

2017 Annual Report on Competition Law and Policy INDONESIA

1. Introduction

In 2017, Indonesia's competition commission, Komisi Pengawas Persaingan Usaha (KPPU) set the highest priorities several strategic sectors like food, finance and banking, energy, logistic and infrastructure, and health and education. It focuses its enforcement and correction measures on unfair competition cases that can cause (i) price fluctuation with an increasing trend; (ii) supply limitation; (iii) lower quality; and (iv) limited choices for consumer. The promoted competition policy is set to enforce every deviation from competition law. Corrective actions were also applied to minimize the impact of the unfair competition on the strategic sectors.

KPPU also focuses its policy to create synergy with the ministry and other government institutions in many forums, including national team for regional inflation controls, national food task force to stabilize the food price, and coordinative meeting by ministry and other government institutions.

2. Changes to Competition Laws and Policies

There are few changes in Indonesian competition law and policy in 2017. New regulation is placed for the start of enforcement on partnership cases mandated to KPPU by the Law on Micro, Small, and medium-sized Enterprises (MSME Law). The amendment of competition law is progressing with a positive movement toward its endorsement in 2018.

2.1. *New Case Handling Procedure for Partnership Case*

KPPU passed a Regulation No. 1/2017 concerning the Case Handling Procedure for Partnership Infringement. This regulation provided further implementation of the Law No. 20/2008 concerning Micro, Small, and Medium-sized Enterprises (MSME Law) and its implementing regulation, Government Regulation No. 17/2013. Under this KPPU Regulation, any infringement on partnership between small and medium-sized with large-sized enterprises; and between small-sized with medium-sized enterprises will follow the stipulated procedure under this case handling regulation.

The case proceeding in general will follow similar steps as case proceeding for competition law cases, which started from receiving complaint (or internal report), investigation, filing, and commission council hearing. There are some significant differences between the procedure for competition and partnership case. The first difference is the time frame. The partnership case will have a shorter time frame in the preliminary hearing phase (which is 7 days from the first hearing), compare to a 30 days for competition cases. The second difference is the consent decree. This is where, after the preliminary hearing, if the defendant admits their wrongdoing; KPPU will stop the case and issue a written warning to the defendant for them stop the infringement. If the defendant did not comply to the warning after 7 days after they received the letter, KPPU will issue another written warning for up to 3 (three) times warning. If the defendant is still didn't comply, KPPU will continue the case to Advance Hearing phase for 14 (fourteen days). Number of days is also shorter compare to competition cases (up to 90 days). By putting a 14 days for the

commission council deliberation, KPPU will issue its decision within 30 days following the starting date of such deliberation.

Shorter time frame for partnership case is dedicated to provide more certainty to and avoid further damages on the MSME caused the violation. It is also dedicated to better use of human resources at KPPU, since other cases like competition and merger cases also will demand significant resources to the agency. Based on this regulation, all instrument for handling partnership case under the MSME Law is completed and KPPU may started to handled this type of case, as some complaints are building.

2.2. *Amendment of Competition Law*

Indonesian competition law is still under final process by the Parliament, waiting for further discussion with the Government. The discussion will focus on clarification of Government's position on the draft proposed by the Parliament (since the proposal for amendment came from the Parliament). Following the discussion, the Parliament will further discuss and set their position for a final draft law to be submitted to the Plenary Meeting of the Parliament (the highest decision maker at the Parliament), for a final approval before sending the law to the President (for a signing).

For information, the draft amendment focuses on several matters, like the application of extraterritorial application of competition law, shifting its merger control to mandatory pre-merger notification, introduction of leniency application, extension of penalties, and improvement of enforcement power by the competition agency.

3. Enforcement of Competition Law and Policies

3.1. *Summary of Activities and Statistics*

KPPU handled 153 complaints and 31 case initiatives, and passed 11 (eleven) decisions in 2017. Bid-rigging cartel is still accounted for the most handled cases in the year (70%) compared to other type of cartel cases and abuse of dominance. KPPU also handled 12 appeal competition cases at the district court in 2017, and won most of the appeal (66.7%). The same positive result also recorded from the cassation case at the Supreme Court, where 70% of cessation won by KPPU.

The enforcement provided by KPPU contributes significant income to the State from the penalties collected. For instance in 2017 only, the collected penalties reached IDR 112 billion. If compared to KPPU annual budget in 2017, its accounted for 83% of KPPU's budget.

