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Information Sharing in Competition Policy – Note by Indonesia

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Indonesia

1. Information Sharing in Indonesian Competition Law

1. In modern competition law regimes, information exchange is one of the most complex issues because it sits at the intersection of market efficiency and the risk of anti-competitive coordination. On the one hand, information exchange can enhance transparency, supply chain efficiency, investment predictability, and the reduction of information asymmetry. On the other hand, it can also serve as a mechanism for coordinating business conduct that reduces strategic uncertainty among competitors, thereby facilitating cartels, price fixing, market allocation, or other forms of collusion.

2. In the Indonesian context, information exchange is not regulated as a standalone provision in Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Competition. Nevertheless, such practices can be assessed under provisions on anti-competitive agreements, particularly Articles 5 (price fixing), 9 (market allocation), 11 (cartel) , and 22 (bid-rigging) of Law No. 5 of 1999, as well as through the use of indirect evidence that has developed in the enforcement practice of the Commission for the Indonesia Competition Commission (*Komisi Pengawas Persaingan Usaha*/KPPU).

2. Case Developments and Advocacy in Indonesia

3. In recent years, information exchange has received increasing attention in Indonesian competition law enforcement. The KPPU does not yet have specific guidelines on information exchange comparable to those of the European Commission or certain OECD jurisdictions. However, several cartel and bid-rigging cases indicate that communications and data exchange among competitors constitute key elements of proof.

4. The KPPU consistently holds that intensive communications among direct competitors can undermine the independence of business decision-making. In several cartel cases, the KPPU has relied on evidence such as association communications, meeting minutes, parallel pricing data, and similarities in market conduct as indications of coordination. The KPPU’s advocacy practice also increasingly highlights the risk of trade associations being used as forums for exchanging sensitive information.

5. From a policy perspective, Indonesia has begun adopting a more economic, effects-based approach, particularly following the issuance of KPPU regulations on case handling and enforcement guidelines. This approach enables the KPPU to assess whether information exchange produces a significant reduction in market uncertainty and affects competition.

3. Is Information Exchange a Standalone Infringement?

6. Under Indonesian law, information exchange is not, in principle, qualified as a standalone infringement. There is no explicit provision in Law No. 5 of 1999 stating that the mere exchange of information automatically constitutes a violation. However, information exchange can form an integral part of an anti-competitive agreement or coordination. Indonesian competition law traditionally recognizes two analytical methods: the rule of reason and per se illegal approaches. Information exchange itself is not explicitly

categorized as per se illegal conduct. However, where it relates directly to price fixing, market allocation, or bid rigging, it may be analyzed as part of a cartel that, in practice, approaches a by object restriction.

7. From an economic perspective, information exchange is considered particularly harmful when it involves information that is individual, recent, strategic, non-public, and exchanged among direct competitors. In such cases, competition authorities may conclude that the primary purpose of the exchange is to reduce competition, without requiring extensive proof of actual effects. Thus, it is treated as evidentiary conduct or a facilitating practice that supports the existence of a cartel or coordinated business conduct. In practice, the KPPU assesses the context, market structure, type of information exchanged, frequency of communication, and the impact on market behavior.

8. In oligopolistic markets, the exchange of information on individual and identifiable data, meaning it consists of specific company-level information rather than aggregated industry data such as production/sales volumes, capacity, or customers of "company x" for the current month, or forward looking data such as communicating of planned price increases, next month's production targets, or upcoming tender strategies. Exchanged data with high frequency and in real time, such as on a daily or weekly basis, thereby eliminating the market uncertainty that is essential to healthy competition. In such circumstances, information exchange may be regarded as part of concerted practices that violate the law.

4. The Role of Trade Associations & Permissible Information Exchange

9. The existence of the Trade Association, both in its establishment and its existence, is a philosophical implementation of the constitutional rights of citizens of the Republic of Indonesia, as stipulated in the 1945 Constitution (UUD 1945). Article 28E paragraph (3) of the 1945 Constitution states: "Everyone has the right to freedom of association, assembly, and expression of opinion." This affirms that everyone's freedom to associate, assemble, and express opinions is a right guaranteed by the Indonesian constitution. These rights and freedoms also give rise to obligations, where these rights are regulated and limited by the state to prevent conflicts with one another, as outlined in state legal principles. One area of law that places significant attention on the existence of trade associations is competition law. In reality, a number of unlawful acts of competition have arisen from associations.

