling. Alcoholic beverages, lubricants, explosives, and certain dangerous chemical compounds, ozone depleting substances, and rough diamonds, are items among 141 tariff lines subject to these requirements. Import licensing is carried out through special importer identification code (API) system, specified in Trade & Industry Ministry Regulation No. 40/2003. Import licensing also applies to textile¹⁴, in which textile can only be imported by registered importers; and only companies that have production facilities using imported fabrics as inputs for finished products, such as garments or furniture, may obtain import licenses.

¹⁴ MOT Regulation No. 732/2002 on concerning Textile Import Arrangements.

Several products such as rice and chicken parts are subject to import prohibitions. Rice imports are prohibited during the peak harvest season (January to June) and may be imported only by importer-producers and registered importers of rice. Rice imports are approved for a specified tonnage, type of rice, port of destination, and shipping schedule. It can be used only as a raw material in industrial processing and may not be sold or transferred to other parties. Restrictions on imports of meat and poultry products is imposed by requiring an Importer Letter of Recommendation (Surat Rekomendasi Importir), which may affect the quantity allowed to enter.

- Restrictions on investment

Before the new investment law enactment (Law No. 25/2007 on Investment), foreign and domestic investment projects must be approved by the Investment Coordinating Agency (Badan Koordinasi Penanaman Modal – BKPM). Currently, such approval is not required anymore, but investment should conform with Presidential Regulation No. 111/2007 that is detailing investment activities closed to investment and open with restrictions.

Based on the regulation, several areas of industry are closed or open with restriction for foreign investors, while several areas of activities are reserved for small and medium enterprises (SMEs).

- Safety and security and environment protection

Regulations below are intended to ensure the safety and security of public consumption and to protect environment.

- PD No. 28/2004 on Food Safety and Quality. The regulations cover standards for sanitation in relation to production, storage, transportation and distribution as well as quality certifications applicable in food processing in agriculture, fishery, forestry, industry and health sectors.
- MOT Regulation No. 520/2003 on Prohibition for importing hazardous chemicals. Basically it prohibits hazardous chemicals, which due to the nature or the amount, directly or indirectly spoils or causes damage to the environment, health or life threatening.

2.3 Licensing

Business license is aimed to functions social protection, market control, and gathering information on business activities. In general, business licenses, permits and special permissions fall into one the following categories:

- ✓ Company act and legalization
Approvals on formal business formation or company act from the Ministry of Justice. This approval needs a deed of establishment from notary, tax identification number, etc.
- ✓ Physical permits
Business location permit, construction permit, and the nuisance permit. For businesses with sizable land requirements, these physical permits are preceded by a principle permit and location permit (differ to business location permit). Both permits are granted at the discretion of local and/or national authorities.
- ✓ Sectoral licenses
License for operating in certain sector: trade, industry, and tourism.
- ✓ Business registration
Only after these steps are completed can a firm register its business. However, for limited liability companies, this step is composed of numerous procedures, which include obtaining a registration certificate and publishing an announcement in the legal gazette, which is done through the Ministry of Justice.
- ✓ Product-specific and activity-specific licenses
For examples, permits to operate industrial or transportation equipment, permits to produce commodities and other permits to transport them, export licenses, and permits to operate specific tourism activities (such as water-tourism permits). These licenses issued national government as well as provincial and district/city governments. Some of these may even involve the approval of local business associations.

The complexity of the licensing framework in Indonesia often forces firms to choose among three unattractive options: trying to navigate labyrinthine official licensing rules; risking (or acquiescing to) illegal bribes to try to expedite processes; or forgoing compliance and enduring the uncertainties inherent in the informal sector. Especially, for growing small and medium sized businesses, such obstacles can hinder opportunities to access credit and enter new markets.¹⁵

2.4 Price control

"Administered prices" remain for a handful of commodities and services including petrol, electricity, liquefied petroleum gas, rice, cigarettes, cement, hospital services, potable/piped water, city transport, air transport, telephone charges, trains, salt, toll-road tariffs, and postage.

¹⁵ Asia Foundation 2007.

The markets for essential foodstuffs such as sugar, cooking oil, wheat flour and soya beans were freed in 1999.¹⁶ Government control on price is intended to stabilize price and to maintain affordability of these goods and services especially for lower-income groups. Price controls are also intended to protect small producers (as in the case of rice price control) from risk price declining in harvest season. Price control is sometime applied parallel with market allocation, as in cement industry. In the past, distribution of cements including ex-factory and retail price is arranged regionally.

2.5 Expected impacts to competition

As mentioned earlier, most monopoly practices in Indonesia are resulted by the government's intervention in the market. Monopoly by SOEs eliminated competition in the area of industry; and privileges create unfair competition among business actors. Under such condition, the excessive pricing and unfair practices that are detrimental to consumers are often in place. In absent of competition, the business actors have no incentives to increase efficiency and causing misallocation of resources. This means that, rather, increasing benefits for the public, awarding monopoly right to certain business actor is possible to be harmful for the consumers.

Airline industry provides the example of how deregulation created more competition¹⁷, drove down prices and improved customer service. Cellular telecommunications industry is another example of the beauty of competition. The sector has shown phenomenal growth with the pricing for the service would continue going down. The growth of fixed line communications, on the other hand, was stagnant with only one provider – Telkom.

On the restrictions on trade, competition in domestic market is not effected by tariff barrier. But, however, protections (in the forms of tariff or non-tariff) to domestic industry may cause inefficiency of production, reduce competitiveness and enforces the increase in price. Unfair competition may be resulted by trade restriction in the form of non-tariff barrier. Trade license (imports or exports licenses) sometimes awarded in non-transparence manner. Certain business actors, in some cases, are provided privileges in obtaining the licenses. Criteria to be fulfilled to attain license for importing sugar, for example, are only eligible for certain business actors (mostly State-owned enterprises).¹⁸

¹⁶ WTO Secretariat 2007

¹⁷ Data from Indonesian Ministry of Transportation, www.dephub.go.id

¹⁸ Iwantono, Sutrisno (2003), Economic crisis and cartel development in Indonesia, paper presented at 5th International Cartels Workshop, Brussels, Belgium

Environmental protection, securing safety and security are essential although the deregulation is pushed to take in place. Unfair competition might be resulted where as the implementation of the regulations is not transparency and unclear.

Table 10 Government Regulations affecting competition

| Government policy | Areas of industry or intervention | Expected impact to competitions |
|--|---|--|
| 1 Public monopoly | <ul style="list-style-type: none"> - Oil and gas, telecommunication (have been reformed) - Electricity, postal service, port & airport operation, rice distribution etc. | - Removes competition |
| SOEs | <ul style="list-style-type: none"> The government - hands over its role on providing goods and services (monopoly right) to SOEs; - provides privileges (priority in public procurement, special access to imports license, etc.) to SOEs: | - Reduces competition |
| 3 Restrictions: | | |
| on investment | <ul style="list-style-type: none"> - Entry barrier: Several sectors of economy are reserved for SMEs and some others are closed or open with restrictions | - Reduce competition |
| On trade | <ul style="list-style-type: none"> - Tariff barriers - Non-tariff barrier: Imports and exports license | <ul style="list-style-type: none"> - Reduce foreign competition - Unfair competition might be resulted |
| 4 Licensing | <ul style="list-style-type: none"> - Business licensing | - Unfair competition might be resulted |
| 6 Safety and security standard, and environmental protection | <ul style="list-style-type: none"> - Standards for food safety, quality and quality certifications | - Unfair competition might be resulted |
| 7 Price Control | <ul style="list-style-type: none"> - Price of petrol, electricity, liquefied petroleum gas, rice, cigarettes, cement, hospital services, potable/piped water, city transport, telephone charges, trains, salt, toll-road tariffs and postage. | - Removes competition |

Restrictions on investment may cause entry barrier, reduce business opportunities and hinder competition in certain area of economy. In absent of foreign investment, technology transfer and domestic-foreign business linkage will be deteriorating. Price control leads irrational consumption pattern and protects uncompetitive industry. Price control eases competition in the market, misallocation of resources.

On the licensing, a transparency and clear procedure on issuing license is very important to avoid corruption and "special treatment" to certain business actor. As collaborative actions are usually initiated by business associations to protect their business interests, the involvement of existing business actors (business association) in process of issuing license may cause entry barrier to the market.

-000-

3

Relaxation of Regulation

The Economic and Financial Reform and Restructuring Program undertaken by the Indonesian government as part of the negotiation (Letter of Intent - Lol) with IMF in 1998 created the milestone for the new deregulation era. Regulatory reform was also part of the measures to improve economic efficiency and competitiveness. The government released new laws and regulations beginning in 1999, some of which were to revise the previous ones.

In general, the deregulations and regulatory reform were aimed at cutting down the privileges that previously been provided to a certain business actors, mostly SOEs, price intervention and trade and investment restrictions by the government; and to improve licensing procedure.

3.1 Removing Privileges

In the past, the government sometimes provides special privileges in the forms of subsidy, easiness, and special arrangements and access to a certain business actors.¹ Such privileges were causing an unequal level of playing field among business actors and unfair competition in the market. To improved business environment and encourage efficiency in economic activity through promoting competition, such privileges just then have been revoked. Below are actions taken by the government to revoke the privileges previously provided.

