



Indonesia was colonised by the Dutch in the early part of the 17th century, where it ruled for three centuries. From 1942, Japan occupied the islands until their surrender in 1945, after which Indonesia declared independence. Nevertheless, it took another four years of hostilities, negotiations and UN intervention before The Netherlands relinquished its claim.

Now a Republic, Indonesia is the world's largest archipelagic state, consisting of 17,508 islands, 6,000 of which are inhabited with Jakarta as its capital. Sharing land borders with East Timor, Papua New Guinea and Malaysia, Indonesia has a total coastline measuring 54,716 km.

Economy

Indonesia, a vast polyglot nation, faces economic development problems stemming from recent acts of terrorism, unequal resource distribution amongst regions, the lack of reliable legal recourse in contract disputes, weaknesses in the banking system, and a generally poor climate for foreign investment.

Indonesia withdrew from its IMF programme at the end of 2003, but issued a 'White Paper' that commits the Government to maintain fundamentally sound macroeconomic policies, previously established under IMF guidelines. Investors, however, continue to face a host of on-the-ground microeconomic problems and an inadequate judicial system. Keys to future growth remain internal reform, building up the confidence of international and domestic investors, and strong global economic growth.

Conditions before the Adoption of the Anti-Monopoly Act

During the so-called 'New Order' era, bureaucrats were very influential in the government, because they held the power, and were also responsible for the financial management of the nation. There was heavy government intervention and the markets were not able to function

PROFILE	
Population:	214.5 million***
GDP (Current US\$):	208.3 billion***
Per Capita Income: (Current US\$)	810 (Atlas method)*** 3,230 (at PPP)**
Surface Area:	1.9 million sq. km
Life Expectancy:	66.6 years**
Literacy (%):	87.9 (of ages 15 and above)**
HDI Rank:	111 ***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

properly for the economic development. Albeit, the government's heavy hand did bring benefits in sectors such as health, education, and other issues related to basic needs.

Following the end of the 'New Order' the country shifted towards pro-market liberalisation aided by globalisation. This was achieved mainly due to the new technocrats, graduates from US universities, who became responsible for financial management. This process was also pushed by the international lending institutions in the 1990s to reduce government and introduce the concept of competition.

The financial sector was the very first sector to be liberalised (1983), followed by the banking sector (1987-1988). This was also triggered by the fall of oil prices in the international market. Indonesia also joined the ASEAN FTA, APEC and the WTO. However, the government continued to regulate some protected sectors, such as distribution chain in the agriculture sector, national automobile and airlines.

* Original paper submitted in September 2004. Revised in June 2005

Box 12.1: Nepotism-lead Monopoly Causes Huge Trauma to Farmers

Tebas District, Sambas Municipality in West Kalimantan Province was one of the wealthiest districts in Indonesia. The agriculture sector, especially the ‘Pontianak Orange’, contributed about Rupiah1.5bn to the local government treasury, a big amount of money until the rupiah devaluated due to a monetary crisis. Due to its high quality ‘Pontianak Orange’ hardly had competitors, and thus dominated the market.

In 1991, the Central Government decided to take over the trade of these oranges, and issued regulations that required all harvested oranges should be channeled through a company called PT. Bina Citra Mandiri (BCM). This company, rather than being a state-owned company, belonged to a close family member of the President. Farmers or merchants who tried to sell directly in the open market could be charged for smuggling and put into jail. Besides, BCM also

regulated the price and quotas in distribution. Farmers and merchants were allowed to sell 10 percent of the harvest in the market, while the remaining 90 percent was to be sold to BCM.

This monopoly system resulted in a great loss for farmers. Consequently, they decided to stop harvesting their orange crop, because it was unremunerative. By not harvesting the oranges, the rotting crop lead to a virus infection. Within a very a short time, 7.6mn trees located in 19,000 hectares had to be cut down in order to curb the disease.

Currently, the Ministry of Agriculture and the National University of Tanjungpura Pontianak are working hard to recover from the situation. It took some time before the team could even gain support from the farmers who had experienced such a trauma.

