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1. Introduction

1. The year 2016 is one of the busiest years for the Indonesian competition authority, KPPU, with increasing curiosity of the public and policy-makers on issues of competition. This year is also significant in line with the start of the discussion on amendments to the competition law, the first amendment to Law No. 5 Year 1999. The amendment includes most of the contents of the law, which means it will replace the existing legislation which has been running for more than 16 years.

2. This year also showed an increased concern by policy makers on competition issues, especially on the food sector, and more specifically following special assignment by the President of Indonesia to KPPU to resolve the cartel issue in the (food) sector.

2. Policy on MSME Partnership Supervision and Enforcement

3. As reported by the 2015 annual report, the Indonesian competition authority, KPPU, has been given a new assignment by the Law No. 20 Year 2008 on Micro, Small and Medium Enterprises (SMEs) and its implementing regulations, Government Regulation No. 17 Year 2013 to carry out supervision and enforcement of partnerships between large enterprises and micro, small, and medium enterprises. In performing the new task, KPPU has issued two (2) new regulations, namely Regulation No. 1/2015 on Procedures for Monitoring the Implementation of the Partnership and Regulation No. 3/2015 on Procedures for Handling Case for the Implementation of Partnership. Both rules are explained KPPU's ways of supervision, including in understanding the scope and form of partnership which overseen by KPPU, and potential violations which may harm the micro, small, and medium enterprises. Moreover, the rules also regulate forms of law enforcement procedures for partnership violations, through the investigation and up to three times written warning to businesses following the violation, and the sanction. The law stipulates that the maximum penalty that can be provided is the revocation of business licenses, and sanctions for abuse of a dominant position define by competition law.

4. As part of the implementation, on August 23, 2016, KPPU together with the Ministry of Cooperatives and Small and Medium Enterprises (SMEs) signed a Memorandum of Understanding on the Implementation Monitoring Partnership Cooperative, Micro, Small and Medium Enterprises. The scope of the MOU includes the dissemination, advocacy, exchange of data and information, expert assistance and resources, and monitoring and evaluation. KPPU considers that synergy between these two institutions is essential in monitoring the partnership in the sector by Micro, Small and Medium Enterprises. Particularly in protecting market concentration by certain business groups through the ownership and control of their partners, and encourages the formation of market structure which ensures the growth of fair competition, protect consumers and improve the bargaining position of SMEs.

5. In the near future, KPPU and Ministry of SMEs will form a Joint Task Force comprising representatives from various SMEs offices across Indonesia to take part in the supervision of the SMEs partnership. Institutionally, this year KPPU will establish a special directorate for the supervision of such partnerships. This Directorate will work to create a monitoring system, and conduct education to oversee the growth of SMEs to the domestic and global markets.

3. Regulation on the Adoption of Competition Assessment Checklist

6. KPPU has issued Regulation No. 4/2016 on Guideline for the Use of Competition Policy Checklist on 3 May 2016. The Guideline which consists of 4 (four) checklists serves as a tool for self-assessment on the compliance of government regulation to competition policy. The checklist was adopted from international practices, including OECD, with some adjustments to meet Indonesian and ASEAN context. The checklist consist of 4 (four) sections, namely checklist on policies which not exempted by the

competition law, checklist on the exempted sectors, checklist to sectors with monopoly rights, and checklist on sector with enterprises with exclusive rights.

7. Currently, the Competition Checklist has been implemented in 12 (twelve) government institutions, namely Indonesia National Planning Agency, Ministry of Home Affairs, Ministry of Finance, Ministry of Law, Ministry of Trade, and Regional Government of Jakarta Metropolitan, West Java, South Sulawesi, North Sumatera, East Java, Riau Islands, and East Kalimantan.

8. To promote the use of competition checklist, especially to meet the reform made by Indonesian National Medium Plan 2019, on 7 September 2016, KPPU was able to convince the Coordinating Ministry of Economic Affairs to issue a Circular Letter to all relevant Ministries under its scrutiny on the synchronization and synergy between economic policies which requires all economic ministers to inform their policies to the coordinating ministers for a regulatory impact and competition assessment proceeding its implementation.

