

Unclassified

DAF/COMP/WD(2015)53

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

11-Jun-2015

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE

**ROUNDTABLE ON COMPETITIVE NEUTRALITY IN COMPETITION ENFORCEMENT**

-- Note by Indonesia --

16-18 June 2015

*This document reproduces a written contribution from Indonesia submitted for Item 9 of the 123rd meeting of the OECD Competition Committee on 16-18 June 2015.*

*More documents related to this discussion can be found at [www.oecd.org/daf/competition/competitive-neutrality-in-competition-enforcement.htm](http://www.oecd.org/daf/competition/competitive-neutrality-in-competition-enforcement.htm).*

JT03378309

Complete document available on OLIS in its original format

*This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.*



DAF/COMP/WD(2015)53  
Unclassified

English - Or. English

## INDONESIA

### 1. Indonesian Economic System

1. Economic system adhered to by every country is different in accordance with the philosophy and ideology stuck to. The economic system adhered to by the Indonesian nation will be different from the economic system stuck to by other countries. Indonesia has an ideal foundation namely Pancasila and constitutional foundation namely the 1945 Constitution. Therefore, the economic system applied in Indonesia is based on the two foundations mentioned above. The economic system has been prepared to materialize economic democracy and is used as the basis for the implementation of economic development called democratic economic system. Indonesia's democratic economic system is summed up in Article 33 of the 1945 Constitution which reads as follows:

*Paragraph (1): Economy shall be prepared as a joint venture on the basis of amicable principle.*

*Paragraph (2): Production branches that are vital to the State and that control the necessities of life of many people shall be controlled by the State.*

*Paragraph (3): Earth, water, and natural resources contained therein shall be controlled by the State and shall be used to best possible extent for the welfare of people.*

*Paragraph (4): The national economy shall be administered on the basis of economic democracy along with the principles of togetherness, fair efficiency, sustainability, environment-friendliness, independence, as well as keeping the balances of progress and the integrity of the national economy.*

2. In Indonesia we can find individual private ownership of production instruments side by side with ownership by the state, wherein price mechanism and free market coexist the planning made by the government. Most of the prices of goods and services as well as production factors are determined by the power of demand and supply. However, on the other hand, the Government also influences the power of such demand and supply through price policy, for example, floor price and trade system. The government may also regulate, supervise, stabilize, and advance the national economy in a comprehensive manner by spurring or engendering the private sector's initiative.

3. Nevertheless, the following negative characteristics must be avoided in democratic economy:

- Free fight liberalism system, namely a free competition system that engenders exploitation of human being and other nations that may cause structural weaknesses of the national economy;
- Statism system, where the state along with economic apparatuses of the state are dominant in nature, as well as urge and deaden potentials and creativity of the economic units outside the state sectors;
- Concentration of economic power on one group in the form of monopoly that harms the community.

4. In Indonesia's democratic economy, the Government has crucial roles in the life of the state economy. Such roles are in the form of the making of regulations so that economic activities conducted by economic actors run properly and do not harm the community, executing various economic policies, as well as conducting various economic activities so as to maximize social benefits (the benefits earned by the general public), conducted through the establishment of state-owned enterprises (SOEs) in sectors that are vital and are relating to the necessities of life of many people. This in line with the provisions in Article 33 paragraph (2) of the 1945 Constitution which reads as follows "Production branches that are vital to the State and that control the necessities of life of many people shall be controlled by the State".

5. The first thing is the definition of production branches that are vital to the state and control the necessities of life of many people. This means the products of goods and services deemed vital to human life within a certain period, while during such certain period, the supply is limited, and consequently, the suppliers may set the price and determine other trade conditions that harm the general public for the sake of their personal gains. The second thing is the definition of "controlled by the state" which means control in a broad sense, namely including the definition of ownership in public and private senses, including the power to control and manage the lines of business directly by the government or government apparatuses assigned with special duties.

6. The said provisions obligate the government as the state representative to control production branches that are vital to the state, production branches that control the necessities of life of many people and natural resources. As for the objective of such assignment are as follows:

- preventing monopoly from taking place both by individuals and groups.
- safeguarding the interest of the State pertaining to vital objects.
- utilizing such production branches and natural resources for the welfare of the people.