Summing up, the interventionist policy did result in growth rates of 7-8 percent, but could not help proper redistribution of wealth. As a result the number of poor did not come down. It is this realisation by a learned technocracy, which lead to liberalisation due to the conditions created rather than an ideology. It is, thus, that the need for proper market regulation to ensure spread of benefits to all was realised.

Competition Law and Regulation

The enactment of the Law on Prohibition of Monopolistic Practices and Unfair Business (the AMA – Anti-monopoly Act), Law No. 5/1999 is an important pillar in economic development towards a free market in Indonesia.

As in other countries, this law is expected to act as a guide for enterprises to conduct fair and healthy business practices, in order to create better democracy within the economy so that enterprises’ interests are balanced with the public interest. The main objective is to create conditions for large, middle and small-scale business enterprises to ensure that they carry out their business processes properly. In addition, the Law is also meant to create efficiency in business practices.

To achieve the objectives of the legislation, the Government needs to lay ground for a more comprehensive competition policy that complements the competition law. One particular need for reform is to include and encourage transparency in the laws on investment; business entities; contracts, and bankruptcy.

Many problems currently encountered by the State are due to the fact that the existing laws contradict competition law. The decentralisation process allows the local governments to issue regulations that protect local interests and local enterprises, but undermine national policy (see box 12.1).

The implications of the AMA depend very much on the work of the Supervisory Body for Business Competition (KPPU). This body was established by the Parliament, on June 07, 2000, which comprises 11 officers, including the Chairman and Vice-Chairman. This independent body functions as a watchdog to monitor whether business practices are in line with Law No. 5/1999. The KPPU is responsible to the President of the country, and reports to the Parliament.

The KPPU is the only authority entrusted with the implementation of competition policy in Indonesia. This body holds executive power, in terms of developing subordinate legislation. It also holds powers of investigation, in relation to allegations of violations, and, in addition, the KPPU is able to impose administrative sanctions where violations are proven.

One important decree, issued by the KPPU in 2000, was ‘05/KPPU/Kep/IX/2000’ – the Code for Finding Submissions and the Handling of Allegations of Violations of Law No. 5/1999. In general, the Decree contains guidelines for the KPPU when handling any incoming reports, or findings on practices, or contracts that are not in line with good competition principles.

The Law requires the KPPU to follow up any case filed, as long as it has been lodged in a manner that satisfies procedural standards. Although the final decision (whether or not a violation has taken place) is made by the KPPU, the enforcement of its orders is referred to the District Court. In the case of a refusal to carry out the sanction, the matter can be brought to the Police Department for further investigation. Any petition of objection, against the KPPU’s decision, can be lodged with the District Court. Further appeals can be lodged with the Supreme Court.

Box 12.2: Intervention of Local Government Policy on Local Trade Systems

Frozen Sperm Trade

The Governor of the province of East Java prohibited the import of frozen sperm into the province of East Java from other areas. The regulation was aimed at protecting the local animal husbandry industry that trades in frozen sperm. Such regulation undermines the community's ability to have choices in this market.

Mandatory Standard on Mineral and Vitamin Enriched Flour

Mandatory application of a standard may become a barrier for newcomers to enter the market, or a barrier for some groups of producers to compete fairly in the market.

In the Petrol and Gas Sector

The heat treatment and setting up of the drilling pipe system involves duopoly practices. By observing the complaint reports from the business players in the oil and gas sector, together with the investigated cases regarding the same utilities; the problems related to the duopoly in the heat treatment process and the set-up of exploration pipes. The KPPU concluded that one of the contributing factors to the problems was concerned with government policies in the related sector.

The complexity of policy problems in this sector required comprehensive evaluation, which has been undertaken in the 2004 Activity Programme.

Source: Supervisory Body of Business Competition Report, 2003

Some advantages of this system are identified as follows:

- Unlike the standard justice process, appeals can be directly filed with the Supreme Court without having to go through the lower-level jurisdictions in the judicial hierarchy; and
- The Law has set clear timeframes for the handling of these cases. This is to avoid any uncertainty for participating parties.