3.2. *Description of Highlighted Cases*

Exclusive agreement and market control in Indonesian bottled water case

Indonesia's leading packaged drinking water producer (AMDK) brand AQUA, PT Tirta Investama (TIV) and PT Balina Agung Perkasa (BAP) as the distributor, proved to conduct unfair competition through exclusive agreement and market control. For the violation, TIV was fined IDR 13.84 billion while BAP was fined IDR 6.29 billion. This was stated by the Supervisory Commission for Business Competition (KPPU) at the decision announcement held on Tuesday, December 19, 2017.

This case was started from the complaint of the retailer and retail merchants to the KPPU Head Office in September 2016. The retailer claimed to be blocked by PT Tirta Investama to sell Le Minerale products produced by PT Tirta Fresindo Jaya (Mayora Group). One of the clauses of the retail agreement says, if the merchant sells Le Minerale product, then the status will be derived from Star Outlet (SO) to the wholesaler (retail). For this action, PT Tirta Fresindo Jaya issued an open publication against PT Tirta Investama in the newspaper on October 1, 2017. This action was subsequently responded by KPPU and started its investigation.

The action by TIV seemed to deter other business actors in the market of AMDK. Moreover, the degradation causes, the retailer get a higher 3 percent price. For example, for Star Outlet, the price charged is IDR 37,000 per carton for the size of 600 milliliters, while for the Whole Seller is charged IDR 39,350 per carton.

In the process, KPPU finds strong evidence to support the violation. One of the evidence which the investigator team has was the evidence of e-mail communications. The investigator found a two-way communication between the TIV and BAP, which were sent to each other by e-mail address of the office. E-mail subject to "Star Outlet Degradation (SO) Being a Wholesaler." contained sanctions applied by BAP to SO retailer. In fact, BAP was said to have executed the sanction to one of the Star Outlets. Based on the information, AQUA products controlled the market share of up to 46.7 percent in the AMDK market, and followed by Club 4 percent (Indofood), 2 Tang (PT Tang Mas) 2.8 percent, Oasis (PT Santa Rosa Indonesia) 1.8 percent, Super O2 (Garuda Food) 1.7 percent, and Prima (Sosro) 1.4 percent.

Exercise of Monopoly Power by Angkasa Pura Logistic

KPPU imposed penalty amounting IDR 6.5 billion to PT. Angkasa Pura Logistik, for their monopoly practices (Article 17.1 and 17.2) at a Decision Announcement on Case No. 08/KPPU-L/2016 on 14 June 2017. PT Angkasa Pura Logistic is proved to exercise its monopoly power at Cargo Terminal in Sultan Hasanuddin International Airport in Makassar, South Sulawesi, specifically by imposing a double charge on its logistic services to the consumers. The company is proved to violated Article 17.1 and 17.2 (on monopoly practices) of Indonesian competition law, the Law No. 5/1999.

The case was started in 2016, where the Reported Enterprise is suspected of exercising its monopoly power by imposing double charge to the consumer of two similar services it's provided. The double charged services are the Regulated Agent Fee (for IDR 550/kg), and Air Post and Cargo Service Fee (for IDR 500/kg). Both activities provided consider similar to one another. This double charge considers not comply with mandate assigned by the Government under Transportation Minister Decree No. 15/2010 on Blueprint on Inter-mode Transportation 2010-2030. In addition, the double charge has not provided the consumer the performance or additional services resulting from such double cost.

Following the Decision, KPPU also proposed a recommendation to the Ministry of Transportation to conduct an evaluation on Transportation Minister Regulation No. 153/2015 which contrasts to the Law No. 1/2009 on the determination of tariff; as well as to impose sanction to PT Angkasa Pura I who believed to intentionally transfer its authority to PT Angkasa Pura Logistik, and breach Article 223.3 of the Law No. 1/2009. Further, KPPU also recommended three parties, namely Ministry of Transportation, Ministry of SOE, and Airport Authority to provide rules and regulations, as well as performs an effective monitoring on the implementation of

Regulated Agent in all airports across Indonesia, to guarantee safety, security, and flight services which comply with the fair competition principle.

4. Merger and Acquisition

Indonesian competition law adheres to the mandatory system of post-merger notification and voluntary pre-merger notification. The provisions are regulated by Law no. 5/1999 and further by PP no. 57/2010. Rules stipulate that, every notification that meets certain threshold requirements shall be notified to the KPPU after the merger is juridical effective date.

During the last 5 (five years) (2013-2017 period), KPPU receives 349 (three hundred and forty nine) notification on the acquisition of shares, merger, or consolidation of business entities. The year 2017 is the year with the most notification, with 90 (ninety) notification.