9. Currently, KPPU and the Coordinating Ministry of Economic Affairs are preparing a draft Presidential Regulation on competition impact assessment, with an objective to provide mandatory adoption of competition assessment into regulatory making process in economic.

4. The Launch of Competition Index

10. In order to set a target on the effectiveness of competition authority, KPPU has released a Competition Index on 9 August 2016. The index uses a scale of 0-1 and sourced from the Central Bureau of Statistics (BPS), Financial Service Authority, Ministry of Trade, and Ministry of Industry. There are two sectors surveyed by the KPPU in these indices, namely manufacturing and banking. Higher index will show better competition climate in the country. Currently, the index showed that the manufacturing sector needs special attention, since it has an index below 0.5.

5. Recent Enforcement Activities

5.1 Abuse of Dominance Decision - Flavoured Beverage Case

11. KPPU, on 30 August 2016 had decided the violation of Law No. 5 of 1999, in particular Article 19 (a) and (b)/Entry Barrier and Article 25, paragraph 1 (a) and (c)/Abuse of Dominance by PT Forisa Nusapersada in flavoured beverage (processed fruit powder containing milk in sachet). This case originated from a report to the KPPU regarding the alleged violation of Article 19 (a) and (b) and Article 25, paragraph 1 (a) and (c) of Law No. 5 of 1999.

12. Based on the submitted report, PT Forisa Nusapersada was alleged to have committed an abuse dominant position by issuing a Real Ice Pop Ice Blender Program (Internal Office Memo No. 105/IOM/MKT-DB/XII/2014), which contains (1) ice pop product exchange, (2) the drink stall display; and (3) shop market display. The program in the marketing memo obliged beverage kiosks and shops in the market not to display and/or sell products by its competitors (like Milkjuss, S'Cafe, Camelo and SooIce) by promising a prize of 1 (one) package of Pop Ice, shirts, and blenders. PT Forisa Nusapersada also will redeem one strip of S'cafe product with 2 (two) strips of Pop Ice in exchange programs, also make an exclusive contractual agreement with beverage kiosks and shops in the market to prohibit the selling of competing products.

13. After summoning 36 (thirty six) parties in the hearing, KPPU decides that PT Forisa Nusapersada to be found guilty of violating Article 19 letter (a) and (b), and Article 25, paragraph 1 (a) and (c) of Law No. 5 Year 1999. KPPU was then penalize PT Forisa Nusapersada with a fine amounting IDR 11.4 billion

and ordered them to stop The Real Ice Pop Ice Blender Program, and withdraw their Internal Memo on such program.

5.2 *Cartel Decision – Chicken Meat*

14. KPPU has completed its examination on October 13, 2016 of the Case Number 02 / KPPU-I / 2016 on the alleged violation of Article 11 (Cartel) of the Law No. 5 of 1999 related settings Seed Production of Broiler in Indonesia. This case originated from the internal study and followed by an investigation on 12 companies, including two public companies, PT. Charoen Pokphand Indonesia Tbk. and PT Japfa Comfeed Indonesia, Tbk.

15. In the case, the Commission proves the agreement on the early cultivation of (broiler) parent stock and egg hatchery by some breeders in 2015. KPPU believes that an agreement on early cultivation of parent stock clearly motivated and initiated by the enterprises, and is not an official policy of the Government, so that the KPPU is authorized to handle the case a quo as the provisions of Article 36 of Law No. 5 of 1999.

16. The relevant market in the case a quo is the Broiler or Day Old Chick marketed in Indonesia. In this case, KPPU found that the reported parties has met on 14 September 2015 and 21 September 2015 related to the proportion of which will be culled by each Party, has been effectively implemented, as corroborated by the evidence of the destruction stage for parent stock as much as 2 million birds in accordance with the percentage that has been agreed by the Party.

17. After an early cultivation, the price of day old chicken is increased. This is evidenced by the increase in average prices in November and December 2015 by 11 (eleven) parties, compared with average prices from February to October 2015. On such violation, KPPU imposed sanctions to all reported parties with a cumulative fine of IDR 120 billion.

