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The The Declaration for Fair Competition

The Law No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition is a law that is parallel with the Indonesian Constitution 1945 that set rule on national economic system based on affinity and economic democracy orientating to the people’s welfare. The Article 3 letter “a” of the Law No. 5/1999 stipulate that the objective of the Law is to protect public interest and increase national economic efficiency as one ways to increase people’s welfare.

Without proper competition law enforcement, national economic could filled with monopolistic practices, cartel, unfair acquisition, and bid rigging that will create vulnerable economic structure that lead to poverty, economic gap, and unemployment. Meanwhile, the Article 27 of the Constitution stipulates that the State will guarantee citizen’s right on proper living and employment. This concluded that the State has the right to intervene in order to guarantee the people’s welfare.

The creation of fair business competition will demand commitments and supports from the country’s leader. Thus, inline with the presidential election for 2009-2014, KPPU initiated a concept on Fair Competition Pact. The pact is one of KPPU’s demand on the presidential candidate to have full commitment on economic democracy and fair competition. The pact signed by the President candidates is showing how important the commitment and support from the elected President to create fair competition as central poin in gearing overall economic resources for the benefit of society at large. The pact is signed by two of three President candidates competing for the upcoming election. It is through this pact that KPPU aimed to gain support from elected President in supporting main agendas such government regulation on merger and acquisition, institutional status, and amendment of the law.

Competition law enforcement requires active roles and continuous efforts of all state elements such as the government, competition authority, business actor, and society. For a decade of the implementation of Law No. 5/1999, KPPU has handled 2,094 complaints resulting 229 cases and lead to 186 decisions and 43 resolutions. KPPU also provided 64 policy advices to the government on their policy in several sectors affecting business competition climate. KPPU issued eight guidelines on certain articles of the law to have same interpretation in implementing it.

Notwithstanding that KPPU also faces several challenges and unfinished priorities such the government regulation on post merger notification, attempt in enhancing the authority to search the premise, and KPPU’s institutional status. Through this pact, whoever the President will be, it is expected that the upcoming President will commit to the people that Indonesia will develop in facing global challenges. This commitment surely will assist competition authority in optimizing its roles for the creation of fair business competition to enhance people’s welfare.
KPPU asked ASTRO to Implement the Supreme Court Decision

Indonesian Supreme Court denied cessation request by ESPN STAR Sports (ESPN) and All Asia Multimedia Networks, FZ-LLC (AAMN) and affirmed KPPU’s Decision N. 03/KPPU-L/2008 on Astro Case. The affirmation showed facts and legal consideration used by KPPU in concluding the decision were accurate and reliable. The Supreme Court decision also acknowledge that examination and decision making process by KPPU was undertook professionally and independently based on due process on law stipulated by the Law No. 5/1999. Thus, therefore it should not correlate with other substance apart from the procedural process and case subject.

KPPU’s decision on Astro Case that issued on 29 August 2009 stipulated that ESPN STAR Sport and All Asia Multimedia Network and FZ-LLC, have convincely proved to breach Article 16 of the Law No. 5/1999 concerning Agreement with Foreign Parties. KPPU decided that both alleged parties have to withdraw their agreemen on control and placement of broadcasting right for Barclays Premiere League 2007-2010.

Both alleged parties also ordered to amend their broadcasting right agreements and conduct a competitive process between Cable TV Operators in Indonesia in determining the right’s owner. Moreover, All Asia Multimedia Networks and FZ-LLC also ordered to guard and protect the consumer for cable TV in Indonesia by continuously maintain business arrangement with Direct Vision Corp and provide services to their subscriber until further legal arrangement on the ownership of Direct Vision Corp is made.

To follow-up the KPPU’s decision, both alleged parties applied for an objection to the District Court. However, their objection is denied by the District Court, while now, their cessation is also refuse by the Supreme Court Decision. Under this new development, it would be irrelevant should there is certain party questioning decision for Astro Case with consumer protection issue by KPPU in its ways to create fair business competition process in paid cable TV industry. KPPU is now requesting related parties to accept this decision and obey sanctions stipulated
Fuel Surcharge Cost in the Airline's Cost Component

Fuel surcharge is a new cost component in airline industry paid by consumer. This applied, as part of Airline Company's attempt to recover emerged cost as the result of fuel jet's price increase. The amount was differing amongst Airline Company that depend on the volume of jet fuel used and passenger capacity owned.