- The National Car Program (Program Mobil Nasional)

In 1996, the government ran the National Car Program by providing incentive to domestic car manufacturers that categorize as "pioneer".² The "pioneer manufacturer" brought two advantages – tax exemption for importing additional input material for production as well as the non-application of value added tax for luxury goods. In the implementation, the pioneer status and tax exemptions were only given to PT Timor Putra Nasional.

For the National Car Program, the government provided special arrangements which include:

1. Value added tax for luxury goods was taken over by the government upon the delivery of domestic made automotive vehicles carrying local brand (GR No. 50/1994).

¹ For more detailed list of privileges provided by government to certain business actor in the past, see for example, Hofman, Bert. et. al. (2004). Indonesia: Rapid Growth, Weak Institutions.

² Those who meet requirement of 20% local content in the first year of production, 40% in the second year and 60% in the third year of commercial production.

2. Value added tax was taken over by the government for imported components and or automotive vehicles for taxi service purposes (PD No. 74/1995).
3. Value added tax for luxury goods was taken over by the government for the manufacturing of national cars of Timor brand (PD No. 42/1996).

In reality, these special arrangements were given to PT TPN anyway even though the company did not meet the local content requirements. The special arrangements for PT Timor Putra Nasional (PT TPN) created unfair competition to automotive industry.

In 1998, the special arrangements for National Car Program were lifted as the GR No. 50/1994 was replaced by GR No. 14/1998. PD No. 74/1995 was replaced by PD No. 39/1998 and PD No. 42/1996 was replaced by PD No. 20/1998. With the revocation of PD No. 42/1996 on the manufacturing of local cars, the Presidential Instruction No. 2/1996 on the Industrial Development of National Motor Vehicles was revoked.

- Revocation of State Logistical Agency (BULOG) Exclusive Right
BULOG was founded in 1967 based on Presidential Decree (PD) No. 114/ 1967) to replace National Logistical Command (KOLOGNAS) with main duty to maintain food price stability, especially for the nine major food material (Sembilan Bahan Pokok – Sembako).³ The BULOG's duty then is extended to maintain price stability and manage the supply of rice, sugar, wheat, flour, soy, and other food material.⁴ To carry out the duty, BULOG engaged in procurement process locally as well as overseas for those commodities.

In November 1997 (PD No. 45/1997), BULOG's duty was reduced to only maintaining price stability and supply for rice and sugar. Since February 1998 (PD No. 19/1998), BULOG's duty was again reduced to only rice distribution monopoly:

“ State Logistical Agency (BULOG) has the main duty of assisting the President in maintaining price stability and managing supply for rice, directly or indirectly, in order to maintain price and quality based on the government's general policies”.

Therefore, since February 1998, commodities used to be solely managed by BULOG were opened for other parties for importing and distribution in local markets.

- Elimination of Clove Monopoly

³ The history of BULOG prior to becoming a state-owned company <http://www.bulog.co.id/>

⁴ PD No. 50/1995

Special privilege that has been given to Clove Support and Marketing Board (Badan Penyangga Pemasaran Cengkeh - BPPC) is another example of government policy based on cronyism. PD No. 20/1992 gave an exclusive right for clove marketing and distribution monopoly to BPPC. Monopoly by BPPC brought prices significantly down that farmers preferred to abandon their lands. In June 1998 (PD No. 21/1998) BPPC monopoly was revoked, allowing farmers to freely trade cloves at market price. Clove price and production went steady after the monopoly was lifted.

3.2 Removing Exclusive Right

Exclusive right was granted to several business actors, mostly State Owned Enterprises (SOEs), to carry out the role of state in several economic sectors. As mentioned earlier (section 2.1.1), although the debate over the interpretation of National Constitution, the role of state in several economic activity to have a legal support. The National Constitution (UUD 45) stated that “branches of production essential to state and governing the life and living of the public should be controlled by the state”.⁵ The article of constitution sometime is interpreted as a mandate for public monopoly in certain sectors of economy.

As for implementation of the state control, the state then hands over its role by granting monopoly right to several SOEs. For instance, state monopoly on oil and gas granted to PERTAMINA, PT TELKOM was granted to monopolize telecommunication business, and The National Electricity Company (Perusahaan Listrik Negara – PLN) was granted to take over the state role for supplying power for public. As a matter of fact, the monopoly right was not only given in relation with “essential branches of production”. One example was the clove marketing and distribution monopoly given to BPPC.

In line with the economic restructuring program, the government took over the monopoly right that was previously granted. The regulatory framework for administering several sectors that was previously monopolized by SOEs was reformed. Regulatory Reform was taken to restructure or unbundled vertical integration in certain industry sectors resulting from market domination by state-owned companies⁶. The restructuring was carried out through redefinition of government role and developing industrial competitiveness.

⁵ Article 33 verses 1 and 2 of the National Constitution (UUD 45).

⁶ Nugroho (2004)

In relation with the restructuring several laws was enacted since 1999, which are the Law No. 39/1999 on Telecommunications, Law No. 22/2001 on Oil and Gas, Law No. 20/2002 on Electricity, Law No. 23/2007 on Railway transportation. In several industries – telecommunications, oil and gas, and electricity, the law mandated the formation of supervisory board to monitor economic activities in related sectors. The important matter of these laws are the phasing out of the monopoly position of the SOEs in the certain sector and provide more opportunities for private investments.

Table 11 Law No. 3/1989 in comparison with Law No. 36/1999

| No. | Description | Law No. 3/1989 | Law No. 36/1999 |
|-----|---------------------|---|---|
| 1 | Government Role | - Own, develop and run telecommunication services | - Set the policies, regulate, and supervise the telecommunication industry. - The government may hand over the regulatory and supervisory role to regulatory body. |
| 2 | Implementing Body | - The government handed over to implementing body | - State-owned companies, local state-owned companies, private companies, and cooperatives. - BUMN, BUMD, private enterprises and cooperatives. |
| 3 | Operation | - Monopoly | - Competitive |
| 4 | Type of Services | - Telecommunication's basic, non-basic and special services | - Telecommunication connection networks, telecommunication services and special services |
| 5 | Type of Partnership | - Joint venture, Joint operation and Contract of Management | - Business driven |
| 6 | Tariff | - Set by the government | - Cost structure and market oriented |
| 7 | Others | | - Monopoly prohibition, universal service obligation (USO), licensing, penomoran, & interconnection. |

Source: Tayyiba 2004, Table 3.

- Telecommunication sector

Upon the release of Law No. 39/1999, telecommunications industry in Indonesia was regulated by Law No. 3/1989 with the implementation guidelines depicted in GR No. 8/1993. Law No. 39/1999 stated that:

“ The operation of telecommunication services is run by the government, in which can be assigned to an implementing body the to carry out the duty”,
[article 12(1)]

Furthermore, GR No. 8/1993 stated that:

“ The government hands over the operation of telecommunication services to an implementing body”, [Article 3(1)]

“ The implementing body mentioned in point 1 is a designated state-owned company, formed in accordance to existing law”, [article 3 (3)]

Therefore, the Law No. 39/1999 gave the operating monopoly of telecommunication services to the government, which was then handed over to state-owned companies. The monopoly was removed through Law no. 36/1999 on telecommunication services. Article 8 of the law opens telecommunication operator services to private companies and cooperatives. The law even strongly prohibits monopoly practices and unfair competition among telecommunication operators (Article 10). The major differences between the laws on telecommunications are summarized in Table 6 below:

- Oil and gas sector

Law No. 22/2001 on Oil and Gas changed the mode of management and state domination over oil and gas and petroleum products. The previous law No. 8/1971 granted monopoly rights for oil and gas exploration, exploitation, refinery, transportation and distribution to PERTAMINA (National Oil Mining Company). Law No. 22/2001 stated that oil and gas upstream and downstream activities are not to be run by a single business entity; and therefore, PERTAMINA monopoly is revoked. Through GR No. 31/2003, PERTAMINA was changed into limited company (Persero) or one of the many players in oil and gas industry.

The law divided the activities in oil and gas industry into two main are categories – upstream and downstream activity. Upstream activities include exploration and exploitation while downstream activities include processing and refinery, transportation, distribution and trading. The two main activities are monitored by two different bodies – executive body and regulatory body.

In relation to the law, two regulatory bodies have been formed, which are:

- The Executive Body of Oil and Gas Upstream Activities (BP MIGAS) with the duty of monitoring upstream activities so as to ensure that the extraction of the state's natural oil and gas brings the maximum benefits and income to the state and for the welfare of the society (GR No. 42/2002).
- The Regulatory Body of Oil and Gas Downstream Activities (BPH-MIGAS) with the authority to manage the supply and distribution of gasoline, national gasoline reserve,

and the transportation and storage facilities (GR No. 67/2002). Furthermore, private sectors including foreign investors are allowed to run oil rigs, storage, export and import, and fuels transportation.⁷

The new oil and gas law also mandates the implementation of market based pricing of fuels product in the domestic market. Unfortunately, the provision was rejected by Constitutional Court (Mahkamah Konstitusi). However, the government sets price of non-subsidized petroleum products based on a formula in which the price of Mid Oil Platts Singapore (MOPS) is taken into account.

