

**12th Session of the
Intergovernmental Group of Experts on Competition Law and Policy
Geneva, 9 to 11 July 2012**

**Round Table on Cross-Border Anti-Competitive Practices: The challenges for
developing countries and economies in transition**



**Cross-border anti-competitive practices
from Indonesia's perspective**

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Commission for the Supervision of Business Competition (KPPU)
Republic of Indonesia

Cross-border anti-competitive practices from Indonesia's perspective

Dr. Anna Maria Tri Anggraini

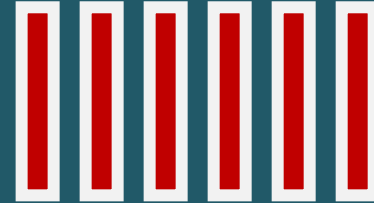
UNCTAD Intergovernmental Group of Experts on Competition Law and Policy Meeting
Geneva, July 2012

Indonesia, country of thousands of islands

- Biggest archipelago country in the world
 - Islands : 17,508
 - Land : ± 2 million km²
 - Sea : ± 5.8 million km²
 - Coastal line : ± 81,000 km
- Population 237,641,326 people
- The fourth largest democratic and open-economy country in the world
- Most of businesses in Indonesia are micro, small, and medium enterprises (99.99% of national businesses)
- Two major sectors are agriculture, animal husbandry, forestry, fisheries (51.5%); and the trade sector (28.8%)



Indonesian competition law

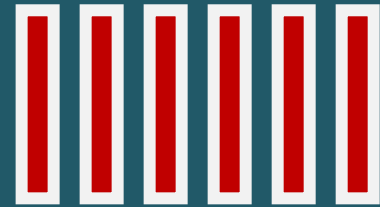


Indonesia's competition law was enacted in 1999, while the competition commission was established in 2000 to supervise and enforce the implementation thereof. The commission consists of eleven Commissioners, including the Chairperson and Vice Chairperson selected from amongst the Commissioners every year. The highest decision making power rests with the Commission Meeting, and all decisions are made by deliberation for consensus.

The commission has two major tasks, namely to enforce the law and to prevent future violation through competition advocacy (policy advice and outreach).

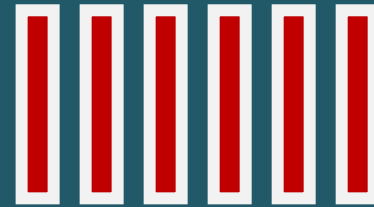
Provisions under the competition law concerning prohibited agreements are mostly related to cartel behavior and other arrangements, while provisions on prohibited activities deal with unilateral conduct by businesses. Merger provisions are part of the section on the abuse of dominant position.

Agency priorities



The Commission has set four priorities in its enforcement and advocacy activities (including monitoring, investigation, and market study). These priorities have been determined based on the frequency of complaints and investigation, public opinion (through media), international practices, the agency's objectives, and Indonesian leaders' policy objectives.

Cross border competition issues: legal framework

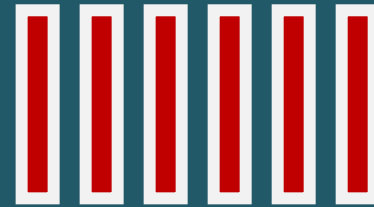


- **National competition law and relevant regulations**
- **Bilateral agreements: IJEPA**
 - notification
 - exchange of information
 - coordination
 - technical cooperation

(Article 13 IJEPA / Implementing Agreement, Chapter 5, Article 11-21)
- **Regional agreements and activities: AEGC**

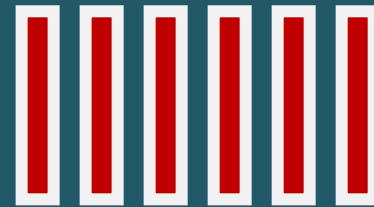
Regional guideline and handbook on competition policy and law based on country experiences and international best practices with a view to creating a fair competition environment (2010)