On the early of 2006, Airline Company was beginning to discuss the need for compensation cost on jet fuel's price increase. Indonesia National Carriers Association (hereforth recall as "INACA"), a trade association of Indonesia airline industry, proposed the government to include fuel surcharge as part of component for Airline Company. However, INACA unilaterally conduct the regulation without the government's approval. This encourages initiative by KPPU in monitoring INACA's behavior and issuing an advice and recommendation. INACA was then cancelled the fuel surcharge agreement and let the Airline Company issuing it as their owned initiative. As result, the jet fuel price nowadays is working on a market mechanism.

KPPU's surveillance rise issue that fuel surcharge is continuously increasing with percentage that incomparable with the percentage of jet fuel's price increase. The Airline Company is fix the fuel surcharge using their own estimation and not by an accurate calculation. The government then conducts a coordination to provide a methodology in calculating the fuel surcharge.

However, during its development, the fuel surcharge increased continuously along with the increase of jet fuel's price. Notwithstanding that when the jet fuel's price is decreasing, the fuel surcharge is still high. Obviously, their fluctuation should be equal. This phenomenon shows that fuel surcharge treated as a fixed cost, and not an instrument to compete. With regard to an increase tendency of the cost, thus this indicate that fuel surcharge as other function other than to recover the cost emerged as result of jet fuel's price increase. This function suspected to subsidize other increased cost and to increase the company's income through exploiting the limitation of consumer's access on information. At this very moment, KPPU is continuously monitoring the behavior and if necessary will advance to law enforcement when there is strong indication on the violation of law. KPPU also will provide advice and recommendation to the government to play an active role in regulating the fuel surcharge.
The Violation of Competition Law in Check-In Counter Service Facilities in the Juanda International Airport

Angkasa Pura I Corp is suspected to violate Article 15 (2), 17 (1), 25 (1.a) of the Law no. 5/1999 in the management of check-in counter services at the Juanda International Airport of Surabaya. A series of examination process by examination team of KPPU founded several indications on the violation of the law, especially concerning exclusive dealing agreement and abuse of dominant position provision. The examination result showed an existence of authority of Angkasa Pura I Corp to monopolize management of check-in counter services for every airport in Indonesia through its Multi User Check-in System (MUCS). This system is design to overcome problems on passenger line, data accuracy, and passenger service charge (PSC).

MUCS aims to optimize counter’s utilization, thus could be shifly use by different airlines by their check-in schedule and respective departure control system. The MUCS is scheduled to be implemented at five major airports under the supervision of Angkasa Pura I Corp, including Juanda International Airport, Hasanuddin International Airport, Ngurah Rai International Airport, Sepinggan International Airport, and Adisucipto International Airport. The examination team found facts that the MUCS is performed by third party, namely Citra Candika Corp, through an Operational Cooperation with Angkasa Pura I Corp for 5 (five) consecutive years. The service charge for MUCS (including VAT and counter rent) is varying based on the period. For December 2006 – June 2007, the MUCS is charged Rp. 1,950/pax, while on July 2007 and afterward the service charge is Rp 2,100/pax. The examination team also found facts that the technology use by each airline had different level of sophistication. Several airlines already computerized the entire process, while several others had semi-computerized characteristic, and few other even still using the manual system in conducting the check-in process. This condition emerge an opinion that the MUCS application was actually not in accordance with the operators airlines needs as the service user. The imposition of MUCS tariff service clearly created additional operational and sunk cost for airlines.

Based on the facts and evidences, the Commission Council made conclusions as follows:

1. Common use check-in counter system was a system that should and normally applied in airport as an effort to increase the airport service standard quality.
2. In short term, the application system did not yet give the optimal benefit, since the airlines need to make adjustments on the check-in system owned and operated by each airlines.
3. In long term, the application system will benefit to maximised check-in service and supported transparency to ease the Government supervision, especially related to flight safety and security.
4. The MUCS application in Juanda Airport is part of Angkasa Pura I, Corp’s tasks and obligations to increase airport service. Therefore, the Commission Council concluded that Angkasa Pura I, Corp was not proven guilty to breach Article 15 point (2), Article 17 point (1) and Article 25 point (1) letter (a) of the Law No. 5/1999.