10. Trade association serve legitimate economic functions by enabling industry standardization, facilitating policy advocacy before government, providing member education and training, and supporting sectoral capacity building that lowers costs and improves quality across the market. Through collective standard-setting, dissemination of best practices, and aggregation of non-sensitive industry data, they can reduce transaction costs, address information asymmetries, and enhance competitiveness, particularly for small and medium enterprises that lack individual resources. The primary purpose of collecting and disseminating this data is to indicate trends in the industry, demonstrating the relationship between demand and supply, enabling businesses to plan their operations in greater detail. Another objective is to meet government requests, which generally require data and information on real market conditions to fulfill their obligations to foster and regulate the industry.

11. Nevertheless, because these forums routinely bring direct competitors together in regular meetings and working groups, they can also become conduits for anti-competitive coordination when discussions shift from legitimate benchmarking to exchanges of individual, recent, and strategic information such as future prices, output volumes,

customer allocation, or tender strategies. In that context, the same organizational structure and trust built for lawful collaboration can lower the costs of monitoring and enforcing a cartel, turning the association into a platform for price fixing, market allocation, or bid rigging. Therefore, governance and compliance within associations are critical, including the use of legal counsel, clear meeting agendas, and explicit prohibitions on discussing sensitive information to ensure that the association's activities remain pro-competitive.

12. Indonesian competition law did not treat trade association as its subject. Hence when behaviours done by an association, all member association will be treated as Reported Parties, in practice by KPPU. The last and recent case was related to the suspected price fixing infringement by Indonesian online lending platforms, where they decided to be colluded in setting their interest rate in 2020.

13. Not all information exchange is prohibited under competition law. Modern approaches recognize safe harbours under certain conditions. Although Indonesia does not yet have explicit rules on safe harbour information exchange, generally accepted principles include exchanges of historical, aggregated, and anonymized information that do not allow identification of individual business conduct. Exchanges of industry statistics, safety benchmarks, sustainability reporting, or certain technical standardization may produce legitimate economic efficiencies. Their legality usually depends on whether the exchange enhances efficiency without eliminating the independence of commercial decision-making. In cases of alleged monopolistic practices and unfair competition involving multiple business actors within the same association, the KPPU tends to be wary of the exchange of detailed, individual, and current information within the association.

5. Public Disclosure and Earnings Calls

14. Public signaling becomes a competition concern when companies use public channels such as earnings calls, investor presentations, press releases, and analyst briefings to communicate specific, forward-looking information about prices, output, capacity, or bidding strategy. Unlike routine disclosure that informs customers and investors, signaling is problematic when the content, timing, and audience are calibrated to influence rivals rather than the market at large. By reducing strategic uncertainty, these communications allow competitors to align expectations and coordinate conduct without direct contact. Competition authorities in the EU and under OECD guidance treat this as a potential concerted practice when the information is granular, recent, and unlikely to have a legitimate commercial purpose, because it replicates the stabilizing effect of a cartel while avoiding explicit agreement.

15. In Indonesia, this issue is becoming more relevant as capital markets deepen and corporate disclosure requirements expand under Financial Services Authority (OJK) regulations and stock exchange listing rules. Listed companies are increasingly required to release market-sensitive information that, in concentrated industries, can quickly shape competitor behavior. For example, a public announcement of a planned price increase or capacity cut in a market with only three or four major players can create a focal point for parallel conduct, effectively dampening rivalry. This creates a grey area where lawful transparency overlaps with strategic signaling, making it difficult to distinguish normal investor communication from conduct designed to coordinate behavior and lessen competition.