18. KPPU also provide policy recommendation to the government to jointly manage the sector. To the President of Indonesia and the Chairperson of House of Representative, the KPPU asked for the revision of Law No. 41 of 2014 on Animal Husbandry and Health to provide protection to independent farmers and prevent economic concentration in the poultry industry. To the Minister of Agriculture, KPPU requests them to made clearer rules or regulations regarding poultry in Indonesia, in accordance with the principles of fair competition. To the Minister of Commerce, KPPU asked the government to cut the distribution chain in the downstream market (ranging from the breeding place to the traditional market) to protect farmers. As to the Minister of Health, KPPU recommended a promotion of massive community awareness to switch from fresh meat to frozen meat. Lastly, to the Head of the Central Statistics Agency (BPS), the Commission asked them to be able to build an information system/data on the needs/consumption and production of chicken meat in Indonesia, so as to ensure the availability of chicken meat in sufficient quantities and at affordable prices to the society.

5.3 *Bid Rigging Decision – Jack Drilling Rig Services*

19. KPPU on 14 November 2016 has announced its Decision on Case No. 03/KPPU-L/2016 on Alleged Violations of Article 22 (Bid Rigging) of Law No. 5 of 1999 related to the Auction of Jack-Up Drilling Rig Services conducted by HUSKY-CNOOC Madura Limited and PT COSL INDO. HUSKY-CNOOC Madura Limited is one of the Production Sharing Contracts (PSC) of the Government of Republic of Indonesia to conduct exploration and exploitation of oil and gas in Madura Strait. PT. COSL INDO (China Oilfield Services Limited) is solution provider offshore oil field services in China. The company has core services like drilling services, well services, marine support and transportation and geophysical services, covering every stage of the oil and gas exploration, development and production.

20. KPPU in their allegation prosecutes the existence of collusion between Husky-CNOOC Madura Limited and PT COSL INDO. Such collusion can be seen from the affiliation between PT COSL INDO with Husky-CNOOC Madura Limited, where HUSKY-CNOOC Madura Limited invited PT ENSCO Sarida Offshore as a formality in the auction, and making unusual requirements for Drill Pipe, the existence of post-bidding, and condition where PT COSL INDO has not meet the requirements of personnel but pass the auction. Based on prevailing evidences, KPPU imposed a Decision to fine Husky-CNOOC Madura Limited to pay a fine of IDR 12.8 billion and PT COSL INDO for IDR 11.6 billion.

21. Furthermore, KPPU also recommended the Special Unit on Upstream Oil and Gas (SKK Migas) to (i) evaluate the procurement rules (tenders) associated with linkages shareholding between providers of goods and/or services to users of goods and/or services in the bidding process, and the effective requirements of local content so it is not just limited to an intention alone, but also includes, among others: the achievement methods or strategies and detail components that will be met in the plan.

6. Statistics in Enforcement

22. Based on the record in October 2016, KPPU has conducted 59 (fifty-nine) case investigations and 29 (twenty-nine) hearing proceeding (examination) only in 2016. KPPU had issued 228 decisions for the past ten years, where won most of the objected cases at District Court (57%) and Supreme Court (73%). This year, KPPU litigation team has been able to collected fines (for the State Budget) from January to October 2016 amounting IDR 18 billion. In total, liabilities from affirmed competition cases reach IDR 281 billion, where 80% (IDR 212 billion) of it has been collected. This number comes from the affirmed decision (with executable power) which accounted for 104 Decisions.

7. Statistics in Merger Review

23. In 2016, KPPU has received 50 merger notifications from different sectors. Most of the notified sectors are manufacture and infrastructure, with combined contribution of 50% notifications. Banking and finance is the third sector with high number of notification. Around 31 merger notifications are between local companies, where 12 notifications come from foreign mergers.

