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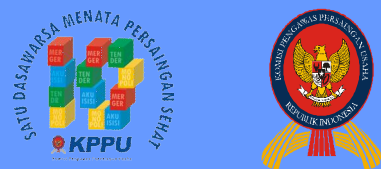
Newsletter on Indonesian competition law and policy

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## Handbook on Competition Policies and Laws for Business



Commission for the Supervision of  
Business Competition (KPPU)

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# What's New?



In front, from right to left: Ahmad Junaidi (Head of Public Relation Bureau), Taufik Ahmad (Head of Competition Policy Bureau), Ismed Fadillah (Head of Law Enforcement Bureau), Ani Pudyastuti (Head of Internal Audit Bureau), Kurnia Syaranie (Commissioner's Expert Staff for Legal), and M. Syuhadhak (Secretary General).

## Inauguration and Handover of New Officers at the KPPU's Secretariat

In an organization, mutation and rotation of positions of its employees is a process to adjust with the organization development and dynamics. Therefore, KPPU as an Indonesian business competition institution applies the same.

The inauguration and oath-taking of the managerial officers at the KPPU's secretariat was held on Friday, August 21st, 2009. Then, the handover of the positions from incumbent officers to the newly installed officers was directly led by the KPPU's Vice Chairman, Didik Akhmadi, Ak., M.Com., on August 25th, 2009.

The followings are the names and the positions of the structural officers at the KPPU's secretariat:

- **Drs. Mokhamad Syuhadhak, M.P.A.**, as the Head of Administration Bureau and Acting Secretary General;
- **Kurnia Sya'ranie, SH. MH.**, as the Commissioner's Expert Staff;
- **Ir. Ani Pudyastuti, M. A.**, as the Head of Internal Audit Bureau;
- **Ismed Fadillah, S.H., M.Si.**, as the Head of Law Enforcement Bureau;
- **Ir. Taufik Ahmad, S.T., M.M.**, as the Head of Competition Policy Bureau;
- **A. Junaidi, S.H., M.H., LL.M., M.Kn.**, as the Head of Public Relations Bureau.

## Bid Rigging on the Procurement of Road Periodic Maintenance Project, Simpang Kota Pinang, Labuhan Batu Regency

Komisi Pengawas Persaingan Usaha – KPPU (the Commission for the Supervision of Business Competition) has decided the Case No. 03/KPPU-L/2009 concerning the Tender for Road Periodic Maintenance Project, Simpang Kota Pinang, Batas Tapsel, Labuhan Batu Regency, Fiscal Year 2008, which has violated the provisions stipulated in Article 22 of Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

The Council's Session was held on August 25th, 2009 at the KPPU's Building and chaired by Ir. Dedie S. Martadisastra, S.E., M.M., in the presence of the members, namely Ir. Tadjuddin Noer Said and Yoyo Arifardhani, S.H., M.M., LL.M.

In the case, a horizontal conspiracy has occurred, in which Jul Arwanto Sitepu through the mediator, Binsar Simare-mare has used the names of PT Parnasib Nusantara, PT Nasiotama Karya Bersama, PT Buana Baru Nusantara and PT Audison Nusantara in participating in the tender. In addition, PT Parnasib Nusantara, PT Nasiotama Karya Bersama, PT Buana Baru Nusantara and PT Audison Nusantara have presented similar Implementation Method and Schedule, and List of Proposed Equipments. In addition, the Commission's Council also finds the facts that some of these companies has the Board of Directors and Board of Commissioners with the same addresses. On the basis of the facts on the use of the companies' names, similar quotations, family relations and same addresses, it proves that PT Parnasib Nusantara, PT Nasiotama Karya Bersama, PT Buana Baru



Nusantara and PT Audison Nusantara have committed the horizontal conspiracy in the tender.

In addition, some facts are also found concerning vertical conspiracy, in which the Tender Committee for the Local Budget (APBD) Project of North Sumatra Province in the Fiscal Year 2008, Road Periodic Maintenance Project of Jalan Simpang Kota Pinang-Batas Tapsel, Labuhan Batu Regency, Labuhan Batu Field and Technical Section and Road and Bridge Agency of Sumatra Province have evaluated the bidders and qualified PT Audison Nusantara. As a matter of fact, the company does not meet the required qualifications. Further, after being awarded the contract, PT Audison Nusantara subcontracted the project to a third party, namely Jefri Jamril. This practice constitutes a violation of the provisions stipulated in article 32 paragraphs 3 of the Presidential Decree Number 80 Year 2003 and the Integrity Pact.