- Electricity sector

Law No. 20/2002 is aimed at transforming the monopolistic, vertically integrated and SOE (state-owned enterprise) dominated public utility (electricity) sector into a more open, competitive and consumer oriented industry. Unbundling is also applied in electricity services, turned into different category of services – electricity generator, high and medium voltage, transmission, distribution and low voltage services. The first and second category of services is open for competition. Meanwhile, the other three categories, due to their natural monopoly nature, will remain regulated. Other complementary services such as consultant, construction, testing, maintenance, research and development, and training will be carried out by separate entities.

Law No. 20/2002 canceled the role of National Electricity Company (Perusahaan Listrik Negara - PLN) as the authorized body, which “for and on behalf of the government carries the duty of providing electricity throughout the nation”⁸. The Law⁹ envisioned the end of PLN monopoly in the distribution of electricity, while opening the sector to private companies (including foreign companies) and allowing them to sell the services directly to end-users. The responsibility for electricity provision then goes to Electricity Market Supervisory Body (BAPEPTAL) (Nugroho, 2004).

Law No. 20/2002 on electricity provision is supported by earlier Government Regulation No. 10/1989 on the provision and utilization of electricity and GR No. 25/1995 on electricity complementary services. GR No. 53/2003 on BAPEPTAL also supplemented the law.

⁷ GR No. 36/2004

⁸ Law No. 15/1985 on Electricity

⁹ Released in September 2002

Other complementing regulations include two Presidential Decrees and 15 Ministry Decrees (Nugroho, 2004).

Unfortunately, the government's efforts to deregulate the electricity sector were canceled by Constitutional Court in 2004, so that the provisions in the law were no longer applicable.

- Transportation sector

Law No. 23/2007 on Railway Transportation states that people and goods transportation services using railway transportation can be run by state-owned companies, local state-owned companies, cooperatives and private companies. In addition, the operation will need to obtain business license and operation permit from respective government bodies. Therefore, monopoly by state owned railways company (PT Kerata Api Indonesia) - in railway transportation is no longer justified¹⁰.

3.3 Subtracting Restrictions on Trade and Investment

The new investment Law (Law No. 76/2007) is dedicated to promote competitiveness on attracting foreign investors by providing legal certainty such as equal treatment of domestic and foreign investors, protection from nationalization and expropriation, provisions regulating dispute settlement, transparency and accountability principles and clear definition of sectors closed or open for investments.¹¹

The improvements in the new investment law such as:

- Establish the principle of equal treatment for foreign and domestic investors;
- Relax restrictions on the residence and employment of expatriates;
- Remove most requirements for capital divestiture; and
- Revoke the monopoly rights of state-owned companies in certain sectors.

3.4 Subtracting Government Intervention on Price

In Indonesia, the government sets and regulates pricing for various goods and services, directly or indirectly. Prices for domestic fuels, electricity, toll, etc. are administered by the government. Price rice is intervened by the government through setting out the Bulog's procurement price. As mentioned earlier, the law provision for setting unsubsidized domestic

¹⁰ The Law No. 13/1992 on Railways stated that railways operations is controlled by the government and the railways operation is handed over to SOE.

¹¹ Pangestu, Mari (2006). Government's Regulatory Reform Program –Progress To-date and Policy Priorities.

fuels price based on international price was rejected by Constitutional Court (Mahkamah Konstitusi).

Price regulations are exercised through mandated guidelines (such as in transportation services). Up until today, railway transportations fares must refer to guidelines set by the government. Due to the pressure for deregulation, pricing for several goods and services are left to market mechanism. Referring to the new law on railway transportation, pricing guidelines set by the government are now more adjustable, taking into account the cost structure, operational expenses and profit margin.

At the end of 2002, the government transformed the scheme of intervention on rice price. By Presidential Instruction (Inpres) No 9/2002 on Decision of Rice Policy, "floor price" scheme was changed into "procurement price" system. The procurement price is conceptually different with floor price. The "procurement price" refers to quantity target that is to buy a certain quantity for a certain price. Since the quantity is targeted the effect on market price become residual and is not a matter. In the contrary, floor price scheme targeted the market price at the level above floor price (harga dasar) while the quantity purchased is depend on the supply and demand.

3.5 Promoting Competition

- Government projects' biddings and procurements

To promote transparency in the process of bidding and procurement of government's projects the government issued PD No. 80/2003 on Procurement and Bidding Guidelines. Toward this end, all government institutions are obligated to announce the procurement plans for the fiscal year, followed by bidding announcement for each projects prior to the bidding. Civil society participation is sought for monitoring the bidding process. Transparent process is expected to minimize the risk from collusion and unfair competition. The Presidential Decree allows foreign companies to take part in the bidding process for government projects by serving as an outsource company (sub-contractor) for or in a joint partnership with local companies.

- Competition in banking sector

To promote competition and prevent abuse of dominant position in banking sector the regulatory body of banking sector (Bank of Indonesia) issued Bank Indonesia Regulation No. 8/16/PBI/2006 – on Single Ownership. The regulation stipulated that any party may only become a Controlling Shareholder in one Bank.

3.6 Promoting Good Governance on National Resources

To improve the management of national resources several law was enacted, these are the Law on Geothermal (Law No. 27/2003), Law on State Owned Companies (Law No. 19/2003), and Law on Natural Resources (Law No. 14/2004). The new regulatory framework on state owned enterprises (the Law No. 19/2003 – on State Owned Enterprises) clearly stated that other parties (other than the managements) are prohibited to interference with the company's operation. The Law also stated that the SOEs are subjected to privatization.

The enactments of several laws are dedicated to promote a comprehension public sector management, to clearly define the role of state in economy and encourage private participation and competition in the market.

Table 12 Government policies and efforts for relaxing regulations

| | Policy | Actions taken | Sector(s) affected |
|------|---|---|--|
| 1998 | Economic and Financial Reform and Restructuring Program | <ul style="list-style-type: none"> - Remove special tax and customs benefits previously granted to the National Car (Mobnas) Program. - Remove Bulog monopoly right on importing various commodities: wheat, wheat flour, soybean and garlic, etc. - Remove barrier on investment in palm oil plantation. - Eliminate monopoly on clove marketing (BPPC). | <ul style="list-style-type: none"> - Automotive - Dimestic and and international trade - Agriculture - Trade |
| 1999 | Law No. 36/1999 on Telecommunication | <ul style="list-style-type: none"> - End monopolies and open basic telecommunications services to majority foreign ownership. | <ul style="list-style-type: none"> - Telecommunication |
| 2001 | Law No. 22/2001 on Oil and gas | <ul style="list-style-type: none"> - Open up domestic oil and gas sector for foreign investments; - Open the oil and gas sector (especially downstream activities) for more competition. | <ul style="list-style-type: none"> - Oil and gas |
| | Presidential Decree No. 31/2003 | <ul style="list-style-type: none"> - Pertamina was converted into a limited liability company and ended its Public Service Obligation. | <ul style="list-style-type: none"> - Oil and gas |
| | Presidential Decree No. 46/2004 | <ul style="list-style-type: none"> - Outline the general procedures, activities and licenses for oil and gas downstream activities. | <ul style="list-style-type: none"> - Domestic oil and gas distribution |
| | Presidential Decree No. 34/2005 | <ul style="list-style-type: none"> - Outline the general procedures, activities and licenses for Oil and gas downstream activities. | <ul style="list-style-type: none"> - Oil exploration and fuel production |

| | Policy | Actions taken | Sector(s) affected |
|------|---|--|----------------------------|
| 2002 | Law No.20/2002 on Electricity | - Provide opportunities to private sector for participating in electricity sector. | - Electricity supply |
| 2003 | Law No. 19/2003 on SOEs | - Encourage SOE efficiency and privatization. | - SOE |
| 2004 | Law No. 19/2004 on Natural Resources | - Encourage private participation and competition in natural resource utilization. | - |
| 2004 | Presidential Decree No. 20/2003 on Public Procurement | - Foreign companies are eligible to bid on government contracts as part of a joint partnership or as a subcontractor to a domestic firm. | - Bidding & procurement |
| 2005 | Presidential Decree No. 55/2005 | - Align consumer fuel prices with international prices. | - Domestic oil fuels price |
| 2006 | Bank Indonesia Decree No. 8/16/PBI/2006 concerning the Single Presence Policy on Indonesian Banks | - Any party may only become a Controlling Shareholder in one Bank | - Banking ownership |
| 2007 | Railways Law (UU Kereta Api) | - Railway transportation is opened for private investment. | - Railways transportation |
| 2007 | Law No. 76/2007 on Investment | - Establish the principle of equal treatment for foreign and domestic investors; - Relax restrictions on the residence and employment of expatriates; - Remove most requirements for capital divestiture; and - Revoke the monopoly rights of state-owned companies in certain sectors. | - Labor market |

4

Violation to Competition Law

Note: The terms of “Decision” and “Verdict” will be frequently used in this chapter. Both terms carry similar meanings. To avoid confusion, the following definitions are used to interpret the concepts throughout this chapter and the entire report.

