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DAF/COMP/WP3/WD(2015)39

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

19-Oct-2015

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

ROUNDTABLE ON CARTELS INVOLVING INTERMEDIATE GOODS

-- Indonesia --

27 October 2015

This document reproduces a written contribution from Indonesia submitted for Item 3 of the 122nd meeting of the Working Party No. 3 on Co-operation and Enforcement on 27 October 2015.

*More documents related to this discussion can be found at:
www.oecd.org/daf/competition/cartels-involving-intermediate-goods.htm*

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JT03384343

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-- Indonesia --

1. Alpha Corporation and Beta Corporation are organized under the laws of Country A and have factories in Country A where they manufacture Component X, a piece of high-tech hardware used in electronic products. Alpha and Beta agree to charge higher prices for Component X sold to finished product integrators. These integrators are organized under the laws of Country B and have factories in Country B where they incorporate Component X into finished electronic products sold in Country C.

2. Some or all of the anti-competitive overcharge on Component X is passed on by the integrators to purchasers of the finished product in Country C. Alpha and Beta are aware that Component X is incorporated into finished products sold in Country C and Alpha and Beta discuss market conditions and track sales of the finished products in Country C.

Understanding the Case

1. Alpha and Beta are companies in Country A which produce intermediate goods named Component X.
2. Alpha and Beta are duopoly companies in Country A.
3. Only Alpha and Beta which produce Component X in this world.
4. Charlie, Delta, and Echo are companies in Country B which produce Product Integrators using Component X.
5. Charlie, Delta, and Echo produce Product Integrators for Electronic Product.
6. Charlie, Delta, and Echo incorporated in Product Integrators Association in Country B.
7. Fanta, Golf and Hotel are companies in Country C which produce Electronic Product as a final product that sold in Country C.
8. Fanta, Golf and Hotel buy Product Integrators from Charlie, Delta, and Echo.
9. Fanta, Golf and Hotel incorporated in Product Integrators Association in Country C.
10. Alpha and Beta act anti-competitive conduct by increasing the price of Component X beyond the market price and obtaining excessive margin.
11. Price of Component X increase in Country A cause Product Integrators more expensive in Country B and cause increasing the price of Electronic Product in Country C.

1. Assumption 1 – Indonesia as Country A

3. Legal and jurisdictional requirements to Alpha and Beta may be alleged infringe the competition law in Country A if meet the following:

- Alpha and Beta are companies which were established and do economic activities in Country A, so they are in the jurisdiction of Country A.
- Alpha and Beta are duopoly companies which produce Component X in Country A even in the world, then there is no substitution product for Component X.
- Based on economic theory, the duopoly company has the same treatment with the monopoly company.

- If Alpha and Beta are not a duopoly company, at least both of them should have dominant position with market share above 50% which has market power that can influence the price.
- Charlie, Delta, and Echo in Country B have lower bargaining position than Alpha and Beta.
- Should be examined the price movement of Alpha and Beta based on time series (e.g. 5-10 years before price progression).
- Should be proved that Alpha and Beta excessive gain margin from the price set in comparison with the production costs of Component X and margins earned.
- Should be examined the component of cost production of Component X, i.e. raw material, labour, transportation cost, machine cost, electricity cost and so on, that are used by Alpha and Beta. Whether the component of cost production same or different, is there any price progression, is there any scarcity or other specific conditions which influence the price in the certain time series?
- Should be analysed the impact of price progression of Component X by Alpha and Beta to competition and price progression product in Country B and Country C.

4. If the preliminary allege that Alpha and Beta infringe competitive values, then Alpha and Beta will be punished by administrative sanction since they did monopoly practices or conduct abuse of dominant position to produce Component X. Types of sanction i.e. command to stop monopoly activities and abuse of dominant position, and/or fine sanction. There are following factors in imposing the fine:

- Total sales of Alpha and Beta in the certain time series to observe the companies' financial.
- Total excessive margin of Alpha and Beta since the price progressive.
- Number of years of infringement.
- Who is the main actor of this violation? It is necessary to decide the leader or follower in order to decide the amount of fine.

5. Since Alpha and Beta in the jurisdiction of Country A, then there is no need another jurisdiction to impose the fine (neither Country B nor Country C). Country A authorized to protect the domestic business actors. If Country B and Country C give punishment to Alpha and Beta, it's concerned that Alpha and Beta will collapse and can't produce Component X. While Component X gives benefit to Country A.

2. Assumption 2 – Indonesia as Country B

6. Legal and jurisdictional requirements to take legal action towards Alpha and Beta:

- Although Alpha and Beta are under the jurisdiction of Country A, but their anti-competitive activities has raised the impact to Country B, then Country B has authority to process Alpha and Beta based on competition law in Country B.
- Factor is considered to proceed legal action to Alpha and Beta in Country B that they has emerged the impact to unfair competition in Country B in producing the Product Integrators.