In the case, there is a potency of the state financial loss in the sum of Rp 354,216,653.70 due to the decision on awarding the contract to PT Audison Nusantara, despite of the fact that other bidder, (PT Bersama Abadi Jaya) who meets the tender requirements and submits the quotation with lower price. In addition, the tender committee has made changes to the notarial deeds so as to facilitate such conspiracy.

The Council's Trial has decided to prohibit the above-stated companies to participate in any tenders administered by the Field and Technical Section of Labuhan Batu Regency, Road and Bridge Agency of North Sumatra Province. Further, it orders the tender winner to pay

the fine in the sum of 50 million Rupiah and recommends that the administrative officials at the provincial government of North Sumatra impose administrative sanctions to the tender committee and asks the Supreme Audit Agency (BPK) to audit the tender for Road Periodic Maintenance, Simpang Kota Pinang – Batas Tapsel, Labuhan Batu Regency, Fiscal Year 2008 and asks the Indonesian Notaries Association to render supervision against its members before drawing up the deeds for the companies which will participate in the tenders.

## Bid Rigging on the Procurement of Furniture and Interior Work in Public Works Agency of Riau Province



The Commission for the Supervision of Business Competition KPPU (the Commission for the Supervision of Business Competition) has decided the Case No. 02/KPPU-L/2009 concerning Tender for Furniture and Interior Work, Office Building Construction at Settlement and Regional Infrastructure (Dinas Pemukiman dan Prasarana Wilayah) of Riau Province, which has violated the provisions stipulated in Article 22 of Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. The Council's Session was held on August 25th, 2009 at the KPPU's Building and chaired by Ir. M. Nawir. Messi, M.Sc, in the presence of the members, namely Dr. Sukarmi, S.H., M.H., and Didik Akhmadi, A.k., M.Comm.

The case, involves not only a number of companies (PT Findomuda Desain Cipta, PT. Lince Romauli Raya, PT. Waskita Karya, PT. Wijaya Karya, PT. Pembangunan Perumahan, PT Geo Issec and PT Yodya Karya), but also a number of government authorities (Head of Cipta Karya Sub-Agency,

Settlement and Regional Infrastructure Agency (currently, Public Works Agency) of Riau Province in the Fiscal Year 2008, Technical Implementing Officers of Building Construction of Riau Library Building in the Fiscal Year 2008 which obviously involved the Tender Committee and Direct Appointment of the Local Budget-Funded Activities at the Settlement and Regional Infrastructure Agency (currently Public Works Agency) of Riau Province, Cipta Karya Division, Fiscal Year 2008).

In this session, it is found that all of the companies and government agencies as above stated are found to involve in the tender conspiracy and in this case, the Council's Trial concludes that they can be decided as suspects. In the implementation of the Tender for Furniture and Interior Work, Riau Library Construction, Office Building Construction at Settlement and Regional Infrastructure (Dinas Pemukiman dan Prasarana Wilayah) of Riau Province, Cipta Karya Division, in the fiscal year of 2008, a tender conspiracy has occurred in which, as the Council states, certain brand had been stated in the

bid document, bid announcement was held on Saturday (May 3rd, 2008) which was not a working day, and there two Self-Estimated Prices (HPS) which was used and validated by different committee, similar implementation methods proposed by the bidders and similar personnel from different bidders.

On the basis of the above facts, then the Commission's Council has decided that:

- The above mentioned companies and institutions which are decided as suspects in the said case have been proven violating article 22 of Law Number 5 Year 1999.
- To instruct PT Findomuda Desain to pay the fine of Rp 1 billion.
- To instruct PT Geo Issec to pay the fine of Rp 150 million.