One drawback in the case handling process is the lack of synergy amongst government agencies (KPPU and the Police Department) during the investigation process.

Unlike any other government institution (such as Ministries and other Government Institutions), the KPPU does not possess the right to initiate or propose legal reform and the development of regulations outside the scope of Law 5/1999. For example, although the Law of M&A is very essential to the work of the KPPU, in relation to such issues, Law 5/1999 does not allow the KPPU to intervene in this area.

Judicial Role in Implementation

Decisions made by the KPPU are final and binding on the parties involved. However, an unsatisfied party can file an appeal at the District Court, as per Article 44 (2) of the Law.

To support the above provision and to clarify the jurisdiction of the court, the Supreme Court passed a regulation on The Code for Filing Appeals on Disagreements with the KPPU's decisions (No. 01/2003). Basic assumptions of this regulation are that:

- 1) The KPPU is considered to be one of the parties in the case; and
- 2) In reaching decisions on cases, the KPPU is not representing the State. As a result, any disagreement with the KPPU's decision is a matter for the civil jurisdiction. Judges possess the authority to ask the KPPU to re-examine or further examine cases of disagreement with the KPPU's decision. The Courts also have the power to enforce the decisions of the KPPU where the party concerned, in default, has failed to comply with a KPPU order.

The possibility of filing appeals against the decisions of the KPPU can be interpreted as an opportunity to escape the enforcement of such decisions. Another big problem is the lack of integrity and credibility of personnel within the judicial system, such as lawyers and judges. The phenomenon of judicial mafia indicates that the system needs to be reformed to regain public confidence in the Indonesian justice system. In addition, awareness of the law needs to be generated within the justice system (amongst the Police, lawyers, judges), and without, as the law is new to Indonesian businessmen as well as the legal system.

Box 12.3: Anticompetitive Business Practices in Sectors

The Annual Report of the Supervisory Body of Business Competition 2000-2005 shows that the body has received 224 complaints from the public.

Handling incoming reports/complaints constitutes 66 percent of the Commission's work. The remaining are enquiries proactively conducted in the form of monitoring and analysis of business practices and evaluation of the existing business policies that violate the competition law. Monitoring and analysis is focused on highly regulated sectors such as public utilities, transportation, and high market concentration ratio and sectors with long distribution chain such as sugar and fertilizer. The Commission also undertakes litigation and holds public hearing.

During 2000-2005 (April), 156 complaints were filed with the Commission. During the same period of time, the Commission made 43 recommendations for corrective action to the Government resulting from the reviews.

Box 12.4: Reports processed by KPPU, 2000-April 2005

<i>Report /Complaint Content</i>	<i>No. of Reports</i>	<i>Sector Related</i>
An allegation of a oligopolistic practice	1	Book reproduction
An Allegation of price discriminatory	1	Leasing and rent
An Allegation of a monopolistic practice	2	Transportation, Information Technology
An Allegation of a closed agreement	3	Industry, Distribution of Salt, Live Stock
An Allegation of market dominance	3	Clean water, Telecommunication
An Allegation of predatory pricing	3	Food Industry, Parking service, Telecommunication
An Allegation of a cartel	4	Live Stock, Agriculture, Chemical industry
An Allegation of a vertical integration practice	4	Retail, Live Stock, Air Transportation, Food Industry
An Allegation of a dominant position	7	Entertainment, Telecommunication, Retail, Electricity, Food Distribution
An Allegation of tender conspiracy	104	Mostly Government institutions in electricity, Fuel industry, Agriculture, Illegal Sugar, Security service, Information Technology
Anticompetitive government policies	24	Fuel, Retail, Local government, Clean Water, Textbook, Insurance
Total	156	

Source: KPPU Annual Reports, 2000-2005

Government Policy and Competition Principles

The table shows the dominance of the government institutions (mostly state owned companies) indulging in anticompetitive practices. Therefore, the Commission has decided to focus its attention and energy to monitor state owned companies in electricity, transportation, port management, fuel, telecommunications and extraction industry (cement). In 10 of the 15 regulated industries, it is dominated by state owned firms.