No	Type of Notification	2013	2014	2015	2016	2017
1	Merger	1	2	3	2	6
2	Acquisition	68	53	50	62	82
3	Consultation	8	6	-	4	2
	Total	77	61	53	68	90

The obligation to report corporate actions to the KPPU fundamentally refers to any actions affecting market conditions in Indonesia. Therefore, it is not only corporate actions conducted by domestic enterprises who shall be notified KPPU, but also corporate actions conducted by enterprises outside Indonesia, so long as they have an impact on Indonesian domestic market. KPPU for the last five years recorded a trend of increasing mergers and acquisitions by foreign companies over Indonesian companies. In 2017, the action reached 16 (sixteen) notifications by foreign companies. Nevertheless, the portion of mergers and acquisitions carried out between domestic companies still recorded the highest number, compared to other types of corporate action.

Various notifications are derived from certain enterprises, namely (i) energy; (ii) mining; (iii) the property and tourism construction industry; (iv) banking and non-bank financial services; (v) electronic, information and communications; (vi) manufacturing; (vii) transportation and logistics; (viii) livestock farming; and (ix) retail food and beverages. In the past two years, there has been a significant increase in corporate action in companies engaged in the manufacturing and construction, property and tourism sectors. This is in line with government efforts that put their focuses on infrastructure development, one of which is implemented through take over on less effective projects by State-Owned Enterprises.

The delay of notification is still often done by enterprises. In 2017, KPPU imposed sanctions on 2 (two) cases of notification delays involving the acquisition of PT Citra Asri Property shares by PT Plaza Indonesia Realty Tbk, and the acquisition of PT Mutiara Mitra Bersama shares by PT Nirvana Property, each imposed a fine of IDR 1 billion for the delay. For the last five years, the KPPU has imposed a fine of IDR 20.2 billion to enterprises that have been delaying its notification.

5. Contribution to the Formulation of Competition Policies

KPPU in 2017 consistently encourages the government to use competition assessment toolkit prepared by KPPU as the government's main reference in preparing its economic policy. Currently, the checklist has been used by 14 ministries and national agencies, 21 provincial governments, and 129 district and city governments.

On policy recommendation, in 2017, KPPU has issued 20 policy recommendations to the government, both at the central and regional levels. The recommendations are given to various government policies, including (i) procedures for the selection of radio frequency band users 2.1 GHz and 2.3 GHz for the cellular network; (ii) regulation of the Minister of Transportation No. 32/2016 on the off route transportation of persons with public vehicles ; (iii) the policy on the implementation of auction for refined sugar; (iv) revision of Presidential Regulation No. 61/2015 on the collection and use of oil palm plantation funds; and (v) government policies related to referral arrangements for the implementation of Moslem worship trip.

In general, we observed that in 2017, policy directive from government was not fully harmonized with the competition principles. There was yet strong commitment for a synergy in implementing the competition principles between government and KPPU. Therefore, there is high need a better collaboration between competition authority and government in promoting governance and competition policies.

5.1. *Description of Highlighted Policy*

Recommendation on taxi versus online hire vehicle

KPPU put its special attention to help governments solve the problem in the policy of transportation services industry, particularly related to taxi versus online hire vehicle. At least, there are three KPPU recommendations issued to the government policies to encourage the fair competition in the transport service industry. In general, KPPU supports the government to establish arrangements to ensure equal business opportunities for all transport providers, be it a taxi both conventional and cab-line categorized as the transportation of special lease (hire vehicle). Further to reform the industry, KPPU provided three main advices which expected to be implemented by the government.

The three recommendations are: first, the Commission asked the government to remove the policy-setting on floor tariffs applied to conventional cab. Instead, the KPPU suggested that the government to set just the upper limit. Floor tariff setting will have an impact on the inefficiency of taxi services industry as a whole and lead to the high cost of tariffs for consumers. Floor tariff also inhibit innovation to improve the efficiency of the transportation services industry. Further, the floor tariff can be a source of inflation rates.

Secondly, KPPU recommended that the government not to set a quota or a taxi fleet of both conventional and online operating in an area. Thus, determination of the number of fleet for transportation businesses shall left to the market mechanism. Each of businesses will adjust its fleet according to customer needs. The setting by the government would reduce competition and ultimately harm consumers. However, the government as regulator must closely monitor licensees of taxi transport services. The government should be firm to revoke the operating license alias remove businesses from the market, if it violates the regulation. Thus, the super strict supervision will maintain the performance of conventional and online hire vehicle to meet minimum standard for services. Governments should also establish a detailed

minimum standard of service and must obey by all taxi service providers. The government must act decisively against any violations committed by the businesses.