Legal aspects of cross border enforcement: Law No. 5/1999



- **No detailed / specific provisions on cross border competition issues**
- **A broad definition of ‘business actor’**
 - “Business actors shall be any individual or business entity, either incorporated or not incorporated as legal entity, established and domiciled or conducting activities within the jurisdiction of the state of the Republic of Indonesia, either individually or jointly based on agreement, conducting various business activities in the field of economy. (Article 1 item 5, Law No.5/1999)
- **Unfair competitive practices by businesses through foreign party agreement is prohibited**
 - “Business actors shall be prohibited from entering into agreements with foreign parties setting forth conditions that may result in monopolistic practices and or unfair business competition.” (Article 16, Law No. 5/1999)
- **Activities through international agreements exempted**
 - “... anyone engaging in business in Indonesia must be in the condition of fair and normal competition, thus not causing a concentration of economic power around certain business actors, while observing the commitments made by the State of the Republic of Indonesia with regard to international conventions“ (Preamble, Law No.5/1999)
 - Excluded from the provisions of the law are, among other things, “international agreements ratified by the Government of the Republic of Indonesia” (Article 50, Law No. 5/1999)

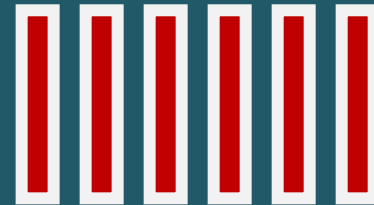
Legal aspects of cross border enforcement: Competition law related implementing regulations



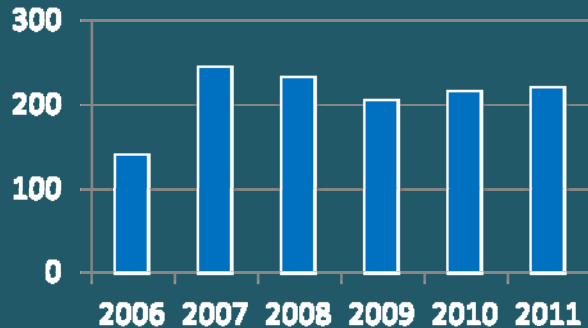
- **Government Regulation No. 57/2010 Re: Merger Review (Article 8)**
- **Commission Regulation No. 10/2011 Re: Merger Review Implementation Guidelines (Chapter III)**
- **Commission Regulation No. 11/2010 Re: Merger Consultation (Article 1 point 9)**

- **Definition of ‘foreign mergers’ (Chapter IV, CR No. 10/2011) :**
 - conducted outside Indonesian territory; and
 - having a direct impact on the Indonesian market, namely :
 - all parties involved in the merger are conducting business in Indonesia, either directly or indirectly, as for example through an Indonesian company controlled by them; or
 - only one of the parties involved in the merger conducts business activities in Indonesia, however, the other party sells its products or services directly in Indonesia
 - value benchmark; and
 - conducted among non-affiliated companies

Statistics of achievements in the period: 2006-2011



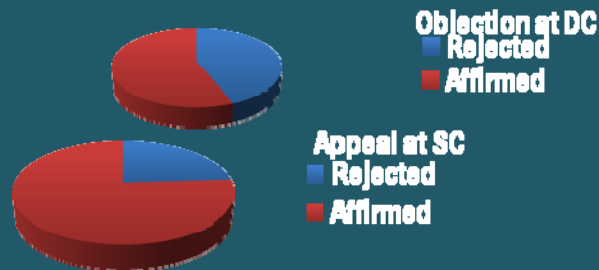
Complaints



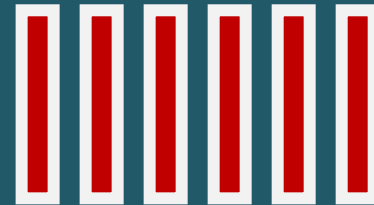
During 2006 – 2011, the Commission received 1,271 complaints, 237 of which were filed in 2011 only. The complaints resulted in 205 examinations, which resulted in 166 Decisions and 39 cease and desist orders. Out of 166 decisions, 9 decisions involved foreign business actors.

Up to 2011, 86 appeals were filed with the District Court (DC), and 58 cassation complaints with the Supreme Court (SC). At the DC level, 56% or a total of 48 appeals were decided in favor of the Commission. At the SC level, 76% or a total of 44 cassation decisions affirmed the Commission's decisions.

State income in the total amount of IDR 150.8 billion (~US\$ 16,7 million) was generated resulting from fines collected from competition law enforcement.