After the adoption of the competition law, the KPPU found government policies and regulations which tend to create barriers to entry in respective sectors. They are categorised as:

1. policies that give bigger space to market actors who are already in a dominant position;
2. policies that give room for anti competitive agreements between market players; and
3. policies that intervene in the existing market mechanism.

It is obvious that the biggest challenge of the Commission is to harmonise and internalise the competition values to the mind of the government's framework. However, there were some success stories where the introduction of deregulation, market opening, privatisation has brought about a better performance of the sectors. Examples are in fuel industry, air transportation, telecommunications, automotive paper and fertilizer industries.

Review of Competition Policy Implementation

Through annual reports, the KPPU details both the internal and external factors affecting its ability to carry out the effective administration of the competition law. External factors reflect the process of market transition.

In Indonesia, competition is a relatively new concept requiring a shift in economic paradigms, government and business mindsets, and public thinking, as to what does and does not constitute a healthy and acceptable business practice. The KPPU identifies several difficulties currently experienced in relation to this period of adjustment and change:

- A lack of support from stakeholders in the implementation process;
- Insufficient knowledge and awareness of the competition law. The impact of this lack of knowledge is directly evident in relation to judicial review of KPPU decisions. Several KPPU decisions and sanctions have been overturned in the State Administrative Courts. Inadequate knowledge on the part of legal personnel, prosecutors and judges in relation to this relatively new area of law remains a significant barrier to effective implementation of the competition law.

One particularly high profile case, known as the *Indomobil scandal* resulted in a court ruling that the KPPU neither had the right, nor the legal basis to summon the defaulting parties (see box 12.5). This case was in relation to sale

Box 12.5: KPPU in Court Battle over Indomobil Case

The KPPU will appeal to the Supreme Court over a recent ruling by the State Administrative Court that effectively annulled KPPU's sanctions against PT Trimegah Securities over the high-profile Indomobil scandal.

KPPU Executive Director, M Nawir Messi, stated that the ruling had undermined the commission's role as an anti-monopoly watchdog.

"The verdict might as well have ordered KPPU not to continue in its current task of ensuring fair business competition. We're definitely going to appeal," Nawir told *The Jakarta Post*.

On July 15, the State Administrative Court ruled in favor of Trimegah, stating that KPPU had neither the right nor legal basis to summon Trimegah over the Indomobil case.

"If we are not allowed to do that, there's no point in having KPPU," Nawir added.

Trimegah leads a consortium that last year won the tender for the government's 72 percent stake in PT Indomobil Sukses Internasional, the country's second-largest carmaker.

But there were accusations that the sale process was plagued by irregularities. The Trimegah-led consortium managed to win the stake at a relatively low price. There have also been suspicions that the founder of Indomobil was behind the consortium. The Government has banned the Indomobil founder, the Salim Group, from repurchasing the company. Indomobil is part of Salim Group's assets transferred to the Government to repay the group's debts.

This prompted KPPU to launch an investigation, which included summoning Trimegah and other parties believed to have been involved in the alleged scandal.

The commission completed the investigation process in May, and alleged that Trimegah was involved in the 'conspiracy'. KPPU ordered Trimegah and other parties involved to pay financial penalties and barred the firm from participating in a future sale of assets held by the Indonesian Bank Restructuring Agency (IBRA).

But Trimegah denied any wrongdoing, and filed appeals with the administrative court and the South Jakarta District Court.

Trimegah said that KPPU had tarnished the image of the securities firm and frightened away clients, causing damage to its business.

Source: *Business and Investment* - July 25, 2002

Dadan Wijaksana, *The Jakarta Post*, Jakarta

<http://www.thejakartapost.com/yesterdaydetail.asp?fileid=20020725.L02>

process irregularities in a tender for divestiture of the Government's 72 percent interest in the country's second largest mobile manufacturing company:

- Ineffectiveness in government policy in upholding the law; and
- The existence of government policies, which are contrary to the competitive business, including conspiracy in bidding and unhealthy business competition. In its 2003 annual report, the KPPU identified various government policies, which undermined principles of healthy business competition, including: Indonesian National Standardisation, in relation to food and other non-food products; operational policy of the Maritime Shipping Authority, encouraging price setting; and general policies relating to the environment, health care, telecommunication, agriculture and industry.