Lastly, KPPU advised the government to remove the policy on vehicle registration of online taxi that want to be changed the ownership of their fleets to a legal entity, instead of personal owned. Because the obligation of the online hire vehicle on behalf of the legal entity has meaning the transfer of ownership from individuals to legal entities. KPPU advised that the government should develop regulations to accommodate the online hire vehicle to coordinate under Cooperative whose assets are owned by the members. Thus, even though the vehicle registration remains registered as private property, but can fulfill all its obligations as a transportation service company in the shade of a Cooperative. The transfer of vehicle registration of private owned into a Cooperative is not in line with the principle of mutual cooperation, which has built up and adopted by the Indonesian economy. The transfer is also not in line with the Law on Cooperatives. Thus, the pattern of vehicle registration settings can provide an opportunity for individual who want to work in the online hire vehicle.

6. International Engagements

In 2017, KPPU has signed a formal cooperation in the form of a Memorandum of Understanding on behalf of the Indonesian government with Mongolia's competition authority, the Authority for Competition and Consumer Protection (AFCCP) on May 5, 2017. The MoU includes several forms of cooperation such as technical assistance and training of AFCCP staff from KPPU, as well as the exchange of legal rules relating to competition, exchange of data, research and information in accordance with the laws and regulations of Indonesia and Mongolia. In that year, KPPU also received visits from government officials from Cambodia and Myanmar countries separately to study the implementation of competition law and policy in Indonesia. Their visit was conducted in order to learn more about KPPU especially related to how KPPU institute, human resources in KPPU, and KPPU growth process.

In the context of international agreement, in 2017 KPPU has been negotiating Chapter on Competition in various free trade agreement negotiations between Indonesia and various countries, including Australia, EFTA, and the European Union. The substance includes various cooperation and coordination in the enforcement, and prevention of competition law violation, as well as other aspect such as consumer protection, subsidy, and public enterprises.

From international advocacy, KPPU in 2017 hosted the 14th East Asia Top Level Officials Meeting on Competition Policy and Law and the 10th East Asia Conference on Competition Policy on 6-7 September 2017 in Bali. The event was attended by various leaders of authority ten ASEAN countries, East Asia, and Australia. Separately, KPPU also conducted the Second Jakarta International Competition Forum (2JICF) themed "Disruptive Innovation, Competition Policy & Challenges to Emerging Markets" on 25 October 2017 in Jakarta. This activity is a multi-stakeholder forum that has been initiated by KPPU since 2015 and held on a bi-annual basis, with the aim of exchanging information and knowledge and values related to increasingly emerging and international competition issues. This activity was opened by Indonesian Coordinating Minister for Economic Affairs and was attended by various Indonesian Ministers and panelists from various competition agencies and international organizations including the Organization for Economic Cooperation and Development (OECD), New South Wales Transport Commissioner, Japan Fair Trade Commission, Australian Competition and Consumer Commission, Anti-Monopoly Bureau of China Ministry

of Commerce, Chinese Taipei Fair Trade Commission, and Competition Commission of Singapore.

7. Resources

KPPU has a budget of IDR 135 billion in 2017, where 24% of it allocated for the salary. Currently, KPPU has 336 staffs ranging from management, investigator, analysis, and officers both in central/head and local offices. For local office itself, there is 76 officials are assigned to 5 (five) local offices across Indonesia. This makes only 260 staffs are placed in head office in Jakarta.

In early 2018, KPPU established a Center for Training and Education, which serves as a central unit to perform capacity development activities for both KPPU and external (stakeholders). In addition, KPPU also introduce a new post, Chief of Task Force attach to two Deputy Offices, Prevention and Enforcement. They assigned to supervise, coordinate, and mediate cross-cutting roles within the Deputy Office, which mainly consist of independent roles like advocacy, merger, partnership, investigation, filing, and hearing.

8. Future Challenges

The term of existing KPPU Commissioners will expired on the 27th April 2018, which means the commission will have a new set of Commissioner by early May 2018. The existing selection process for the new Commissioner is undergoing by the Parliament, before submitting the candidate to the Indonesian President for approval. This will make the KPPU to prepare for potential changes or shift of priorities in 2018.

Meanwhile, KPPU will remains focus on oligopolistic market with some aspects of state captured or government policy that may facilitates cartel, through stronger implementation of competition assessment checklist, and dissemination and implementation of compliance guidance. In international forum, KPPU and Indonesia will continue to promote better convergence between competition authorities to implement its competition law and policy.