## **2. Development of SOEs in Indonesia**

7. In order to execute the mandate of Article 33 of the 1945 Constitution, the Government as actor in economic activities needs to establish State-Owned Enterprises (SOEs). Based on Law No. s19 Year 2003 regarding State-Owned Enterprises, SOEs shall be business entities the entire or the majority of their capital of which is owned by the state through direct participation deriving from the separated assets of the state. SOEs can be in the form of Government Agency Company (Perjan), Public Company (Perum), and Government-Owned Limited Liability Company (Persero). SOEs are established by the government aimed at managing production branches and sources of natural resources that are strategic and that concern the necessities of life of many people, enhancing people's welfare and prosperity, as well as controlling strategic sectors that are less profitable.

8. Based on the data from the Ministry of State-Owned Enterprises, the number of SOEs in Indonesia as per May 2014 was 138 SOEs categorized as 20 limited companies, 104 corporations, and 14 public companies. There were also 13 companies where the government owned minority shares. SOEs conduct business activities in almost all economic sectors such as various mines and strategic industry, energy and mining, industry and housing zone development, forestry, plantations, agriculture and fishery, logistics, certification services, financing, banking and insurance, printing, publishing and telecommunications, construction, transportation facilities and infrastructure, and tourism. The value of assets of the state at SOEs if combined together reaches more than Rp.4,500 trillion, with revenues of approximately Rp.2,000 trillion and profits of about Rp.154 trillion.

**Number of SOEs in Indonesia**  
(Year 2008 – May 2014)

No.	Types of SOE	Number of SOE						
		2008	2009	2010	2011	2012	2013	May 2014
1.	BUMN Listed	14	15	17	18	18	20	20
2.	BUMN Non Listed	113	112	111	109	108	105	104
3.	PERUM	14	14	14	14	14	14	14
<b>TOTAL SOEs</b>		<b>141</b>	<b>141</b>	<b>142</b>	<b>141</b>	<b>140</b>	<b>139</b>	<b>138</b>
SOEs with minority ownership of the state		21	19	18	18	13	12	13

9. The number of SOEs from year to year shows that the number of SOEs owned by the state tends to be stagnant and there has been no significant reduction. Even for the industry that has been publicly open and competed for, the government through SOEs still constitutes a market leader and is in a dominant position with 1 or more SOEs in the same relevant market. For example, in banking industry and infrastructure development, four largest companies and those that dominate the market are SOEs.

10. In its practice, the existence SOEs is not always in line with the concept of the state control over strategic sectors or those that control the necessities of life of many people. Such condition has increasingly become harder due to the dual roles of SOEs as commercial business unit and public service unit as indicated in Article 2 of Law No. 19 Year 2003 regarding State-Owned Enterprises, namely:

- contributing to the national economic development in general and state revenues in particular;
- seeking profits;
- operating public utility in the form of provision of highly quality goods and/or services and are adequate for the fulfillment of the necessities of life of many people;
- becoming pioneers in business activities that may not be conducted by the private sector and cooperatives yet;
- actively participating in providing guidance and assistance for economically weak businessmen, cooperatives, and the community.

11. The Constitution Court through its Decision Nos. 48 and 62/PUU-XI/2013 read out on September 18, 2014 has confirmed that the status of the state assets originating from the state finance and separated from the State Revenues and Expenditures Budget (APBN) that will be included to become capital participation at SOEs still becomes the portion of the financial regime of the state. This means that according to the Constitutional Court although the industry that has been declared open to the private sector, however, there are SOEs therein, then there are still differences between SOEs and the private sector because SOEs are established by the state and they may not merely be orientated towards profits since Article 33 must always become a paradigm in the management of SOEs. SOEs in the constitutional perspective must still become agent of development to provide the best benefits for people's welfare. On the other hand, SOEs' officials/employees also have higher risk as compared to their colleagues in the private sector because by still being declared as part of the state's financial system, then all corruptive behavior shall be subject to anticorruption law.

### 3. Application of Competition Law to SOEs

12. Several SOEs receive delegation of the state power for some sectors both in the form of monopoly right by virtue of regulation and concession. However, some SOEs that have received delegation of the state power (monopoly right holders) are exactly proven to have conducted various activities categorized as monopolistic practice or unfair business competition and in violation of the

provisions in Law No. 5 Year 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition.

13. Law No. 5/1999 (Indonesian Competition Law) applies to any business actor doing business in Indonesia, including state-owned enterprises. However, competition law also takes other laws into account in the implementation thereof, such as law on private enterprises and law on state-owned enterprises. In order to cope with other laws and jurisdiction, the Indonesian competition law also provides exemptions for any behavior existing as the implementation of certain law and exclusions of the natural monopoly implemented by SOEs. Such exemption is contained in Article 51 of Law No. 5 Year 1999 which reads as follows:

*“Monopoly and concentration of activities relating to production and or marketing of goods and or services that control the necessities of life of many people as well as production branches that are vital to the state shall be provided for in a law and shall be administered by State-Owned Enterprises and or agencies or institutions established or designated by the government.”*

14. Commission for the Supervision of Business Competition as a competition institution in Indonesia in charge of the supervision of the implementation of provisions of Law No. 5 Year 1999 has issued a guideline of Article 51 that elucidates exemption articles for SOEs.