16. To date, Indonesia has not seen major cases where earnings calls or public disclosures were sanctioned as standalone competition violations, but the legal basis exists under Law No. 5 of 1999. The KPPU can analyze such behavior under the doctrines of

agreement, concerted practice, and facilitating practices if there is evidence that the disclosures were intended to induce parallel conduct and had the effect of substantially reducing competition, even without a formal meeting or written contract. As digital markets and algorithmic pricing make real-time coordination easier, the KPPU will likely need clearer guidelines and economic evidence standards to separate legitimate disclosure from anti-competitive signaling, focusing on market structure, the nature of the information shared, and the actual market effects.

6. Algorithms, AI, and Information Sharing

17. Pricing algorithms and artificial intelligence are creating new challenges for competition law because they can coordinate prices without direct human contact. In digital markets, companies often use software that tracks competitors' prices in real time and adjusts its own prices automatically. This can lead to aligned pricing outcomes that look like collusion, even if no managers ever discuss strategy with each other.

18. Indonesia does not have specific rules for algorithmic collusion yet, but Law No. 5 of 1999 still applies because it focuses on the effect on competition, not the method used. The key issue for the KPPU is whether these algorithms produce concerted conduct that substantially reduces competition, whether through explicit agreement, tacit understanding, or fully automated interaction. In practice, this means examining if the algorithms enable real-time monitoring, signaling, and fast retaliation that mimic a traditional cartel. These cases are harder to prove because it is difficult to show intent when algorithms learn on their own, to separate genuine efficiency gains from collusive synchronization, and to decide who is liable; the company using the tool, the developer, or both.

19. Going forward, the KPPU will need stronger capabilities in digital forensics, economic modeling, and AI governance to detect these non-traditional forms of coordination. Evidence will shift from looking for emails and meetings to analyzing pricing patterns, data flows, and algorithm behavior. To make enforcement workable, Indonesia will likely need clearer guidelines, technical expertise, and updated standards for what counts as proof of algorithmic collusion in digital markets.

7. Fines Imposed on Associations

20. In Indonesia, there is still disagreement over whether administrative sanctions under competition law can be imposed on business associations when they are proven to have served as a platform for cartel conduct or anti-competitive agreements. This stems from the general provisions of Law No. 5 of 1999, which define a "business actor" as an "every individual or business entity, whether in the form of a legal entity or not, which is established and domiciled or carries out activities within the legal territory of the Republic of Indonesia, either alone or jointly through an agreement, carries out various business activities in the economic sector". An association is a nonprofit professional or industry organization and is not itself a business actor that operates or competes in the relevant market. Because an association is not a "competing business actor," this can be interpreted narrowly to mean that, from a legal standpoint, an association cannot be held liable under the provisions of Law No. 5 of 1999. Moreover, even when an agreement or consensus stems from a codified decision at the association level, it is the individual business actors who implement and benefit from the agreement. Therefore, responsibility should rest with each individual business actor. Through progressive legal interpretation and the jurisprudence of Indonesia Competition Commission (KPPU) decisions, the phrases

"jointly through an agreement" or "business entity/non-legal entity" encompass associations. When an association issues a decision, decree, or appeal binding its members to engage in anti-competitive practices, the association acts as a collective representative of the business actors within it.

21. On the other hand, competition fines are calculated as a percentage of profits based on turnover or sales revenue. This creates a major challenge because associations are nonprofit organizations that typically do not generate commercial turnover or sales revenue like ordinary companies; their income usually consists only of membership dues. As a result, imposing a fine that is both fair and has a deterrent effect becomes difficult to determine proportionally if the calculation relies solely on the association's own "turnover."

22. Another challenge is that the mechanism for shifting financial liability or fines to all association members is not detailed in Indonesia's domestic competition law. This differs from EU competition law, where if an association cannot pay a fine, its members may be held jointly and severally liable to ensure effective enforcement. The KPPU can only sanction specific members who are proven to have signed or agreed to the prohibited arrangement. It does not have a regulatory instrument to seek "compensation" or to impose an association's fine on all other members on a joint and several basis. The absence of such regulation means that passive members who benefit from an association's decision may avoid financial liability.

