



Commission for The Supervision of Business Competition
Komisi Pengawas Persaingan Usaha (KPPU)

Anti-Cartel Enforcement

Implementation of Law No. 5 year 1999

Concerning Prohibition of Monopolistic Practice and
Unfair Business Competition

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BRIEF PROFILE OF INDONESIAN COMPETITION LAW

- Law No. 5/1999, issued in 1999 and effectively implemented in 2000;
- Provisions on prohibited agreement, prohibited behavior, abuse of dominant, competition authorities and case handling procedure;
- Law No. 5/1999 has several exemptions, but applies to all sector (no exemption to specific sectors);
- KPPU is the one and only competition authority, to implement and enforce competition law in Indonesia.



KPPU AS COMPETITION AUTHORITY

The duties of KPPU (Law No 5/1999) :

- Evaluate agreement that may result in monopolistic practices and or unfair business competition;
- Evaluate business activities or conduct of business actors that may result in monopolistic practices and or unfair competition;
- Assess abuse of dominant position;
- Provide advice and recommendation concerning government policies related to monopolistic practices and or unfair competition;
- Prepare guidelines and publications related to this law;
- Submit report to the President and parliament.



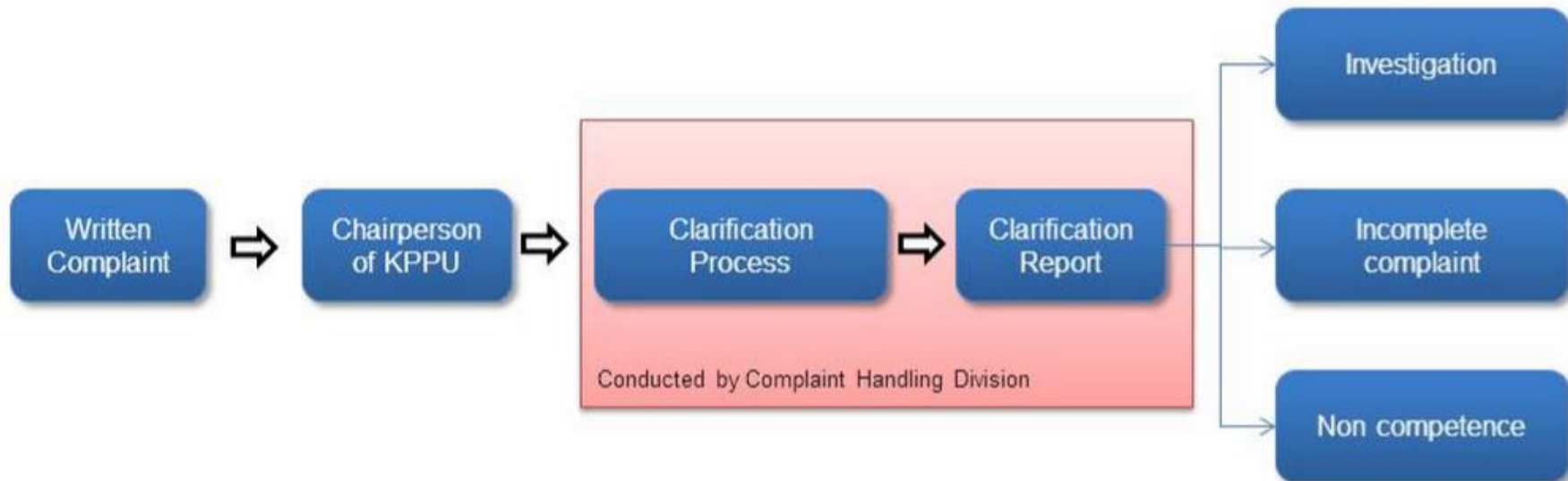
KPPU AS COMPETITION AUTHORITY (CONT.)

KPPU has the authorities:

- Receive reports on violation of the law from public and business actors;
- Conduct research on presumption of any business activities that could cause unfair competition;
- Conduct investigation and examination on presumed cases;
- Summon and invite business actors and witness and expert who is considered knowing of any violation;
- Ask for information from government agency;
- Impose sanction;
- Decide and determine whether or not there has been any loss suffered by business actors or public.