15. Article 51 of Law No. 5 Year 1999 says that monopolistic activities and concentration of activities are not activities that are banned in the competition law and the same can be conducted with due observance of the principles of fair business competition. Consequently, SOEs still become the subject of the competition law and are not free from the provisions in the competition law. Exemption in Article 51 only applies to market structure and to business behaviors.

16. The said Article also elucidates that monopoly and or concentration of activities can be conducted to the industry/sector that controls the necessities of life of many people as well as production branches that are vital to the state. Therefore, such industry/sector must have the following functions:

- Allocation, aimed at goods or services that originate from natural resources controlled by the state to be utilized maximally for people’s welfare.
- Distribution, aimed at goods and/or services that are basically needed by the community, but they may not be fulfilled by the market within a certain period or continually; and or
- Stabilization, relating to goods and/or services that must be provided for public interest.

17. Monopolistic activities must also be regulated by virtue of law, clearly including the objective of monopoly and/or concentration of activities as well as mechanism for state control and supervision in the administration thereof so as not to point to monopolistic practices and/or unfair business competition. Lastly, such monopolistic activities are conducted by SOEs or institutions established by the Government that have the following criteria:

- The activity management and accountability thereof are influenced, developed ,and reported to the government,
- Not merely aimed at seeking profits;
- Not having the authority to delegate the entire or a part of the monopoly and/or concentration of activities to other parties.

18. Within a time span of 15 years of the putting into effect of competition law in Indonesia, KPPU has handled 48 cases relating to anti-competition conducted by SOEs. There were 4 decisions of KPPU involving SOEs in the sectors of financial service, ports, transportation, and oil and gas in 2014. A case that drew public attention in 2004 involved a State-Owned Enterprise in the financial sector which committed a monopolistic practice by way of obliging Housing Loan customers to take life insurance at one of the insurance companies collaborating with such State-Owned Enterprise.

#### **4. Conclusions**

19. Despite their monopolization, SOEs have yet to significantly contribute to economic development as well as the enhancement of social welfare. There are some opinions that SOEs are treated similarly to other business entities or unequipped with special rights that could breach fair business competition principles. This strengthens the need for the reorganization of SOEs in contributing to the national economy.

20. In line with the said outlook, the Government has shown its commitment to strengthening the internalization of the principles of fair competition in all sectors and promoting compliance with competition law. This has been explicitly set forth by the Government in the 2015-2019 Medium-Term Development Plan that places competition policy as one of the national priorities. Fair business competition will spur an efficient performance of the economic sector with high productivity and innovation that will eventually improve Indonesia's comprehensive economic competitiveness. As for the implementation itself, it will be conducted by way of the internalization of fair business competition in formal educational path, the strengthening of values of fair business competition among economic actors, the government, and the community, as well as the strengthening of the role and function of KPPU as a competition institution.

21. Aside from the policy aspect, one of the Government's visions through the Ministry of State-Owned Enterprises today is completing the establishment of a super holding company of the State-Owned Enterprise that becomes the managing umbrella of SOEs companies. It is hoped that through such holding company SOEs will become stronger in terms of their capital, more efficient, and the superiority of the state companies will be optimized. SOEs consolidation measures are taken through merger, acquisition, liquidation, and privatization of SOEs expected capable of "adjusting" the number of SOEs to become only 87 SOEs in 2015 and 25 SOEs in 2025.

22. KPPU is not in a position to encourage privatization and also understands if there is still a need for exemption on the basis of Article 33 of the 1945 Constitution and Article 51 of the Indonesia Competition Law, however, with regard to industries that have been declared by the government as open, the government should grant incentive to the market so that the market keeps growing and enhancing the wheel of economy by granting balanced competition to SOEs and the private sector.

23. One of the examples of the opening of industry sector in Indonesia that has been conducted based on the recommendation and input of KPPU was the opening of airline industry in Indonesia in 2001. As competition took place in the airline sector, such industry grew from only 8 million passengers per year during the period prior to the opening of the industry, to date in the era of airline competition, the market grows to become more than 80 million passenger per year. As for a State-Owned Enterprise in aviation services with full service on the contrary records profits in the competition era and is capable of competing against low cost carriers.