

Unclassified

CCNM/GF/COMP/WD(2001)19



Organisation de Coopération et de Développement Economiques  
Organisation for Economic Co-operation and Development

09-Oct-2001

English text only

CENTRE FOR CO-OPERATION WITH NON-MEMBERS  
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS

## OECD Global Forum on Competition

### CONTRIBUTION FROM INDONESIA

*This contribution was submitted by Indonesia as a background material for the meeting of the Global Forum on Competition to be held on 17 and 18 October 2001.*

JT00114183

Document complet disponible sur OLIS dans son format d'origine  
Complete document available on OLIS in its original format

CCNM/GF/COMP/WD(2001)19  
Unclassified

English text only

## I. – COMPETITION LAW AND POLICY IN INDONESIA

### I. **Indonesia's Competition Law: Law Number 5 of 1999 Concerning the Prohibition Monopolistic Practices and Unfair Business Competition**

#### A. Background on Law Number 5

- a) Passed by the House of Representatives on 5 March 1999 with an effective date of 5 March 2000, in order to provide time for the socialization of the new law.
- b) Businesses were given an additional six-month grace period, until 5 September 2000, to come within compliance of the law.
- c) Law Number 5 was adopted in part to address public concerns regarding monopolistic practices and closely related concerns about corruption, collusion, and nepotism (known in Indonesia by the acronym "KKN")
- d) In a practice rarely invoked by the House of Representatives, the House exercised its right to propose the draft law -- rather than relying on the government to do so -- and this draft formed the basis of Law Number 5.
- e) Prior to the passage of Law Number 5, legal provisions touching on competition could be found scattered throughout numerous other laws, including both the criminal and civil codes.

#### B. The Purposes of Law Number 5 (as set forth in Article 3)

- a) To safeguard the interests of the public and to improve national economic efficiency in order to improve the people's welfare.
- b) To ensure the certainty of equal business opportunities for large, medium, and small-scale businesses.
- c) To prevent monopolistic practices and unfair business competition.

#### C. The Organization of Law Number 5

- a) Contains 11 chapters and 53 articles, with the major substantive law sections consisting of:
  - a. Prohibited agreements
    - (1) Oligopoly (Article 4)
    - (2) Price fixing (Article 5)
    - (3) Price discrimination (Article 6)
    - (4) Predatory pricing (by agreement with competitors) (Article 7)
    - (5) Resale price maintenance (Article 8)

- (6) Market division (Article 9)
  - (7) Group boycotts (Article 10)
  - (8) Cartels (Article 11)
  - (9) Trusts (Article 12)
  - (10) Oligopsony (Article 13)
  - (11) Vertical integration (Article 14)
  - (12) Exclusive dealing concerning re-supply (Article 15 (1))
  - (13) Tying (Article 15 (2))
  - (14) Reciprocal dealing (Article 15 (3) a.)
  - (15) Exclusive dealing (Article 15 (3) b.)
  - (16) Agreements with foreign parties that may result in monopolistic practices or unfair business competition (Article 16)
- b. Prohibited activities
- (1) Monopoly (Article 17)
  - (2) Monopsony (Article 18)
  - (3) Market control (Article 19)
  - (4) Predatory pricing (unilaterally) (Article 20)
  - (5) Determining production and other costs (Article 21)
  - (6) Conspiracies to rig bids (Article 22)
  - (7) Obtaining competitors' business secrets (Article 23)
  - (8) Impeding production and marketing of competitors' products (Article 24)
- c. Abuse of dominant position
- (1) Abuse of dominant position (Article 25)
  - (2) Interlocking directorates (Article 26)
  - (3) Cross- share holding (Article 27)
  - (4) Mergers & acquisitions that may result in monopolistic practices or unfair business competition (Article 28) and giving the KPPU notice of proposed mergers (Article 29)
- d. There currently is little guidance regarding merger review and notification other than:
- (1) The prohibition of mergers that result in monopolistic practices and unfair business competition (Article 28).
  - (2) The requirement that the government develop further regulations governing merger review and notification. Such regulations have yet to be issued (Article 29). As Law Number 5 currently reads, Indonesian law will not require prior notification of mergers, only notification within thirty days of the merger.
- e. Exemptions (Article 50) -- provides exemptions for certain activities involving, among others, agreements intended to implement applicable laws and regulations, intellectual property, standard setting, joint ventures for research and development, international agreements ratified by the government, export agreements, activities of small-scale enterprises, and activities of cooperatives aimed at serving their members.
- f. State action exception -- the law also includes what effectively is a "state action" exception (Article 51), permitting monopoly if it is the result of a law (passed by the DPR), and if its activities are carried out by a state-owned enterprise or institution formed or appointed by the government.

2. Creates the Commission for the Supervision of Business Competition -- the "KPPU" -- responsible for enforcing Law Number 5 (Articles 30-37).
  3. Establishes the procedures for reporting possible violations of Law Number 5 to the KPPU and how the KPPU should handle possible violations of the law (Articles 38-46).
  4. Sets forth the sanctions for violations of Law Number 5 (Articles 47-49).
- D. The law's primary focus is on the prohibition of business practices that may result in "monopolistic practices" or the "unfair business competition," although Law Number 5 also contains some presumptions of illegality based on market shares.
1. There are market share presumptions in the provisions dealing with:
    - a. Oligopoly (Article 4) -- collectively controlling 75% of a market.
    - b. Oligopsony (Article 13) -- collectively controlling 75% of a market.
    - c. Monopoly (Article 17) -- controlling 50% of a market.
    - d. Monopsony (Article 18) -- controlling 50% of a market.
    - e. Dominant position (Article 25) -- one firm controlling 50% of a market or several firms controlling 75% of a market.
  2. Additionally, market share defines the violation in the case of cross-share holding (Article 27), where one firm owns a majority of shares in companies controlling 50% of a market, or a group of firms owns a majority of shares in companies controlling 75% of a market.
- E. There is no private right of action under Law Number 5.

## **II. The Commission for the Supervision of Business Competition ("KPPU")**

### **A. Background on the KPPU**

1. Established in accordance with Articles 30-37 of Law Number 5 and Presidential Decree Number 75 of 1999, and it began operations through the appointment of Commissioners in June 2000.
2. Indonesia's first independent regulatory commission -- not part of the executive, legislative, or judicial branches of Government.
3. Major functions:
  - a. Law enforcement -- investigating, interpreting, and enforcing Law Number 5, which prohibits monopolistic practices and unfair business competition.
  - b. Competition advocacy -- providing advice on government policy related to monopolistic practices and unfair business competition.
  - c. Written guidelines and policy statements -- assisting business and the public understand and comply with the law.
4. Subject to oversight by:
  - a. The President -- through reporting requirements and the appointment (and possible dismissal for cause) of the Commissioners, upon approval of the House of Representatives.
  - b. House of Representatives ("DPR") -- through reporting requirements and the budget process.
  - c. The judiciary -- through appellate review and possible enforcement of the KPPU's decisions.

- d. The public -- through decisions of the KPPU, which are read in public session.

## B. The Organization of the KPPU

### 1. The Commissioners

- a. Eleven commissioners, appointed by the President, with confirmation from the House of Representatives.
- b. Must be experienced in business or have expertise in law or economics, and must not have ties to any business entity.
- c. Serve five-year terms and may be reappointed for one additional five-year term.
- d. Each Commissioners has equal authority and the Commission acts through majority vote.
- e. The Chairman and Vice Chairman are selected by the Commissioners and serve one-year terms.

### 2. The Secretariat

- a. Consists of four directorates:
  1. Directorate for Investigation and Law Enforcement -- responsible for investigating alleged violations of Law Number 5 and litigating cases before the courts.
  2. Directorate for Communication -- responsible for disseminating information to business, the public, and the press.
  3. Directorate for Research and Training -- responsible for training the professional staff and providing research in support of cases under investigation and the competition advocacy program.
  4. Directorate for General Affairs -- responsible for administration, finance, and personnel.
- b. The professional staff consists primarily of lawyers and economists.

## C. Remedial Powers of the KPPU

### 1. Civil Remedies (Article 47):

- a. Declare unlawful agreements null and void.
- b. Require restructuring of firms guilty of illegal vertical integration.
- c. Issue cease and desist orders to stop activities causing monopolistic practices or unfair business competition or the abuse of dominant position.
- d. Cancel mergers or consolidations in violation of the law.
- e. Order compensation for damages by violators to injured parties.
- f. Impose civil fines up to Rupiah 25 billion (approximately \$2.5 million) for violations of the law.

### 2. The KPPU may seek criminal penalties, for certain violations enumerated in Article 48, through submission of the case to police investigators, who may refer the matter to the public prosecutor and, ultimately, the courts.

- a. Criminal fines up to Rupiah 100 billion (approximately \$10 million).
- b. Prison sentences of up to six months.

## D. Regulations Governing the KPPU's Internal Operations -- Law Number 5 gives the KPPU the power to promulgate regulations governing its internal operations. To date, the KPPU has issued the following regulatory "decisions":

1. Decision Number 1 -- concerning the election procedures for the chairman and vice chairman of the KPPU.
2. Decision Number 4 -- concerning the organizational structure, duties, and function of the KPPU's secretariat. (Decision Number 4 supersedes Decisions 2 & 3, which also dealt with the organization of the secretariat.)
3. Decision Number 5 -- concerning the procedures for submitting complaints and handling suspected violations of Law Number 5. (This is outlined in Section III below.)
4. Decision Number 6 -- concerning the code of ethics of the KPPU.
5. Decision Number 7 -- concerning the "working group" of outside experts to assist the KPPU on an ad hoc basis to investigate alleged violations of Law Number 5.
6. Decision Number 8 -- concerning the procedures for holding "consultation meetings" (public hearings) of the KPPU to obtain information about possible violations of Law Number 5.

