

kompetisia

Newsletter on Indonesian competition law and policy



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KOMPETISIA
Newsletter on Indonesian
competition law and policy

Team of Editor:
Ahmad Junaidi
Deswin Nur
Solihatun Kiptiyah
Isti Prisniwi
Alia Saputri
Fathin Kemala Nashir

Contact address:
KPPU Building
Jl. Ir. H. Juanda No. 36
Jakarta 10120
INDONESIA

Also available online in our website:
<http://www.kppu.go.id>

Foreword

“Eight years in promoting healthy business competition”



The presence of Law No. 5/1999 about Prohibition of Monopolistic Practices and Unfair Business Competition has run during eight years commencing from implementation. After the time, emulation characteristic of healthy business competition started arises, whereas implementations of

Law No. 5/1999 in number of cases always rise. Now, the Commission for Supervision of Business Competition (KPPU) has handled 118 cases with various collision matters as well as in number of strategic business sectors, for example retail, transportation, agribusiness, telecommunications and oil and gasses.

If observed, growth of the existing corporate world is getting elevated. Innovation war and efficiency has becoming a trend. The good side is innovation effect and efficiency hence consumer choice increases accordingly.

Under this condition, business perpetrator remains to oblige to obey Law No. 5/1999 in competing for their consumer. For this purpose, beside handles case, hence KPPU always yields useful study as main reference in realizing healthy business competition.

As it is known that two main duties of KPPU is straightening of competition law enforcement and vesting of suggestion, where KPPU relying on competition law values which has gave contribution to this country. In line with government agenda, hence KPPU's finding at various cases either in case handling, monitoring or policy re-

search and evaluation, has shown importance of competition value to introduced to avoid abuse of dominant position either by perpetrator and also policy maker (regulator) that harms this nation. Some competition problems have been identified carefully through research activity that highlighting various industries from year to year.

KPPU also coping in giving appraisal to various entrepreneurs' behavior and government's policy based on Law No. 5/1999. With this consistency, KPPU expects Indonesian nation can pluck optimal benefit from growing of healthy business competition.

This momentum in turn will become kind of performance marker for KPPU till now. For his two main duties, hence KPPU also requires input from various related parties, which one of them is mass media. Thereby, KPPU always can improve his performance in reinforcement effort for institution status that has not completed. Finally to greets this important momentum, hence KPPU have also provided mass media space as information facility that can be exploited by the journalists to coverage KPPU's duty. This anniversary was closed by public campaign as part to increase public awareness toward KPPU and competition law and policy.

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People champaign to celebrate eight years in commencing the Law No. 5/1999

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Competition Advocacy

“Government’s vision on competition policy for public procurement ”



Wednesday, March 12 2008 will be the witness of Government’s commitment for national competition policy which pursue by the Commission for the Supervision of Business Competition (KPPU) through arranged meeting with Minister of National Development Planning or Head of National Development Agency (Bappenas) at Bappenas Building.

KPPU, whom represented by its Chairman, Vice Chairman, and several top officers from the Secretariat, submitted several issues concerning its development, such as the increase support towards competition law enforcement that showed from increasing numbers of decisions that affirmed by the District Court and the Supreme Court. Most of those decisions were concerning violation in procurement of goods and services. Furthermore, KPPU also submit increasing in competition advocacy efforts, in which there were more than 40 advices and recommendation was sent to the government. Moreover, KPPU also requested BAPPENAS to share their insight on competition policy development by government as a part of development of national economy policy.

Furthermore, concerning violation of business competition law in the sector of procurement of goods and services, Erwin Syahril said that tender conspiracy tended to occur in the planning process. The fact is, civil servants do not reluctant to become Bidding Committee, but they anxious worried if his superior intervened or ordered him to arrange the bidding. Vice Chairman KPPU added that there are many violations in the procurement caused by the lack of good governance that treated as outside of KPPU’s jurisdictions (for example, in the matter of building’s layout permission).

Responded to this, BAPPENAS that represented by Paskah Suzetta (Minister of National Development Planning/Head of Bappenas), Slamet Seno Aji (Deputy of Economics), Lukita Dinarsyah Tuwo (Deputy of Development Funding), and Agus Rahardjo (Head of Centre for of Policy Development of the Procurement of Public Goods and Services), explained about the development agency of procurement that will minimize conspiracy in bidding.