Decision (Penetapan):

Is the conclusion KPPU made against suspected violation of competition law, in determining if the case should proceed or not.

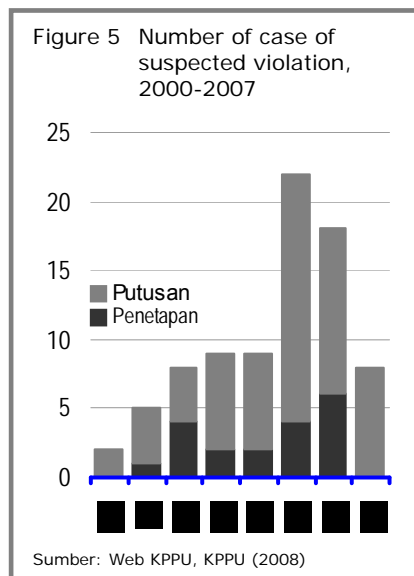
Verdict (Putusan):

Is the judgment KPPU made against suspected violation of competition law, in determining if the suspect conducted the violation or not.

In its first year of duty, KPPU received two reports on suspected violation to the competition law. The number grew in the subsequent years, adding to KPPU load and the complication of the cases.

The two first year cases received verdicts from KPPU and deemed guilty of violations to the law. In the suspected conspiracy case of casing and tubing procurement by PT Caltex Pacific Indonesia, KPPU stated that the suspect was guilty of violating article 22 in the law. Further development indicated that bidding collusion in the procurement of goods and services (especially in relation to government projects) were the most frequent violations handled by

KPPU.



Of the 62 cases that ended up with KPPU verdicts during 2000-2007, 40 were of bidding collusion to arrange the winner (Table 13). Suspected violation cases in bidding mainly took place in government related sectors, even with the strict procurement guideline made by the government (PD No. 20/2003). This encouraged KPPU to also provide procurement guidelines.

4.1 Violated rules

Violation cases may reflect competition problems in Indonesia. Table 7 shows that competition problems in Indonesia are

mainly related to bidding practices. Of the 44 cases proven to be guilty of violations, 23 were of bidding collusion to arrange winner (in violation of article 22) while 16 of them were charged with fines or compensation fee. Most bidding collusions took place in procurement by government bodies. Of 27 bidding cases which received the guilty verdicts, only three took place in procurement by private companies. This indicated the lenient supervision by government bodies to the procurement process.

Further elaboration shows that of 27 bidding violations, 20 were proven to violate article 22, 1 violated article 17 and three violated article 19. The remaining three cases violated both article 19 and 22. Therefore, monopoly, market domination and collusion may take place in bidding practices.

Other than bidding collusions, market domination is most prevalent. During 2000-2007, there were 19 cases violating article 19 (market domination), three of which took place in bidding process.

4.2 Imposition of sanctions

Law No. 5/1999 in article 77 point 1 states that KPPU has the authority to impose administrative sanctions against guilty suspects. Administrative sanctions may include (1) the stipulation of cancellation of agreements or consolidations or merging of business entities or

share acquisitions.(2) order to stop vertical integration, abuse of dominant position, monopoly practices, and or activities that cause unfair competition or being harmful to the society; or (3) imposition of compensation payment or fines of one billion rupiah minimum and twenty five billion rupiah maximum.

Competition law violation also may receive criminal sanctions of one to one hundred billion rupiah fines (depending upon the articles being violated) or imprisonment of three to six months (Article 48 point 1 to 3). Additional criminal sanctions can be imposed to the violations with revocations of business licenses, prohibition of filling in director or commissioner positions for certain duration of time, or orders to stop of certain activities that cause losses to other parties.

Table 9 presented the sanctions imposed by KPPU to violations

Table 13 Violation cases to Law No. 5/1999 according to violated articles.

| Articles in Law No.5/1999 | Administrative sanctions | Fines | Total |
|--------------------------------------|--------------------------|-------|-------|
| 22 – Bidding conspiracy | 7 | 16 | 23 |
| 19 – Market control | 8 | 8 | 16 |
| 05 – Price fixing | 4 | 1 | 5 |
| 15 – Exclusive dealing | 2 | 2 | 4 |
| 17 -- Monopoly | 2 | 2 | 4 |
| 11 -- Cartel | 2 | 1 | 3 |
| 25 – Dominant position | 2 | -- | 2 |
| 26 – Interlocking directorships | 1 | 1 | 2 |
| 27 – Majority shareholding | 1 | 1 | 2 |
| 06 – Agreement; price discrimination | 1 | -- | 1 |
| 08 – Tying arrangement | -- | 1 | 1 |
| 14 – Vertical Integration | -- | 1 | 1 |

Note: Tabulated based on 44 violation cases that received guilty verdicts by KPPU. Number of violations can be bigger than number of cases because violations in one case can be made against multiple articles.

of competition law. During 2000-2007, KPPU issued 44 guilty verdicts with 25 of them were imposed with fines. Table 8 shows that the imposition of fines was not determined by article numbers. Table 7 and 8 show that violations of any articles , may result in fines. Law No. 5/1999 does not refer to specific articles to which fines and the amount can be imposed. Therefore, all decisions regarding fines are solely at KPPU's discretion, specially made by the commission members on duty.

Sanctions by KPPU were not only intended to punish the violators but also to generate a deterrence effect to prevent future violations. However, the unavailability of provisions regarding when and how to calculate the fines creates uncertainty in the implementation of the law. For example, Table 8 infers that one violation of article 17 (prohibition of monopoly practices) was imposed with fines. Two other violations of both article 17 and other articles (articles 19, 25 and 26) were only imposed with administrative sanctions that are the order to stop violation acts.

To avoid questioning against KPPU's verdicts, more clear guidelines as to the type of sanctions will be needed as much as the amount of fines.

4.3 Competition Law Enforcement

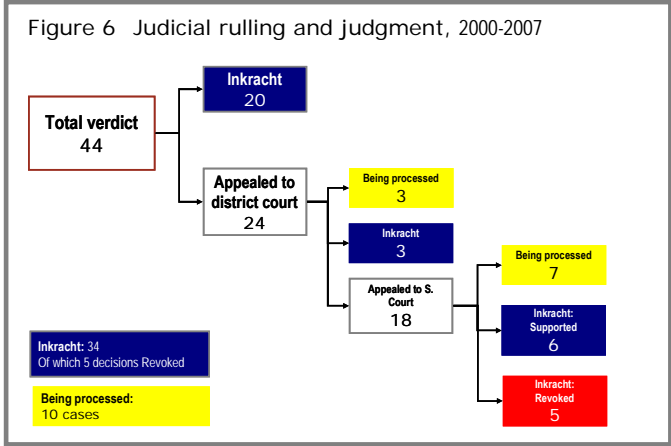
The imposition of fines by KPPU was usually ended in a legal battle with the defendants. Of

the 25 being imposed with fines, 21 defendants proceeded by appealing to district court and only four of them accepted KPPU verdicts. On the other hand, defendants receiving administrative sanctions of termination of activities or cancellation of agreements usually accepted the verdicts. Out of 19 cases with administrative sanctions of termination of activities or cancellation of agreements, 16 accepted the verdicts while 3 appealed.

Figure 3 shows the pattern of judicial rulings and judgments during 2000-2007. From 44 KPPU verdicts, 10 were in proceedings with district courts and the Supreme Court while 29 had already had the power of law – the defendants accepted the verdicts or the verdicts were affirmed by district courts or the Supreme Court. Five other cases had the verdicts being ruled out by the Supreme Court.

Table 14 Sanctions to violations of Law No. 5/1999.

| Articles being violated | Administrative sanctions | Fines | Total |
|-------------------------|--------------------------|-----------|-----------|
| 05 | 2 | -- | 2 |
| 17 | -- | 1 | 1 |
| 19 | 3 | 4 | 7 |
| 22 | 7 | 13 | 20 |
| 27 | 1 | 1 | 2 |
| 14, 15 & 26 | -- | 1 | 1 |
| 15 & 19 | 1 | -- | 1 |
| 15, 19 25 | 1 | -- | 1 |
| 17, 19 | 1 | -- | 1 |
| 17, 19, 25 & 26 | 1 | -- | 1 |
| 19 & 22 | -- | 3 | 3 |
| 5, 11 & 19 | 1 | -- | 1 |
| 5, 17 & 19 | -- | 1 | 1 |
| 5, 6 & 11 | 1 | -- | 1 |
| 8, 11 & 15 | -- | 1 | 1 |
| Total | 19 | 25 | 44 |



The judicial process by district court of district courts or the Supreme Court is not regulated by the competition law. Verdicts by the courts are dependent upon the judges' comprehension of the competition law. Not all of the judges have sufficient understanding of the law and the benefits of competition for the economy.

The judicial process with district courts and the Supreme Court can go very slow. While the proceedings by KPPU have the time duration regulated by the law, proceedings by district courts or the Supreme Court have no time limitations.

~000~

5

Industrial Structure and Market Trend

5.1 General Overview

5.1.1 Market Structure Measurement

Industrial structure and market trend analysis is one of the important points to measure how well competition environment works. Organizational industry theory explains that the most competitive market is the competitive market due to its many players and no-barrier to entry. In other side, the most non-competitive market is monopoly market. It has just a player that determines whole market equilibrium using its great barrier to entry. However, it has to be considered that although the competitive market is the most competitive one, it almost doesn't exist in the real world. And so does monopoly. Therefore, there are just two market that exist in real; monopolistic market and oligopoly (Pindyck and Rubinfeld, 2001).