Furthermore, the Commission Council has KPPU to provide advice and recommendation to the Government, especially the Minister of Transportation to develop and supervise the implementation of MUCS, including the determination of MUCS service tariff which applied by Angkasa Pura I, Corp.
Discussion on Public Procurement and Franchise Agreement in the Perspective of Fair Competition

As one of KPPU advocacy activity to disseminate fair competition principles to its stakeholder, KPPU periodically conducted dissemination programs carried out in various areas in Indonesia. In July 2009, KPPU held public discussions forum in 3 areas, namely Kupang (Timor Island), Pontianak (Kalimantan Island) and Jambi (Sumatra Island), under the theme of "Public Procurement and Franchise Agreement in the Perspective of Fair Competition". The discussions attended by delegation of government agencies, business association, Indonesia Chamber of Commerce and Industry and academicians.

In the forum, KPPU explained the benefit of competition law implementation through Law No. 5/1999, namely to create fair competition in order to achieve an efficient market economy, to allocate the natural resources efficiently, to ensure that consumer could have choices on products and service available in the market, to create innovation, and to ensure the competitive price of products and service considered from production quality and cost. Whereas the purpose of Law No.5/1999 was to safeguard the public interest, to create a conducive business climate to ensure the certainty of equal business opportunities, to prevent monopolistic practices and or unfair business competition, and to create effectiveness and efficiency in business activities.

The discussions forum aimed to give understanding to KPPU's stakeholder on the Franchise Agreement in accordance with provisions in Article 50 letters (b) Law No. 5/1999. Subject on franchise agreement focussed on condition and requirement that often emerged in franchise agreement linked with competition law issues. The conditions could cover such the selling price, requirement to buy supplies from the franchisor or any certain side, requirement to buy products and service from the franchisor, restriction of territory, and requirement to not conduct same business activity for certain period after the franchise agreement expired. Apart from franchise, the discussions forum also discussed the theme on public procurement for goods and services in accordance with provisions of Article 22 Law No. 5 Year 1999.

From the government point of view, the public procurement principles were to obtain goods and services with the best price, delivery, quantity and quality in accordance with Government requirement. Therefore, Government as the organiser for public procurements was expected to encourage fair competition principles in the procurement, namely open, announced widely, non-discriminatory, could be entered by any business actors with the same competence, and did not contain requirement and technical specification that lead to certain business actor. In each process of procurement by Government, there were several problems oftenly emerged, namely: the Dutch auction, the bid conspiracy (both vertical and horizontal conspiracy), and mislead procurement procedure which might lead to bid conspiracy. Therefore, the government is expected comprehend the principle and KPPU to resolve the problems and weakness of public procurement. The harmonization of both surely will encourage the good corporate governance in Indonesia.
KPPU Advocacy Activity through the Seminar on Business Competition

As one of advocacy activity on fair business competition, KPPU host business competition seminar concerning “The Implementation of Business Competition Policy as Stipulated in Law No. 5 Year 1999” conducted in Bukittinggi (in West Sumatra Province) and Manokwari (in West Irian Province) on July 2009. Seminar attended by government delegation, mass media, academicians, and business association from Indonesia Chamber of Commerce and Industry (KADIN).

During the seminar, KPPU delivered subject on competition law implementation in Indonesia. Competition law is expected to create fair competition in global business. As stated in Article 3 of the Law No. 5/1999, competition law was beneficial for the better work of market economy mechanism. KPPU also explained the provisions of violation stipulated in Law No. 5/1999, such as prohibited agreement, prohibited activity, and dominant position. Most of case handled by KPPU is tender/procurement cases, which behaviors explain in the Guideline of Article 22 concerning the Prohibition of Conspiracy in Procurement/Tender activity.

KPPU considered the importance of support and participation from Government towards KPPU achievement, especially the local government involved in procurement process which draught with business competition principles. During the procurement process, both the business actors and the Bid Committee have to convey the procurement provisions. The awareness on competition principles will create fair competition in procurement process. KPPU, along with the Government, is expected to conduct intensive dissemination to swift paradigm and behaviour of local and national business actors in any public procurement. Through the seminar, it is expected that the implementation of Law No. 5/1999 could be highlighted and uses as reference for Central Government to transfer the authority to the local government.