Competition in Telecommunications Business

The provision of telecommunications service in Indonesia is a natural monopoly. It is run by a state owned company called PT. Telkom. The rapid change in ICT worldwide

has changed the global IT market and created ICT with lower costs. In the beginning a single telecommunication connection required US\$1,000. This has now come down to US\$150-200 or even US\$70-80. There are now many other alternatives means of communications in the market such as: cellular telephone, Voice over Internet Protocol, Virtual Private Network, beside the most common one, fixed lines.

Facts show that telecommunication business is more likely to achieve efficiency and effectiveness if competition is introduced in its management. It is, therefore, several models of competition have been introduced in the Law No. 36/1999 on Telecommunications. In terms of tele-density the results were excellent. Fixed lines connection that has been the only alternative for decades achieved a stagnant coverage of 8-9mn. Cellular telephone has reached 30 million customers within less than 10 years. There are six players in cellular market. On the other hand, since the government opened the fixed line market, there are now two players in addition to the existing one PT. Telkom.

There are at least two advantages from applying competition in telecommunications market: (1) the increase of coverage area. Consumers outside the Java island (the island that is most developed, the centre of development) can now enjoy a variety of means of telecommunication, and (2) reduction in tariffs. Ever since international gateways have been opened to private players, the international dialing cost has come down by 60 percent. The local fixed line connection has also come down to 28 percent.

However, the KPPU has observed unfair business practices among the telecommunication companies. This is due to the lack of supporting regulations.

Competition in Air transportation Business

Before the year 2000, the government conferred strong protection to local companies. The oldest decree was The Presidential Instruction No. 1/1980 that prohibited the airline regulatory institution to issue permits to bring and to operate more aircrafts in Indonesia. The government also regulated the type of aircraft used, the route, the management of the airlines, the number of scheduled domestic airlines allowed to operate in Indonesia, tariff for passengers and cargo tariff and put quota on non-economic seats.

It is only in 1995 that the regulatory framework was partially liberalised to reduce the onerous entry barriers in the airline sector. With only six billion rupiahs in hand, any person or any company was allowed to operate a scheduled airline company.

There were only six airlines in Indonesia as a result of the regulation passed in 1990's namely Garuda, Merpati, Mandala, Sempati, Bouraq and Dirgantara Air Service.

In 2000, after the adoption of The Law No. 5/1999, Indonesia entered a new regime of pro-market system. By way of Presidential Decree No. 33/2000 the government withdrew the Presidential Instruction No. 1/1980 and at the same time allowed airline companies to determine the type of aircraft to use. The lifetime of the aircraft was no longer regulated as long as it met the feasibility and safety standards. Many regulations were issued in 2000s that encouraged competition in the market. For example, a company with just two aircrafts is able to start an airline.

On a recommendation by the KPPU, the government withdrew the regulation that gave INACA (the association of airlines companies) the only authority to set tariffs. This means the government will let the market mechanism to set tariffs.

The number of airlines has now increased to 21 (15 of which are newcomers) within less than seven years after the above regulation was passed. The average growth of passenger traffic increased from 14 to 26 percent in 2004.

The spillover effects of competition in air transportation have lead to efficiency in the management and tariff reduction in train and sea-transportation.

Consumer Protection

In Indonesia, consumer protection is treated as a separate legal domain to competition policy. Law No. 8/1999, on Consumer Protection, is the primary source of consumer protection regulation in the country.

Under Article 31 of Law 8/1999, the National Consumer Protection Agency (BPKN) was inaugurated on October 19, 2004, with the function of developing consumer protection efforts. The level of cooperation and information sharing between the KPPU and BPKN remains to be seen.

From KPPU's annual reports, it would seem that investigations are most often initiated, either in response to complaints by other business players, or on KPPU's initiatives. Although KPPU decisions may have a significant impact on consumer protection, consumers seem largely unaware of the existence of the KPPU and the importance of competition policy implementation in protecting their interests.