It is a well-known fact that market structure highly correlates with competition degree. More players exist in the market, more competitive the market is. At least, there are two indicators that can measure the market structure, those are: (Viscusi, Vernon, Harrington; 2000):

- a. Concentration Ratio. The m-firm concentration ratio is simply the share of total industry sales accounted for by the largest firms. The value of m depends on study's objective which is usually 2, 4, or 8.
- b. Hirschman-Herfindahl Index (HHI). Like concentration ratio, HHI is used to measure how concentrated a certain market is, but in more complex formula. If s_i is the market share from company i in a certain industry, HHI is defined as:

$$HHI = \sum_{i=1}^n (100s_i)^2$$

From this measurement, it can be concluded that more concentrated is the market in a company, larger HHI is. It can also be inferred that the highest value of HHI is 10000 that just only one player in the market. On the contrary, the lowest value is near zero that reflects so many players having a small portion of market share.

5.1.2 General Industries Performance

The industrial sector performance in Indonesia shows different patterns for different industries. Table 10 presents market concentration ratio (CR4) in various industries in Indonesia for 1999-2004. Shown in the chart that industries such as flour, pulp and pharmaceutical preparation are highly concentrated while soft drink, plywood and wearing apparel, on the other hand, are not concentrated.

Industrial economics theory says that market structure depends on production process of particular products. Products with production process requiring sophisticated technology and high economies of scale form barrier to entry to the market. Therefore, there are only limited players in the market, creating an oligopoly market. On the contrary, production process with limited technology and low economies of scale allows easy entry to the market, with many players to create monopolistic market.

Table 15 Market Concentration in Various Industries in Indonesia, time period 1999-2004

| Type of Industries | CR4 | | | | | | |
|-----------------------------------|------|------|------|------|------|------|-----------|
| | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | Avg 99-04 |
| Palm Cooking Oil | 0.91 | 0.58 | 0.51 | 0.35 | 0.67 | 0.38 | 0.57 |
| Flour | 0.99 | 0.97 | 0.94 | 0.98 | 0.96 | 0.97 | 0.97 |
| Sugar | 0.29 | 0.33 | 0.33 | 0.40 | 0.43 | 0.40 | 0.36 |
| Soft Drink | 0.32 | 0.41 | 0.35 | 0.43 | 0.31 | 0.31 | 0.36 |
| Pulp | 0.93 | 1.00 | 0.93 | 0.92 | 0.88 | 0.93 | 0.93 |
| Pharmaceutical Preparation | 0.98 | 0.87 | 0.94 | 0.94 | 0.97 | 0.94 | 0.94 |
| Mixed Fertilizer | 0.97 | 0.98 | 0.99 | 0.91 | 0.96 | 0.98 | 0.97 |
| Printed Textiles | n/a | 0.44 | 0.44 | 0.59 | 0.53 | 0.61 | 0.52 |
| Cultural Papers | 0.75 | 0.90 | 0.77 | 0.67 | 0.85 | 0.78 | 0.79 |
| Industrial Papers | 0.71 | 0.72 | 0.54 | 0.91 | 0.64 | 0.74 | 0.71 |
| Paint | 0.40 | 0.33 | 0.40 | 0.41 | 0.40 | 0.32 | 0.38 |
| Tire and Inner Tubes | n/a | 0.80 | 0.67 | 0.66 | 0.69 | 0.59 | 0.68 |
| Sheet Glass | n/a | 0.92 | 0.87 | 0.93 | 0.96 | 0.94 | 0.92 |
| Iron and Steel | n/a | 0.69 | 0.86 | 0.82 | 0.76 | 0.89 | 0.80 |
| Radio, Television and Electronics | 0.58 | 0.47 | 0.72 | 0.62 | 0.66 | 0.66 | 0.62 |
| Plywood | 0.19 | 0.24 | 0.17 | 0.12 | 0.27 | 0.26 | 0.21 |
| Wearing Apparel | n/a | 0.08 | 0.10 | 0.07 | 0.10 | 0.08 | 0.09 |
| Sport Shoes | n/a | 0.34 | 0.47 | 0.37 | 0.36 | 0.39 | 0.39 |
| Four Wheeled Motor Vehicles | 0.94 | 0.89 | 0.76 | 0.77 | 0.82 | 0.80 | 0.83 |

Source: Indonesian Bureau of Statistical Information, several year publications

Beside production process, government regulations also play a role. Although production process may not use sophisticated technology neither require high economies of scale, privilege by the government to certain companies creates an oligopoly market when those companies enter the market. For example, Clove Support and Marketing Board BPPC, who held the authority for marketing and distribution at the time. Clove processing does not require hi-tech machines neither high economies of scale. Yet the privilege from the government made BPPC a monopolist as well as a monopsony player in the clove market.

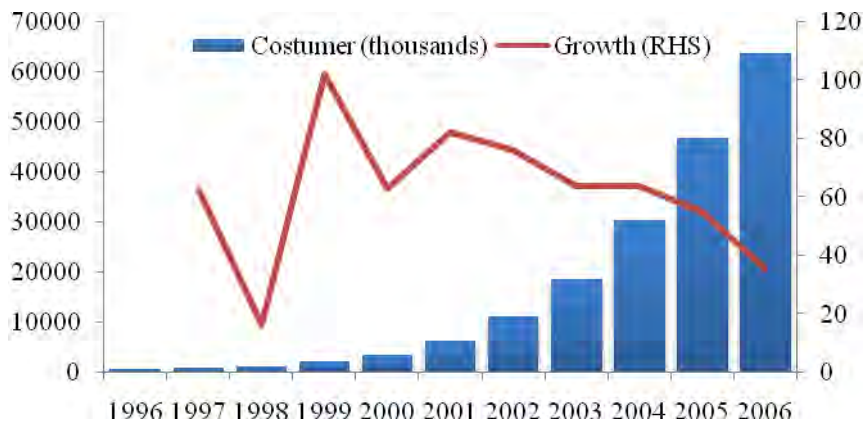
To have a better understanding about Indonesia's industry market structure, the following discussions will come up with several case studies, which include telecommunications, airline, crude palm oil and sugar. These industries are chosen based on several interesting parts which are along with, beside insufficient data occurring in this study. Using concentration ratio as simplest measurement of market structure, it can be seen how competition policy is implemented and how well it works to influence such industries.

5.2 Review of selected industries performance

5.2.1 Telecommunication Industry

Telecommunications Services Industry is a major industry sector in Indonesia that has received much attention these days, and requires a careful approach due to the rapid growth in number of subscribers during the last decade. Number of subscribers has grown over 113 times within 1996-2006 period with the average annual growth of 50 percent (Silalahi, 2007). In 1996, Indonesia has recorded 563 thousand cellular telephone customers, whose number has sharply increased to 63.8 million in 2006 (Figure 7). The teledensity did also increase from 3 per thousand people to 27 per one hundred people.

Figure 7 Growths of Cell Phone Costumers in Indonesia



Source: Silalahi (2006)

The emergence of cellular telephone industry in Indonesia is marked with the establishments of PT. Telkomsel and PT. Indosat by the Government, taking place in the early period of 1990's. During the time, the technology used in this market was unsophisticated, such that it was predicted that it would not replace the position of fixed line telephone. Nonetheless, such

prediction proved to be the opposite. In line with the technological advancement that runs so rapidly, cellular telephone begins to take the place of the fixed line telephone's role. Within a period of less than ten years, the total number of cellular telephone connection units has overtaken those of fixed line telephones. Today, the number of fixed line telephone connection units stay stagnant at the figure of 8-9 million telephone connection units (SST), vis-à-vis the figure of recent cellular communications connection units that are approaching 30 million units (KPPU/Business Competition Supervisory Commission, 2005). The fact shows that more and more people are now shifting their preference from fixed line telephone to cellular telephone of either GSM technology or CDMA.

The Indonesian community's inclination toward such communication model is also well responded by the Indonesian manufacturers and government. Through Law No. 36/1999 concerning Telecommunication, the Government has opened the faucet of this liberalization, meaning: the telephone usage rate that had strictly been ruled is now being left to market mechanism. The result is: market form has significantly changed from that of duopoly into oligopoly in character. So far, the current providers of cellular telecommunication industry have been PT. Cellular telecommunication, PT. Indosat, PT. Excelcomindo Pratama, PT. Bakrie Telecom, PT. Mobile-8 Telekom, PT. Natrindo Seluler, PT. Sampurna Telekom, and PT. Pasifik Satelit Nusantara (Silalahi, 2007).

Market Concentration

The structure of oligopolistic market always bears the consequences of the high market concentration. In Indonesian cellular telecommunication service, there are three primary operators who have dominated more than 90 percent of market — PT. Telkomsel, PT. Indosat, and PT. Excelcomindo Pratama. The three operators dominate more than 90 per cent of market share.