This agency will eventually hold the message of Presidential Decree No. 80/2003 and President Regulation No. 8/2006 separated from BAPPENAS and will be responsible directly to the President. The agency assigned to compile and supervise the implementation of the policy of procurement of goods and services, negotiate with foreign creditor, and do advocacy on the problem that deal with implementation of the procurement, policy design, monitoring the procurement, and introducing e-procurement. With regard to this establishment, Paskah Suzetta considered that written co-operation with KPPU will be fundamental.

On government efforts in developing of national competition policy, Slamet Seno Aji said that business competition program included in the Middle Period of Development Plan, especially in priority sectors. Agus Rahardjo added that procurement rule also contained the fair business competition as a part of it’s objectives. Moreover, in order to promote the business competition, five provinces signed agreement with BAPPENAS to applied e-procurement. Those are Gorontalo, West Sumatra, Central Kalimantan, East Java, and West Java province.

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“KPPU revoke price cartel by Port business associations”

Port sector recently has become attention by KPPU, with regard to import tariff agreement by business actor in Tanjung Priok Port in Jakarta. This export and import activity has not anticipated by the Government, thus used by several business associations to make a tariff agreement on forwarder and warehouse service to reduce high cost economy in this sector.

KPPU understand these facts as precise form of cartel on price that banned by the Law No. 5/1999. Thus, the Government as a regulator must have a strong leadership considering that port sector is categorized as natural monopoly and regulated industry. Despite the fact that port organization has moved to a competitive industry, but several monopolistic practices have occurs in form of high tariff and law quality of services.

KPPU viewed that agreement formed by business actors is not a solution to give birth to healthy port services. This was considered by several aspects, such as:

1. The ability of business actor for supporting services to endorsed their business differently;
2. Concept on tariff that only benefits business actors without ability to bargain a lower price thus will create inefficiency in the long run;
3. Cartel on price/tariff by business actor is considered breach the Law No. 5/1999;
4. The Government shall arrange supervision on two

indicators, tariff and quality of services.

For tariff regulation, Government shall formulate tariff formulation and component, based on comprehensive research that can identify the real tariff component, thus will erase illegal cost such as refund gave by the forwarder to the exporter that tends to create high cost economy. Government will also need to have an intervention to reduce potency for excessive tariff by service provider with high bargaining position on the port consumer. Further, by fixing ceiling price that will give huge space in promoting fair competition as well as in guarding consumer from abusive service's provider.

On the other side, things to be regulated increasing standar for quality service are the minimum standard that has significant consumer orientation, some of which are deliver-

ability and security.

In order to organize this sector, KPPU advice Government to stop this tariff agreement and fixed their policies by taking over authority given to business actor to fix their price on an agreement. Moreover, KPPU also advice Government to conduct policy intervene by regulating tariff formulation and equip with ceiling price limitation, and also to promoting standard for minimum requirement together with strong law enforcement.

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International Activities

"AECG and competition policy in South East Asia Region"



KPPU was represented by Chairman Syamsul Maarif (as well as focal point AEGC for Indonesia) and Ms. Helena W. Wulandari (Head of Legal Infrastructure) to this AECG Meeting.



is to implement better competition law and policy. Every state stills has different viewpoint on the existence of a regional competition law and policy which influenced by their state condition.

Furthermore, a free market in ASEAN hardly required the existence of competition policy to support their investment. Along with the commitment stated in the ASEAN Economic Community blueprint, ASEAN is rushed by the obligation to implemented better competition policy in the region. Therefore, AEGC's meeting is aimed to scrutinize this mission in which they are required to embrace the establishment of competition policy in ever member state before the year of 2015. Currently, this formal organization under the ASEAN Secretariat is lead by Singapore and Malaysia as Chairman and Vice Chairman.

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Association of South East Asia Nation/ASEAN Expert Group on Competition (refer as AEGC) held in Singapore on Mach 18-20, 2008, was aimed to proceed action plans agreed at the ASEAN Consultative Forum on Competition's (refer as ACFC) top official meeting in Vietnam. This event based on the propose to discuss term of reference for AEGC, implementation of ASEAN Economic Blueprint, regional guideline on competition policy, work-plan for AEGC in the short term, draft for competition policy chapter in ASEAN Australia New Zealand Free Trade Agreement, and decision for transforming ACFC into AEGC.

