Interaction Between Economic, Industrial Policy and Competition Policy

An Indonesian Experience

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I. Introduction

A dynamic and competitive environment, underpinned by sound competition law and policy, is an essential characteristic of a successful economy. Many developing and transition economies that have undertaken significant market-oriented reforms, such as trade liberalization, privatization, and deregulation, are now also recognizing the need to implement rules maintaining effective competition. Since 1990 more than 35 developing and transition market economies have enacted or substantially revised competition laws.

The benefits resulted from competition include increased economic efficiency, innovation, and consumer welfare. Effective enforcement of competition law and active competition advocacy can also be used as a powerful catalyst for a successful economic restructuring. This is in turn foster flexibility and mobility of resources, which in the current global business environment are critical elements for the competitiveness of firms and industries across nation. Indonesia is not an exception in relaying on competition as a mechanism to promote economic progress. Indonesian economy in the past has been best described as having highly concentrated industries, large state-owned sectors and inefficient firms operating in markets insulated by various types of barriers. While Indonesia to some extent has adopted policies of trade liberalization, deregulation and privatization, the country now has a competition authority in which it implement and supervise Indonesian Competition Law, the Law is called Law. No.5 / 1999. Indonesian economy in the past has been characterized by cozy relationship and phenomenon that has developed and have been supported by decision makers and business actors, either directly or indirectly, leading to deterioration of inequitable economic distribution.

Economic development in the past (First long Term Development) has resulted in much progress, among other things with the improvement of social welfare. Despite this, many challenges or issues still remain, especially in the economic development that is not yet divided up and along side the trend of globalization in the economy. The business opportunities created during the last three decades have in fact not enabled all levels of society to participate in development in various economic sectors. Various forms of inadequate Government policies leading to market distortions have, on the one hand marked the development of the private sectors during the above-mentioned period. On the other hand, the development of the private sector has in fact been mainly the result of unfair business competition conditions. Businessmen close to the elite have obtained extreme facilities resulting in the creation of a social gap. The emergence of conglomerates and a group of strong businessmen not supported by the spirit of real entrepreneurship has been
one of the factors, which cause economic resilience to become extremely vulnerable and uncompetitive.

The above situation and condition have caused Indonesia to study and rearrange its business activities so that the business can grow and develop in a fair and appropriate way, leading to the creation of a fair business competition climate, and in order to avoid concentration of economic power around one certain person or group, which are contradictory to the ideals of social justice. Therefore, it is necessary for Indonesia to stipulate Law No. 5 / 1999 concerning the Prohibition of Monopolistic Practices and unfair Business Competition intended for the enforcement on the provisions of law and providing equal protection for every business actor in an effort to create fair business competition. The law provides a guarantee of legal certainty for stimulating further rapid economic development in an effort to improve social welfare, as well as an implementation of the spirit and intentions as elaborated in the Indonesia’s constitution.

For an effective implementation of this law and implementing regulations thereof in accordance with its principles and objectives, the Government of Indonesia formed KPPU (Commission for the Supervision of Business competition; an independent institution free from the influence of the Government and other parties, having the authority to conduct supervision of business competition and to impose sanctions. This sanction shall be in the form of administrative measures, whereas criminal sanctions will be rule under the authority of the court of justice. The KPPU reports directly to the President and the Parliament and it was inaugurated on June 7, 2000 which consist of eleven members – including a Chairman and a Vice Chairman – whose appointments have been made with the approval of DPR, with a five – year term of office.

In general, the substance of the Law Concerning the Prohibition of monopolistic Practices and Unfair Business Competition consist of 6 (six ) sections as in the following:

1. Prohibited Agreements;
2. Prohibited Actions;
3. Dominant Positions;
4. Commission for the Supervision of Business Competition;
5. Law Enforcement;

This law has been drawn up based in the principles of Pancasila (State Philosophy) and the 1945 constitution, and it has been based on economic democracy with due observance of equilibrium between the interests of business actors and the public interest with the aim to: safeguard public interest and protect consumers; develop a conducive business climate through the creation of business competition, and ensure certainty in equal business opportunity for every person; prevent monopolistic practices and or unfair business competition created by business actors; and create effectiveness and efficiency of the national economy as one of the efforts to improve the welfare of the people.

II. Indonesian Development Experience and Establishment of Competition Authority (KPPU)
Experience in several countries have shown that the implementation of Competition Law has been enriched by the long-term conflict between Competition Policy and industrial Policy, of which the latter was said to direct the economy more into the government direction (government – led economic development). There has been significant changes in the comprehension and the interpretation of competition and liberalization in Indonesia especially in this current decade. Before the end of 1980’s, the interpretation on competition and liberalism has been closely linked with etatism or diametral free competition. But with the fall of oil price in 1986, and after the implementation of liberalization and deregulation, the idea of competition and liberalization has been accepted by many in the country. In 1992, Indonesia has signed an accord on the formation of the AFTA (Asean Free Trade Area Agreement) and since that agreement, there has been discussion on the positive aspect of the implementation and not the negative aspect of the agreement. In 1994 Indonesia was the host to the APEC meeting and this highlight the changing view of the country towards the concept of competition and free trade. It is in the context and spirit of creating innovation and providing wide array of goods and services thus Law No.5 / 1999 was created.

