Competition Policy and SME in Indonesia

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The Indonesian government has for a long time been concerned with the development of small- and medium-scale enterprises (SMEs). Like in other countries, SMEs are the main players in the production, distribution and service sectors of the Indonesian economy.

Since the economic crisis SMEs in Indonesia have received renewed attention, as many of these SMEs turned out to be more resilient than the highly indebted conglomerates. However, many less viable SMEs experienced great difficulties and had to go out of business.

For this reason, government assumes that these small enterprises need protection and specific policy
SME’s Policy Direction

- Government of Indonesia create SME’s policy direction as follow:

- Supporting cooperatives and small and medium enterprises by giving facilities selectively especially in protection of unfair competition, giving education and training, business and technology information, capital and location and creating conducive business climate and providing business great opportunities.

- This is for instance reflected in Law Concerning Small Business (Law No.9/1995) and article 50h of Indonesia’s Competition Law, which exempts small-scale enterprises from the provisions of the Competition Law.
In respect of article 6 (b), the development of business climate related to the competition aspect, the government stipulates law and regulation to:

1. increase cooperation among small enterprises in the form of cooperatives, associations, and business group to strengthen their bargaining position
2. prevent a formation of market structure that create unfair competition environment, such as monopoly, oligopoly and monopsony that will cause disadvantage to small business
3. to prevent a market monopoly and business centralization by certain group which will detrimental to small enterprises
Small Business Criteria

Article 5 of Law No.9/1995:

The criteria of small business are described as follow:

1. Having net asset value not more than Rp. 200.000.000 (two hundred million rupiah) excluding land and building that are used as business location
2. Having an annual sales volume not more than one billion rupiah
3. Belonging to Indonesia citizen
4. Not part of business affiliation directly or indirectly with medium sized or large enterprises
Article 3 Law No.5/1999

The purpose of enacting this act shall be to:

a. Safeguard the public interests and to increase the national economic efficiency as one of the efforts to increase people’s welfare

b. Establish a conductive business climate through the arrangement of fair business competition thus guarantee the certain of equal business opportunity for large, middle and small scale business actor in Indonesia
Exemption Chapter

Exempted from the provision of Law No.5/1999 are:

h. **Enterprises belonging to the category of small enterprises**

Small enterprises in this sense are those which conform with the definition in Law Concerning Small Business (Law No.9/1995)
Exemption Chapter

The exemption of small enterprises from the law complies with these objectives:

- Small enterprises usually cannot exercise any economic power and interfere with market forces;
- The legal consequence of this provision is that such small enterprises are exempted completely from all regulation of law No.5/1999 in respect to all agreements and unilateral actions which influence the market;
- Therefore, they should be allowed to compete with big enterprises on the market.
What is KPPU doing?

- **Protecting against abuse of a dominant position**
  
  One particular area of focus is the abuse of a dominant position. If large firms exploit their market power to stifle smaller competitors or small suppliers, this is an anti-competitive practice that is forbidden under law No.5/1999. The Commission gives full attention to complaints made by smaller businesses in this area.

- **Preventing price fixing**
  
  Some agreements between large companies can also impair competition, to the detriment of smaller businesses. The most familiar example is an agreement on prices, or cartel, whereby firms fix price levels jointly so that downstream customers are unable to take advantage of competition between suppliers to obtain competitive prices.
Advocacy of Competition Law and Policy

- KPPU actively provide socialization of Competition Law (Law No.5/1999) and launched a number of media publication about competition law and policy which also involves SME;

- KPPU continuously cooperate with many business associations and institutions as well as small enterprises in order to create fair business competition environment and awareness about competition law

- Until now, there is no spesific case regarding exemption of SME from competition law. However, there is a case concerning of abuse of dominant position from large company to its supplier which happens to be SME.
Case concerning SME position

- One of the cases handled by KPPU concerning SME is the allegation of Law No. 5/1999 violation related to an agreement of trading terms applied to small supplier by Carrefour Indonesia (Carrefour);

- As mentioned in SME report, suppliers deemed that the trading terms was difficult to apply, particularly on items requiring listing fee and minus margin, because every year Carrefour adds terms, increasing the cost and fee percentage.
Case concerning SME position

- Minus margin was suppliers’ guarantee to Carrefour that their product selling price was the lowest selling price. If Carrefour obtained written evidence that its competitor could sell the same product with cheaper price than Carrefour’s purchasing price, Carrefour had a right to ask compensation from suppliers as amount as difference price between Carrefour’s purchasing price with competitor’s selling price.

- Compensation obtained by Carrefour through applying minus margin sanction was suppliers’ invoice deduction without giving a chance to suppliers to prove that suppliers did not conduct discrimination of selling price. Invoice deduction was calculated by multiplying price difference with amount of the suppliers’ rest of product in Carrefour shop.
Case concerning SME position

The facts founded in investigation, Carrefour used its bargaining power to push down suppliers in order to accept the addition of item trading terms, cost increase and percentage of fee trading terms. Form of pressure conducted such as: holding the payment in due, breaking the cooperation one side not to sell suppliers’ products by not issuing purchase order, decreasing order amount of suppliers’ product item.

Considering that Carrefour had *market power* in relevant market, the Commission Council stated that Carrefour in carrying out its business activity needs to pay closer attention to the following issues:

- every item of trading terms applied to suppliers should provide added value for both Carrefour and suppliers (*partnership win-win solution*);
- not doing a such difficulty to suppliers particularly small and medium business category when conducts negotiating;
- not applying excessive trading terms to suppliers.
This is the end of presentation
Thank you.

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