

Franchise Agreements Exempted Under the Anti-Monopoly Law - KPPU Decision

It is clear to anyone who shops or frequents fast-food restaurants that franchising is not only an emerging business in Indonesia, but also an area of growth. The growth in the franchising sector is viewed positively as a means of contributing significantly to the growth of the Indonesian economy, particularly as the establishment of a franchise generally requires the franchisee to employ large numbers of people.

Therefore, in order to remove any possibility of misinterpretation of the relevant provisions of Law No. 5 of 1999 on the Prohibition of Monopolistic and Unfair Business Practices (Anti-Monopoly Law), specifically Article 50(b), the Commission for the Supervision of Business Practices (*Komisi Persaingan Usaha / KPPU*) has issued Decision No. 57/KPPU/KEP/III/2009. The Decision includes as an Attachment a set of Guidelines that set out the implementation of Article 50(b). Simply, the guidelines set out the exemption of agreements relating to franchising from the provisions of Article 50(b) of the Anti-Monopoly Law.

The guidelines have been issued for the purposes of providing the prevailing interpretation of Article 50(b) to all parties that have an interest in franchising. Furthermore, the guidelines are specifically noted to be of assistance to members of the KPPU in the performance of their duties and authorities as noted in Articles 35 and 36 of the Anti-Monopoly Law and Articles 4 and 5 of Presidential Decree No. 75 of 1999.

The guidelines are set out in a logical order and provide definitions to each of the key terms as the KPPU understands them. After providing some general background as to the need for the guidelines, which have been noted above, the guidelines then define what an agreement is, what constitutes a franchise, the conditions necessary for a franchise agreement, and finally the elements of Article 50(b).

Chapters III and IV of the guidelines are of most interest as they deal with the application of the provisions of Article 50(b) as they relate to franchising and then provide a case example, respectively. For example, the basic premise with respect to application is to provide for an increase in economic efficiency with a view to increasing communal prosperity, guarantee equal opportunities for all business players, prevent monopolistic and unfair business practices, and create an environment that is effective and efficient in the practice of business.

The guidelines, in Chapter III, also deal with the criteria that are generally exempt from the provisions of Article 50(b). These include, among others, Resale Price Maintenance; conditions of purchase from the franchisor; area restrictions; and end of agreement exclusion from certain business activities. It is worth noting that these exemptions are not absolute. The KPPU seems to reserve the right to hold that some franchising agreements

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have been drafted with a view to establishing an environment which creates a monopoly or some other unfair business practice. Simply, not all franchise related agreements are exempt.

The case example deals with a mini-market scenario and involves issues of intellectual property rights. The example then goes on to explain in detail the obligations of the franchisor and the franchisee. Ultimately, franchise related agreements would be exempt where those agreements comply with the prevailing provisions in Article 3 of Government Regulation No. 42 of 2007 on Franchising. In the example, one of the clauses stipulates a sale price and the KPPU interprets clauses of this nature to hold the potential of creating an environment of unfair business practice. Nevertheless, each case must be determined on its merits and the potential for breach is clearly not a case of actual breach.

The Decision was confirmed on 12 March 2009. 

⚙ Documents

KPPU Decision No. 57/KPPU/KEP/III/2009
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pdf - 186.Kb)

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