- Should be proved that Alpha and Beta have higher bargaining position than Charlie, Delta, and Echo in Country B towards Component X. It can be proved by counting supply and demand elasticity of Component X.
- Should be proved that price progression of Component X significantly impact the price of product Integrators which produced by Charlie, Delta, and Echo.
- Should be proved that Component X is the main component in making the Product Integrators which has no substitutes, therefore Charlie, Delta, and Echo have to depend on Component X which produced by Alpha and Beta.
- Based on production factor analysis and production cost, assumed that there is no other increasing in production factor besides Component X. Price progression of Product Integrators only caused by Component X.
- Should be proved that Charlie, Delta, and Echo increase the price of Product Integrators based on business calculation (not excessive) thus it won't violate the competition law in Country B.

7. If Alpha and Beta conduct price fixing meeting in Country B, then there is no different analysis as mentioned in point 1. It can strengthen jurisdiction and authority in Country B, since locus delicti (the place of violation) happen in Country B.

8. But, it can change if Alpha and Beta conduct price fixing meeting in Country B with Charlie, Delta, and Echo. Charlie, Delta, and Echo can be imposed the cartel conduct through price fixing.

- Should be proved that Alpha, Beta, Charlie, Delta, and Echo have a meeting to increase the price when Charlie, Delta, and Echo receive the offer of Alpha and Beta to increase the price of Component X then it can be a reason for Charlie, Delta, and Echo to increase price of the Product Integrators.
- Should be proved that price progressive by Charlie, Delta, and Echo is the excessive price beyond the margin.
- If the hard evidence (price fixing meeting) can't be proved, we can do parallel price analysis among Charlie, Delta, and Echo before and after the meeting. If the price shows parallel form, it can conclude they conduct price fixing.
- Alpha and Beta can be punished by price cartel provision (at the Intermediate Product level), Charlie, Delta, and Echo as well (at the Product Integrators level).
- Among cartel group of Alpha and Beta and cartel group of Charlie, Delta, Echo can be imposed the vertical restraint provision that impede competition.

9. Sanction that can be imposed to Alpha and Beta based on:

- Total sales of Alpha and Beta in the certain time series to observe the companies' financial.
- Total excessive margin of Alpha and Beta since the price progressive.
- Number of years of infringement.

- Who is the main actor of this violation? It is necessary to decide the leader or follower in order to decide the amount of fine.
- The impact of price fixing by Alpha and Beta towards the economic of Country B. E.g. the impact of price progressive of Component X which can increase the price of Product Integrators in Country B. Product Integrators is a product to be exported to Country C. If the price progressive of product integrators caused decreasing the export from Country B to Country C, it can be considered to impose the fine to Alpha and Beta.

10. Country B should consider involving the competition law enforcer in Country A to process Alpha and Beta based on competition law in Country B. This is necessary because Alpha and Beta are business actors under the jurisdiction of Country A. Country B can consider a joint investigation with Country B. In calculating the fines will also be considered based on the results of a joint investigation by Country A.

3. Assumption 3 – Indonesia as Country C

11. The legal and jurisdiction requirements to ringing an enforcement action against Alpha and Beta is the impact of anti-competitive conduct by Alpha and Beta toward the economy of Country C.

12. Issues should be considered:

- Although Alpha and Beta are in the jurisdiction of Country A, but the anti-competitive activities conducted by the Alpha and Beta have impact on Country C, the Country C is authorized to process Alpha and Beta based on provisions of competition law in Country C.
- The existence of a domino effect is felt by the County C during Alpha and Beta increase the price of Component X. This is due Component X is an intermediate goods which needed by Country B to produce Product Integrators purchased by Country C to produce the final product in the form of Electronic Products
- Should be proven the price progressive of X Component resulted in raising the price of Product Integrators, and price progressive of Product Integrators caused the price Electronic Products more expensive.
- Should be proved that the price of Electronic Products marketed in Country C will result in the loss of consumer goods, namely when the price goes up, there are consumers who can't buy the goods. The consumer loss would result in a dead weight loss to Country C. This is the impact that must be proved by the Country C
- Should be proved that Alpha and Beta have higher bargaining power than Charlie, Delta and Echo in Country B to the purchase of Component X. It can be proved by calculating the elasticity of supply and the elasticity of demand for the Component X.
- It should be proved that Charlie, Delta and Echo in Country B have higher the bargaining power than Fanta, Golf and Hotel in Country C to purchase Product Integrators. It can be proved by calculating the elasticity of supply and the elasticity of demand for Product Integrators.
- Should be proved that price progressive of Component X significantly affect the increasing of Product Integrators which produced by Charlie, Delta and Echo.