23. Associations are generally implicated in competition law enforcement through two main scenarios, as a cartel facilitator (Hub-and-Spoke) and as a anti-competitive policy issuer. The association acts as a "hub" (coordinating center) that facilitates its members in entering into price agreements, territorial allocations, or production/supply arrangements. The association also may formally issues internal regulations, codes of ethics, or decrees that set minimum or maximum rates or prohibit its members from competing freely. These actions are often categorized as per se illegal violations (e.g., Article 5 concerning Price Fixing or Article 11 concerning Cartels).

24. When an alleged violation reaches the enforcement stage by the KPPU, the market impact of the agreement is analyzed. For example, when an association creates a code of conduct, the KPPU examines whether association members (business actors) choose to comply and follow it collectively, thereby stifling price competition in the market. Because the impact of market distortion (consumer losses) is caused by the compliance of association members, administrative sanctions (in the form of fines) are imposed on business actors (organizers) found to have implemented the agreement, not on the organization itself.

25. If the KPPU finds potential competition violations stemming from association regulations, legal action taken against the association is usually institutional or recommendatory, such as ordering the association to revoke provisions/codes of conduct that lead to cartels, and providing recommendations to sectoral supervisory authorities to evaluate relevant regulations to create a sound competitive climate. Meanwhile, administrative sanctions are aimed directly at business actors who actively implement the agreement and enjoy the results of the lack of competition in the market. KPPU's goal is to remove the structural source of coordination and push sectoral regulators to fix the rule. Fines alone are less effective if the association's code remains in place and members are compelled to follow it.

26. This can be seen in a number of previous KPPU cases involving associations. In case No. 25/KPPU-I/2009 Regarding Fuel Surcharge Pricing in the Domestic Aviation Services Industry, the KPPU found strong indications that national airlines deliberately

engaged in parallel pricing shortly after meetings or appeals at the association level, under the guise of complying with the Ministry of Transportation's Upper and Lower Tariff Limit regulations to standardize price components/fare discounts. In this case, KPPU imposed administrative sanctions on the business operators and ordered the association to revoke/cancel all clauses that facilitate the coordination of tariff components. In addition, the KPPU also recommended that the Ministry of Transportation of the Republic of Indonesia prohibit associations from authorizing the setting of prices or tariffs.

27. Still in the transportation industry, the KPPU face a similar condition in case No. 20/KPPU-I/2023 Regarding Tariff Agreements for the Provision of Container Depot Services at Panjang Port, Lampung. In this case, the KPPU found a tariff agreement outlined and ratified by the association to serve as the basis for tariff implementation by each member. In its decision, the KPPU recommended that the Minister of Transportation of the Republic of Indonesia to provide guidance to the associations at each port and order the cancellation/removal of all forms of price-fixing agreements by container depot service providers to prevent similar agreements from occurring in other ports. Regulators are also recommended to create guidelines for associations to ensure smooth and efficient transportation processes and improve associations' skills and competencies in organizational management to ensure they comply with the principles of fair business competition.

8. Special Sectors and Exemptions

28. Certain sectors in Indonesia operate under special regulatory regimes that can influence how information exchange is assessed under competition law. In financial services, for instance, data sharing is often necessary for systemic stability, macroprudential supervision, and compliance with reporting obligations to authorities like OJK and Bank Indonesia. Similar needs appear in transportation and agriculture, where coordinated data exchange can support logistics planning, price stabilization, or compliance with sector-specific policies. Because these exchanges are tied to public policy objectives, they are not automatically treated as anti-competitive. The key distinction lies in purpose and scope: legitimate exchange is limited to what regulators require to maintain market integrity and consumer protection, rather than to coordinate commercial behavior.

29. However, the existence of a sectoral regime does not grant immunity from Law No. 5 of 1999. The KPPU retains authority to examine whether the exchange goes beyond what is strictly required by regulation and whether it creates anti-competitive effects in the market. If information sharing allows competitors to align prices, output, or bidding strategies beyond regulatory necessities, it can still be classified as unlawful coordination. In practice, KPPU will weigh the regulatory justification against the actual impact on competition, focusing on whether the exchange facilitates collusion rather than merely enabling compliance.