### **III. The KPPU's Procedures for Case Initiation and Handling**

- A. Cases may be initiated based on a report from a party complaining about a possible violation of Law Number 5 or upon the initiative of the KPPU.
- B. Submission of the Report (Complaint)
  1. Determining whether the report is complete or incomplete
    - a. To be considered complete, a report must:
      - (1) Be in writing, in Indonesian, and signed by the "reporting party" (complainant), including a name and address.
      - (2) Provide details on the violation allegedly committed by the "reported party" (target).
      - (3) Include any supporting documentation or evidence.
    - b. If a report is found incomplete:
      - (1) The reporting party is notified of any deficiencies and is given ten days to correct the report. If not corrected, the report will be deemed incomplete.
      - (2) If no notice of deficiency is given within ten days of receipt, the report is considered complete.
  2. Complete reports are summarized by the Secretariat, recorded in the case register, and are then submitted to the Commissioners.
  3. Notification is given to the reporting party of the commencement of the preliminary examination.
  4. The identity of the reporting party and any business secrets are kept confidential.
- C. Preliminary Examination
  1. 30 business days to complete.
  2. The purpose of the preliminary examination is to determine whether further investigation is warranted.
  3. The investigation is conducted on a voluntary basis, with requests for cooperation from the reporting party, the reported party, and other third-party witnesses. Compulsory process may be used if necessary.

4. The reporting party and the reported party may be called before the Commission for questioning.
  5. Commission as a whole decides whether further investigation is warranted.
- D. Follow-Up Examination
1. 60 business days to complete, with possible extension up to 30 business days.
  2. The purpose of follow-up investigation is to determine whether the law has been violated.
  3. A "Council of Commissioners," which is established by the Commission to conduct follow-up investigations and must consist of at least three Commissioners, determines how to structure the investigation, whether to close it, and what, if any, sanctions to impose.
  4. The investigation is conducted on a voluntary basis, with requests for cooperation from the reporting party, the reported party, and other third-party witnesses. Compulsory process may be used if necessary.
  5. May include the involvement of police investigators if necessary.
- E. The Commission's Decision
1. Must be issued within 30 business days of close of the follow-up examination.
  2. The Commission Council determines whether the law has been violated, and its decision is issued in writing and must include the Council's reasoning.
  3. The decision is made public by a reading in an open session of the entire Commission.
- F. Implementation of the Commission's Decision
1. The reported party is notified of the decision.
  2. The reported party is required to abide by the Commission's decision within 30 days of issuance, unless it makes objections within 14 days of notification.
  3. The reported party may appeal the KPPU's decision to the District Court. The District Court must hear the appeal within 14 days after filing, and it must render a decision within 30 days after initiating the case.
  4. Appeals from the District Court are taken to Supreme Court, which must hear the appeal within 14 days after filing and must render a decision within 30 days after initiating the case.
  5. If the reported party fails to comply with the Commission's decision the matter may be submitted either:
    - a. To the courts for an enforcement order, where civil penalties are sought.
    - b. To the police investigator, who then may refer it to the prosecutor and, ultimately the courts, for further action where criminal allegations are involved.
- G. The Working Group
1. The KPPU may be assisted in its investigations on an ad hoc basis by a "working group."
  2. A working group consist of individuals from outside the KPPU who are experienced or are expert in fields deemed necessary to assist the KPPU investigate a given case.

#### IV. The KPPU's Law Enforcement and Competition Advocacy Actions to Date

##### A. The *Caltex* Case

1. On April 20, 2001, the KPPU found Caltex Pacific Indonesia, an oil company, and three pipe processors, Citra Tubindo, Purna Bina Nusa, and Patraindo Nusa Pertiwi, guilty of bid-rigging in violation of Article 22 of Law Number 5, resulting from a tender by Caltex to supply it with pipe. Citra Tubindo, Purna Bina Nusa, and Patraindo Nusa Pertiwi were found to have exchanged their bid prices with each other at a meeting the evening before the bids were opened. Caltex, in turn, was held responsible for failing to "exercise[ ] adequate prudence in ensuring fair business competition," because in setting up the tender process it "should have expected [that] collusion would occur."
2. As a consequence of the violation, the KPPU required that the pipe-supply contract entered between Caltex and Citra Tubindo, the lowest bidder, be terminated, and that the entire tender process be re-done.
3. Caltex has accepted the KPPU's verdict and has not sought an appeal to the district court.

##### B. The *Indomaret* Case

1. On July 4, 2001, the KPPU found Indomarco Prismatama, the owner of the Indomaret convenience-store chain, which has about 470 stores to be acting "economically undemocratic" in violation Articles 2 and 3 of Law Number 5.
2. The KPPU had received complaints against Indomaret from many small store operators complaining of, among other things, predatory pricing, illegal vertical integration, exclusive dealing, abuse of dominant position, and price discrimination. The investigation itself, however, was opened on the KPPU's initiative after a period of "monitoring" Indomarco Prismatama's behavior.
3. As a result of finding the violation, the KPPU ordered that Indomarco Prismatama be forbidden from expanding its Indomaret stores in "traditional markets;" that is, areas with open-air food stalls selling all manner of groceries, fruits, and vegetables. The KPPU also recommended to Indomarco Prismatama that to the extent it expands the number of its Indomaret stores, it should do so more through franchises than through Indomarco Prismatama -owned stores.
4. The KPPU also recommended to the government that it should improve its policies and regulations regarding retailing (e.g., zoning, location permits, opening hours), and that the government work to help empower small and medium enterprises to compete more effectively.
5. Since the decision was announced, Indomarco Prismatama has stated publicly that it will abide by the decision and that it will not seek to challenge the decision in court.

##### C. The KPPU's Industry Monitoring Activities

1. One of the KPPU's function under Law Number 5 is to monitor the compliance and adherence of businesses in Indonesia to the law.
2. As part of the monitoring process, the KPPU has identified a number industries where a single firm appears to control more than 50 percent of the market. Some of the industries that have been subject to KPPU monitoring are:
  - a. Cement
  - b. Cigarettes
  - c. Cooking oil

- d. Detergent
  - e. Flat Glass
  - f. Instant coffee
  - g. Instant noodles
  - h. Lubricating oil
  - i. Mineral water
  - j. Paper and pulp
  - k. Wheat flour
3. As part of the monitoring process, the KPPU has held public hearings where the apparent dominant firm, other industry participants, and interested parties have been invited to appear, give testimony, and answer questions. To date, such public hearings have taken place in the following industries:
    - a. Paper and pulp
    - b. Wheat flour
    - c. Day-old chickens
    - d. Taxi Cab
    - e. Airline Association
  4. Additionally, the apparent dominant firms, as well as other interested parties, have been invited to appear before the KPPU in closed session to answer follow-up questions and to give additional testimony.
  5. To date, besides those last two cases, no further actions have been taken by the KPPU as a result of these monitoring activities.

**D. The KPPU's Competition Advocacy Activities**

1. Taxi Cab Tariffs -- the KPPU has sent a letter to the Ministry of Transportation advising it that a government plan to permit a private association of taxi-cab companies to set taxi-cab tariffs would likely result in higher taxi prices for consumers and could harm competition. Consequently, the KPPU has advised the Ministry of Transportation not to grant the taxi cab association these powers.
2. Airline Price Benchmarks -- the KPPU has been reviewing a plan by the Ministry of Transportation to permit a private association of airlines to collectively set certain pricing benchmarks from which airfares in Indonesia may be set. The KPPU is concerned that such a policy could have the effect of raising prices to consumers and harming competition, and it has already issued a letter to this effect to the Ministry of Transportation.
3. Kerosene Pricing -- On April 18, 2001, the KPPU sent letters to the Ministry of Energy and Mineral Resources, the Coordinating Ministry for Economic Affairs, and Pertamina (the state oil company) concerning price discrimination on kerosene prices. According to Presidential Decree No. 45 of 2001, kerosene prices in the country are set at different levels for three categories of end user: foreign industrial companies, domestic industrial companies, and general consumers. The KPPU pointed out to the Ministries and to Pertamina that such an action may violate Article 6 of Law Number 5's prohibition against price discrimination, and that such decrees could become a bad precedent for future government action, given their potential to harm competition.

**V. The Challenges Ahead for the KPPU and Law Number 5**

The KPPU faces many challenges implementing Law Number 5 in the coming months and years. These challenges broadly fall into two categories:

- A. Challenges Involving the Interpretation and Enforcement of Law Number 5
1. What are Law Number 5's purposes and goals in practice?
  2. Which goals will take precedence in specific cases, should the goals conflict?
  3. How broadly or narrowly will the exemptions to Law Number 5's scope, as set forth in Articles 50 and 51, be drawn?
  4. What meaning will the KPPU and the courts give to the terms "monopolistic practices" and "unfair business competition" as the law develops?
  5. What areas of law enforcement will become the KPPU's priorities?
  6. Are Indonesia's courts prepared to deal with antitrust cases when they arise, and what will the courts actually do when presented with such cases? How and what rules of evidence and procedure will apply? How will the courts apportion the burdens of proof? How much deference will the courts give to the KPPU's initial findings of fact and conclusions of law?
  7. Will the law enjoy the support of the people, businesses, the government, and the legislature?
- B. Challenges Involving the Development of the KPPU as an Institution
1. Will the legislature and government provide the KPPU with a budget and resources sufficient to do its job?
  2. Can the KPPU attract and retain a professional, well-trained, and highly motivated staff?
  3. How will the KPPU allocate its limited resources between its law enforcement, competition advocacy, and public and business education roles?
  4. Is the KPPU as an institution likely to enjoy the support of the people, businesses, the government, and the legislature?
  5. Will the KPPU be able to demonstrate, over time, the value of its mission and work in terms of promoting competition, protecting consumers, and enhancing the economic well being of the Indonesian people?