Table 16 shows the cellular telecommunication's concentration level of the three major companies from the side of the total number of their respective customers. It can be observed that during the period of 2004-2006, the concentrations of such three companies reach 97 percent. PT. Telkomsel comes as the market leader with its market dominance that averages 53.7 percent, followed by PT. Indosat (29.7 percent) and PT. Excelcomindo (14.1 percent). The remaining 2.5 % was spread to other smaller operators.

Table 16 Number of cellular phone subscribers

| Operator | Number of subscribers | | | Share (%) | | |
|---------------------|-----------------------|------------|------------|-----------|------|------|
| | 2004 | 2005 | 2006 | 2004 | 2005 | 2006 |
| PT. Telkomsel | 16,291,000 | 24,269,000 | 35,597,000 | 53.7 | 51.6 | 55.8 |
| PT. Indosat | 9,754,607 | 14,512,453 | 16,704,729 | 32.2 | 30.9 | 26.2 |
| PT. Excelcomindo | 3,791,000 | 6,978,519 | 9,527,970 | 12.5 | 14.9 | 14.9 |
| Total of 3 operator | 29,836,607 | 45,759,972 | 61,829,699 | 98.4 | 97.4 | 96.9 |
| Total subscriber | 30,336,607 | 46,992,118 | 63,803,015 | 100 | 100 | 100 |

Source: Silalahi (2006)

Profitability

Figure 8 Return On Equity (ROE) 3 Big Establishments

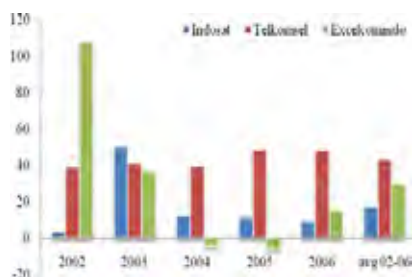
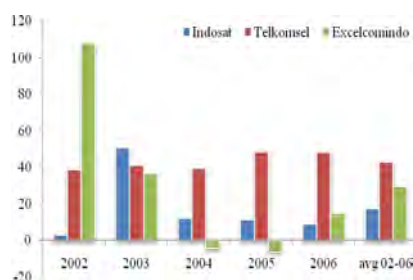


Figure 9 Returns on Asset (ROA) 3 Big Establishments



Source: Silalahi (2007)

The profitability level of telecommunication sector is quite promising, can be seen from a quite high rate of return reflected by the ROE and ROA of the three major companies (Figure 8 and 9). We can see that the ROE as well as the ROA of the three major companies that control the cellular telecommunications market show a good profitability level. With respect of the ROE, the three companies have ROE of over ten percent. The greatest operator, i.e. Telkomsel, records the best performance with the average rate of 29.3 percent in 2002-2006, followed by Excelcomindo with 29.9 percent, and Indosat 17.3 percent. In terms of ROA indicator, Telkomsel again shows the best prospect, i.e. 28.9 percent, followed by Indosat (8 percent) and Excelcomindo (5%).

A large market capture by the big three doesn't mean a

lack of competition on the industry. Market trend is showing a tight price competition among those players, indicated by the wider advertising¹. Price trend decline continuously, causing the increase of consumer as shown in Figure 4.

Even though telecommunication industry has changed gradually into more competitive industry, monitoring role is still needed. The existence of three big establishments makes them tend to collude. KPPU as authorized board for monitoring is needed for assuring of competition environment.

5.2.2 Airline Industry

As in the case of cellular telecommunications service industry, the flight services industry, since the very beginning, was one of the highly regulated industries. There were only two market players and they constituted government-controlled companies – Garuda Indonesia and Merpati Nusantara. These two airline companies have different focus of service. Garuda Indonesia is intended for servicing the domestic busy routes and overseas routes. On the other hand, Merpati Nusantara was designated to serve the relatively thin routes and pioneering in nature.

In 1990, the government issued two regulations – Minister of Communications Regulation No. 126/1990 concerning the navigational networks and routes, and the other one is No. 127/1990 that regulates the operation of air transportation. These two policies governed the aviation companies that serve domestic aviation. The companies include Garuda, Merpati, Mandala, Sempati, Bouraq, and Dirgantara Air Service (KPPU/Business Competition Supervisory Commission, 2005). Beside these two regulations, there have been a number of other regulations that represent some significantly great barriers created by Government for those who intend to engage in this industry. From this point, we can infer that up to the end of 1990, the government's intervention in the airline industry has been strong.

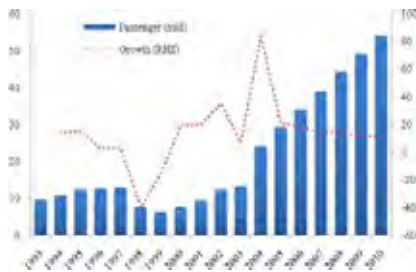
Market structure

As at the early stage following the creation of aviation service industry, there existed only a small number of players, and it was predictable that the market was duopoly or oligopoly in character. It is small wonder that in the period between the initiation of this industry and the

¹ Advertising is one of several indicators that show competition behavior in the industry. Wider advertising is in practice, higher competition occurs in the industry. Advertising is also as an indicator of product differentiation degree in certain industry. For more detail, see Pyndick and Rubinfeld (2001) and Greer (1984).

end of 1990, air tickets cost so much that only certain persons would be capable of using

Figure 10 Numbers of Passangers



Source: KPPU (2005)

aircraft as transportation mode. It is hardly surprising that at that time when people, as users of flight service, capable of using flight service would be regarded as one of their achievements.

Market structure has changed dramatically since the competition climate was opened. Thanks to Law No. 5/1999 that was later on embodied in a number of other legal regulations concerning aviation sector, this industry become more competitive. In 2002, Government revoked

Decision of Minister of Communications No.9/2002 that fixed upper margin. This policy indicates that Government wished to let prices go free so as to form by themselves through market mechanism.

The result of such deregulation in the year of 2002 was very clear. This policy packet gave investors so much encouragement to operate in this industry. From six companies that existed in 1996, the number of the same companies rose into 21 in 2003, 16 of them were new comers. Even, there were 31 companies in operation in 2006. The companies that own fleet are Garuda, Dirgantara Air Service, Mandala, Merpati Nusantara, Lion Mentari Air, Metro Batavia, Wings Abadi, and Adam Air (Directorate General of Air Communications, 2008).

In term of consumption number, the percentage growth took place encouragingly fast, from 14 percent into 26 percent. It is estimated that in 2004, the number of air passengers would come to 20 million. This figure is nearly doubled from the average rate of the air passengers in 2000. Figure 4 describes the growth of air passengers existing since 1993 and the projection for the period up to 2010 made by Ministry of Communication, the Republic of Indonesia.

Further implication was seen from the side of air tickets being offered. The competition raging among the aviation companies has caused air fare to drop drastically. This is accompanied with the strategy of price fixing in classes. The emergence of low cost carrier (LCC) in aviation concept has spurred aviation industry operators to engineer their companies in order to reach the most efficient possible performance. Eventually, this has given consumers various kinds of product and price selection and at the same time widen the market of the aviation service itself. Consumers could elect and decide between using low priced

service with after-a-fashion service type where the point is capable of being carried to the destination and the one of premium service with international standard service.

Airline industry development is an example that portrays how competition regulation can produce higher consumer welfare in Indonesia. When competition regulation is applied, both production and consumption rise significantly. Furthermore, the price declines over year and varies depend on the quality of service. It satisfies wider range of customer that lead the increasing number of customers.

5.2.3 Crude Palm Oil (CPO) Industries

Crude Palm Oil (CPO) constitutes one primary export community in Indonesia in plantation or estate sector. Today, there are approximately 5.5 million hectares of oil palm estates that spread in five provincial territories existing in Riau (25 percent), North Sumatera (17.5 percent), South Sumatera (9.5 percent), Jambi (8.4 percent), and west Kalimantan (8.4 percent) with their productions of 16 million tons in 2006. At this rate of production, Indonesia comes second in the world-greatest producer of CPO, after Malaysia. Indonesia controls 38.8 percent of world CPO production.

The growth of CPO as one of Indonesia's main export commodities is due to various efforts by the people in general, the government and private companies to expand the area of plantation. We can see that from the growing size of CPO plantations, from 120 thousand hectares in 1968 to 4.9 million hectares in 2003, to recently 6.2 million hectares. The coverage also expands, not only in Sumatra but also in Kalimantan and Sulawesi.

Along with the growing size of area, volume of production also shows significant growth. Production volume increased to more than double within six years, from seven million tons in 2000 to 16 million tons in 2006. Meanwhile, productivity increased from 2.8 tons/hectare in 2000 to 3.4 ton/hectare in 2006 (Table 2). In comparison with Malaysia, however, the productivity level was relatively low. Malaysia was able to produce 6-7 tons of crude palms per hectare of land.