30. In case No. 02/KPPU-I/2016 Concerning Alleged Violation of Article 11 of Law Number 5 of 1999 Regarding the Regulation of Broiler Chicken Production in Indonesia, the KPPU (sanctioned 12 chicken breeding companies for allegedly early culling of parent stock. This case stemmed from the decline in live chicken prices caused by an oversupply, ultimately leading to selling prices no longer covering production costs. To address this, the government took action by calculating the excess supply of Day Old Chicks (DOC) to find a solution to the problem of oversupply and declining prices at the farmer level. To this end, the association collected data, which the government used to conclude that the solution was to cut parent stock early and issue a circular policy calling for the early culling of six million parent stock throughout Indonesia. This policy, which lacked legal basis, was

welcomed by the perpetrators, who were members of the association, who held a series of meetings that ultimately resulted in a mutual agreement to implement early culling. The KPPU ruled that this wasn't just for sector data collection but was used to align market behavior. In this agreement, made by the association, although preceded by a government decree, it is evident that the parties divided the amount of early culling among each of the businesses involved. This production arrangement contravenes Law No. 5 of 1999. KPPU fined the business actor and ordered association to stop facilitating meetings that led to price coordination and to revoke provisions in its code of conduct that supported it. In its decision, the KPPU also recommended that the Ministry of Agriculture, as the sector regulator, create clear rules or regulations regarding poultry in Indonesia to comply with the principles of healthy business competition.

9. Evidence and Evidentiary Standards

31. When the KPPU investigates alleged violations that may involving data exchange, such as price fixing, market allocation, or boycotts, the evidentiary process is inherently complex. KPPU Regulation No. 2/2023 on Case Handling Procedures requires proof that business actors entered into an agreement, either written or oral, to restrict competition. Types of evidence in handling monopolistic practices and unfair competition cases include witness testimony, expert testimony, letters and/or documents, clues (in the form of economic evidence and/or communication evidence whose truth is believed to be true), and statements from the Reported Party. The most relevant evidence typically includes emails, electronic messages, meeting minutes, internal presentations, pricing data, communication data, and whistleblower testimony. KPPU’s guidance lists communication evidence as covering casual meetings, association meetings, minutes, and confirmation emails, even without explicit mention of price. Economic evidence covers market structure, HHI/CRn concentration measures, product homogeneity, and price parallelism

32. The nature and scope of evidence collected depend heavily on the specific alleged violation. For per se illegal provisions, including Article 5 (price fixing), 6 (market division), 7 (output limitation), and Article 9 (market allocation), the evidentiary focus centers on establishing the existence of an agreement. The decisive issue is whether the exchanged information is accessible to competitors and sufficient to establish an agreement to restrict competition. Attendance at association meetings alone does not prove a violation, but it provides strong circumstantial evidence when combined with evidence that sensitive data has been shared that reduces uncertainty and allows for coordination of prices, output, or market allocation. Without evidence of such exchange, parallel conduct alone is insufficient, and courts have rejected decisions based solely on circumstantial conduct. In such cases, KPPU is not required to demonstrate detailed market harm. The relevant evidence typically comprises internal communications, meeting records, and or association regulations that indicate coordination among business actors.

33. In case No. 20/KPPU-I/2023 Regarding Tariff Agreements, KPPU found evidence of communication in meetings within the association which was presented in writing in the form of circulars and minutes of association meetings set tariffs for the provision of container depot services. In Case 04/KPPU-I/2016 Alleged Violation of Article 5 Paragraph 1 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition in the 110-125 Cc Automatic Scooter Motorcycle Industry in Indonesia, an agreement inferred from executive meetings in golf course, parallel pricing, and market structure. The KPPU believes that the agreements include both written and unwritten agreements, including concerted action by business actors, as long as communication occurs. The Reported Party's behavior is further

supported by economic evidence of the implementation of price fixing (evidence of parallel pricing).