## Bid Rigging in Indoor Cleaning Services in PT Chevron Pacific Indonesia

The KPPU has decided that the case Number 04/KPPU-L/2009 concerning the tender of Indoor Cleaning Services in Duri Dumai (Package I – Number 5453-Xk) and Rumbai-Minas (Package li-Number 5454-Xk) within the Premises of PT. Chevron Pacific Indonesia, has violated the article 22 of Law Number 5 Year 1999 concerning the Prohibition of Monopoly Practice and Unfair Business Competition. The trial has been conducted on August 31, 2009 in the KPPU Building Jakarta and the trial was chaired by Ir. H. Tadjuddin Noer Said and the members were Dr. Sukarmi SH., MH and Ir. Dedie S. Martadisastira, S.E., M.M.

Besides involving several companies (PT Chevron Indonesia, PT. Nusa Inti Sarindo, PT Avia Jaya Indah, PT Shandy Putra Makmur, PT Jacolin Fitrab Cabang Pekanbaru,

PT Freshklindo Graha Solusi and PT Yogi Pratama Mandiri), where these companies were suspected violating the tender and shall be decided as suspects in the case.

In this trial, it could be proved that the tender process won by PT Nusa Inti Sharindo and PT Avia Jaya Indah contained tender violation. The violation constitutes vertical conspiracy where PT. Chevron Indonesia tried to facilitate certain participants in order to determine the tender winner. In addition, there was also a horizontal conspiracy among these companies in order to determine the tender winner, where the tender participants make an agreement letter to determine the tender winner as well as the effort of the participants to influence PT Chevron in order to evaluate the tender participants.

According to the facts that have been proved in the trial, then the commission Council decided that:

- All suspects in the trial have violated Article 22 of Law Number 5 Year 1999
- To sentence a fine of Rp 2 billion to PT. Chevron
- To sentence a fine of Rp 1 billion respectively to the tender winners (PT Nusa Inti Sharindo and PT Avia Jaya Indah)
- To prohibit PT Shandy Putra Makmur, PT Jacolin Fitrab Cabang Pekanbaru, PT Freshklindo Graha Solusi and PT Yogi Pratama Mandiri to participate in any tender held by PT Chevron Indonesia for duration of 1 year since the issuance of this decision.

## Evaluation and Study on the Competition Policy in Cooking Oil Industry in Indonesia

On Wednesday, 5 August 2009, in the KPPU Office in Jakarta, a limited discussion has been held in order to discuss the Evaluation and Study on the Impact of Competition Policy in Cooking Oil Industry in Indonesia. The discussion was held as the KPPU's effort to obtain additional data and information from several stakeholders in a comprehensive manner. The discussion was attended by several participants from the KPPU Secretariat or relevant stakeholders (Trade Ministry, Industry Ministry, Indonesian Consumer Protection Foundation/YLKI and some business actors.

The discussion held by presenting a speaker Ir. Taufik Ahmad (Head of DKP Bureau of the KPPU) was based on the fact of the decrease of CPO price which was relatively disproportional and it affects the decrease of fried oil price. Due to the movement of fried oil price, either bulk or packed, which is relatively responsive to the increase of the movement of CPO input price.



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## The 1st AEGC Workshop on the Handbook on Competition Policies and Laws for Business

Competition policy constitutes a certainty to develop a healthy economy system in a country or territory. In this case, ASEAN which plans the FTA, has not possessed any generally applicable competition policy and law in its territory, considering that ASEAN region constitutes a very potential area for the growth, development or mobility of economy.

For that purpose, ASEAN Secretary as the institution arranging FTA planning in the region considers the importance of a generally applicable regulation for ASEAN region relating to fair business competition. For that purpose, ASEAN Expert Group on Competition (AEGC) held the 1st Workshop on the Handbook on Competition Policies and Laws in ASEAN for Business on 18-19 August 2009 in Yogyakarta. The event held by ASEAN Secretary and InWent – International Capacity Building (a Germany international donor institution) was attended by the delegation of business competition authorities from countries within Southeast Asia region as well as experts from Fratini vergano (a business consultant in Europe Union).

This is the first workshop for the purpose of obtaining information on the condition of countries within ASEAN region to be used to arrange an initial draft for Handbook of Competition Policy to be thoroughly implemented within ASEAN region. For that purpose, it is necessary to obtain an intact information from countries within ASEAN region, either those which already have competition law (Indonesia, Singapore, Thailand, and Vietnam) or those which have not any competition law (Malaysia, Cambodia, Philippine, Myanmar, Brunei Darussalam and

Laos). In addition, the workshop also discusses the basic principles in arranging guidelines on competition policy, where the handbook constitutes basic guidelines to introduce, implement, and enforce competition law as well as general business competition advocacy activities in Southeast Asia region.