With the introduction of AFTA in the Asian region, all Indonesian firms must therefore be ready to compete with other international firms on the ground of cost, speed, and efficiency and overall of quality of goods and services provided to the consumers. In an integrated of world economy, Indonesian firms cannot hide behind a fallacious Government protections and forms various cartel agreement to obtain profits. In that context, Indonesian firm must live by their wits. If they hope to survive in a fierce Asian competition, their goods and services must generate more value and they must produce goods that continuously embody new innovations that other nations cannot easily and quickly match. The argument of the past was that the Government should provide temporary tariff to aid, or to bring into being, an “infant industry”. Then when the industry was well established, the Government would and should remove the tariff and toss the now “mature” industry into the competitive swim. The policy went so far as to require that businessmen joined associations of any kinds appointed by the government. The theory above is fallacious and the policy has proven to be disastrous in practice. For there is no more need for Government to protect a new, young, industry from foreign competition than there is to protect it from domestic competition. As a result businessmen – especially players in the strategic sectors – in the past must engage in an anti competition practices and link themselves extensively with the ruling elite. In this age of knowledge-based economy, only companies with capability to adjust and compete in the basis of efficiency and innovation will prevail.

As mentioned above The Law No. 5 was developed as a tool to safeguard and promote Indonesian economy towards more a same level playing field for all business actors. As mentioned above, to prevent misconduct committed by business actors in the market, the government has also established KPPU and it is the first independent regulatory agency in Indonesia’s history. Hence, its effectiveness will depend upon the capacity to:

- Overcome past practices involving close dealings between Government agencies and business to favor a few large or favored firms;
• Identify the forces and policies that affect competition in markets, and address competition issues in a technical, transparent, non-intrusive and fair manner;
• Develop an effective advocacy strategy for public policy measures affecting competition; and
• Build KPPU on the basis of stability, independence and technical merits.

If these goals are accomplished, KPPU will have the potential to exercise significant influence on important policy matters that affect market structure and business conduct in Indonesia. This overview of different objectives of competition policy indicates that in order to promote efficient use of resources while protecting the freedom of various economic participants. Competition policy generally has been viewed as a way of achieving or preserving a number of other objectives as well: pluralism, decentralization of economic decision making, prevention of abuse of economic power, promotion of small business, fairness and equity and other sociopolitical values.

III. Competition Law Enforcement

The KPPU welcomes for public and / or business actors to make reports about the occurrence of monopolistic practices and / or unfair business competition to be investigated. Based on the conclusions resulting from its investigations and examinations, the KPPU may issue orders to and impose sanctions on business actors found to have been conducting business practices that restrict competition.

In general, case-handling process in KPPU in general is divided into two parts namely. Early examination and Advance examination. Early examination must be completed in thirty days whereas Advance examination should be completed at the maximum of sixty days and can be extended to 30 working days. The result of the Advance examination will be in the form of KPPU’s decision that shall be announced in the open forum for public at the latest thirty days after the commencement of Advance examination.

There are nine cases handled by KPPU in 2003, out of nine cases, three were in the status of early examination, five cases has reached a verdict and has been announced to the public. The five cases that reached a verdict are:

1. Verdict on a monopolization of ticket reservation system conducted by Garuda Indonesia Airways.
2. Verdict on a creation of entry of barrier conducted by JICT (Jakarta International Container Terminal).
5. Verdict on a price fixing agreement conducted by five local city bus transportation companies.

IV. Conclusion
Moving Ahead With Better TAR (Transparency, Accountability and The Rule of Law)

Indonesia is now in a transitional phase where promotion of good governance through implementation of competition policy is a must if a country is to survive the global competition. The necessity to be efficient and effective in all fields of endeavor to successfully meet this challenge is immense. In so doing, it is important that competition policy enforced by the authority be implemented to prevent misconduct committed by both public and private sectors. There is no short route to create economies that are open, transparent and competitive which is conducive for all business actors. These three factors are essential to generate healthy economic growth and sustained employment in the long term, as stated in the constitutional requirement. Competition is a new subject, lasting results will take years to achieve, and sustained efforts must be on a scale commensurating with the problems. The complexity to create this condition should not be used as an excuse for doing nothing. In a knowledge based and information society bad news spread around fast, public reaction towards market misconduct has probably never been stronger as it is increasingly clear that the public is the big loser if the wrongdoing continues. Several steps are identified to create better “TAR”

a. There is a clear need for KPPU to develop frameworks for cooperation between the enforcement agency and its counterparts in other countries – this will be critical in assisting the agency effectively investigate international anti-competitive conduct and to integrate into a strong network of competition law that exists.

b. The role of the press in curbing anticompetition malfeasance is also crucial. This is not to suggest that the press may take over the government’s responsibility. KPPU can establish a regular information exchange so the press could be more effective in identifying anti competition practices and optimally used its capability to play the role of monitoring.

c. The government at all legal stages must provide appropriate protection for witness and its parties that report on anti competition practices.

Essentially, for competition policy to come into realization there must be sound understanding by every stakeholder involved. The role of KPPU is pivotal and the Government is general must also give its political commitment in curbing anti competition practices. There must be an acceptance of the principles of competition due to the fact that if Indonesia is to attract outside investment, equity investors and international financiers want a good corporate governance be implemented through a sound competition policy in the country. These core characteristics are mutually reinforcing and cannot stand-alone. With the increasing pressure of globalization and regional free trade competition, economic sovereignty would be best maintained if policy makers had the vision of what kind of economy the country is heading to in the next five or ten years.

Rapid liberalization without first putting safety nets – including the implementation of competition policy- in place will lead Indonesia into dire poverty and a never ending
vicious economic catastrophe. It is like setting the country off on a voyage on rough seas, before the holes in their hull have been repaired, before the captain has received training, before life vests have been put on board. Even in the best circumstances, there would be a high possibility that the ship would sink when hit broadside by a big wave. With the right type of regulation, Indonesia has a remarkable chance to establish the primacy of markets as engines for economic progress. This once-unimaginable opportunity may not come in the way again, Indonesia means to make the most of it.