## II. – DESCRIPTION OF CASES

The Republic of Indonesia's Commission for the Supervision of Business Competition ("KPPU") to date has brought only one matter challenging hard-core cartel behavior -- the *Caltex* case. In this case, the KPPU found Caltex, an oil company, and three pipe processors, Citra, Purna, and Patraindo, guilty of bid-rigging in violation of Indonesia's Law Number 5 of 1999, resulting from a tender by Caltex to supply it with pipe and pipe processing services. Citra, Purna, and Patraindo were found to have exchanged their prices with each other at a meeting the evening before the bids were opened. Caltex, in turn, was held responsible for failing to "exercise[ ] adequate prudence in ensuring fair business competition," because in setting up the tender process it "should have expected from the beginning that . . . collusion would occur."

**PPU CALTEX DECION (Number: 01/KPPU-L/2000)**

***FOR THE SAKE OF GOD THE ALMIGHTY***

The Business Competition Supervisory Commission hereinafter referred to as the Commission examining alleged violations of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices allegedly committed by:

- PT. CALTEX PACIFIC INDONESIA, having its office address at Sarana Jaya Building, Jalan Budi Kemuliaan I No.1, Jakarta 10340, hereinafter referred to as the Reported Party;
- Has made the following decision:
- The Commission Council;
- After having read the Report and documents in this case;
- After having heard the statement of the parties concerned;
- After having investigated the Reported Party's activities;
- After having read the Minutes of Examination;

**IN VIEW OF THE CASE:**

1. Considering whereas a business enactor hereinafter referred to as Report Party I in his letter dated April 5, 2000 received by the Commission on June 30, 2000 stated the following:
  - a) Whereas in the period prior to the year 2000, with the aim of meeting its piping requirements for one year, the Reported Party had usually announced a tender open to vendors based on the TDR (Contractor's Registration Certificate) owned by them respectively. Such tender was for 1 x 1 year, namely usually referred to as Blanket Purchase Order (BPO) and such BPO itself consisted of several items (max. 8 items) divided into 2 (two) categories, namely:
    - Low grade (75% of the total requirement),
    - High grade (25% of the total requirement);
  - b) Whereas to date (in approximately the past 5 years) Reporting Party I as the Reported Party's Contractor, specifically for low grade requirements, has almost always been awarded the said tender, even though he only had facilities for low grade, compared to his competitors who had more complete facilities (low grade and high grade), it was still competitive;
  - c) Whereas the implementation of and competition in the tender mentioned in paragraph b hereinabove was considered rather fair by Reporting Party I because it was in compliance with the prevailing provisions and there was no requirement to offer all items requested by the Reported Party, but in accordance with the capabilities of the respective bidders, whatever they considered

they were capable of offering. This was done by the Reported Party in recognition of the fact that the capabilities and facilities possessed by the respective bidders varied or were not the same;

- d) Whereas there were no limitations in respect of the pipes (country of origin), the most important thing being that these met international standards namely the American Petroleum Institute (API);
- e) Whereas in the order realisation process Reporting Party I had never encountered any problems, either from the aspect of pricing, raw material origin or the process plant of Reporting Party I (on Batam Island), until the dispatch of the goods to the Reported Party's place/warehouse. No delays have ever occurred, delivery has been even faster than the determined schedule;
- f) Whereas for the period of the year 2000, Reporting Party I considered the implementation of the Reported Party's tender no longer fair with tendencies of fabrication, increasingly narrowing down the role of Reporting Party I and it could be deemed it had no more opportunities for the following reasons:
  1. There were only 4 (four) bidders, namely:
    - PT. Purna Bina Nusa that did not have upsetting and heat treatment facilities, so that it could only offer low grade;
    - PT. Patraindo Nusa Pertiwi was equal to PT. Purna Bina Nusa,
    - PT. Citra Tubindo Tbk. had upsetting and heat treatment facilities so that it was able to offer low grade and high grade;
    - PT. Seamless Pipe Indonesia Jaya was equal to PT. Citra Tubindo Tbk.;
  2. The tender was awarded to one bidder only, namely the bidder offering all items (low grade and high grade);
  3. All bidders were required to offer all items (low grade and high grade);
  4. Bidders offering in accordance with their capability (low grade), even though their price was quite good and low but their offer was not complete with high grade because they did not receive support in the form of price and letter of support from the bidder possessing high grade, were going to be disqualified;
  5. Those not possessing high grade facilities could request price and support from bidders possessing high grade facilities (whereas those possessing high grade facilities were the competitors of those not possessing high grade facilities, so that it would not make sense to have them compete with them);
  6. Raw material supply sources were also limited and directed to particular sources;

Based on the above statements, Reporting Party I deemed as follows:

1. The Reported Party's planned tender allegedly violated the provisions of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Practices,
2. The Reported Party's planned tender was not usual and was not fair for other participants/bidders,

3. The Reported Party's planned tender did not meet the criteria of principles of justice and equality. Reporting Party I deemed that there were unusual provisions and requirements in the plan compared to those applied previously tending to be oriented towards a particular supplier;
2. Considering that another business enactor hereinafter referred to as Reporting Party II in his letter dated September 13, 2000 received by the Commission on September 14, 2000, stated as follows:
- a. Whereas in the Reported Party's tender No.Q-034210-0000-0000-00-52 only manufacturers were invited and it showed a tendency to monopoly, in addition to that referred to as manufacturers were only thread makers (*pengulir*) and most strangely the awardee had been determined prior to the tender. The tender had not been announced in the mass media as stipulated in Pertamina's Decision Number 027/C0000/2000-SO dated April 15, 2000 and such tenders had been participated in by other oil contractor companies such as Conoco, Pertamina DEP Prabumulih, Maxus and others, and this was supported by BPPKA Pertamina;
  - b. Whereas therefor the Reported Party held a meeting on August 3, 1999 in the Reported Party's Conference Room to discuss Business Partnering Casing & Tubing. Invited to and attended the meeting were the following:
    - On the Reported Party's part Tatang Heramawan, Pandji Ariaz, Teuku A.S., Sic/Dea,
    - On the pipe processor's part PT. Citra Tubindo Tbk., PT. Hymindo Petromas Utama/Citra Tubindo Group, PT. Seamless Pipe Indonesia Jaya/Bakrie Group, PT. Purna Bina Nusa, PT. Patrindo Nusa Pertiwi, PT. Pipa Mas Putih,
    - On Pertamina's part Willem L.B. Siahaya – Head of Logistic Bureau of BPPKA,
    - On Migas' part Moch.Poernomo Singgih,
    - On the part of Development Control, Hananto;
  - c. Whereas the system and requirements proposed by the Reported Party in the tender concerned were as follows:
    - One-package system even though there were 8 (eight) items consisting of low grade and high grade,
    - Participants required to offer all items, if not, they would be disqualified;
    - Only be 1 (one) vendor would be appointed as awardee for 3 (three) years;
    - Bidders (vendors) not possessing heat treatment facilities had to ask the same from bidders who had heat treatment facilities;
    - Heat treatment had to originate from in-country;
  - d. Whereas the meeting specified in sub-article b here in above was held several times in Batam, Anyer, Hotel Millenium Jakarta and at the Reported Party's Office in Jakarta attended by the same persons; Based on the above, Reporting Party II is requesting the Commission to

straighten out the tender requirements so that other contractors, too, can benefit from the same, not only a few of them;

3. Considering whereas in view of the written report of Reporting Party I and Reporting Party II mentioned above, on September 13, 2000 the Commission determined to conduct a Preliminary Examination, and for that purpose the Commission appointed an Examination Team consisting of Ir. H. Mohammad Iqbal as the Chairperson of the Team, Soy Martua Pardede, SE as Member, and Ir. H. Tadjuddin Noer Said as Member;
4. Considering whereas after having conducted a Preliminary Examination from September 13, 2000 through October 24, 2000 the Examination Team found allegations of violation that need to be further developed from the parties whose statements need to be heard, therefore the Examination Team recommended that the Commission conduct Follow-up Examination;
5. Considering whereas in view of such recommendation of the Examination Team, the Commission has decided to accept and conduct Follow-up Examination, and for such purpose it established the Commission Council consisting of Ir. H. Mohammad Iqbal as the Chairperson of the Commission Council, Soy Martua Pardede, SH as Member of the Commission Council and Ir. H. Tadjuddin Noer Said as Member of the Commission Council;
6. Considering whereas the Commission Council conducted Follow-up Examination from October 26, 2000 through January 23, 2001 and it was extended up to and including March 7, 2001;
7. Considering whereas in the Follow-up Examination the Commission Council reviewed 30 (thirty) documents obtained and requested from Reporting Party I as indicated in Attachment I to this Decision;
8. Considering whereas in the Follow-up Examination the Commission Council reviewed 11 (eleven) documents obtained from Reporting Party II as indicated in Attachment II to this Decision;
9. Considering whereas the Commission Council heard the statements of 22 (twenty-two) Witnesses, respectively as follows:
  - a) Nugroho I. Purbowinoto, in this matter acting for and on his own behalf in his capacity as the President Director of PT. Seamless Pipe Indonesia Jaya;
  - b) Drs. Frankie Setiadi, in this matter acting for and on behalf of the President Director of PT. Citra Tubindo, Tbk, furthermore verbally in the Examination Room and before the Commission Council Drs. Frankie Setiadi stated that Herman Hermanto and Frenandez da Silva who appeared jointly could make a statement for and on behalf of PT. Citra Tubindo Tbk.;
  - c) Yusuf Ginting and Hendra Kosasih, in this matter acting for and on behalf of the President Director of PT. Pipa Mas Putih;
  - d) Djurianto and Eryono, in this matter acting for and on behalf of the President Director of PT. Patraindo Nusa Pertiwi;
  - e) Moch. Poernomo Singgih and Drs. Willem L.B. Siahaya, in this matter acting for and on his own behalf in his capacity as member of the Joint Committee of the Government-CPI;