For the next step, expert will implement their mission in several ASEAN countries in order to obtain information and implement identification with regard to competition that has been held in order to support the next step to arrange the draft.



# International

## The 4th AEGC Meeting

The meeting was held on August 7th-8th, 2009 at Langkawi Island, Malaysia. It was attended by some representatives from Asian countries and the forum was chaired by the Chairperson of AEGC from Malaysia.

The meeting discussed all programs and problems as well program plans to be implemented by the Asian countries as an effort to create a better competition at the region. The forum highlighted the notes, progress and decision to the main issues in the meeting to summarize into the ASEAN Secretariat Information Paper. In addition, the forum paid attention to some developments achieved by the AEGC.

The meeting also serves a forum to explain and reports the outputs attained in the Regional Guidelines which was first held in Bali on July 30th-31st, 2009. It also discussed the outline draft of the handbook to be developed by the experts from FratiniVergano on the basis of the outline draft handbook issued by WG which were distributed during the third AEGC Meeting. The forum reviewed and approved the outline draft handbook with some notes that the outline draft handbook shall only serves as structure for the Asian countries which have established the Law on Competition.

In addition, the forum also notes the negotiation progress with the GTZ in respect of the the implementation of the technical assistance on the competition policy and law in the ASEAN.



## The 4th AEGC Training Workshop on Approaches, Methodologies and Techniques of Competition Law

This Workshop was held in coincidence with the 4th AEGC Meeting at Langkawi Island, Malaysia on August 10th- 12th, 2009. It discussed the approach and methodology as well as technique to be applied the implementation of the business competition law. In addition, the workshop enumerated the objectives of the competition law in an effort to create total welfare, not only the consumer welfare. Then, the workshop discussed the case samples on many kinds of cartels and tender cases which frequently arise. Therefore, a Leniency Program is applied at some countries in handling the cartel problems.

The workshop also discussed Vertical Agreement and Vertical Restraint. Vertical agreement constitutes an agreement among various parties from different levels of production chain and

distribution, such as distribution agreement and goods transportation. Vertical Restraint constitutes a restraint in business freedom against one or more business actors to enter any vertical agreement such as the limitation against after sale price, the requirement not to compete, selected goods distribution and exclusive goods distribution. The negative impact of vertical restraint reduces inter-brand and intra-brand competition. The positive impact of vertical restraint reduces any "free-riding" in distributors and suppliers.

## The 5th APEC Training Course on Competition Policy

This activity was held by Taiwan Fair Trade Commission (TFTC) and facilitated by APEC Secretariat and JFTC and attended by several institutions related to business competition within APEC countries. The discussion in the training was divided into 2 groups namely small Group on Vertical Restraint and small Group on Interrelation between Competition Policy and Consumer Policy. The Small Group session on Vertical restraint discusses the mechanism of Resale Price Maintenance (RPM) either relating to the effect and incentive which underlined the RPM or the dominant aspects such as the definition and collective dominant.

The Small Group session on Interrelation between Competition Policy and Consumer Policy discusses the relationship between business competition law and consumer protection against

the improvement of consumer welfare occurs in APEC member countries. With the presence of comparative study from various business competition authorities within APEC countries, it is expected to provide a new point of view and perspective from the KPPU toward business competition dynamics.



## ASEAN Regional Workshop “The Economics of Monopoly / Dominance”

This workshop was held on 24-26 August 2009 in Da Lat City, Vietnam. The delegations attending the workshop were the representatives from business competition authorities within ASEAN region and Mongolia, as well as academicians and government officials.

The workshop discussed the use of economy theories relating to monopoly and market domination. In addition, there was also several case examples discussed in the workshop, such as those relating to executive dealing involving Denstply. The case concerning executive dealing between Denstply and its distributors is the presence of an entry barrier for the competitors as well as monopoly. Another case relat-

ing to market share discount also occurred. Where there was a company which abused their dominant position by offering market share and volume discount. The discount was given by 'golden handcuffs' where the closed agreement has excluded competitors from the business, and enabled the company to determine extremely high price.

