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Working Party No. 2 on Competition and Regulation

**Market Studies and other Market Analysis Tools for Competition Authorities – Note by
Indonesia**

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More documentation related to this discussion can be found at: oe.cd/msmat.

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1. The Strategic Role of Market Studies in KPPU's Mandate

1. Indonesia Competition Commission (KPPU) established based on Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. KPPU carries out its mandate to supervise business actors to ensure a healthy competition climate. KPPU's role includes four main pillars: law enforcement, prevention, supervision of merger transactions and policy advocacy. To carry out this function, KPPU uses market studies and other market analysis tools that have different purposes and depth of analysis.

2. Market studies are systematic analyses conducted by competition authorities to understand market structure, business behavior, and market performance. In practice, market studies and other market analysis tools are recognized as vital instruments used by competition authorities to understand market dynamics and identify potential anti-competitive practices. At KPPU, market studies play a central role in bridging the prevention functions with the law enforcement function.

3. Specifically, the task to prevent monopolistic practices and/or unfair business competition is carried out by the Prevention Bureau (Articles 20-21 of the Commission Regulation Number 5 of 2024 mengenai organization and work procedures of the Secretariat General of the KPPU). According to the Commission Regulation, The use of market studies by KPPU is driven by several strategic objectives, including to gain a comprehensive understanding of the structure, behavior, and performance of certain market and to provide advice and consideration (advocacy) to the government or relevant institutions regarding policies that have the potential to create unfair business competition. Market studies assist KPPU in detecting potential competition problems and formulate appropriate corrective actions. Market studies also serves as an important basis for decision-making and prioritization of law enforcement investigations.

2. Market Studies and Other Market Analysis

4. In analyzing the structure, behavior, and performance of certain market, The Structure-Conduct-Performance (SCP) framework is a widely used as basic tool in market studies to analyze the competitive dynamics of a market. Key elements of market structure include market concentration, product differentiation, entry and exit barriers. Conduct refers to competitive strategies and interactions with rivals, suppliers, and customers that encompasses various aspects such as pricing behavior, non-price competition, and potential collusive behavior. Performance refers to the outcomes and results of the market process, reflecting how well the market is functioning in terms of efficiency, innovation, and consumer welfare. This includes metrics such as prices, output levels, product quality, innovation rates, and profitability. Market performance is influenced by both the structure of the market and the conduct of firms within it, or it can be different depending on the sector.

5. In general, market studies take place in less than a year. However, it can be continued to the following year if more specific deepening is needed. At 2025, KPPU conduct several market studies, such as analysis of the price of imported goods in the marketplace, analysis of the potential of the jet fuel cartel, study the competition policy of

the rural bank, also monitoring of strategic food prices to detect price fluctuations and potential unfair competition practices in the food sector. KPPU is also actively involved in the formulation of public policies that have the potential to have an impact on market structure, one of which is related to the revision of the SOE Law, which has the potential to give a legal monopoly to state companies.

6. Market studies employ various techniques to grasp market dynamics and competition. This involves collecting data from industry reports, financial statements, and consumer surveys, which serves as the foundation for analysis. The data is then scrutinized to comprehend market structure, business behavior, and overall performance. Additionally, interviews with key business players provide valuable insights into their strategies and actions. Consumer surveys further enrich the understanding by capturing preferences and behaviors, offering a holistic view of the market landscape.

7. Despite their significance, market studies are not without drawbacks. A major challenge is the availability and accuracy of data, which can impede the effectiveness of these studies. Complex markets pose another hurdle, making analysis more intricate and demanding. Furthermore, conducting thorough market studies can be both costly and time-consuming, requiring substantial resources and effort to yield meaningful results.

8. One of the challenging sectors in the study market is the digital economy sector, which is very complex and growing rapidly. Digital platforms often operate in multiple markets, making it difficult to define the relevant market and assess competition. Additionally, the use of algorithms and artificial intelligence by digital platforms can make it challenging for competition authorities to understand their business models and competitive dynamics. Another challenge is the availability and accessibility of data. Digital platforms often collect vast amounts of data on users and their behavior, which can be difficult for competition authorities to access and analyze. This can limit the effectiveness of market studies and make it challenging for competition authorities to identify potential competition concerns. Furthermore, the global nature of digital markets can also create jurisdictional challenges for competition authorities, requiring international cooperation and coordination to effectively regulate and enforce competition laws.

9. KPPU choosing the market studies to be carried out, KPPU prioritizes sectors where there are indications of control of a certain market share or dominant position by business actors who have the potential to violate the law. This focus is important to avoid monopolistic practices. KPPU also conducts market studies on sectors that are important for the economy because they control the livelihood of many people, become a government program, or are new areas of unknown structure, behavior, and performance. For example, studies related to new strategic sectors such as e-commerce and telecommunications are the main targets to learn because of the network effects that can be the main source of dominant market strength, as well as the complexity in determining the relevant market.