During discussion, participants’ complaint about the high selling price of several product, especially in Manokwari. KPPU said that the principle of “price depended on supply and demand” was difficult to be fully applied on market mechanism since it only effective for efficiency based, whereas economic interest stated by Article 33 of the State Constitution 1945 also should be considered. Therefore, KPPU (with the implementation of Law No. 5/1999) purposed to maintain the balance of interest between business actors and consumers, as well as to create people welfare through fair business competition. Moreover, the local government is expected to play active role in fighting obstacles in global business world such technical and price barrier.

Apart from seminars on KPPU and guideline on prohibition of bid rigging (tender conspiracy), KPPU also disseminate pre-merger notification program to its stakeholder. As acknowledge before, the article 35 letters (f) of Law No.5/1999 gave mandate to KPPU in compiling guideline and publication on competition law. Guideline was compiled to give legal security for business actors in conducting their business strategy.

In accordance with the task, KPPU recently ratified the Commission Regulation No. 1/2009 concerning Pre-Merger Notification. As a new regulation, it is important that KPPU should disseminate the guideline to provide better implementation by the stakeholder. One of the dissemination programs was held in July 27, 2009. The seminar participated by the government agencies, business actors, the Chamber of Commerce, academicians and journalists.

The dissemination program is expected to elevate understanding on merger criterias, process, as well as qualification of market concentration as standard regulation. It is also expected that the Commission’s regulation will not obstruct their business development or investment. Instead, the regulation is aimed to create transparency on the process and standard used. The business actors also will by assisted by the assurance on prospect of their merger plan.
The 1st AEGC Workshop on Regional Guideline: an Effort to create a business competition environment in ASEAN region

As stated in ASEAN Economic Community (AEC) Blueprint, ASEAN Member States (AMSSs) agreed to apply the competition law and policy in their respective country on 2015. As an effort to realize it, the ASEAN Experts Group on Competition (AEGC) agreed to compile the Regional Guideline on Competition Policy. Regional Guideline was a guideline for AMSSs to help them understand the competition law and policy, based on best practices from countries, which implemented the competition law, including Indonesia. Regional Guideline was expected to help all AMSSs on their efforts in compiling, implementing and enforcing the effective competition law and policy on their respective Country.

As part of the compilation process of the Regional Guideline, AEGC in cooperation with InWent (German Capacity Building International) and KPPU (Commission for Supervision of Business Competition) Indonesia; held “The 1st Workshop of Work Group on Developing Regional Guidelines on Competition Policy” (WG Guidelines) on July 30-31 2009 in Bali, Indonesia. This workshop was held to facilitate AEGC members to review and revise the draft of Regional Guideline compiled by Singapore, as the chairman of WG Guidelines. The meeting attended by AEGC member delegation from Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam, as well as delegation from ASEAN Secretariat and the expert from Fratini Fergano Europe. The expert was appointed to assist AMSSs in formulating the concept and contents of Regional Guideline. The Meeting was chaired by Mr. Ow Yong Tuck Leong from Competition Commission of Singapore (CCS), in his capacity as the Chairman of the WG Guidelines.

As the host country, the KPPU Chairman, Dr. Benny Pasaribu, in his opening remark, shared his expectation that Regional Guidelines on Competition Policy could increased the AMSSs understanding towards the importance of implementation of competition law and policy in creating fair business competition on economic sector in ASEAN Region. Chairman also expected that Regional Guideline could encourage AMSSs that did not yet apply the competition law to immediately ratify it. As for Indonesia, Regional Guidelines was expected to elevate the quality of competition law and policy enforcement in Indonesia.

Regional Guideline itself is a general guidance for AMSSs to introduce, implement and develop competition policy in their respective Country, in accordance with the characteristics of economy structure in each AMSSs. Therefore, the Guideline functioned as reference without binding justification. Periodically, AEGC will update the contents of the Guideline to reflect all the changes and development in competition policy in ASEAN and international community. With the application of Regional Guideline among AMSSs, it is expected that the economic integration in ASEAN region could be realized. The economics integration, together with fair business competition environment and conducive business environment will attract the interest of foreign investor and increase economics growth in ASEAN region. The enhancement in AMSSs co-operation through the implementation of competition policy also will increase economic efficiency and competitiveness in ASEAN region.
During the Workshop, KPPU gave their view that Regional Guideline necessarily should be coordinated and disseminated with relevant government agencies, such as the Ministry of Economic, Ministry of Trade, Ministry of Industry, Ministry of Justice, and the Investment Coordinating Board. This is due to since the issues of competition policy was not only the authority of competition agency, but also the government. KPPU also considered the overlapping in the use of term ‘competition law’ and ‘competition policy’ in the Guideline, while in fact the two terms were very different one with another. Several other terms that were felt confusing in the Guideline were between ‘Merger and Acquisition’ and ‘Concentration’, ‘exemption’ and ‘exclusion’, as well as ‘Market Power’ and ‘Dominant Position’.