It is expected that the workshop would provide a comprehensive understanding for the KPPU against any issues and problems around business competition law.

# International

## Participation in the Workshop and Technical Visit “Best Practice in Internal Audit and Implementation of Internal Control in Public Sector”

This workshop was held on August 1st-8th, 2009 in Perth, Australia by Internal Auditor Education Foundation (YPIA) and several private organizations, regional government and financial auditor bodies in West Australia. Besides KPPU, Indonesia was also represented by 11 representatives from several government institutions and State Owned Enterprises. This workshop was held in the Price Waterhouse Cooper (PWC) Consultant office which performs government audit programs by using co-sourcing system.



The workshop also discussed the practical implementation of Government internal control system and Risk Management. In addition, training on best practice and risk management, fraud management and the use of CAAT as audit application was also provided.

It is expected that the activity will be able to contribute a capacity building for the KPPU, particularly for Internal Audit division, so that they would understand the internal audit function as well as the focus of performance audit.

## International Lecture on Competition Law



In accordance with KPPU's cooperation with the Supreme Court and GTZ, the Implementation of Competition Law Project presented an international lecture by Mr. Andre Brantz and Mr. Robert Lancop from Canadian Competition Authority on the implementation of competition in Canada with an adoption to Indonesian competition law.

The activity held on 12-15 August in Bali is aimed to introduce KPPU with international experts as well as absorb their knowledge in identifying market power and its abuses. The lecture ex-

plained overall and rational framework on competition policy correlated with technical issues on merger control. Therefore, investigation and analysis technique are needed. The lecture also discuss other aspects such abuse of dominant position and cartel.

The lecture touch upon case studies in mentioned subjects. In merger, there were four cases are presented, namely case on Canadian Waste Service Merger, Southam Newspaper Merger, Superior and ICG Merger in Propane Industry, and Staples-Office Depot

Merger. For abuse of dominant position, Laidlaw Waste Management and AC Nielson Case are discussed. As in cartel investigation, Quebec City Concrete and Charterways (the first bid rigging case handled by Canadian Competition Commission) are discussed.

Despite of short allocated time due to preference in merger control, the lecture is a success in providing broad understanding on Canadian Competition Law, especially in handling merger, cartel, and abuse of dominant.

## Blitz Megaplex in Box-Office Brawl With Group 21 Over Alleged Monopoly

Allegations of a monopoly over the nation's film distribution network have resurfaced again, the Business Competition Supervisory Commission said last Monday, after it received a report on unfair industry practices last month.

The regulator, also known as the KPPU, said it had received a report from PT Graha Layar Prima, operator of Blitz Megaplex, claiming that cinema giant Group 21, along with four distributors and six film production companies, had long been in control of the distribution of movies, especially domestic films. The KPPU has invited GLP and Group 21 to provide information for the regulator's investigation on Thursday.

Based on the report, the strict control of distribution by Group 21 and its affiliates had made it difficult for rival cinemas to gain easy access to local movies.

With its immense market share, Group 21 has strong leverage over movie producers to keep films off rivals' screens. According to the Indonesian Association of Movie Entrepreneurs (GPBSI), Group 21 controls 67.6 percent of cinemas in the country, and 76.9 percent of the screens. GLP claims that through May, Blitz has only been able to show 17 domestic films out of 42.

Group 21 is facing possible charges over its domination of movie distribution, colluding with film importers and distributors, lack of transparency in its working contracts, and having had the same board of directors from Group 21 presiding over two of its units, PT Camila Internusa Film and PT Satrya Perkasa Esthetika Film.

Ahmad Junaidi, KPPU communication director, said on Friday that his office had not yet made any conclusions regarding the claims that Group 21 was competing unfairly. To obtain sufficient data and evidence before going further

investigating the case, the KPPU has given both parties a chance to explain their sides of the issue, Ahmad said.

The battle between Blitz Megaplex and Group 21 gives a picture of the state of the national film industry. After operating for more than 15 years, Group 21's Cineplex 21 is being challenged by GLP's Blitz. In 2008, Group 21 had 379 screens in 90 locations.