10. In addition to making in-depth studies on certain sectors, KPPU also makes studies to evaluate the economic sector as a whole. Since 2017, KPPU has measured the level of business competition in Indonesia every year, covering 15 economic sectors and almost all provinces through the Competition Index Survey (Indeks Persaingan Usaha/IPU). The IPU serves several purposes, including monitoring competition and identifying sectors with low or high competition levels, especially sectors that are often found to have competition law violations, consist only a few business actors in the market, and sectors that affect the welfare of the wider community. By tracking competition levels, the IPU enables KPPU to identify sectors with potential competition issues and prioritize its enforcement efforts, promoting fair competition and protecting consumers in Indonesia. The Competition Index (IPU) is a crucial tool for the KPPU to fulfill its task of monitoring and studying all sectors in Indonesia.

11. The Competition Index also has several benefits for the Indonesian government. It provides a systematic and objective way to assess competition levels, allowing policymakers to prioritize their efforts and allocate resources more effectively. It also helps to promote transparency and accountability, as the results of the index can be used to evaluate the performance of regulatory agencies and policymakers. Furthermore, the Competition Index can be used to raise awareness about the importance of competition policy and to promote a culture of competition among businesses and consumers in Indonesia.

12. KPPU since 2024 also developed the Partnership Index to measure the ecosystem of partnership, with an emphasis on the effectiveness of partnership implementation in regions and strategic sectors. Three main dimensions: ecosystem, implementation process, and usefulness. Studies show that national regulations are available, but their implementation in the regions is still limited, especially in supervision. The Partnership Index is recommended to be implemented on a pilot project basis first, with weighting evaluation and advanced dimension development.

13. Merger and acquisition transaction analysis is also another form of market analysis. The initial assessment lasted 90 days to determine changes in market concentration and potential anti-competitive impacts. If needed, followed by a comprehensive assessment. In market analysis for merger transactions, the analysis could be more deeper than market studies. The analysis of the market concentration of the Herfindhal Hirschman Index (HHI) was followed by an analysis of the impact of mergers.

14. KPPU's approach in initiating market studies and other market analysis tools can be a response to complaints, merger notifications, and can also be an internal initiative. Cases can be handled based on the results of monitoring, observation, and internal research on situations or conditions that are suspected of causing unfair practises, but did not have enough evidence to be taken to the trial. In recent years, there has been at least one market study result per year that has opened the case for initiatives. Prevention efforts, including periodic research, are an integral part of KPPU's role in preventing market dominance.

15. In addition to the goal of understanding a specific industry sector, market studies provide a comprehensive picture of the market and assist KPPU in formulating corrective actions, ultimately facilitating adaptive and evidence-based policy development. To serve this purpose, the competition authority issued a KPPU Regulation No. 4/2023 on providing advice and recommendation to government policies, which include the competition assessment checklist. KPPU's institutional framework aligns well with the OECD's recommendations on institutional settings for competition assessment. To ease the use of competition assessment, KPPU builds the sakpu.kppu.go.id platform to facilitate government requests for assessments. The KPPU Regulation No. 4/2023 is being promoted to relevant ministries to be adapted in their regulatory making process, as well as to promote the checklist as part of the regulatory impact analysis. Based on our database, about 55 % of our policy advice and recommendation have been implemented by government.

3. Cross-Border Collaboration and Further Development

16. Currently, Indonesia lacks a specific regulation governing international cooperation on competition law enforcement, including to cooperate in market analysis. However, various legal provisions promote cooperation and transparency. President Regulation 100/2024 enables KPPU to apply principles of coordination, integration, and synchronization with other institutions. Moreover, as an ASEAN Member State, Indonesia is one of that signed the The ASEAN Framework Agreement on Competition (AFAC). As

a member, Indonesia is committed to implementing competition policies and laws, and to cooperating with other member countries on competition issues. The agreement provides a framework for member countries to implement competition policies and laws, and to cooperate on competition issues. It serves as a general framework for ASEAN Member States to develop competition policy and create a standard for cooperation.

17. KPPU is actively involved in international cooperation, such as through the ASEAN Expert group on Competition (AEGC). AEGC routinely conducts capacity building that can be used as a means of exchanging information. Cooperation opens up opportunities for the exchange of information and the best methodology, as well as the harmonization of analytical methodologies. Cooperation between authorities strengthens KPPU's market analysis capacity. On several occasions, KPPU has held discussions with competition authorities to discuss competition issues under investigation. This cooperation is carried out voluntarily, respectfully, and supports the work of each party.

4. Market Studies and Market Investigation Powers

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20. The policy recommendations produced by KPPU are non-binding, meaning that the government is not obliged to comply with the policy recommendations produced by KPPU. In contrast to the results of the market investigation process, which aim to enforce the law and can result in binding decisions that impose administrative sanctions or fines on business actors who violate the provisions of Law Number 5 of 1999. Although market studies does not have sanction powers, it serves as a strategic intelligence tool. The study provides in-depth market context, allows authorities to conduct more thorough investigations, and strengthens the overall law enforcement framework.