This thing is related to most all member of ASEAN in implementing her economy based on open economics system, so-called market economics. Even states that are formerly embraces closed economic system (like Vietnam, Laos, Cambodia and Myanmar) have implemented her economics system with market economics system, thus will grows economics environment in ASEAN region and generates improvement of competition between business actors.

An integrated market economics system in regional level requires competition policy and competition agency. Member of ASEAN has a common idea that effective competition policy had the character of a command, even though some members have difference opinion about how

"Lesson learned from Japan's experience in developing competition law: a story from country focused training (CFT) on competition policy in Tokyo and Nagoya"

On March 2-22nd 2008, 10 staffs of KPPU were joining Country Focused Training (CFT) on Competition Policy held by Japan International Cooperation Agency (JICA) and Japan Fair Trade Commission (JFTC) in Tokyo and Nagoya, Japan. The program is an annual program as part of cooperation between government of Indonesia through KPPU and government of Japan through JICA and CFT.

Since 2004, this training program becoming an annual agenda for KPPU's staffs to learn about competition law in Japan. It's also figured out that the lesson learned dur-

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ing the training might be used as a tool to develop the competition law in Indonesia.

Japan with its extensive experience on competition law since 1947 is a right place to learn about competition law. Moreover, the developmental history of Japan's competition law is having so many similarities with Indonesia. Japan's situation before the enactment of competition law is quite similar with Indonesia.

During the training, participants were taught to learn about the development of competition law in Japan, also contain of Antimonopoly Act of Japan (AMA). AMA was enacted in 1947 after Japan's surrender to Allied Forces, lead by USA, or so called Japan under occupation era. Allied forces seen Japan's aggressive sense is influenced by the existence of zaibatsu (conglomerates), which were hunger of natural resources and raw material for their industries, and lead Japan's government look for it in another country by using imperialism.

The existence of international interference in enacting AMA is similar to Indonesian's experience on enacting Law No.5/1999. Moreover, the economic situation in Indonesia and Japan before the enactment of the competition law is also quite similar. Indonesia experienced conglomerates issue and Japan had zaibatsu.

AMA is consisted of regulation on Unfair Trade Practices (TP), Private Monopolization (PM), and Monopoly. The contain AMA which is becoming main attention during the training was Private Monopolization, especially when discussing about merger issue. The discussion is related to the merger guideline drafted by KPPU. Based on the material of the training, participants learned a lot of knowledge related to merger issue.

Overall, the training was so significant in improving the knowledge of KPPU's staff. While in Japan, not merely learning about Japanese competition issue, the participants also introduced to industrial policy of Japan. Furthermore, the participants also had the opportunity to learn about the culture of Japan, especially, daily life of Japanese people. And, the experiences gained in Japan are so important to widen the perspective of the participants.

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"Sharing knowledge on cartel case in cement industry"

It was for the first time, OECD Korea Regional Center for Competition held a training workshop located outside of South Korea, precisely in Singapore, March 5-7, 2008. This workshop was examined competition issues related to cartels, the design and effective implementation of leniency programs, and the interface between competition and regulation. The first session was focused on cartel theory and countries' experiences in combating national and international cartels. The second session was continued the discussion of cartels with a focus on how leniency programs can be effectively incorporated into an anti-cartel

agenda. The final session was examined the role of competition enforcers in regulated industries, discussing differing experiences in effectively managing this relationship.

In this workshop, KPPU (that represented by its two top investigators, Mr. Lukman Sungkar and Mr. Abdul Hakim Pasaribu) was entrusted to deliver case study on cartel in cement industry that being decided several years ago.

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Upcoming events

APEC Seminar for Sharing Experiences in APEC Economies on Relations between Competition Authorities and Regulator Bodies, **June 11-13, 2008**, Ramada Bintang Bali Resort & Spa, Bali, Indonesia

Status:

- General information to this seminar has been circulated to invite comment from member economies.

The 4th APEC Training Course on Competition Policy **August 27-29, 2008**, Sanur Paradise Plaza Hotel & Suites Bali, Indonesia

Status:

- This training is postpone until **November 5-7, 2008**.

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Deswin NUR (Mr.)

*Head of Inter-institution Cooperation Division
Directorate of Communication*

Commission for the Supervision of Business Competition
Jl. Ir. H. Juanda No. 36, Jakarta, INDONESIA 10120

Tel: (62-21) 3507015/16/43

Fax: (62-21) 3507008

deswin@kppu.go.id