Structure dan Market Concentration

CPO Industry is oligopoly in structure. In spite of fairly many agriculture businesses, only a handful of companies that is relatively potential. They are six in number consisting of PT

Table 17 Size of land, Production volume and Productivity level of palm plantations

| Year | Land Cultivated (m ha) | Production (m tons) | Productivity |
|------|------------------------|---------------------|--------------|
| 2000 | 2.5 | 7,0 | 2.8 |
| 2001 | 2.9 | 8,3 | 2.8 |
| 2002 | 3.3 | 9,6 | 2.9 |
| 2003 | 3.4 | 10,4 | 3.0 |
| 2004 | 3.8 | 12,1 | 3.1 |
| 2005 | 4.3 | 14,6 | 3.3 |
| 2006 | 4.9 | 16,4 | 3.4 |

Source: Indonesian Palm Oil Statistics (2006)

Table 18 Market Share of Palm Plantation company

| Year | CPO | CPO products |
|---------------------|------|--------------|
| Wilmar | 14.6 | 42.8 |
| Musim Mas | 14.1 | 20.7 |
| PT Smart | 13.8 | 4.4 |
| PT Perkebunan | 9.9 | 0.1 |
| Permata Hijau Sawit | 7.6 | 10.8 |
| AAA | 7.1 | 7.7 |
| Other | 32.9 | 13.5 |

Source: Indonesian Association of Cooking Oil Industry 2007 in Soelistaningsih (2007)

Wilmar, PT. Musim Mas, PT Pennata Hijau Sawit, PT. Smart, PT. AAA, and PTP. The market controlling capability of each of such companies can be seen in Table 12.

In 2007, these six great CPO producers have control over 67.1 percent of Indonesian CPO production. PT. Wilmar is the market leader that dominates market at 14.6 percent. Then, when seen from processed palm oil industry that constitutes a down-stream industry of CPO, its domain becomes even larger. Approximately 86.5 percent of the market is dominated by these six enterprises. Again, PT. Wilmar constitutes the market leader with its mastery of market at 42.8 percent.

As seen on the above Table, besides the visibility of market domination, there is also the greatness of market concentration. The CR4 value for CPO industry is available as much as 52.4 percent, and at the same time the processing palm oil industry is 82 percent. This means that more than half of the market production coming from four

producers indicating that this industry is virtually oligopoly in nature. Accordingly, this industry is frequently suspected of having formed cartel in order to form prices, and what is more so when the prices of palm oil is increasing several times higher most recently. Due to this suspicion, KPPU needs to monitor palm oil industry frequently to ensure that the market mechanism works well.

5.2.3 Refinery Sugar Industries

The history of sugar industry in Indonesia can be traced back to Dutch colonization era in Indonesia. In the 19th century, the Dutch's forced plantation helped boost the economy, relying mostly on cane plantation and sugar processing. There were 179 sugar factories nationwide at the time (BEI, 2008). However, the number kept declining. In 1950, the number was 30, slightly increased to 55 in 1962, and 58 in 2004.

Table 19 Market Concentration
Sugar Industry

| Year | CR2 | CR4 | CR8 |
|-----------|------|------|------|
| 2001 | 0.2 | 0.32 | 0.46 |
| 2002 | 0.28 | 0.4 | 0.54 |
| 2003 | 0.31 | 0.43 | 0.58 |
| 2004 | 0.27 | 0.4 | 0.52 |
| Avg 01-04 | 0.27 | 0.39 | 0.53 |

Source: BPS, several year publications

Sugar industry has a strategic value for Indonesia. Sugar plays an important role in Indonesia's food consumption, being one of the nine major food material for Indonesian people. Therefore, the government gave special attention to the industry, exercising regulations to the point of over regulation. Trade regulation and import duty are part of the implemented regulations.

Market for sugar in the last two years has shown an excess demand. National consumption of 2,6 million tons in 2006 was served by 2,33 million tons of domestic production, leaving a room

for sugar importing. To compensate for the shortage, the government plans to expand the plantation for additional 15 thousand hectares with the expectation of producing 2,66 million tons to fulfil local demand of 2.7 million tons in 2007 using local resources. Therefore, sugar importing can be kept to the minimum and price stability can be enforced.

Market Structure

Table 5 portrays market concentration in sugar industry in Indonesia for 2001-2004. Using CR4 benchmark, there were 4 four major companies dominating 39 percent market shares. Compared to the other industries, sugar is considerably not concentrated. With current total factories of 50, the market structure is monopolistic.

Current industrial structure of domestic sugar is related to government regulation that allows the private sector entering the industry. As mentioned before, early development of sugar industry is dominated by SOEs, formed from nationalization process. These SOEs has dominated until the private sector started entering the industry in 90's. It enforces the market to work competitively. Until now, there is no big case reported related to sugar industry activities.

-000-

6

Problem and Needs Analysis

The most daunting challenge on competition law implementation in Indonesia is the government competition policy. Monopolistic practices in several areas of industries mostly arose as a result of government policy and regulation. This chapter is intended to summarize problems facing competition law implementation and enforcement and optional actions for the KPPU to solve the problems.

In general, issues on competition law implementation and enforcement fall into one of the following areas. The competition law itself, the government competition policy, system of law enforcement, supports from the stakeholders and the KPPU institution. These areas and the issues and problems on the areas including the optional actions for the KPPU are summarized in Table 20.

6.1. Strengthening competition law

Many issues arise as a result of the weakness of the competition law itself, such as conflicting and overlapping provisions, lack of stipulation on a certain competition, lack of guidance and suitability of provisions. As mentioned in Chapter 2, some provisions difficult to be implemented, since the lack of further provision or incompatible with actual business practices.

For strengthening competitions law, it seems necessary to amend the law. The amendment may be including the content's structure, concept and definition of several terms, and stipulations. For the time being, guidance formulation is critical for increasing transparency, clarity and foreseeability of the law; and promotes self compliance to the law.

6.2. Strengthening competition policy

For some extent, the effectiveness of competition law depends on policies and regulations set by the government. Incompliance of government policies and regulations with the competition law resulting monopolistic practices and unfair competition; and make the KPPU difficult to conduct the duties. The incompliance arises in consequence of the lack of coordination with government agencies conducting policy formulation; weakness supports form government and legislative body. Implementation of local autonomy (Otonomi daerah - OTDA) also creates problems on competition law implementation.

Government policy and regulation reflects the knowledge and awareness of the government on competition; and demonstrates the political support on the competition law. Through

competition policy formulation, the government and, the legislative body as well, play important role in competition law implementation, enhancing public and business actors to comply with the law. Detrimental matter of local autonomy implementation impedes as the government takes actions to synchronizing local government policy and regulation.

As a matter of facts, the awareness of policy makers is less sufficiently to supports competition. Many regulations are in absent of competition value; reflecting the lack of awareness to competition. The lack of awareness is also reflected in relation to facilitating competition law development. As mentioned earlier, several weaknesses are inherent in the present competition law; amendment and/or formulating further provisions are essential for strengthening law enforcement. So far, there has been no indication from the government and the legislative body as well, to revise the competition law.

As mandated by the law, one of the KPPU duties is to provide advice and opinion on government policy related to competition. But, however, the KPPU has no authority and obligation concerning competition law legislation. The optionally, the KPPU can take actions to push the government and the legislative body for legislation by attracting the issues for the public. The KPPU initiative in drafting law amendment could be utilized for attracting public awareness on the needs of competition law development.

6.3. Strengthening law enforcement

The weakness of law system and authority are major problems facing the KPPU on enforcing competition law. The procedural law is less compatible to enforce competition law implementation. Meanwhile, many adjudicators have no sufficient understanding of the competition law, and the underlying philosophy of competition, and the disadvantage of unfair competition. This is one of the reasons why some of the KPPU rulings were revoked by district courts.

The coordination between KPPU and the other judicial bodies are not yet effective. Implementation of Supreme Court Regulation (*PerMA*) No. 3/2005 on Court Proceeding for Business Competition is still impediment. Difficulties in asking the Police for assistance are facing the KPPU since the lack of formal coordination (MoU). In absent of authority to search through for the evidence or confiscate from the violating companies, the lack of support from the Police impede the KPPU to conduct effective investigation.

On the case of violation, most of case reported relate to bidding collusion for government projects. This means that the close monitoring of bidding process can reduce the probability of bidding collusion, which will reduce the load for KPPU.

6.4. Strengthening public and political support

The most challenging duty of the KPPU is to enhance developments of competition culture among people and business actors. Competition is considered representing foreign interest; and provides more benefit for the large business actors. The lack of competition culture generates difficulties on enforcing self compliance to competition law by the business actor.

Business actors less consider competition will provide benefits for promoting business growth, protecting them from unfair practices; and have less awareness of the detrimental of unfair competition. For some extent, this is because of many business actors get used to privilege and protection from the government. These situations generate the lack of political support to competition law and policy.

Dissemination of information regarding competition law may improve their understanding about competition and the applications in business. To generate more of public and politician support to competition law and policy, we have to develop a competition culture. We can do that by campaigning on the law and highlighting the benefits of competition to the general society.

6.5. Institutional building of competition authority

On the institutional matters, the KPPU is facing several barriers in conducting its duties to enforce competition law implementation, such as:

- Insufficient human resources available for conducting the monitoring, investigating and evaluating government policies and regulations and business activities. Most of the KPPU staff has insufficient formal education or training on economics and business competition. Since the KPPU is relatively new institution, most of the staff has a bit experience on competition matters.
- Limited budget relative to wide range of the KPPU duties. The budget allocation system form the state (The KPPU budget is allocated as a part of the MoT budget) creates dependency to the MoT.