- f) Ir. Lolita and Yosephne yap, in this matter respectively acting for and on their own behalf in their capacities as the Managing Director and the General Manager of PT. Penta Adi Samudera respectively;
  - g) Sonny W/ Trisulo, in this matter acting for and on his own behalf in his capacity as the President Director of PT. Multi Guna Laksindo;
  - h) Drs. Purnama, Msi, Aji Prayudi, SH, MM and Sudarso, in this matter acting for and on behalf of the President Director of Pertamina;
  - i) Ir. Sarwi Notoatmodjo and Ir. Indradjit Kartowijono, in this matter acting for and on their own behalf respectively in their capacities as the Director of Oil and Gas Supporting Association and the President Director of PT. Energitama Bumi Nusa respectively;
  - j) On the part of the Government, namely Dr. Ir. Rachmat Sudiby, in this matter acting for and on his own behalf in his capacity as the Director General for Oil and Gas of the Department of Energy and Mineral Resources, Subiyanto and Edi Purnomo, in their respective capacities as staff members of the Directorate General of Oil and Gas, Department of Energy and Mineral Resources; and
  - k) Witnesses whose identity has been kept a secret by the Commission Council;
10. Considering whereas the complete identity of the Witnesses and other parties examined and the complete statements of such parties have been recorded in the Minutes of the Examination;
  11. Considering whereas in the course of this Follow-up Examination the Commission Council reviewed 2 (two) documents from Witness Djurianto and Eryono as indicated in Attachment III to this Decision;
  12. Considering whereas in this Follow-up Examination, the Commission Council reviewed 3 (three) documents from Witness Moch. Poernomo Singgih and 4 (four) documents from Witness Willem L.B. Siahaya, as indicated in Attachment IV to this Decision respectively;
  13. Considering whereas in the course of this Follow-up Examination the Commission Council reviewed 4 (four) documents from Witness Ir. Lolita and Yosephine Yap, as indicated in Attachment V to this Decision;
  14. Considering whereas in this Follow-up Examination the Commission Council reviewed 7 (seven) documents from Witness Sonny W. Trisulo as indicated in Attachment VI to this Decision;
  15. Considering whereas in this Follow-up Examination the Commission Council reviewed 4 (four) documents from Witnesses Drs. Purnama, Msi, Aji Prayudi, SH, MM and Sudarso, as indicated in Attachment VII to this Decision;
  16. Considering whereas in this Follow-up Examination the Commission Council reviewed 3 (three) documents form Witnesses Ir. Sarwi Notoatmodjo and Ir. Indradjit Kartowijono, as indicated in Attachment VIII to this Decision;

17. Considering whereas in this Follow-up Examination the Commission Council reviewed 1 (one) document from the Government in this matter from the Directorate General of Oil and Gas, Department of Energy and Mineral Resources, as indicated in Attachment IX to this Decision;
18. Considering whereas the Commission Council heard the statement of the Reported Party represented by A.H. Batubara, the Vice President for General Affairs, Pandji A. Arias, Senior Coordinator Procurement Business Relations, Genades Panjaitan, Manager Corporate Affairs and A.B.M. Simanjuntak, Manager Strategic Procurement, in this matter acting for and on behalf of the President Director of PT. Caltex Pacific Indonesian by virtue of a special Power of Attorney from the President Director of PT. Caltex Pacific Indonesia Number 2574/JKT/2000 dated December 19, 2000;
19. Considering whereas the Commission Council reviewed 79 (seventy-nine) documents of the Reported Party as indicated in Attachment X to this Decision;
20. Considering whereas the Commission Council finally has sufficient data for making a Decision;

***CONCERNING THE LEGAL ASPECTS:***

1. Considering whereas according to Reporting Party I in his written statement and in the statement given in the hearing before the Commission Council as well as in the documents submitted to the Commission Council, he stated that the Reported Party had held a tender under Instruction for Bidders No.Q-034210-0000-0000-00-52 for casing and tubing, the requirements whereof caused unfair business competition for the following reasons:
  - a) The bidders in the tender were required to offer all items (low and high grade) in a package (document of Reporting Party I No.2 and Reported Party's document No.5);
  - b) Bidders possessing only low grade facilities were required to obtain letter of support from business enactors possessing high grade facilities in-country (document of Reporting Party I No.2 and Reported Party's document No.5);
  - c) Domestic business enactors possessing the above mentioned high grade facilities are competitors of business enactors possessing low grade facilities only;
  - d) The incompleteness of the letter of support as intended hereinabove would cause the disqualification of the bidder concerned (document of Reporting Party I No.2 and Reported Party's document No. 5);
  - e) The pipe (mill) source was limited and was oriented to certain sources;
  - f) Whereas based on the matters specified by Reporting Party I, the Reported Party is alleged of having violated Article 22 of law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices;
2. Considering whereas according to Reporting Party II in his written statement and in the statement he made in the hearing before the Commission Council as well as the documents submitted to the Commission Council, he stated that the Reported Party's Tender No.Q-034210-0000-0000-00-52 had been held in an unfair business competition due to the following matters:

- a) Tender implementation was not announced in the mass media;
  - b) The invitation for the meeting for the socialization of the introduction of this new tender system was only addressed to pipe processors, without involving agents and traders as in previous tenders (document of Reporting Party II No.1, 2 and 3);
  - c) Whereas based on the matters as specified by Reporting Party here in above, the Reported Party is alleged of having violated Article 22 of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices;
3. Considering whereas according to the Reported Party's statement before the Commission Council and the documents submitted to the Commission Council the Reported Party stated as follows:
- a) Whereas the changes in the requirement of the tender implementation by the Reported Party were the business enactor's policy with the purpose of achieving overall efficiency in order to reduce inventory level, procurement cost and cycle time. For achieving the above-mentioned matters, partners possessing capability facilities and experience and management through consignment system. With this method, the Reported Party would be able to save US\$10 (ten) million per year (Reported Party's document No.1);
  - b) Whereas in order to materialise the Reported Party's above mentioned intention, the Reported Party formed a Joint Committee of the Government-CPI, with its members consisting of elements form the Directorate General of Oil and Gas, Office of the Development Control Minister and Pertamina-BPPKA, who, according to the Reported Party, have the competence to approve the Reported Party's procurement plans (Reported Party's document No.1);
  - c) Whereas the Reported Party furthermore held a series of socialisation meetings in the context of introduction and request input for the design of the above mentioned new goods procurement system inviting 6 (six) pipe processors (Reported Party's document No.29);
  - d) Whereas the result of the above mentioned socialisation meeting process was the creation of the new goods procurement system, the implementation whereof remained in compliance with the provisions for the procurement of goods and services namely Presidential Decree Number 16 Year 1994, Decision of the Board of Directors of the State Oil and Gas Company (Pertamina) No. Kpts.108/C000/94-SO, and Pertamina-BPPKA Procedure Bulletin No.077 Rev.II and approved by the Joint Committee of the Government-CPI in the meeting held on December 16, 1999 and approved by Pertamina-BPPKA on December 21, 1999 (Reported Party's document No.36);
  - e) Whereas prior to conducting the tender for the procurement of casing and tubing, the Reported Party had conducted manufacturer assessment of 8 (eight) potential contractors namely PT. Citra Tubindo Tbk., PT Penta Adi Samudera, PT. Semaless Pipe Indonesia Jaya, PT. Purna Bina Nusa Tbk., PT. Multi Guna Laksindo, PT. Bakrie Pipe Industries, PT. Patraindo Nusa Pertiwi and PT. Pipa Mas Putih (Reported documents No.2, 3 and 79);
  - f) Whereas based on the 8 (eight) assessed business enactors, the Reported Party concluded that there were 3 (three) potential alternative partnerships, namely between the Reported Party and PT. Seamless Pipe Indonesia Jaya and PT. Bakri Pipe Industries, between the Reported Party and PT. Citra Tubindo Tbk. and between the Reported Party and PT. Purna Bina Nusa, PT. Penta Adi Samudera and PT. Multi Guna Laksindo. Meanwhile, PT. Pipa Mas Putih and PT.

Patraindo Nusa Pertiwi were only suitable for supporting the above specified three alternative partnerships (Reported Party's document No.79);

- g) Whereas after the Reported Party had held a meeting with the Joint Committee of the Government-CPI, the Reported Party decided that only 4 (four) pipe processors, namely PT. Citra Tubindo Tbk., PT. Purna Bina Nusa, PT. Seamless Pipe Indonesia Jaya and PT. Patraindo Nusa Pertiwi would be invited to participate in the tender (Reported Party's document No.3);
  - h) Whereas on March 2, 2000 Herman Hermanto of PT. Citra Tubindo Tbk. presented his proposal that a consortium be formed, so that the aforementioned procurement of casing and tubing would not have to be conducted through a tender, but the appointment of a consortium as the implementor of the above mentioned word would be sufficient, with PT. Citra Tubindo Tbk. acting as co-ordinator who would distribute the work among the consortium members. The Reported Party rejected such proposal and the Reported Party's rejection was approved by the Government;
  - i) Whereas furthermore the bid opening held on May 2, 2000 was attended by 4 (four) participants who had passed the manufacturer assessment (Reported Party's document No.4);
  - j) Whereas the Reported Party did not hesitate in applying the new requirements considering that this would enhance the utilisation of domestic industry with high grade and low grade facilities at the same time which is a national policy and it has been stipulated under separate rules;
  - k) Whereas the Reported Party stated that the indication of mill source in the tender document was only a suggestion in consideration of quality and experience;
  - l) Whereas the Reported Party did not intend to direct a particular participant to win the tender, the most important matter for the Reported Party was that all criteria set forth by the Reported Party, including the requirement concerning letter of support for the domestic upsetter and heat treater could be met;
  - m) Whereas the reason for using domestic pipe processors with heat treatment and upsetting was the Government's appeal for obtaining domestic industrial added value;
  - n) Whereas the Reported Party did not advertise in the mass media because the tender was conducted through direct selection in accordance with the provisions of Presidential Decree Number 16 Year 1994 concerning the Implementation of the State Revenues and Expenditures Budget;
4. Considering whereas in his statement before the Commission council, Witness Ir. Nugroho I. Purbowinoto stated as follows:
- a) Whereas in the implementation of the tender for the procurement of casing and tubing, the Reported Party invited only pipe manufacturers or processors;
  - b) Whereas it is correct that prior to the implementation of tender, socialisation meetings had been held to discuss the tender applying the new requirements which were then approved by all those attending;
  - c) Whereas the tender awardee had never distributed work to the Witness;