34. For rule-of-reason provisions, such as Article 11 (cartels) and Article 22 (bid-rigging), the evidentiary standard is higher. The decisive issue extends beyond the existence of an agreement to whether the information exchange produced or was likely to produce anti-competitive effects. KPPU must show that the information is accessible, usable for coordination, and that it reduces uncertainty in a way that enables alignment of prices, output, or bids. Attendance at meetings and exchange of sensitive data serve as evidence of the mechanism, but KPPU must also link this to economic evidence of market impact. Without that link, parallel conduct alone does not satisfy the evidentiary standard, and courts have consistently required both agreement and effect for rule-of-reason violations. KPPU must go beyond meeting minutes or association rules by linking them to evidence of sensitive information exchange and economic analysis demonstrating market impact.

35. In Indonesian enforcement practice, direct proof of a cartel agreement is rare, so the KPPU relies heavily on indirect evidence. KPPU Regulation No. 2/2023 Regarding Procedures For Handling Cases Of Monopolistic Practices And Unfair Business Competition classifies "indicative evidence" to include economic evidence and communication evidence, both considered indirect. The Commission typically builds a case by combining several strands: records of communications between competitors, evidence of parallel conduct such as simultaneous price changes, analysis of market structure and concentration, and economic analysis showing that the observed behavior is inconsistent with normal competition.

36. In the case 02/KPPU-I/2016 concerning Alleged Violation of Article 11 of Law Number 5 of 1999 Concerning the Regulation of Broiler Chicken Production in Indonesia, the KPPU found documentary evidence of an agreement to slaughter 6 million Parent Stock (PS) chicks, which the defendants then followed up by reducing or prematurely culling the PS, which consistent to the impact an increase in the price of DOC. Likewise in case 10/KPPU-I/2015 Alleged Violation of Article 11 and Article 19 Letter C of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition in the Imported Cattle Trade. In addition to finding evidence of meetings in associations to discuss cattle prices, also proves the existence of adjustments in market behavior by reducing or withholding the supply of cattle to slaughterhouses. This then resulted in an increase in the price of cattle and beef.

10. Conclusion

37. Information exchange in Indonesia is not a standalone infringement under Law No. 5/1999. It becomes unlawful when it forms part of an anti-competitive agreement or concerted practice. The legal analysis depends on the nature of the conduct and the provision applied. Analytical approach Per se illegal cases, KPPU does not need to prove market harm. Exchange of individual, recent, strategic, and non-public data among competitors is treated as strong evidence of the agreement itself. Rule-of-reason cases, KPPU must prove both the agreement and its anti-competitive effect. Here, information exchange is assessed as a facilitating practice, and KPPU must link it to economic evidence of reduced uncertainty and market impact.

38. Associations serve legitimate functions like standardization, advocacy, and aggregated data sharing. However, they often become conduits for coordination when discussions shift to future prices, output, or bids. KPPU's practice is to sanction the business actors who implement the agreement and to order associations to revoke

provisions that facilitate coordination, rather than fining the association itself due to its non-commercial nature and the absence of joint-and-several liability rules and enables coordination. KPPU's enforcement approach is increasingly effects-based, focusing on the context, type of information, frequency of exchange, market structure, and actual impact on competition.

39. Information exchange is lawful when it involves historical, aggregated, and anonymized data that improves efficiency without removing independent decision-making. It becomes unlawful when it involves individual, current, and strategic data that reduces uncertainty and enables coordination. KPPU's enforcement approach is increasingly effects-based, focusing on the context, type of information, frequency of exchange, market structure, and actual impact on competition.

40. Going forward, economic digitalization, the use of AI, big data, and the integration of digital platforms are expanding forms of coordination that were difficult to imagine under traditional cartel paradigms. Indonesia needs to develop a more explicit policy framework on information exchange, including safe harbour guidelines, governance of trade associations, the use of algorithms, and digital evidentiary standards. Enforcement approaches must also increasingly integrate legal and economic analysis simultaneously. In the global context, the trend toward data-driven competition enforcement shows that competition authorities must no longer rely solely on understanding market structure and pricing behavior, but must also understand data architecture, algorithms, and mechanisms of digital information exchange. For Indonesia, strengthening institutional capacity and updating regulatory approaches will be key to ensuring that competition law remains relevant in the modern digital economy.