Human resources development is essential to ensure effective role of KPPU. More qualified personnel is needed for conducting more complex competition issues and higher number of suspected actions of violation to competition law.

Financial independency should be considered as a part of institutional development of the KPPU; amending the KPPU constitutional form (inherent with competition law amendment) is necessary.

Table 20 Problems and Needs

| No. | AREA | Issues and Problems | Actions to be taken |
|-----|---|---|--|
| 1 | Strengthening competition law | <ul style="list-style-type: none"> - Several provisions in the law are: <ul style="list-style-type: none"> • conflicting or overlapping; • need to be explained further; • incompatible with actual business practices - Current law does not stipulate some issues of competitions. | <ul style="list-style-type: none"> - Law amendment - Guidance formulations - Law amendment - Law amendment |
| 2 | Strengthening competition policy | <ul style="list-style-type: none"> - Several government regulations does't comply with the spirit of competition - Coordination with regulatory body (ministries and other sectoral regulator) - Challenge of local autonomy implementation - Weakness of supports from the government and legislative body (DPR) | <ul style="list-style-type: none"> - Coordination on policy formulation - As above - As above - Advocacy |
| 3 | Strengthening the law enforcement | <ul style="list-style-type: none"> - Weakness on law system, the procedural law is insufficient to accommodate competition law enforcements. - Weakness of the KPPU authority - Limited understanding of adjudicators on competition matter. - Most violations are related to bidding process for government projects | <ul style="list-style-type: none"> - Coordination with judicial body; - Law amendment - Law amendment - Advocacy - Coordination on policy formulation |
| 4 | Strengthening public and political supports | <ul style="list-style-type: none"> - Lack of competition culture - Some peoples are against free competition - Some peoples believe competition law representing foreign interests | <ul style="list-style-type: none"> - Advocacy - Advocacy - Advocacy |

| No. | AREA | Issues and Problems | Actions to be taken |
|-----|---|--|--|
| | | <ul style="list-style-type: none"> - The society has little knowledge of the law and benefits for economy - Less awareness of business actors on competition | <ul style="list-style-type: none"> - Advocacy - Advocacy |
| 5 | Institutional building of competition authority | <ul style="list-style-type: none"> - Insufficient human resources - Limited budget and dependency | <ul style="list-style-type: none"> - Human resources development; - Hire more staff - Advocacy on the importance of competition law enforcement; - Law amendment |

7

Other Issues

7.1 Compliance of competition law by enterprises

Anti-competition culture still prevails among enterprises, including among the state-owned enterprises (BUMN). Most of enterprises continue undertaking practices against the principle of competition such as discriminative mechanism and collective price fixing, whereas attempts to obtain government privileges and dispensations are also common. This culture is believed to be hindering the process of nurturing competition.

Other problem that impedes the induction of business competition value is a dominant belief that the business competition act is created to accommodate foreign interests and only benefiting large business actors.

7.2 Bidding method of the government and state companies

Bidding for goods and services procurement in government sector had been regulated by the President decree No.8 2003 on regulation on procurement for government good and services which then been reformed by the President Regulation No. 95/2007¹. This regulation aims to regulate tender process within government institution: departments, the Central Bank, and other government agencies which are funded by either State or Provincial budget.

Principles

The regulation stipulates tender procedures to comply with the principles of efficiency, effectiveness, openness and competitiveness, transparency, fairness, and accountability (KepPres No. 80/2003, Article 3).

Bidding method

Successful bidder is selected through general selection, while in certain condition; selection of consultation service provider could be conducted through limited selection, direct selection, or direct appointing (Article 22).

¹ Kepres No. 80/2003 had been changed for 7 times, it had been changed to Perpres no 61/2004, president decree no 61/2004, Perpres no 32/2005, Perpres no 70/2005, kepress no 8/2006, kepress no 85/2006, and lastly it had been changed to prepress no 95/2007..

General selection is a selection system where listing of bidders is conducted through a publicly opened prequalification process ².

Limited selection system is a selection system used to select service providers who are regarded as having enough capacity to carry complex projects. This system is also used when it is deemed that the numbers of potential bidders is limited.

Direct selection is a selection system where the list of bidders comprises of consultation service providers which are directly appointed and follow through a prequalification process. This selection system is conducted if the general or limited selection systems are considered would be inefficient.

Direct appointment. The bidding winner is selected by negotiation on technical aspect and the cost of the project to meet an acceptable price. Direct appointment is acceptable in a special condition and situation.

The current regulation have given specific guidance on various tender methods to serve various purposes, however violation on business competition had largely occurred in tenders which involved government goods and service procurement.

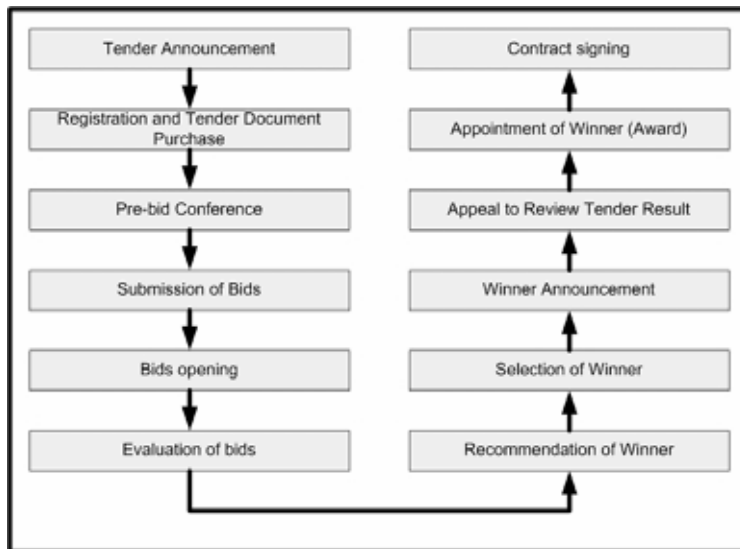
Bidding procedure

Procedure of public procurement set up by government through Presidential Decree No. 80/2003 with its several revisions. Procurement procedure conducted by private sector and donor institute is set up by themselves. The process for public procurement of goods/service is a little different with auction in the case of duration and procedure. Following is a procedure for public procurement in Indonesia.

Process of tender started with tender announcement, followed by registration and purchase of tender document. After document obtained, a pre-bid conference will be organised. Pursuant to the pre-bid conference, tender participants are given sufficient time to prepare and hence submit their bid. After submission of bids closed, public opening of bids and evaluation of bid documents will be held. Result of bid documents evaluation will be used as base for recommending the winner. Bidders are given expostulating period to review tender result, and only after that tender winner is decided and award is given, followed by signing of contract.

Figure 10 Procedure of public procurement

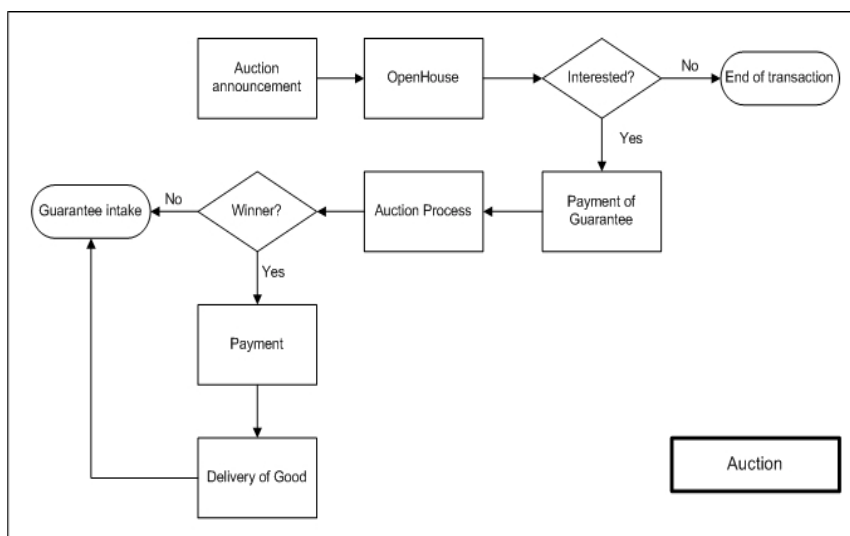
² Announced/advertised in at least one national newspaper and/or one local newspaper.



Source: OECD, Competition in Bidding Markets (2006)

Auction followed more simple process, started with announcement, followed with an open house. Payment of auction guarantee is made along with registration to participate. Through bargain process in open auction, winner decided to the highest bidder. This is different with public procurement which also can involve quality as one of the winner criteria.

Figure 11 Procedure of public auction



Source: OECD, Competition in Bidding Markets (2006)

Government procurement controller

On the 6 December 2007, the government released government regulation No.106/2007 on the Agency of procurement policy on government good and services. The regulation aims to

make procurement process (1) become more efficient and effective, (2) conform to the principles of competition; transparent, opened, and fair for all.

Based on the regulation, the agency of procurement policy on government good and services was established. The task of the agency is to develop and design policies on government goods and services procurement. In addition, the agency has an authority to supervise all tenders on projects that involve government spending.