5. Considering whereas in his statement to the Commission Council Witness Drs. Franke Setiadi and Witness Herman Hermanto stated as follows:
- a) Whereas invited to the socialisation meeting were PT. Citra Tubindo Tbk., PT. Seamless Pipe Indonesia Jaya, PT. Purna Bina Nusa, PT. Patraindo Nusa Pertiwi, PT. Pipa Mas Putih and PT. Hymindo Petromas Utama;
  - b) Whereas the purpose of the socialisation meeting held by the Reported Party was to introduce the new system for the procurement of casing and tubing referred as consignment purchase, a system that had been applied before by YPF Maxus Southeast Sumtra BV.;
  - c) Whereas the Witness was agreeable to the new requirements even though he realised that based on these new requirements there would be business enactors that would not be able to participate in the tender because the tender with this system was not for small-scale entrepreneurs, but indeed for large-scale and strong business enactors;
  - d) Whereas in one of the socialisation meetings, the Witness refused the effectuation of the tender using the new requirements because the Witness and PT. Seamless Pipe Indonesia Jaya were the only ones capable of meeting the requirements. Therefore, the Witness once proposed that the work not be conducted through a tender, but through the direct appointment of a consortium led by the Witness himself, that would subsequently distribute work to all participants. The Reported Party and the Government rejected the above proposal with the reason that it was contradictory to the existing new regulations;
  - e) Whereas in the work contract with the Reported Party the opportunity to sub-contract the work to third parties was open, insofar as meeting API requirements;
  - f) Considering whereas in his statement before the Commission Council Witness Yusuf Ginting and Witness Hendra Kosasih stated as follows:
    - a) Whereas the Witness admitted to have participated in the series of socialisation meetings held by the Reported Party and the situation in such meetings was such that the Witness had to accept the new tender requirements proposed by the Reported Party;
    - b) Whereas the Witness stated that in the aforementioned meetings there was a concept proposed by the Reported Party and a concept proposed by PT. Purna Bina Nusa;
    - c) Whereas had the bid requirements in the aforementioned new tender not prescribed the obligation to bid in one unit or package combining low grade and high grade, it is not certain that PT. Citra Tubindo Tbk. would have been the most competitive;
7. Considering whereas in his statement before the Commission Council and in the documents submitted to the Commission Council, Witness Djurianto and Witness Eryono stated as follows:
- a) Whereas the Witness admitted to have participated in a series of socialisation meetings held by the Reported Party (documents of the Witness No. 1 and 2);
  - b) Whereas the Reported Party did not use pipes requiring heat treatment (high grade), so the package system bid was not important, therefore bidding could have been conducted through separate bidding system for high grade and low grade.

- c) Whereas the Witness had no problem with agents or traders being invited to participate in the tender;
  - d) Whereas the Witness together with other attendants of the socialisation meeting, except for PT. Seamless Pipe Indonesia Jaya and PT. Citra Tubindo Tbk., rejected the new requirements set forth by the Reported Party;
  - e) Whereas the Witness chose the letter of support from PT. Citra Tubindo Tbk. because it is located in the vicinity of the Witness' factory in Batam;
8. Considering whereas in his statement before the Commission Council, Witness Moch. Poernomo Singgih and Witness Willem L.B. Siahaya, stated as follows respectively:
- a) Whereas both Witnesses attended the series of socialisation meetings held by the Reported Party;
  - b) Whereas according to Witness Moch. Purnomo Singgih, he attended the series of socialisation meetings to ensure the implementation of the Government's policy in using domestic products;
  - c) Whereas according to Witness Willem L.B. Siahaya the idea to implement procurement using a new system originated from Pertamina, namely in the context of efficiency, cost reduction, competitiveness, utilisation of domestic products and compliance with the regulations;
  - d) Whereas according to Witness Willem L.B. Siahaya, the consideration for inviting only 6 (six) pipe processors originated from the Joint Committee of the Government-CPI after stock taking;
  - e) Whereas the package-system tender was to become the policy of all Production Sharing Contractors (PSC) as evident from the Decision of Pertamina's Board of Directors Number 077/C0000/2000-SO Year 2000;
  - f) Did not notice the direction of tender awardee from the beginning;
9. Considering whereas in his statement before the Commission Council and in the documents submitted to the Commission Council Witness Ir. Lolita and Witness Yosephine Yap stated as follows:
- a) Whereas the company managed by the Witness falls under the trader category;
  - b) Whereas the Witness was not invited and did not attend the socialisation meetings held by the Reported Party;
  - c) Whereas the Witness was visited by the Reported Party for manufacturer's assessment related to mill source, financial capabilities and others (the Witness' documents No.2 and No.3);
  - d) Whereas the Witness did not receive and was not notified of the manufacturer's assessment results;

10. Considering whereas in his statement before the Commission Council, Witness Sonny W. Trisulo stated as follows:
- a) Whereas the Witness was invited to the series of socialisation meetings, he however attended the same with the representative of PT. Purna Bina Nusa;
  - b) Whereas the Witness objected to the Reported Party's policy in accepting only particular mill source, while there were many others of good quality, as for example Tusal Pipe from Austria and US Steel from the United States;
  - c) Whereas the Witness stated he was not agreeable to the package-system tender requirement because it was evident there were only 2 (two) business enactors capable of meeting the same namely PT. Citra Tubindo Tbk. and PT. Seamless Pipe Indonesia Jaya;
  - d) Whereas the Witness stated that in the procurement of casing and tubing at Pertamina Prabumulih, tender participants were allowed to import pipes processed with heat treatment and upsetting from overseas provided these were cheaper by 15% as a preferential figure for domestic products;
11. Considering whereas in his statement before the Commission Council, Witness Purnama, Witness Aji Prayudi and Witness Sudarso stated as follows:
- a) Whereas the idea of procurement through the alliance system in Production Sharing Contractors (PSC) circles was initiated based on a comparative study conducted by Willem L.B. Siahaya and several employees of the Reported Party at Chevron and Texaco in The Unites States, the result of which were subsequently reported to Pertamina. The idea was then discussed in the Logistics Communication Forum and within Pertamina itself. The idea was ultimately presented to the Office of the Development Control and the Directorate General of Oil and Gas. Since the idea was not in compliance with Presidential Decree Number 16 Year 1994, it was agreed that the said idea would be introduced in the new Presidential Decree concerning the procurement of goods and services, because at that time discussions were under way concerning the concept of the Presidential Decree that was later stipulated as Presidential Decree Number 18 Year 2000;
  - b) Whereas the membership of Pertamina's representative in the so-called Joint Committee of the Government-CPI was not known to Pertamina's Board of Directors, likewise Willem L.B. Siahaya had not been officially appointed as member of the said Committee;
12. Considering whereas in his statement before the Commission Council, Witness Dr.Ir. Rachmat Sudiby, Witness Subiyanto and Witness Edi Purnomo stated as follows:
- a) Whereas the Directorate General of Oil and Gas stipulated that the import of threaded (*diulir*) casing and tubing was prohibited because there were five business enactors engaging in threading (*ulir*) deemed capable of doing it in-country;
  - b) Whereas the consideration of cost reduction in PSC circles was already in the Government's program, following the example of the North Sea project known in Indonesia as KRIS (Cost Reduction Indonesia Style);

- c) Whereas there are not yet manufacturers capable of manufacturing seamless pipes in Indonesia, therefore it should be started with threading, upsetting, then heat treatment, the Government's plan is that Indonesia must be capable of manufacturing casing and tubing domestically;
  - d) Whereas the purpose of the involvement of the Directorate General of Oil and Gas in the Joint Committee of the Government-CPI and in the socialisation meetings held by the Reported Party was only to serve as a source of reference for ensuring that there was competition, that domestic products were prioritised and that there were no violations of the regulations;
  - e) Whereas the Letter of the Director General of Oil and Gas Entrepreneurship Guidance Number 005/936/DMB/1992 concerning the Utilisation of Domestic Heat Treatment and Threading Facilities was only an appeal and not a requirement;
13. Considering whereas in his statement before the Commission Council, Reported Party I provided the following additional statement:
- a) Whereas PT. Purna Bina Nusa submitted 2 (two) requests for a letter of support to PT. Citra Tubindo Tbk. for the tender of the Reported Party No.Q-034210-0000-0000-00-52, namely on April 12, 2000 and on April 26, 2000, which was not obtained up to May 1, 2000 (one day prior to bid submission and bid opening);
  - b) Whereas Reporting Party I stated that on May 1, 2000 at ± 19:30 hours the team of PT. Purna Bina Nusa that was going to attend the bid opening on May 2, 2000 was invited by the team of PT. Citra Tubindo Tbk. to Hotel Aryaduta Pekanbaru to meet in a room rented by PT. Citra Tubindo Tbk. In the said meeting PT. Purna Bina Nusa was forced to open and show its bid documents to be examined by PT. Citra Tubindo Tbk. as a condition for obtaining a letter of support from PT. Citra Tubindo Tbk.;
  - c) Whereas Reporting Party I stated that the above mentioned meeting was also attended by Pahlevi, in his capacity as the representative of PT. Patraindo Nusa Pertiwi, who had also been asked to do the same thing as a condition for obtaining the letter of support of PT. Citra Tubindo Tbk.;
14. Considering whereas in his statement before the Commission Council, the Witness whose identity has been kept secret by the Commission Council, stated as follows:
- a) Whereas it is correct that a meeting was held in a room at the Hotel Aryaduta Pekanbaru on May 1, 2000 at about 19:30 hours West Indonesia Time, one day prior to the bid opening on May 2, 2000;
  - b) Whereas it is correct that in the above mentioned meeting PT. Purna Bina Nusa was requested to show its bid price to PT. Citra Tubindo Tbk. as a condition for obtaining a letter of support from PT. Citra Tubindo Tbk. After the representative of PT. Citra Tubindo Tbk. had seen the above mentioned price, the above mentioned proposal was sealed in the presence of PT. Citra Tubindo Tbk. and it was submitted to the tender committee on the following day;
  - c) Whereas the Witness confirmed that the representative of PT. Patraindo Nusa Pertiwi, namely Pahlevi, was also in the room where the above mentioned meeting took place;
  - d) Whereas the Witness heard that PT. Citra Tubindo Tbk. promised it would give work to PT. Purna Bina Nusa if it was awarded the tender;