Commission decisions involving foreign business actors



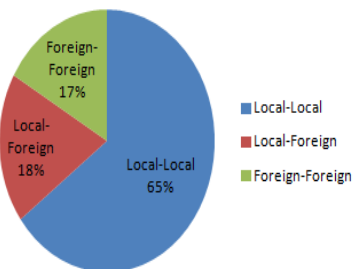
No.	Case Decision	Type of violation	Article(s) violated	Punishment /sanction /compensation (\$) (1 \$=Rp.9,000)
1	07/KPPU-L/2007	Cross ownership	27	25,000,000
2	17/KPPU-L/2007	Bid rigging	22	Acquitted
3	19/KPPU-L/2007	Conspiracy to disclose information classified as company secret	23	110,000 / 424,000
4	27/KPPU-L/2007	Bid rigging	22	Acquitted
5	03/KPPU-L/2008	Agreement with foreign parties causing monopolistic practices and/or unfair competition	16	Cancellation of agreement.
6	47/KPPU-L/2008	Bid rigging	22	Acquitted
7	05/KPPU-L/2010	Bid rigging	22	166,000
8	17/KPPU-L/2010	Cartel	5, 11	11,111,000
9	35/KPPU-L/2010	Bid rigging and tender conspiracy	22, 23	1,670,000

Statistics on merger review

Period: 2009-2011



Percentage (%) of Mergers in Indonesia

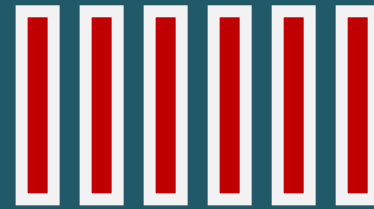


Mergers	Total Transactions	% Transactions	Number of mergers	%
Between local companies	9.5 trillion	9.00	35	64.81
Between foreign and local companies	26.3 trillion	25.00	11	18.52
Between foreign companies	70.9 trillion	66.00	9	16.67
Total	106.7 trillion	100.00	55	100.00

Domestic mergers are large in number, yet relatively low in terms of value compared to other types of mergers. Mergers between foreign companies take more than 60% of the total value of mergers handled by the Commission in 2011.

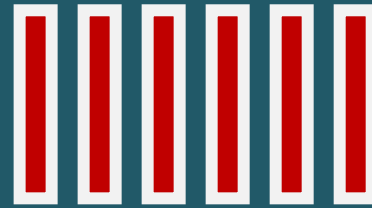
Merger	Year		
	2009	2010	2011
Consultation	0	1	4
Notification	1	3	44

Forward looking in handling cross border competition issues



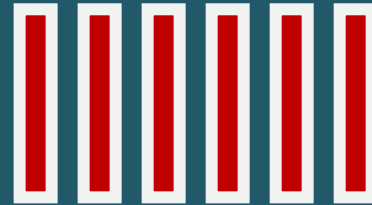
- **Merger Review: new regulation required**
- **Expand the definition of ‘merger’ to include foreign business actors which:**
 - conduct merger outside the territory of the Republic of Indonesia; and
 - have an impact on the Indonesian market,
 - regardless of whether or not they have subsidiaries in Indonesia

Challenges in cross border enforcement



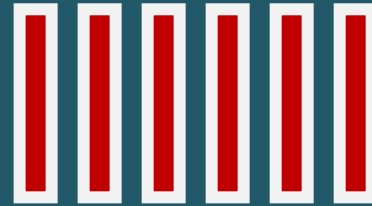
- **Different legal systems (including enforcement and litigation power)**
- **Different institutional structures**
- **Different levels of protection or priorities by national governments**
- **Non-existence of formal cooperation in enforcement**
 - Cross border notification is information, not a solution. Notification can be made or obtained on a voluntary basis (e.g. Indonesia with Japan, Australia and Korea)
- **Cross border coordination is time consuming, while case examination period is limited**
 - In Indonesia: 6 (six) months

Lessons learnt and possible solutions



- **Harmonization of competition law enforcement is the ultimate solution, but difficult to achieve**
- **Bilateral cooperation (agency to agency) could be a possible solution**
- **Voluntary notification without request needs to be encouraged**

Thank you for your attention.



Dr. Anna Maria Tri Anggraini

KPPU Commissioner since 2006 to date. Since 1990, Anna Maria has been a full time lecturer at the Faculty of Law, Trisakti University. Anna Maria has been active in writing articles published in scientific papers, and attending scientific seminars. Anna Maria has published Economic Law in Indonesia, funded by USAID, University of Washington School of Law (Seattle). Anna Maria holds Bachelor Degree in Law from Gadjah Mada University (1987), Master of Law degree from Tarumanagara University (1995), and Doctor in Economic Law degree from the University of Indonesia (2003).