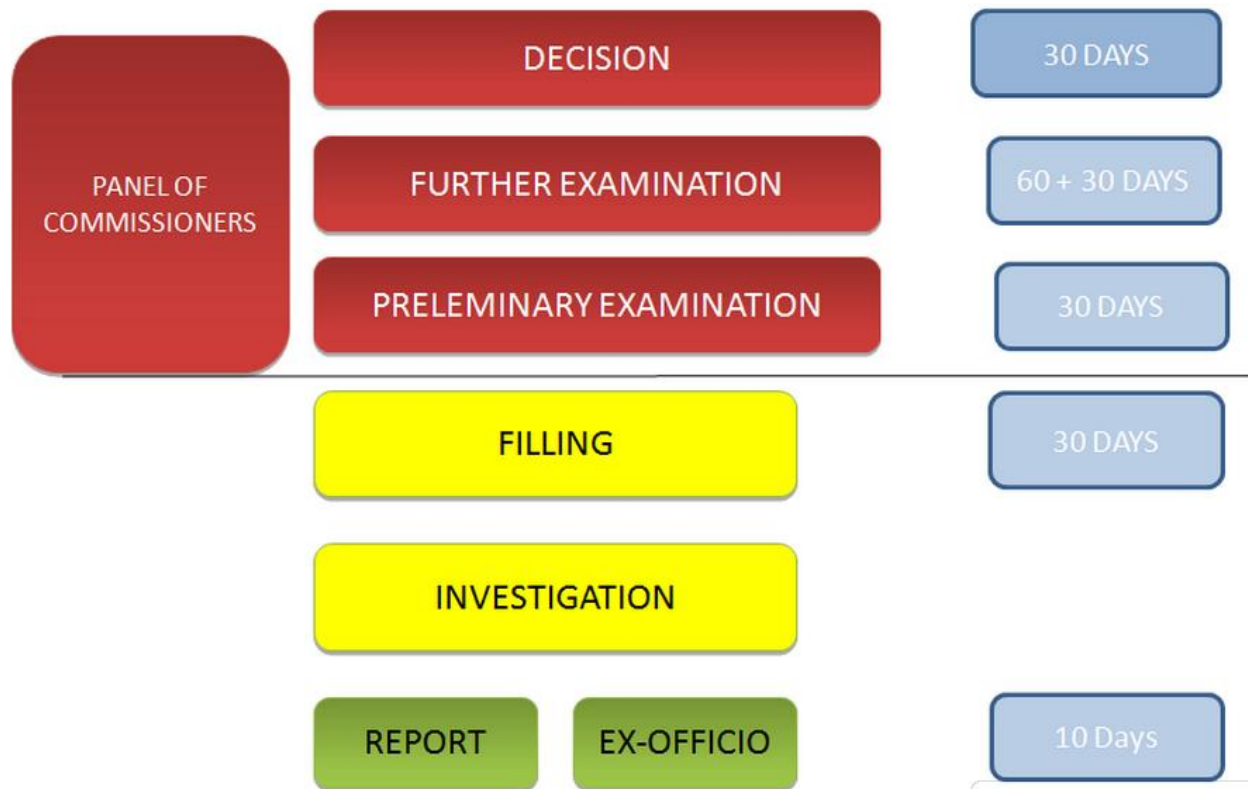


COMPLAIN HANDLING PROCEDURE





INVESTIGATION PROCESS





DEFINITION

CARTEL

agreement between competing firms to control prices or exclude entry of a new competitor in a market. It is a formal organization of sellers or buyers that agree to fix selling prices, purchase prices, or reduce production using a variety of tactics