15. Considering whereas in their statement before the Commission Council, Expert Ir. Indradjit Kartowijono and Expert Ir. Sarwi Notoatmodjo were of the opinion that seen from the normative aspect, there were no indications of violation by the Reported Party, however, there was a need to study whether the aforementioned new requirements had gone through adequate and comprehensive socialisation process to related business enactors;
16. Considering whereas based on the facts disclosed in the hearing, both in the testimony of Witnesses as well as in the documents submitted to the Commission Council, and the written responses by the Reported Party, the Commission Council established the following facts:
  - a) Whereas the Reported Party is an Indonesian legal entity known by the name of PT. Caltex Pacific Indonesia, having its office address in Sarana Jaya Building, Jalan Budi Kemuliaan I No.1, Jakarta 10340;
  - b) Whereas the Reported Party, for the procurement of casing and tubing for 3 (three) years setting the price annually, held tender No.Q-034210-0000-0000-00-52 for which bid opening was conducted on May 2, 2000 in Rumbai;
  - c) Whereas in the above mentioned tender the Reported Party introduced a new requirements, namely a one-package bid system combining low grade and high grade;
  - d) Whereas the Reported Party had been aware from the beginning that under the one-package system there would only be 2 (two) business enactors meeting such requirement, namely PT. Citra Tubindo Tbk. and PT. Seamless Pipe Indonesia Jaya;
  - e) Whereas the Reported Party set the requirement for tender participants possessing only low grade facilities to enclose a letter of support from business enactors possessing high grade facilities;
  - f) Whereas the Reported Party required that such letter of support come from domestic business enactors by virtue of the Government's appeal indicated in the Letter of the Director General of Oil and Gas Entrepreneurship Guidance, Directorate General of Oil and Gas, Department of Mines and Energy of the Republic of Indonesia Number 005/396/DMB/1992 dated January 4, 1992 concerning the Utilisation of Heat Treatment and Threading Facilities in-country;
  - g) Whereas for introducing the tender with such new requirements, the Reported Party held a series of socialisation meetings, starting with Jakarta, Batam, Anyer and back in Jakarta inviting only 6 (six) pipe processor business enactors namely PT. Citra Tubindo Tbk., PT. Seamless Pipe Indonesia Jaya, PT. Purna Bina Nusa, PT. Patraindo Nusa Pertiwi, PT. Pipa Mas Putih and PT. Hymindo Petromas Utama;
  - h) Whereas the Reported Party conducted manufacturer assessment activities from September 21-28, 1999 involving 8 (eight) business enactors, namely PT. Citra Tubindo Tbk., PT. Penta Adi Samudera, PT. Seamless Pipe Indonesia Jaya, PT. Purna Bina Nusa, PT. Multi Guna Laksindo, PT. Bakrie Pipe Industries, PT. Patraindo Nusa Pertiwi and PT. Pipa Mas Putih. Based on the result of the above mentioned manufacturer assessment, the Reported Party recommended 3 (three) alternative partnerships, namely partnership between the Reported Party and PT. Seamless Pipe Indonesia Jaya and PT. Bakrie Pipe Industries, between the Reported Party and PT. Citra Tubindo Tbk., between the Reported Party and PT. Purna Bina Nusa, Pt. Penta Adi Samudera and PT. Multi Guna Laksindo. Meanwhile, PT. Pipa Mas Putih and PT. Patraindo Nusa Pertiwi were only as supporters of the above mentioned three alternative partnerships;

- i) Whereas after the Reported Party had held a meeting with the Joint Committee of the Government-CPI, it was decided that only 4 (four) business enactors had been qualified, namely PT. Citra Tubindo Tbk., PT. Seamless Pipe Indonesia Jaya, PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi, whereas the procurement system would be implemented through tender;
- j) Whereas PT. Citra Tubindo Tbk. proposed to form a consortium of pipe processors so that the aforementioned procurement of casing and tubing would not have to be conducted in the form of a tender, but it would be sufficient to appoint the consortium as the work implementor with PT. Citra Tubindo Tbk. acting as co-ordinator who would subsequently distribute work to consortium members. Such proposal was not approved by the Reported Party and the Government, so that the procurement of casing and tubing was conducted through a tender;
- k) Whereas out of the 4 (four) pipe processors invited to participate in the tender, only 2 (two) pipe processors were capable of meeting the requirements set by the Reported Party, whereas the 2 (two) pipe processors not possessing high grade facilities in accordance with the requirements were required to obtain a letter of support from business enactors possessing such facilities;
- l) Whereas the requirement for obtaining the letter of support has been a common practice. In the above mentioned tender, bidders were not allowed to request a letter of support from foreign business enactors as a consequence of the Government's appeal included in the Letter of the Director General for Oil and Gas Entrepreneurship Guidance, Directorate General of Oil and Gas, Department of Mines and Energy of the Republic of Indonesia Number 005/396/DMB/1992 dated January 4, 1992 concerning the Utilisation of Heat Treatment and Threading Facilities in-country, whereas there were only 2 (two) domestic business enactors capable of issuing such letter of support, namely PT. Citra Tubindo Tbk. and PT. Seamless Pipe Indonesia Jaya who were in fact competitors of the tender participants;
- m) Whereas PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi requested a letter of support from PT. Citra Tubindo Tbk. considering that the location of PT. Citra Tubindo Tbk. in Batam was more economical compared to the location of PT. Seamless Pipe Indonesia Jaya in Cilegon, bearing in mind that the Reported Party's warehouse receiving goods is located in Dumai, the Province of Riau;
- n) Whereas the letter of support provided by PT. Citra Tubindo Tbk. to PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi was provided on May 1, 2000 namely one day prior to the bid opening, at about 19:30 hours West Indonesia Time in a room at the Hotel Aryaduta Pekanbaru. The said letter of support was provided after PT. Citra Tubindo Tbk. had requested PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi to show the bid price that would be submitted at bid opening on May 2, 2000 and PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi agreed to show the said bid price because they had been promised to receive work from PT. Citra Tubindo Tbk.;
- o) Whereas the bid opening held on May 2, 2000 was attended by 4 (four) participants namely PT. Citra Tubindo Tbk. with a bid price of US\$15,447,672, PT. Purna Bina Nusa with a bid price of US\$15,872,954, PT. Patraindo Nusa Pertiwi with a bid price of US\$15,966,092 and PT. Seamless Pipe Indonesia Jaya with a bid price of US\$16,103,020 so that PT. Citra Tubindo Tbk. was determined as the awardee with the lowest bid price;

17. Considering whereas based on the above mentioned facts, the Commission Council has concluded that in the implementation of tender No.Q-034210-0000-0000-00-52 held by the Reported Party with the bid opening held on May 2, 2000 in Rumbai, Pekanbaru, a collusion occurred among PT. Citra Tubindo Tbk. and PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi, to arrange and or determine the tender awardee leading to unfair business competition. This is evident from the meeting in a room at the Hotel Aryaduta Pekanbaru on May 1, 2000 at about 19:30 hours West Indonesia Time for obtaining a letter of support for high grade facility. The Reported Party should have suspected from the beginning that the aforementioned collusion would occur, because the Reported Party had realised from the beginning that there would only be 2 (two) business enactors meeting the aforementioned requirements namely PT. Citra Tubindo Tbk. and PT. Seamless Pipe Indonesia Jaya so that such unbalanced position was extremely sensitive to the occurrence of collusion. Therefore the Reporting Party is deemed not to have been exercised adequate prudence in ensuring fair business competition. Meanwhile the letter of appeal issued by the official of the Directorate General of Oil and Gas of the Department of Mines and Energy of the Republic of Indonesia Number 005/396/DMB/1992 dated January 4, 1992 by virtue of the Stipulation of the People's Consultative Assembly Number XX/MPRS/1966 and Number III/MPR/2000 concerning Legal Source and Hierarchy of Laws and Regulations does not fall under the hierarchy of legislation used as a basis for exemption as intended in Article 50 sub-article a of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices. For such purpose, the Commission Council suggests to the Government in relation to efforts for the utilisation of domestic products to stipulate the same in a clear and certain provision and in compliance with Law Number 5 Year 1999;
18. Furthermore, the Commission Council has concluded that there has been a collusion among tender participants, namely PT. Citra Tubindo Tbk., PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi, for the determination of tender awardee which is a violation of Article 22 of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic And Unfair Business Competition Practices;
19. Considering whereas Article 22 of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices contains the following elements:
- a) Business enactor;
  - b) Collusion;
  - c) Arrange and or determine tender awardee;
  - d) Occurrence of unfair business competition;
- Ad.a. Business enactor;
- Considering whereas referred to as business enactor under Article 1 sub-article 5 of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices shall be defined as "Any individual or business entity, either incorporated as a legal entity or not incorporated as legal entity established and domiciled or engaging in activities in the jurisdiction of the state of the Republic of Indonesia, either jointly or severally through agreement, conducting various business activities in the field of economics";

- Considering whereas based on the examination it has been found that PT. Citra Tubindo, Tbk., PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi are business enactors in accordance with the above mentioned definition;
- Considering whereas based on the above mentioned considerations, the Commission Council is of the opinion that the business enactor element has been met;

Ad. b. Collusion.