21. KPPU uses market studies when the goal is prevention, diagnosis of market structure, or policy advocacy. On the other hand, KPPU uses law enforcement investigations when there is preliminary evidence indicating specific violations of articles in the competition law. The fundamental gap lies in coercive forces. Market Investigation will enable to make action based on market failure findings. The KPPU has significant market investigative powers, enabling it to enforce competition laws effectively.

22. KPPU has the authority to investigate potential competition law violations in Indonesia. This process typically begins with a preliminary investigation, where KPPU gathers evidence based on reports or its own initiative. During this phase, KPPU investigators can request documents and information from relevant parties, including business actors, witnesses, government, and experts. KPPU has the power to summon witnesses to provide testimony, which can include business actors, experts, and other relevant parties. In asking for information from individual witnesses, KPPU can request a testimony orally or in writing, where this is one of the evidence of the examination.

23. KPPU could also requiring criminal investigator to present the party for investigation or examination, imposing damages, and issuing decision and administrative sanctions. If KPPU finds evidence of a violation, it can impose administrative sanctions, including fines of up to IDR 5 billion or 10% of the business actor's total sales in the relevant market. In addition to imposing sanctions, KPPU also monitors compliance with its decisions and can request regular reports from business actors to ensure adherence to competition laws. This ongoing oversight helps to prevent future violations and promotes a culture of compliance among businesses operating in Indonesia.

24. KPPU does not have the authority to do unannounced inspections (dawn raid), access electronic information (wiretapping and such), and surveillance authorisations. But KPPU could requesting the assistance of government investigator (including police) to present business actors, witnesses, expert witnesses, or any person who are not willing to comply with the Commission's summons. KPPU does not have the authority to impose sanctions for non-compliance with mandatory requests and obstruction of investigations, however, based on Law Number 5 of 1999, KPPU may hand over non-compliant business actors or other parties to examine by public prosecutors.

25. From the various challenges above, KPPU is trying to deal with them with various efforts. Among them is the advocacy efforts of competition authorities to private and public stakeholders, regarding the effective prevention, detection and correction of anti-competitive conduct. KPPU also routinely develops the capacity of its employees. This capacity building will allow for more effective monitoring and evaluation of market trends, enabling KPPU to provide more qualified market studies and other market analysis tools.

5. Conclusion

26. The KPPU plays a vital role in promoting fair competition and preventing monopolistic practices in Indonesia. To achieve this, KPPU conducts market studies and other market analysis to understand market dynamics, identify potential anti-competitive practices, and inform government and or policy-makers.

27. KPPU prioritizes market studies in sectors with indications of market control or dominant positions, as well as those crucial for the economy and public welfare. The commission also measures competition levels annually through the Competition Index Survey (IPU), covering 15 economic sectors and almost all provinces, which can also serve as an initial screening for sector industries and geographical area where competition is limited.

28. Conducting market studies poses several challenges, including the availability and accuracy of data, which can hinder effective analysis. The complexity of markets, particularly in the digital economy, adds another layer of difficulty, making it tough to define relevant markets and assess competition. The global nature of digital markets also raises jurisdictional challenges, requiring international cooperation and coordination to regulate and enforce competition laws. Despite these challenges, these complexities also

present opportunities for capacity building, knowledge sharing, and collaboration among competition authorities, ultimately strengthening KPPU's ability to promote fair competition and protect consumers. To address these challenges, KPPU engages in advocacy efforts, capacity building, and international cooperation, ensuring effective prevention, detection, and correction of anti-competitive conduct.

6. Recommendation

29. To conduct effective and efficient market monitoring, one key takeaway is the importance of prioritizing market studies in key sectors, such as those with indications of market control or dominant positions, as well as those crucial for the economy and public welfare. By focusing on these areas, competition authorities can effectively identify potential anti-competitive practices and inform policy makers.

30. Conducting market studies poses several challenges, including data availability and accuracy, complexity of digital markets, and jurisdictional issues. To address these challenges, competition authorities should invest in data collection and analysis, develop specialized expertise in digital economy, and engage in international cooperation. Capacity building and knowledge sharing are also essential for effective competition law enforcement.

31. Evaluation and monitoring tools, such as competition index, can be a valuable tool for measuring competition levels and identifying areas where competition is limited. By developing similar tools, competition authorities can gain a better understanding of market dynamics and prioritize their efforts accordingly.

32. Ultimately, promoting fair competition requires continuous effort and collaboration among competition authorities. By sharing best practices, investing in capacity building, and engaging in advocacy efforts, competition authorities can strengthen their ability to protect consumers and promote economic growth.

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