

## KPPU Regulation: Criteria to Determine the Existence of Cartels

**C**ommission for the Supervision of Business Competition (KPPU) Regulation No. 4 of 2010 was recently released, elaborating the provision on cartels in Article 11 of Law No. 5 of 1999 on the Prohibition of Monopolistic and Unfair Business Practices ("Anti-Monopoly Law"). Among other things, the Guidelines outline the criteria that the KPPU will use to identify the existence of cartels, and reinforce associated sanctions.

Generally, a 'cartel' is defined as an agreement - whether formal or informal - between competing businesses to influence prices by controlling the production and / or distribution of a good and / or service, which may cause a monopoly and / or unfair business practice to occur.

Though provisions on cartels are scattered throughout the Anti-Monopoly Law, they lack specificity and do not give firm legal basis to the identification of cartels and prosecution of related corporations and individuals. Under the Guidelines, official indicators that can be used for a charge of cartel activity include:

- Inter-relation of ownerships between competing companies, whether the ownership is minor or major;
- The significant entry-barrier for new businesses when entering a given market(s);
- Transparency and easy exchange of information, where the association generally facilitates business activities, and / or;
- Price uniformity of goods and / or services in markets in a number of areas, which as such generally indicates that there is a consensus on price fixing amongst competing business actors.

The aforementioned criteria must be supported by other evidence, set out in Chapter IV, which among other things includes: documents that suggest the existence of an agreed price, production quota, or allocation between businesses, and / or financial reports of the alleged business actors. In addition to written evidence, the assessment may use oral statements from related parties, such as employees or former employees, and / or customers.

If indeed cartel activity is deemed to take place, the Guidelines reinforce sanctions laid out in the Anti-Monopoly Law, which variously include: revocation of the 'agreement,' stopping the activities that constitute the cartel organization, fines, imprisonment, and temporary prohibition from assuming a position in any company.

The KPPU Regulation, including the Guidelines, applies not only to the KPPU, but also other parties (Article 3 (2)), and has been in force since 9 April 2010.

For further review of the KPPU Regulation, see [ILD No. 153 23/4/2010](#).

### ❖ Past Issues

- ✍ Three More State-Owned Enterprises Shares to be Publicly Available This Year (Issue 1471 - 8/4/2010)
- ✍ Low-Income Housing Financing Regulation (Issue 1470 - 8/3/2010)
- ✍ Zakat as a Deductible Expense in Determining Taxable Income (Issue 1469 - 8/2/2010)
- ✍ Land Acquisition and Resettlement for the Jakarta MRT Project (Issue 1468 - 7/30/2010)

### ❖ Documents

KPPU Regulation No. 4 of 2010  
(PRLB\_KPPU\_4\_2010.pdf - 538.Kb)

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