The AEGC members also suggested proposal on the guidance’s structure. It was highlighted that there should three parts in the guideline, such as:
- the part that accommodated input from ASEAN countries implemented the competition law and policy (Indonesia, Singapore, Thailand, Vietnam),
- the part of ASEAN country in the process of preparing the competition law and policy (Malaysia, Philippines, Cambodia), and
- the part for ASEAN country without competition policy (Lao PDR, Brunei Darussalam, Myanmar).

As the conclusion, all delegation agreed that results of the workshop would be brought and discussed in the Second Workshop of WG Guidelines that will be conducted on 29-30 September 2009 in Manila, Philippines, and afterwards will be circulated to each member of the working group. Furthermore, AEGC requested the expert to immediately improve and complete the additional information, based on input from all participants workshop.

Indonesian Peer Review on the Tenth UNCTAD Intergovernmental Group of Expert Meeting

Indonesia esteemed succeeded and consistent in implementing competition law and policy. Moreover, amongst all reviewed countries, review on Indonesia is the best reviewed ever by UNCTAD in term of the organization and report substances. The opinion shared by the UNCTAD during the closing ceremony of the Intergovernmental Group of Expert Meeting held last July in UN Headquarter in Geneva.

United Nation Conference on Trade and Development (UNCTAD) is part of the United Nations focusing on exchange of knowledge in supporting countries development, in which their intergovernmental meeting is the key meeting in any decision making. Intergovernmental group of expert on competition policy and law is the assembling of competition agencies in the world. During the yearly meeting, numerous new issues represented to elaborate best solutions to overcome it. Apart of exchange of information, this meeting also reviews competition policy and law implementation in developing countries to find recommendations for improvement and technical assistance needed in supporting the recommendation.

UNCTAD Peer Review of Conditional Law and Policy is a voluntary evaluation by UNCTAD on the implementation of competition law and policy of a country. This evaluation is different from similar evaluation conducted by World Trade Organization (WTO) and Organisation of Economic Cooperation and Development (OECD). This evaluation is voluntary and aimed specifically on developing competition agency from developing country. This evaluation is to enhance country development through sharing experiences and best practices and identify technical assistance needed in developing a competition agency.

One review could involve extended procedures, especially in preparing the report. Report formulated by independ-
Peer review on Indonesia held in the margin of the Tenth UNCTAD Intergovernmental Group of Experts (IGE) Meeting held in UN Headquarter in Geneva, 7-9 July 2009. The review is adopted in several steps, namely presentation of report by an independent consultant, observation by reviewed country, comment and discussion with participated country through submitted inquiries, and recommendation on technical assistance that suit the need of reviewed country.

In the report, Prof. Elizabeth Farina submitted that Indonesia showed significant and positive growth in competition law, neither law enforcement nor competition policy. KPPU as a new agency also shows increased performance in capacity building, in which its decision is well accepted and strengthened by the judiciary, and increase transparency through publications that numerously available for the public. Notwithstanding that, several challenges still faced by Indonesia, specifically on the identified weakness of the Law No. 5/1999, as well as substantial challenges and competition law procedures by the judiciary. In her recommendation, Prof. Farina identified several proposals for improvement on the law and expansion of capacity in competition for relevant jurisdictions.

In addition to the report, KPPU shared recent development on competition which not covered by the report, especially on the strengthening of competition law’s instrument, adjustment on budget system, internal regulations, and attempts to increase cooperation with the Indonesian Audit Board and the Indonesian Police. The report received warm appreciation by state members through comments and follow-up questions arose. The comments mostly involved KPPU’s effort in controlling merger and acquisition, effectiveness of sanction, law enforcement and appeal procedures in court, agency’s independency facing high influence by political party, interrelation between competition policy and sector policy, and advocacy strategy implemented by KPPU.