Production
Control

Price Fixing

Bid Rigging

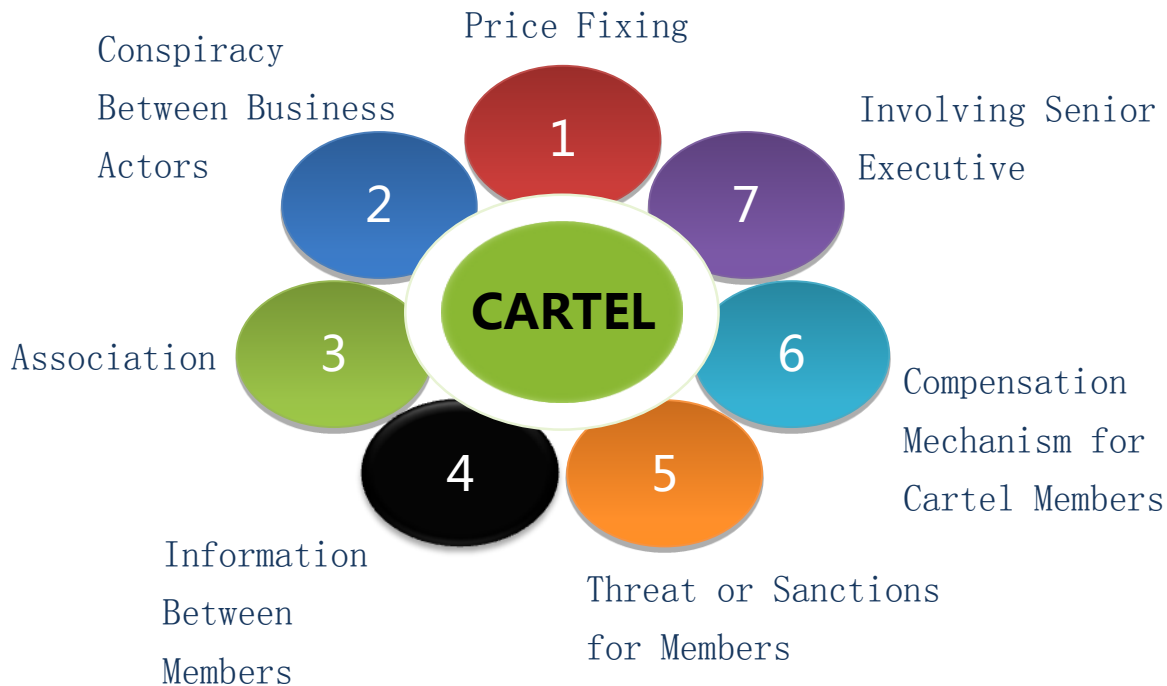
Territorial
Allocation

Customer
Allocation

Market Share
Allocation



CHARACTERISTICS THAT BUILD CARTEL





LAW NUMBER 5/1999

11 article

Business actors shall be prohibited from entering into agreements with their competing business actors, with the intention of influencing prices by arranging production and or marketing of certain goods and or services, which may result in monopolistic practices and or unfair business competition



ARTICLES RELATED TO CARTELS

5

Business actors shall be prohibited from entering into agreements with their business competitors to fix the price of certain goods and or services payable by customers on the same relevant market.

7

Business actors shall be prohibited from entering into agreements with their business competitors to fix price below market prices, which may potentially result in unfair business competition.

9

Business actors shall be prohibited from entering into agreements with their business competitors which have the purpose of dividing marketing territory or allocating the market for goods and or services, potentially resulting in monopolistic practices and or unfair business competition.

10

Business actors shall be prohibited from entering into agreements with their business competitors to fix the price of certain goods and or services payable by customers on the same relevant market.

12

Business actors shall be prohibited from entering into agreements with their business competitors for cooperation by establishing a joint company or a larger company, by keeping and maintaining the continuity of each company or its member, with the aim of controlling production and or marketing of goods and or services, with the result that monopolistic practices and or unfair business competition may occur.

22

Business actors shall be prohibited from entering into conspiracies with other parties in order to determine awardees of tenders which may result in unfair business competition.

24

Business actors shall be prohibited from conspiring with other parties in order to impede that production and or marketing of goods and or services of their competitors with the aim of causing the goods and or services offered or supplied to the relevant market to become less, either in quantity, quality or in timeliness required.