Although Blitz cannot hope to compete with Cineplex 21 in terms of the numbers of screens, it offers superior facilities in marquee locations. The chain is planning to expand to other major cities.

Designed as a venue to meet all entertainment needs in one place, Blitz Megaplex offers a minimum of eight screens per cinema complex with various attractions like lounges.

Group 21 was also reported to the KPPU in 2003 by a nongovernmental organization for alleged unfair practices, including manipulation of film distribution and having undue influence over two affiliated companies, Camila Internusa Film and Satrya Perkasa Esthetika Film. The KPPU dropped the charges in 2003 due to a lack of evidence.

The presence of Blitz Megaplex and its rapid growth has sent a strong signal to Group 21 to modernize its own facilities. In 2007, Group 21 started refurbishing its Cineplex 21 venues and started opening the more sophisticated Cinema XXI and Premiere, which use Dolby Digital Cinema 3D technology.

Cinema XXI was first built in Plaza Indonesia, where a Blitz Megaplex is located, and was followed by movie theaters in malls including Plaza Senayan, Pondok Indah, Gading and Puri in Jakarta, as well as adding cinemas Bandung and Surabaya.

The reawakening of the local film industry has driven the need for the establishment of more cinemas. According to the national film association, there were 483 cinemas with 959 screens throughout Indonesia in 2007.

Though less popular than in the nation's golden era of film in 1990 with 2,600 cinemas, 2,853 screens and 312 million viewers, the public remains enthusiastic about watching movies.

The history of the national film industry can be traced to the Dutch era.

Source:

<http://thejakartaglobe.com/business/blitz-megaplex-in-box-office-brawl-with-group-21-over-alleged-monopoly/327014>

## Healthier competition needed in film business

The cinema industry needs to be more competitive as it is dominated by a single company, a report highlighting unfair practices in the movie distribution business concludes. Economic observer Faisal Basri suggested the film distribution sector should operate through tenders to enforce good business practice.

"Better regulation of the movie distribution business is also required," he said Thursday.

The Business Competition Supervisory Commission's (KPPU) preliminary investigation found movie producers were overly dependent on the country's largest cinema network, Cineplex 21, as a result of an alleged lack of healthy competition. According to the KPPU, Cineplex 21, which is owned by PT Nusantara Sejahtera Raya (NSR), an affiliate of diversified business conglomerate Subentra Group, will cast movies out of its network if film producers provide copies to other distribution networks.

"Producers can only provide a limited number of film copies. Therefore, it is considered costly to provide copies to networks that have a smaller market share," said KPPU head of business monitoring M. Noor Rofieq in a meeting with more than 30 movie industry players and academics on Thursday.

The producers can obtain a break-even point in their profit margins faster if they use the Cineplex 21 network, says the KPPU report.

In 2008, Cineplex 21 had 74.9 percent of the cinema industry market share, with a total of 379 screens, of which 213 were located in Greater Jakarta and the rest in other regions. This percentage excludes cinema networks that are affiliated with Cineplex 21, the report says. The non-Cineplex 21 networks have 25.1 percent of the market



share, with 127 screens across the country.

The KPPU report singles out Cineplex 21's alleged unfair practice of not allowing other cinema networks to get copies of the movies until Cineplex 21-affiliated theaters have finished screening them.

"Other cinema networks only have the right to screen movies after Cineplex 21 has screened them," said Noor. Cineplex 21 screened all 87 films produced in the Indonesian movie industry last year, while other networks could only screen 11, says the report. Most producers acknowledged they had to spend at least Rp 20 million (US\$2,000) per film copy, out of the Rp 5 billion to Rp 10 billion they already spent on production costs.

Because Cineplex 21 has the dominant market share, Noor said, producers are reluctant to provide film copies to other cinema networks.

"Most movie producers prefer Cineplex 21 because it provides better images, segmentation, number of screens and number of film copies. It has the largest audiences too."

The report states movie producers strongly connected to Cineplex 21 receive better technical services when their movies are screened together, such as larger spaces and exclusive screenings.

Source: <http://www.thejakartapost.com/news/2009/09/04/healthier-competition-needed-film-business.html>



## Fair Competition Brings People's Welfare

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