

Distribution Channel in Competition Law Perspective

A JUNAIDI, SH, MH, LL.M., MKN
ajunaidimasjhud@kppu.go.id

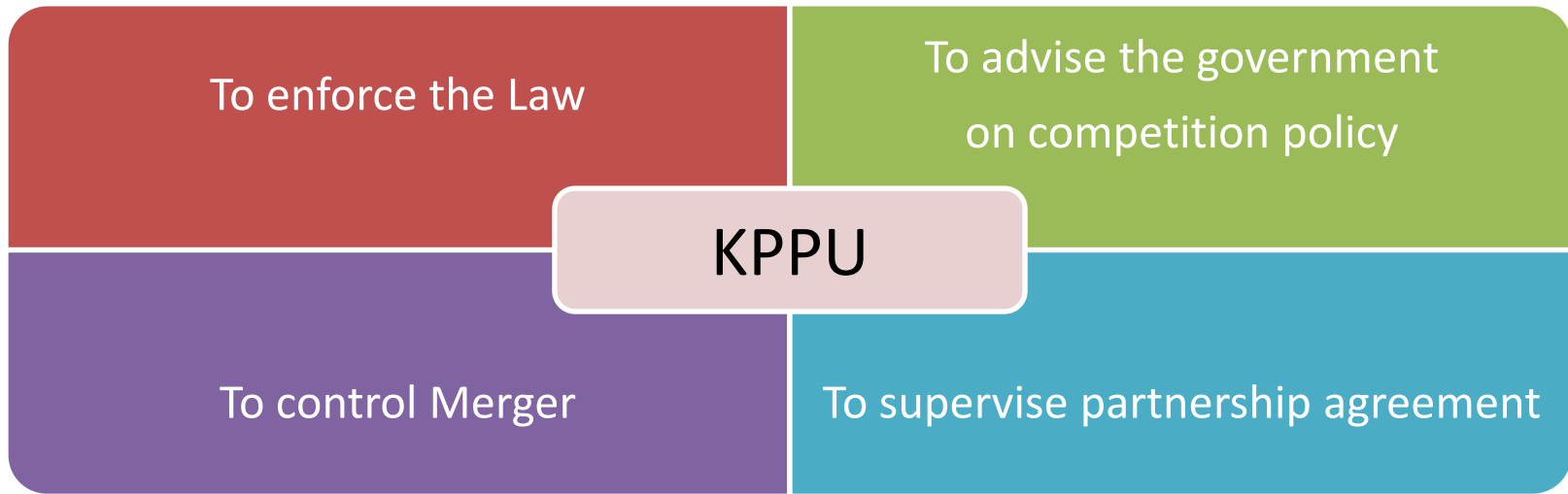


KOMISI PENGAWAS PERSAINGAN USAHA

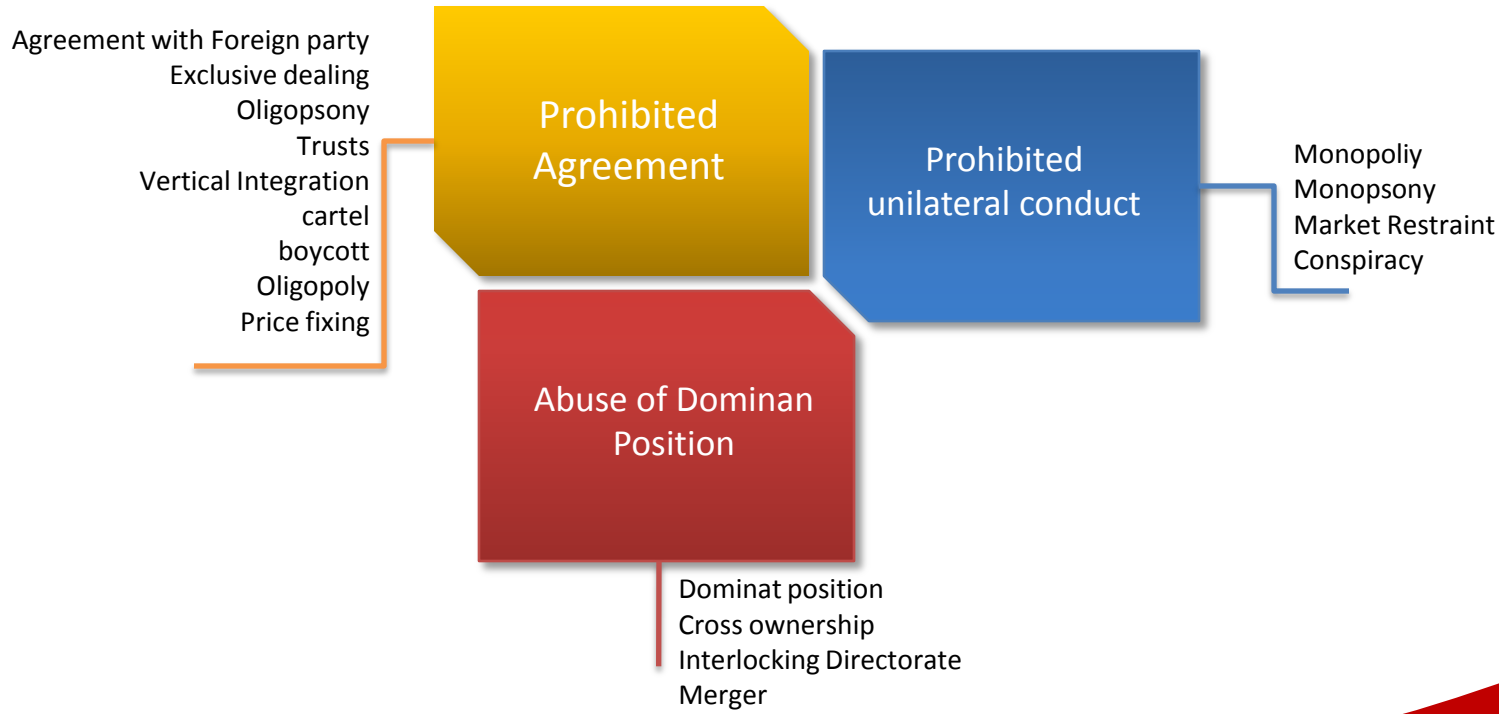
Gedung KPPU
Jl. Ir. H. Juanda No. 36
Jakarta Pusat
Indonesia 10120

Competition Commission (KPPU)

Competition agency which supervise business competition based on law No. 5 year 1999 concerning prohibition of monopoly practices and unfair business competition



Competition Law



PROHIBITED AGREEMENT ?

- Resale Price Maintenance (article 8)
- Market Division (article 9)
- Vertical Integration (article 14)
- Tying Agreement (article 15)
- Exception :
 - Agency agreement
 - Franchise agreement

Resale Price Maintenance (article 8)

- Business actors shall be prohibited from entering into agreements with other business actors setting forth the condition that parties receiving the goods and or services shall not sell or resupply the goods and or services received by them, at a price lower than the contracted price, potentially causing unfair business competition.

Dividing Territories (article 9)

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

Trust (article 12)

- Business actors shall be prohibited from entering into agreements with other business actors to engage in cooperation by establishing a joint company or a larger company, by keeping and maintaining the continuity of each respective company or its members, with the aim of controlling the production and or marketing of goods and or services, which may cause monopolistic practices and or unfair business competition.

Vertical Integration (article 14)

- Business actors shall be prohibited from entering into agreements with other business actors with the aim of controlling the production of several goods constituting products which are included in the production chain of certain related goods and or services whereby each production series is the end product of processing or further processing, either in a direct or indirect series, which may potentially cause unfair business competition and or may be harmful to society.

Tying Agreement (article 15)