Several challenges in the law also arose in the discussion, specifically on multiple objective, definitions, application of per se illegal and rule of reason, and low sanctions. The meeting shared that multiple objective in the law will create potential conflict between objectives and less focused on the ultimate objective of the law. Moreover, it also stipulated the contradictory definition that might haze terminologies use by the law. Maximum sanctions provided by the law argued as too low for effective law enforcement to major business actors. Thus, therefore the meeting encourages the Commission to create definitive sanction in replacing occurred damages.

As whole, it was deemed that the peer review will not only provide best recommendations on the implementation of Indonesian competition law and policy, but also could treated as tool for strategic introduction to world competition agencies as well as in increasing international acknowledgement on KPPU and Indonesian competition law and policy implementation. This result will soon be transformed as several technical assistances in supporting and overcoming the underlined challenges. It is expected that the result of peer review could be disseminated to stakeholders in showing tremendous support by international fora on Indonesia’s achievement in implementing her competition law and policy.
Antimonopoly Group Ponders Move To Look Into Escalating Sugar Prices

With sugar prices skyrocketing over the past few months, the country’s antimonopoly watchdog said it was on the cusp of launching a formal investigation.

“As part of the effort to prevent monopolies and protect the public from the consequences of unfair business practices, the Business Competition Supervisory Commission intends to ascertain whether rising sugar prices are the result of the hoarding of sugar stocks or cartel-like practices,” Ahmad Junaidi, the antimonopoly commission’s director of communications, said on Wednesday.

He said the commission, also known as KPPU, would first survey the markets in Makassar, Balikpapan, Surabaya, Batam and Jakarta to identify the causes of the price hikes. However, analysts said the hike was not entirely surprising, given that bad weather in the world’s two biggest producers, Brazil and India, have pushed global sugar prices to a three-year high. White sugar fetched $485 a metric ton on Wednesday. And it looks like prices are set to continue climbing. The Financial Times on Tuesday quoted Nicholas Snowdon, a soft commodities analyst with Barclays Capital in London, as saying the weather problems have paved the way for “a global deficit of historic proportions, thus offering a seemingly irrefutable fundamental case for a strong price performance.”

Locally, the price of white sugar has risen from an average of Rp 6,649 (66 cents) per kilogram in January to about Rp 8,491 per kilogram in July. White sugar is of a lower grade than refined sugar and is normally for household use, while refined sugar is used by the food and beverage industry. When asked about the impact of high international prices, KPPU’s Ahmad said, “The price increases here should not be continuing for so long as domestic stocks are sufficient for this year, according to the sugar industry and the government.”

Taufik Ahmad, KPPU’s director of public policy, said the commission would also study whether the government’s policy of restricting sugar imports had unduly affected supplies and encouraged speculators to take advantage of the situation.

“The focus of the study will be on finding out the major causes of the prices rises — whether they are related to unfair business practices or the impact of government policies, such as the sugar trading mechanism, sugar import quotas and import bans,” he said.

However, he insisted that food processors were doing their best to contain prices. “Even though production costs have risen by up to 3 percent, producers are trying not to pass these on, given the current weak purchasing power of consumers,” he said.

Total consumption of white and refined sugar this year is predicted to hit 4.85 million tons, with 2.7 million tons destined for household use and 2.15 million tons for industrial use, he said. The Indonesian sugar industry can be viewed as a tale of two segments — the white sugar industry, obsolete and dominated by state companies, and the modern, efficient refined sugar industry, controlled by the private sector and whose output is sold primarily to the food and beverage sector.

During the colonial era, the country was at one stage the second biggest sugar exporter in the world. Since then, however, production has declined due to outdated cultivation techniques and obsolete machinery in the state sugar factories. To turn the industry around again, the government has launched a revitalization plan to achieve self-sufficiency in white sugar by 2014, but little success has been achieved to date.

Fair Competition Brings People's Welfare

Deswin NUR (Mr.)
Head of Institutional Cooperation Division
Bureau of Public Relation
Commission for the Supervision of Business Competition
Jl. Ir. H. Juanda No. 36, Jakarta, INDONESIA 10120
Tel: (62-21) 3507015/16/43—Fax: (62-21) 3507008