- Should be proved that price progressive of product Integrators which produced by Charlie, Delta and Echo in Country B to price progressive of Electronic Products which produced by Fanta, Golf and Hotel in Country C.
- Should be proved that the Component X is the most important component in the manufacture of Product Integrators, and Component X is no substitute, so Charlie, Delta and Echo depend on Component X manufactured by Alpha and Beta
- Should be proved that Product Integrators is the most important component in the manufacture of Electronic Products, and Product Integrators are no substitutes, so dependent on the Product Integrators produced by Charlie, Delta and Echo.
- Based on the analysis of production factors and production costs, it is assumed that there is no increasing price in other production factors besides Component X. It can be concluded price progressive of Integrators Product only caused by price progressive of Component X.
- Based on the analysis of production factors and production costs, it is assumed that there is no increasing price in other production factors besides Product Integrators. It can be concluded that price progressive of Electronic Products caused by progressive price of Product Integrators.
- Should be proved that Fanta, Golf and Hotel in Country C raise the Electronic Products price are reasonable based on business calculations (not excessive) so it does not violate competition law Country C.

13. If there is the fact that Alpha and Beta do the price fixing meeting in Country C, then there is no difference in the analysis as described in the answer of point 1. Instead it strengthens the jurisdiction and authority of the Country C to Alpha and Beta because the locus delicti (place of the infringement) occurred in the County C.

14. Analysis will change if there is evidence that the Alpha and Beta did contact with Fanta, Golf and Hotel in Country C including negotiations related to the price of Component X.

- Should be proved that Alpha, Beta, Fanta, Golf and Hotel conduct in increasing the price of component X that based on the domino effect will result in price progressive of Electronic Products
- Should be proved that the price progressive by Fanta, Golf and Hotel is the excessive prices that exceed a reasonable margin.
- If the hard evidence in the form of price fixing meetings cannot be found, it can be analysed the price movements (parallel price) among Fanta, Golf and Hotel before and after the meeting allegedly held. If there is a parallel price, the three companies are alleged to conduct price cartel (price fixing).
- Alpha and Beta can be subjected to the provisions regarding the price cartel (at the level of intermediate product), and Fanta, Golf and also subjected to the provisions regarding the price cartel (at the level of Finished Products).
- Among cartel group of Alpha and Beta and group cartel of Fanta, Golf and Hotel can be subjected to the provisions of the vertical restraint that impede competition

15. If finished product in the form of Electronic Products are not only sold in Country C, but also sold all over the world, it must consider the following matters:

- Should be considered the market share held by the companies that sell Electronic Products worldwide. Are Fanta, Golf and Hotel has a dominant position to determine the price?
- If Fanta, Golf and Hotel has a dominant position, a scenario that can occur Fanta, Golf and Hotel is an initiator that raise the price of Electronic Products by abusing their dominant position
- If it can be proved that Fanta, Golf and Hotel have higher bargaining power than Alpha and Beta, then Fanta, Golf and Hotel can affect Alpha and Beta in sales of Component X.
- If the sale of the Electronic Products covers all over the world, then it should be produced in mass production to reduce production costs both of Product Integrators in Country B even Component X in Country A. In this case, should the cost of purchasing Component X can be cheaper, so that every price progressive is suspected becomes unnatural due to the low cost of production.

16. If the manufacturer of Product Integrators i.e. Charlie, Delta and Echo in Country B is a subsidiary of Fanta, Golf and Hotel in Country C, then there is full authority for the company in Country C to control the company in Country B, including control the output sales and the price of the product.

- Should be considered that the Single Economic Entity Doctrine where the company in Country C and Country B has a parent-subsidiary relationship is one legal entity. Thus Country C also has jurisdiction over the company in Country B.
- Should be considered that a violation of the provisions of the Vertical Integration which may impede competition that conducted by the company in Country C and Country B.
- If there is a price fixing, then there is a cartel in the group of companies of Country B (Charlie, Delta and Echo) and the group of companies of Country C (Fanta, Golf and Hotel).

17. List to be considered in determining sanctions for Alpha and Beta:

- Total sales of Alpha and Beta in the certain time series to observe the companies' financial.
- Total excessive margin of Alpha and Beta since the price progressive.
- Number of years of infringement.
- Who is the main actor of this violation? It is necessary to decide the leader or follower in order to decide the amount of fine.
- Impact caused by price fixing conducted by Alpha and Beta to the economy of Country B and Country C. For example, the impact of price progressive of Component X resulting price progressive of Product Integrators in Country B. Product Integrators are the products to be exported to Country C. If proven price progressive of Product Integrators caused a decline in the export of Country B to Country C, then this can be considered in imposing fines to the Alpha and Beta. Including if there is the impact of price progressive in the Electronics Product in Country C resulting decline in import revenue for Country C, and the potential loss felt by Country C because of the decrease in consumer demand or in case of loss of consumer and even the dead weight loss.

18. Country C should consider to involve the competition law enforcer in Country A and Country B to process Alpha and Beta (Country A) and Charlie, Delta and Echo (Country B) based on competition law in Country C. It is necessary because Alpha and Beta are business actors that they are under the jurisdiction of Country A, while Charlie, Delta and Echo are under the jurisdiction of Country B. Country C may consider a joint investigation with Country A and Country B. in calculating the fines will also be considered based on the results joint investigation with Country A and Country B. It should be considered that competition law is intended to be created fair competition, not to eliminate the business actors.