- Considering whereas referred to as collusion in Article 1 sub-article 8 of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices is defined as “Forms of co-operation conducted by business enactors with other business enactors with the intention of controlling the market concerned for the benefit of the business enactors involved in collusion”;
- Considering whereas based on the examination it was proven that there had been a meeting between PT. Citra Tubindo Tbk. and PT. Purna Bina Nusa, and PT. Patraindo Nusa Pertiwi at the Hotel Aryaduta Pekanbaru on May 1, 2000 at about 19:00 hours West Indonesia Time to arrange and or determine the tender awardee by showing to each other bid prices that were going to be submitted at the bid opening;
- Considering that based on the above mentioned considerations the Commission Council is of the opinion that the collusion element has been met;

Ad. c. Arrange and or determine tender awardee

- Considering whereas referred to as arranging and or determining tender awardee is an interaction process among tender participants who determine the tender awardee among themselves;
- Considering whereas there was an agreement to provide a letter of support to PT. Citra Tubindo Tbk. to PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi under the condition that PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi had to show first their respective bid prices to PT. Citra Tubindo Tbk., so that PT. Citra Tubindo Tbk. could offer a lower price than PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi whereas TP. Citra Tubindo Tbk. promised it would give work to PT. Purna Bina Nusa. It was further proven that the tender was awarded to PT. Citra Tubindo Tbk.;
- Considering whereas based on the above considerations the Commission Council is of the opinion that the elements of arranging and or determining the tender awardee have been met;

Ad.d. Occurrence of unfair business competition.

- Considering whereas referred to as unfair business in Article 1 sub-article 6 of Law Number 5 Year 1999 concerning Monopolistic and Unfair Business Competition Practices is defined as “Competition among business enactors engaging in production activities and or the marketing of goods and or services conducted in a dishonest or unlawful manner or in a manner hampering business competition”;

- Considering whereas based on the examination, PT. Citra Tubindo Tbk. offered its price after having seen the bid price of its competitors;
  - Considering whereas based on the above considerations, the Commission Council is of the opinion that the element of unfair business practice element has been met;
20. Considering whereas based on the above considered facts, the Commission Council is of the opinion that the determination of the awardee of tender No.Q-034210-0000-0000-00-52 held by the Reported Party the bid opening for which was held on May 2, 2000 in Rumbai, Pekanbaru was conducted through collusion among tender participants in violation of Article 22 of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices;

**HAS DECIDED TO:**

1. DECLARE THE PROCUREMENT OF CASING AND TUBING THROUGH TENDER NO.Q-034210-0000-0000-00-52 LEGALLY AND CONCLUSIVELY PROVEN TO HAVE VIOLATED ARTICLE 22 OF LAW NUMBER 5 YEAR 1999, BECAUSE THE TENDER AWARDEE WAS DETERMINED THROUGH COLLUSION AMONG TENDER PARTICIPANTS;
2. ORDER THE REPORTED PARTY NAMELY PT. CALTEX PACIFIC INDONESIA TO HALT CASING AND TUBING PROCUREMENT ACTIVITIES BASED ON TENDER NO.Q-034210-0000-0000-00-52 BY NO LATER THAN 30 (THIRTY) DAYS FROM THE TIME THE REPORTED PARTY RECEIVES A NOTIFICATION ON THE DECISION.

Hence this Decision has been made and read out before the court session open to the public on Friday, April 20, 2000 by me, Commission Member IR. H. Mohammad Iqbal acting as the Chairperson of the Commission Council and Soy Martua Pardede, SE and Ir. H. Tadjuddin Noer Said, respectively Members of the Commission Council, assisted by Ety Nurhayati, SH the Clerk of the Commission Council.

**III. – ANSWERS TO THE QUESTIONNAIRE**

1. **Question 1(a)** -- Background Information

The respondents' names: PT. Caltex Pacific Indonesia; PT. Citra Tubindo Tbk.; PT. Purna Bina Nusa; and PT. Patraindo Nusa Pertiwi.

The covered product or service: Oil pipe and pipe processing services.

The geographic area: The definition of a geographic market was not an issue in the case, the bid-rigging conspiracy, however, affected the provision of oil-pipe and oil-pipe processing services on Riau, Indonesia.

The beginning and ending dates of the cartel: The bid-rigging conspiracy was formed on May 1, 2000; the KPPU ordered that the illegal contract be undone on April 20, 2001.

2. **Question 1(b)** -- The Evidence of Collusion

Evidence of the bid-rigging conspiracy was direct and testimonial, coming to the KPPU's attention through the testimony of a complainant (whose identity must be kept confidential under Indonesian law), as well as the testimony of witnesses from respondents Citra, Purna, and Patraindo, who were called to testify before the KPPU.

3. **Question 1(c)** -- Amount of Commerce Affected

The oil pipe and pipe processing services contract that was the subject of the bid-rigging conspiracy was valued at U.S. \$15,447,672 (based on the price of the lowest bid).

4. **Question 1(d)** -- Sanctions Imposed

As *Caltex* is the first case ever brought by the KPPU, no fines or other direct financial sanctions were imposed. Instead, the KPPU ordered that the contract between Caltex and Citra (the apparent lowest bidder) be undone and that the entire tender process be redone.

5. **Question 2(a)** -- Statements Concerning the Cartel's Effect on Price

As reported in the KPPU's *Caltex* decision, on May 1, 2000, the day before Caltex was to open the bids for oil-pipe processing services, Citra, Purna, and Patraindo met in a hotel to discuss their bids. At this meeting, Citra agreed to give both Purna and Patraindo so-called "letters of support," conditioned on Purna and Patraindo agreeing to reveal to Citra the bids they intended to submit to Caltex. Purna and Patraindo shared their bids with Citra, and Citra gave them letters of support. The bids were then sealed in the presence of the other conspirators. Additionally, Citra promised Purna some work under the contract, assuming Citra was awarded the contract.

6. **Question 2(b)** -- Evidence Concerning the Cartel's Effects

As described above, the conspiracy successfully rigged the price for the bid for the oil-pipe processing services contract with Caltex.

7. **Question 2(c)** -- Colorful Statements by the Cartel's Members

Transcripts and verbatim statements of the conspirators testimony before the KPPU are not a matter of public record, except to the extent reported in the KPPU's decision. According to an article appearing in the *Jakarta Post* on May 1, 2001, entitled "Citra Tubindo Denies Conspiracy Allegation," however, a representative of Citra is quoted as saying: "Yes, KPPU questioned Citra, but not about any conspiracy. The commission only asked technical questions about the process of the tender, etc. and suddenly there is this verdict that we were involved in a conspiracy." The article goes on to quote the Citra representative as saying: "We never disclosed our bid or whatever it was the KPPU accused us of."

8. **Question 2(d)** -- Demonstrations of the Cartel's Harm

Because the KPPU was able to uncover this bid-rigging conspiracy relatively shortly after it occurred, and because the KPPU ordered that the contract resulting from the rigged bid be undone while it still had more than two years to run, the conspiracy's harm was kept to a minimum. This also is reflected in an article appearing in the *Jakarta Post* on May 17, 2001, entitled "Caltex Terminate Contract with Citra Tubindo," in which a Caltex spokesperson is quoted as saying:

"We are grateful to the KPPU [the antimonopoly commission] for having uncovered the conspiracy behind the tender, and even without the verdict Caltex would have immediately terminated the contract because it runs contrary to business ethics."

9. **Question 4** -- Standards of Proof and the Sanctions for Violations of the Law

Standards of proof: Law Number 5 of 1999 incorporates both rule of reason and per se illegality concepts in its prohibitions of anticompetitive business practices. Most violations of Law Number 5 require that the KPPU find that the respondents' illegal conduct resulted in "monopolistic practices" or "unfair business competition." These terms are defined in Article 1, subsections 2 and 6, of Law Number 5 as follow:

- (a) "Monopolistic practices shall be the centralization of economic power by one or more business enactors, 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."
- (b) "Unfair business competition shall be competition among business enactors in conducting activities for the production and/or marketing of goods and/or services in an unfair or unlawful or anticompetition manner."

Available sanctions: As set forth in Articles 47 and 48 of Law Number 5 of 1999, the KPPU's remedial powers are as follow:

- (a) Civil Remedies (Article 47):
  - (1) Declare unlawful agreements null and void.
  - (2) Require restructuring of firms guilty of illegal vertical integration.
  - (3) Issue cease and desist orders to stop activities causing monopolistic practices, unfair business competition, or the abuse of dominant position.
  - (4) Cancel mergers or consolidations in violation of the law.
  - (5) Order compensation for damages by violators to injured parties.
  - (6) Impose civil fines up to Rupiah 25 billion (approximately U.S. \$2.5 million) for violations of the law.
- (b) The KPPU may seek criminal penalties, for certain violations enumerated in Article 48, through submission of the case to police investigators, who in turn may refer the matter to the public prosecutor and, ultimately, the courts.
  - (1) Criminal fines up to Rupiah 100 billion (approximately U.S. \$10 million).
  - (2) Prison sentences of up to six months.

10. **Question 5** -- General Principles for Calculating Fines and Other Sanctions

Article 47 of Law Number 5 of 1999, which concerns sanctions, does not provide any specific guidance on how fines are to be calculated and, to date, the KPPU has not adopted or issued any guidelines concerning the calculation of fines.

The maximum fines permitted under Law Number 5 of 1999 are set forth in response to the question immediately above.

**IV - PROMOTING COMPLIANCE & EDUCATING BUSINESSES ABOUT COMPETITION  
LAW: INDONESIA'S EXPERIENCE  
(-- For Session II --)**

**Introduction**

In addition to creating the Commission for the Supervision of Business Competition ("KPPU"), Indonesia's first agency charged with investigating and enforcing the nation's new competition law, Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition tasks the KPPU with educating businesses and the public about the competition law and promoting compliance with the law.<sup>1</sup> As described below, Law Number 5's "socialization" process started well before the law actually came into effect, and the need to educate businesses, the public, the press, and the courts about the law likely will need to continue for many years to come.

The purpose of this paper is to review some of the activities that already have been undertaken in Indonesia to promote the socialization of, and compliance with, Law Number 5. It is also hoped that this paper, in conjunction with discussions during the course of the OECD Global Forum on Competition, will spur additional ideas about how law enforcement agencies might best develop programs to educate business and others about the existence and meaning of competition law in a systematic, continuous, on-going manner.