CARTEL DETECTION

Cartel Identification

- Quantity of Business Actor
- Scale of Firm
- Homogeneous Goods
- Multi-market contacts
- Supply and production capacity
- Cross ownership
- Entry barrier
- Elasticity
- Bargaining Power

Behaviour

- Transparency and information sharing
- Price Fixing



CARTEL DETECTION (CONT.)

Market

**Relevant
Market**

**Market
Structure**

**Market
Behavior**

**Market
Share**

Price



PROVING CARTEL

Evidence

- Documents/ record about the price fixing, production quotas, territorial allocation
- Price data/ documents
- Data about trend of price, the amount of production and sales in some areas of marketing
- Data about production capacity
- Data operating profit and profit companies that coordinate with each other
- Data analysis of conscious parallelism
- Ect.

1. Communications

- ✓ Record of telephone conversations
- ✓ Travel to a common destination
- ✓ Participation in a meeting
- ✓ Minutes of a meeting showing that prices are discussed

2. Economic Evidence

- ✓ Conduct
- ✓ Market or Structural Evidence



CARTEL CASE

CARTEL In The Tire Industry

- ✓ Cartel practices for 13-, 14-, 15-, and 16-inch ring of Passenger Car Radial (PCR) Replacement tires during the period of 2009-2012 by 6 tire manufacturers (Members of Indonesia Tire Manufacturers Association (Asosiasi Perusahaan Ban Indonesia/APBI) : **Price Fixing** and **distribution control**;
- ✓ Violation Article 5 (1) and Article 11 of Law No. 5 of 1999;
- ✓ Evidence : Minutes of meeting and economic evidence;
- ✓ Proving Cartel : Harrington Cartel Detection Method;
- ✓ KPPU imposed the maximum fine of Rp25 billion on each of the 6 tire manufacturers, collectively Rp150 billion.

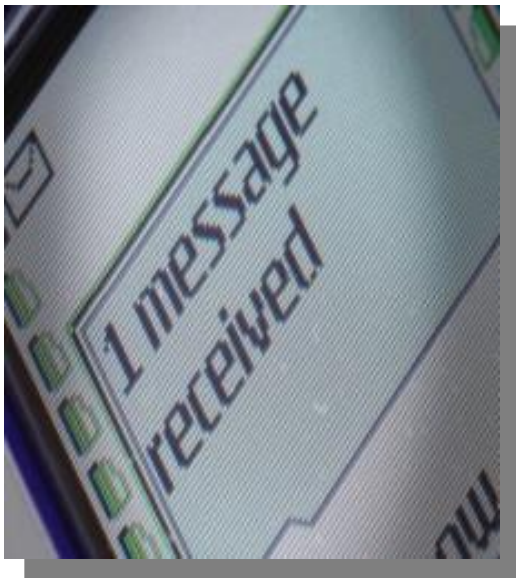


PROVING CARTEL (CONT.)

- ✓ Hard evidence : Minutes of meeting
 - Sales Director Meeting, December 2008 : “Members of APBI is prohibited to do price wars”
 - Presidium Meeting, 26 Januari 2010 : “All Members are asked to restraint and continue to control each distribution and keep the market conditions remain favorable in accordance with the development of demand”
 - Presidium Meeting, 25 February 2010 : “Members will take action to maintain the stability of markets”
 - Sales Directors Meeting, 19 April 2010 : “APBI Monitoring market requested to activated again starting in May 2010, and all members are asked to control the distribution of each, so that such market conditions can be maintained”.



ANOTHER CARTEL CASE



CARTEL Short Message Service

Agreement between telecommunication operators to fix minimum price for off net text messaging services



CARTEL CASE : SMS

- Six cellular companies (during 2004-2007) sets the price conspiracy SMS rate of Rp 350/SMS;
- According to Indonesian Telecommunications Regulatory Body (BRTI) calculation, the agreed SMS price was highly overpriced → The cost of production is only in the range of Rp 42 to Rp 72 per SMS;
- Consumers harmed reached Rp 2,827 trillion;
- Violation of Article 5, Law No. 5/1999 → **Price Fixing**
- KPPU gave administrative sanctions for each operator involved.

Thank you



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