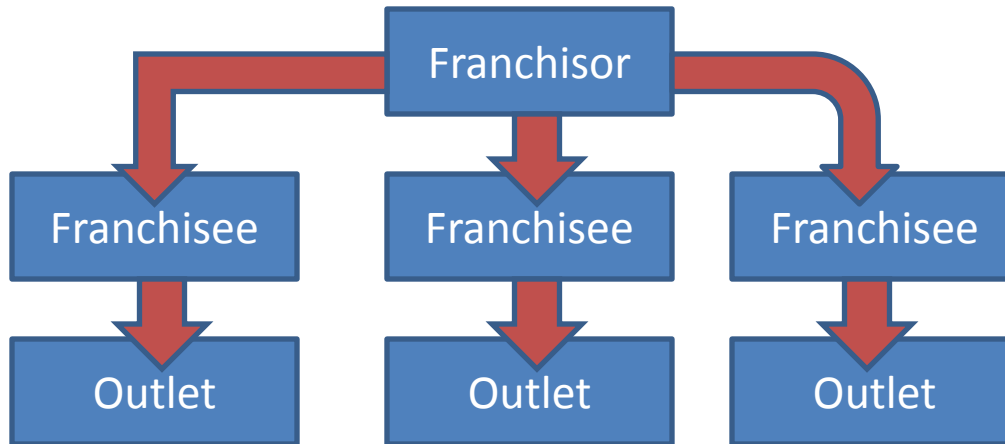
- (1) Business actors prohibited from entering into agreements with other business actors setting forth the condition that the party receiving the goods and or services shall only resupply or shall refrain from resupplying the aforementioned goods and or services to certain parties and or at a certain place ;
- (2) Business actors shall be prohibited from entering into agreements with other parties setting forth the condition that the party receiving certain goods and or services must be prepared to purchase other goods and or services from the supplying business actor.
- (3) Business actors shall be prohibited from entering into agreements concerning prices or certain price discounts for goods and or services, setting forth the condition that the business actor receiving goods and or services from the supplying business actor:
 - a. must be prepared to purchase other goods and or services from the supplying business actor; or
 - b. shall not purchase the same or similar goods and or services from other business actors that are the competitors of the supplying business actor

Agency agreement

- The agency agreement is related to the agreement which the agent acts solely on behalf of the principal as stipulated on Commission Regulation No. 7 Year 2010
- The characteristics of agency agreement are:
 - a. agent acts on behalf of the principal;
 - b. selling price of goods or services is determined by principal;
 - c. principal takes risks resulted from a transaction between its agent and third party;
 - d. the relation of principal-agent agreement is in first degree relation;
 - e. instead of profit income, the agent accepts commission fee from its principal.

Franchise agreement

“A Franchise Agreement is a legal, binding contract between a franchisor and franchisee.”
The franchisor operates a pilot operation in the target market and then directly grants franchisees a right to operate one (or a number of) units.



Based on Article 50 letter B, which cannot be implemented:

- a. resale price maintenance unless it is in recommended price.
- b. requirements to purchase goods/services only from the franchisor or other party designated :
Franchisor may not prohibit the franchisee to purchase the supply of goods/ services from other parties, as long as the goods / services that meet the quality standards that hinted at the franchisor.
- c. requirements to purchase other goods / services from the franchisor (tie-in)
obligation to buy another product that is not a part of their franchise package.
- d. restriction area:
area restrictions are not done in order to establish a franchise network system but rather to limit the market and consumers.
- e. requirement for not doing the same business activities for a certain period after the expiration of the franchise agreement unless it's aim is to protect IPR and franchise reputation

Conflict of norms?

The Supreme Court Decision

- The Supreme Court decision No. 1 K/KPPU/2006, January 18, 2007 uphold KPPU decision No. 2 year 2005
- The defendant must stop minus margin condition to its suppliers

Minister of Trade Regulation

- Minister of Trade Regulation No. 70/M-Dag/PER/12/2013 concerning guideline on structuring and management of traditional market, shopping centre and modern store
- Article 10 cooperation agreement between supplier and Department store must have trading terms as follows:
 - a. trading terms is not applicable
 - b. suppliers of goods to department stores only charge in *margin cost* and may be subject to additional margin and other costs according to the agreement of both parties

Thank you



KOMISI PENGAWAS PERSAINGAN USAHA
<http://www.kppu.go.id>

DISCLAIMER:

The opinions expressed in this presentation and on the previous slides are solely those of the presenter and not necessarily those of KPPU. All information included here falls under the fair use of the Indonesian law for the openness of public information. The presenter strives for accuracy of any data and information in these slides, but cannot be held responsible for any errors in those featured. Any quotation from the slides is allowable by mentioning or referring to the source. Thank you.

For more information, annual reports, articles, and other publications, please visit our official web page.

ADDRESS:

KPPU Building
Jl. Ir. H. Juanda No. 36
Jakarta 10120, Indonesia
P. +6221-3507015/16/49
F. +6221-3507008
E. infokom@kppu.go.id
E. international@kppu.go.id

 [Facebook.com/KPPUINDONESIA](https://www.facebook.com/KPPUINDONESIA)

 [@KPPU](https://twitter.com/KPPU)