**Background on Law Number 5 of 1999**

Law Number 5 of 1999 is Indonesia's first comprehensive law prohibiting monopolistic practices and unfair business competition. Prior to its passage on March 5, 1999, legal provisions touching on competition were fairly limited in scope and could only be found as snippets of law scattered throughout numerous codes and statutes, including both Indonesia's criminal and civil codes.<sup>2</sup>

The interest in developing a comprehensive competition law in Indonesia dates back to around 1990. It was at this time that legal scholars as well as members of various political parties, non-governmental organizations, and certain government institutions began to discuss the need for such a law. In fact, a number of different groups, including the Indonesian Democratic Party and the Indonesian Ministry of Trade (in cooperation with the Faculty of Law University of Indonesia), produced draft competition laws. These proposed draft laws, however, were not given serious attention by those in power at the time, because much of the unfair business competition and monopolistic practices that was taking place, often by Indonesia's largest industries and businesses, was the result of direct and active government support. Crony capitalism was the order of the day under the so-called "New Order" government of former President Soeharto, right up to about 1998.

---

<sup>1</sup> See, for example, Law Number 5, Article 30 (1) (establishing the KPPU to supervise the implementation of Law Number 5) and Article 35 f (giving the KPPU responsibility to prepare guidelines and publications related to the law).

<sup>2</sup> See, for example, Criminal Code of 1945, Article 382 bis (concerning fraud and unfair business practices); and Civil Code of 1945, Article 1365 (concerning the recovery of damages by private parties for violations of the law).

While Law Number 5's passage in 1999 came about in part to satisfy conditions of a Letter of Intent entered into between the Indonesian government and the International Monetary Fund in July 1998, the law's passage also drew much support from politicians, the government, the public, and the press as a means to address growing concerns about monopolistic practices and unfair business practices stemming from the closely related practices of rampant corruption, collusion, and nepotism (known by the Indonesian acronym "KKN") that had been taking place in Indonesia between the government and favoured businesses.

Law Number 5 was passed by the House of Representatives ("DPR") on February 18, 1999, and it was signed into law by Indonesia's President on March 5, 1999, with an effective date of March 5, 2000. The competition law's effective date was purposely set one year after its passage in order to provide time for socialization of the new law. Moreover, businesses were given an additional six-month grace period under the law, until September 5, 2000, to come within compliance of the law.<sup>3</sup> This grace period undoubtedly was included in the law to give businesses, the public, and others a clear signal that the rules of doing business in Indonesia were about to change -- perhaps dramatically.

### **Efforts to Educate Businesses Regarding Law Number 5 of 1999**

The major activity that the KPPU and the government of Indonesia (primarily through the Ministry of Industry and Trade, Law Number 5's original sponsor within the government), have undertaken to socialize businesses and others about the new competition law has been through the sponsorship of, and participation in, conferences and presentations to various target groups in cities throughout the Indonesian archipelago.

Specifically, conferences have been held with:

1. Universities
2. Industry Groups, Business Associations, and Trade Sectors, including the Indonesian Chamber of Commerce ("KADIN")
3. Local Governments
4. Government Ministries and Institutions
5. General Audiences and the Public

These conferences have taken place in most of Indonesia's largest cities, and some of its regional capitals, including: Jakarta, Surabaya, Jogyakarta, Makassar, Bandung, Medan, Manado, Denpasar, Malang, and Palembang.

The focus of such conferences has been first to simply make the various constituencies aware that Indonesia has a law concerning the prohibition of monopolistic practices and unfair business competition. These meetings included activities as simple as distributing copies of the law. The focus then shifted to more detailed discussions about the law's operative provisions, that is, the kinds of business practices -- such as price fixing, bid rigging, market division, abuse of dominant position, and certain vertical restraints of trade -- likely to draw the most scrutiny by the KPPU. These discussions also covered the general modes of competition law analysis, with specific reference to the concepts of the "rule of reason" and "per se" illegality, and they touched upon some of the more significant economic concepts underlying sound

---

<sup>3</sup> See Article 52(2) ("Business enactors having entered into agreement and/or conducting activities and/or undertaking actions not complying with the provisions of this law shall be given 6 (six) months from this Law's coming into effect to make adjustments.")

enforcement of competition law, such as market power, barriers to entry, and identifying likely competitive effects. Finally, such socialization conferences covered the role and organization of the KPPU, how the KPPU handles investigations and processes cases, and how to properly lodge a complaint with the KPPU.

In addition to conferences sponsored by the government and the KPPU, various private, non-governmental organizations ("NGOs"), such as the Partnership for Business Competition, the Center for Indonesian Law and Policy Studies, and the Center for Strategic and International Studies also have sponsored conferences and workshops targeting many different Indonesian constituencies including businesses and business associations, government organizations, the courts, the press, and the public, to assist in the process of educating interested parties about Law Number 5. These conference typically included the participation of KPPU Commissioners and other government officials, and generally covered the same topics as those identified above. Thus, many socialization activities in Indonesia have been the product of close, coordinated public-private cooperation.

Many of the socialization activities of the NGOs have been underwritten, at least in part, by international donor agencies such as the U.S. Agency for International Development, Germany's Gesellschaft für Technische's Zusammenarbeit, Australian Agency for International Development, Canadian International Development Agency, World Bank, Asian Development Bank, and others. Given the involvement of the donor agencies, many socialization conferences have included the participation of notable antitrust scholars and government enforcement officials from the United States, Germany, Canada, Australia, Japan, Korea, and other countries.

### **Public Hearings and the Dissemination of Decisions**

Other important activities that the KPPU has undertaken to socialize businesses and the public about Indonesia's new competition law include public hearings and the public dissemination of the KPPU's decisions.

The KPPU has adopted operating procedures for the conduct of public hearings that are used to investigate highly concentrated industries in which there may be violations of Law Number 5.<sup>4</sup> As part of this process, companies in these highly concentrated industries, together with other industry participants and interested parties, have been invited to appear before the KPPU to give testimony and to answer questions. These sessions have been open to the public and have been well attended by the press and other observers. Such sessions provide businesses and others insights into how the KPPU operates and how the KPPU thinks about and applies the law. To date, such public hearings have taken place in the following industries:

1. Paper and Pulp
2. Wheat Flour
3. Day-Old Chickens

Additionally, the KPPU has adopted the practice of issuing written decisions when it decides a case and then disseminating these decisions in open, public session. Such decisions include: (1) a summary of the evidence collected, including the witnesses who testified before the KPPU and the documents reviewed; (2) the KPPU's findings of fact; (3) the KPPU's conclusions of law; and (4) the sanctions being ordered. The practice of issuing written decisions may not at first appear to be so remarkable, but one must consider that to this day even Indonesia's Courts of Appeal ("High Courts") do

---

<sup>4</sup> See KPPU Decision Number 8 of 2000, concerning "Consultation Meetings."

not issue written decisions most of the time; additionally, the written decisions of the Indonesia's Supreme Court are often difficult to locate, even for Indonesians.

To date, the KPPU has completed two investigations resulting in the imposition of sanctions -- the *Caltex* and the *Indomaret* case. Accordingly, the KPPU has issued two written opinions. The public sessions at which these decisions were read were well attended by representatives from various businesses, the press, and the public.

### **Socialization Activities Being Planned**

In addition to the socialization activities described above, the KPPU currently is in the process of planning and developing two additional projects intended to educate businesses and others about Law Number 5. First, the KPPU is planning to develop its own website. Although some materials related to the KPPU and Law Number 5 are currently available on other's websites, most notably that of the Partnership for Business Competition ([www.pbc.or.id](http://www.pbc.or.id)), the KPPU is interested in developing its own website. Such a site would include copies of all of the KPPU's decisions, the KPPU's internal operating procedures, background information about the KPPU, its membership, and how it is organized, and instructions on how to file a complaint. Much of this material already has been translated into English, and English versions of key materials also would be posted on the site.

Second, the KPPU is planning for the publication of guidelines and instructional pamphlets intended to explain Indonesia's competition law in a straightforward, non-technical manner, for the benefit of businessmen, the public, and the press. Guidelines would be written to cover topics such as cartels and horizontal restraints of trade, vertical restraints of trade, and abuse of dominant position. Pamphlets might also be written explaining how the KPPU is organized, how it does its job, and how to file a complaint about suspected violations of the law.

### **Conclusion**

The socialisation of competition law faces some challenges in Indonesia that make it somewhat more difficult than in many other countries. Although it is not commonly known, Indonesia is the world's fourth most populous country, with a population of over 220 million. Our people, in turn, comprise more than 350 different ethnic groups and speak more than 300 different languages (although most Indonesians also do speak a common language known as "Bahasa Indonesia"). Further, Indonesia is an archipelago consisting of more than 13,000 islands, of which more than 6,000 are populated.<sup>5</sup> These island are spread out over an area of 3200 miles east to west and 1,250 miles north to south (an area significantly larger than the United States). In terms of political subdivisions, the country consists of 30 provinces, which are further subdivided into more than 300 districts and municipalities. Obviously, given these geographic and demographic conditions, effectively getting the word out about the new competition law is a daunting task.

Nonetheless, the KPPU believes that it is up to the challenge. With the assistance of Indonesia's government, NGOs, international, donor agencies, businesses, the press, and the public, we have successfully undertaken the "get-the-word-out" phase of Law Number 5's socialization. We now are interested in moving into the next phase. Learning about the kinds of activities that other countries -- both developed and developing -- have undertaken to promote the socialization of their competition laws is one

---

<sup>5</sup> Most of the population, however, lives on one of Indonesia's five main islands: Java, Sumatra, Kalimantan, Sulawesi, and Irian Jaya.

of the key components of planning for this next phase. In this regard, we are interested in -- and welcome the opportunity to discuss -- ideas of how to develop and implement a sustained, continuous program of socialization and business compliance, capable not only of building upon our past successes, but capable of ensuring that the people of Indonesia get the benefits of competition that they expect and deserve.