However, there are some cases where the Commission's intervention in sectors such as airlines, distribution of salt and kerosene, dairy and bus transport has had direct outcomes for consumer's benefit.

Concluding Observations and Future Scenario

Recommendations – Strategic Planning

As competition law in Indonesia is only a few years old, strategic planning is intended to build a strong foundation to support the implementation and development of competition policy in the future. The Supervisory Body is the front line in competition policy and, as such, has a substantial role to play throughout the entire process of competition policy implementation in Indonesia. As a result, it is important that both external and internal management of the KPPU is sound.

External environment improvement steps that should be included in strategic planning include:

- Increasing communication capacity and providing stakeholders with information on the existence and functioning of competition law, the conduct of business competition and the importance of healthy businesses for the Indonesian economy. This strategy is needed to shift the old paradigms that give room to unfair business practices;
- Encouraging advocacy processes through discussions amongst entrepreneurs, as well as through follow up activities in response to reports and/or findings. Discussions should be held primarily to raise competition issues in specific markets, as a way to find out to what extent competition law is being implemented and to identify any constraints; and

- Encouraging cooperation and promoting collaborative work amongst relevant institutions within and outside the country. Experience sharing and comparison studies are some examples. Close work with similar agencies in other countries is important, especially in order to monitor the work of multinational companies (MNCs) operating in Indonesia. Close work with institutions, such as the Police Department, the Council of Prosecutors and the Supreme Court, is imperative, especially in order to build coherence in understanding the importance of business competition in Indonesia.

Internal capacity building steps, to be undertaken by the KPPU, include:

- *Human Resources*: Strengthening human resources by increasing levels of professionalism in the personnel. The issue of competition is new to Indonesia. It is only recently that it has become part of public discourse. Only a few higher education institutions provide expertise in mastering business competition, either from a legal or economic point of view. One of the main constraints upon human resource development at the KPPU is the unavailability of skilled support staff. At the end of 2003, there were 101 staff in KPPU who assisted the work of the 11 KPPU Secretariat members.
- *KPPU's Infrastructure*: The fact that KPPU has its own building is a positive sign. It is recommended that the KPPU is equipped with a sound information management system that can support the work of the KPPU. It is also expected that the public would be able to access this system. A publicly accessible system allows for

acceleration of the process for public education on competition.

- *Budget*: As far as budget is concerned, the KPPU relies on the Ministry of Industry and Trade. Self-financing is more favourable since financial dependency will eventually affect the work performance of the KPPU.

The KPPU's function, first and foremost, is the administration of Indonesia's competition law. As the overseer of competition policy, the KPPU is in a position to respond to community needs.

External, as well as internal factors hamper the successful functioning of the KPPU. Part of the road to effective competition policy implementation is public education and community support. To date, the KPPU's concerns have largely been concentrated on education for the judicial and the executive arms of the Government, as well as market players.

In Indonesia, the power of public support and public calls for reform could spur awareness in the country, more rapidly, towards economic reform and an effective competition policy. A future emphasis upon practices in markets for essential services and basic community needs would serve to bolster public awareness and support for the efforts of the KPPU. Electricity, telecommunication, and water services are all markets in which the KPPU has the potential to conduct reviews and make recommendations that will benefit the community and support consumer protection efforts in Indonesia.

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Suksmaningsih has been involved with the activities of the Indonesian Consumers Organisation (YLKI) since 1980, active in the development and subsequent work of the Research and Development (R&D) section. Even while pursuing her career in the private sector, Suksmaningsih was a member of the YLKI Board of Directors, before being made Executive Secretary in 1995. In 1999, she was promoted to Chairperson. Her term expired in February 2006.

Suksmaningsih is a founding member of the Institute for Global Justice (IGJ), established in 2000. At present, she is the member of the Steering Committee of International NGO Forum for Indonesian Development (INFID). During the period of 2002-2003, she was the Chair Head of the Steering Committee of INFID.