24. KPPU also found delay in notifications by several merging companies. Two of the highlighted delay in notification was involving South Korean companies, LG International and Toray Advance Materials Korea. For information, Indonesia has a mandatory post-merger notification under its competition law. Any merger shall be notified to KPPU at least 30 (thirty) days of its juridical effective date. The juridical effective date is calculated based on several ways, namely (1) the date where the Minister involved agrees on the changes of basic capital of merging companies; (2) the date where the notification received by the Minister (with or without changes in basic capita); and (3) the date where the Minister approved the contract establishment of the company (in case they form a new company). Government Regulation No. 57/2010 rules that in the absent of notification, merging companies can be imposed an administrative fine amounting IDR 1 billion for each day of delay, and with maximum fine of IDR 25 billion.

25. Delay on notification by LG International Corp. was announced in 26 April 2016. This is a case where LG International Corp. concluded to delay its notification on the share acquisition of PT. Binsar Natorang Energy, a local company in Indonesia. Evidence founded that LG International Corp. has failed to notify such acquisition to KPPU for 20 (twenty) days since the merger approved. At this case, KPPU Commissioner Council decided to impose financial sanction to LG International Corp. amounting IDR 8 billion.

26. In Toray Advance Materials Korea Inc, KPPU decided in 11 March 2016, that share acquisition of Woongjin Chemical Co. by Toray Advanced Materials Korea proved to delay its merger notification for 4 (four) working days after the merger is concluded. Considering the good faith provided during the investigation, the KPPU imposed financial fine of IDR 2 billion to the said company due to its infringement. The case started in 27 September 2013, where Toray Advance Materials Korea Inc. (TAK) acquired 56.21% of the share of Woongjin Chemical Co. (WJC) due to its profitability declined as one of its affiliations, namely Kukdong E&C, face a continuous management crisis. The transaction value of such acquisition was KRW 430 billion. By this, Toray Advance Materials Korea Inc. has majority control over Woongjin Chemical Co. Both companies are based on South Korea. Korea Fair Trade Commission (KFTC) has performed the merger assessment from 11 November. It was later in 19 February 2014, KFTC concluded that this merger did not breach Paragraph 1 Article 7 (on Restriction of Business Combination) of Monopoly Regulation and Fair Trade Law. The merger then decided to have an effective juridical date of implementation on the 28 February 2014.

27. The central focus in the case is Toray Industries, Inc. who owns 100% of Toray Advance Material Korea, Inc. Both companies are Korean based. In Indonesia, Toray Industries, Inc. owns 8 (eight) direct subsidiaries that mostly doing activities in textile and chemical. Meanwhile, Wongjin Chemical Co. (which based in Korea), owns 90.43% share of PT. Woongjin Textile, an Indonesian based company. Through the acquisition of Wongjin Chemical Co., Toray Advance Material Korea, Inc. can own the 90.43% share of PT. Woongjin Textile in Indonesia. So, in addition to another Indonesian company own by Toray Advance Material Korea, Inc., in overall, Toray Industries, Inc. owns 10 (ten) subsidiaries companies in Indonesia. This transaction involves the joint asset and sales value of the subsidiary companies of Toray Industries, Inc. in Indonesia. Based on their financial report from 2011-2013, the joint asset value of Toray Industries, Inc. subsidiaries in Indonesia was IDR 4.3 trillion, with the joint sales value of IDR 5.6 trillion. The number is preceding the threshold by law of IDR 2.5 trillion asset and or IDR 5 trillion sales. Thus, the merger shall be notified to KPPU within 30 (thirty) days of its juridical effective date.

28. KPPU received notification by Toray Advance Material Korea, Inc. on the 21 April 2014. The fact showed from their press release and notification made to Korea Financial Supervisory Commission (FSC), the effective date for this merger is the 28 February 2014. Then, the merger companies shall make the notification before the 11 April 2014. Since the notification was made to KPPU on the 21 April 2014, then based on the calculation of working days, they concluded to delay the notification for 4 (four) working days. Based on the ruling above, KPPU may impose fine amounting at IDR 4 billion to this delay in notification. However, due to the good faith shown by the reported party in voluntary notifying the transaction, KPPU has agreed to grant reduced of fine for 50% (fifty percent), and thus, imposed the fine amounting IDR 2 billion.