

# Procedure for Handling Monopolistic and Unfair Business Practice Cases under KPPU Regulation No. 2 of 2023

The Indonesian Commission for the Supervision of Business Competition (“KPPU”) has issued KPPU Regulation No. 2 of 2023 on the Procedures for Handling Monopolistic and Unfair Business Practice Cases (“KPPU Reg. 2/2023”), which came into effect on 31 March 2023. On the same day, KPPU revoked its previous regulation on the same matter (i.e., Regulation No. 1 of 2019<sup>1</sup>).

## Important Changes in KPPU Reg. 2/2023

We note that some notable changes in KPPU Reg. 2/2023 as below:

1. Cases will be handled electronically.
2. Introduction of new stages: ‘Preliminary Investigation’ and ‘Quick Examination’.
3. Acceptance of behavioral change applications can be submitted during the investigation stage.
4. Detailed definitions of evidence, including witness statements, expert statements, letters and/or documents, inference, and statements from the reported party.
5. Recognition of the reported party’s right to a proper summons.
6. Acknowledgement that data and/or information submitted to KPPU will be treated as confidential.

## Procedure and Timeline for Case Management

For a comprehensive understanding of how monopolistic/unfair business practices are to be handled by KPPU, following is a summary of the procedure and timeline under KPPU Reg.

2/2023.

### **The First Stage: Preliminary Investigation**

This is a newly introduced stage. Under KPPU Reg. 2/2023, a preliminary investigation can be initiated either through (i) reports, or (ii) by the KPPU's initiative. If based on a report, it must be prepared in Indonesian and may include the following supporting documents:

1. a photocopy of the identity card;
2. a copy of the company's deed of establishment; or
3. letters and/or documents as forms of evidence of the alleged violation of the law.

The identity of the reporting party will be kept confidential by KPPU unless the reporting party claims for compensation for the reported violation.

Reports can be submitted electronically or directly to the KPPU's main office or regional offices. Once submitted, a report may not be withdrawn by the reporting party.

KPPU should complete the preliminary investigation within:

- 30 working days of receipt of the report and can be extended (for preliminary investigations based on reports); or
- 14 working days of the formation of the KPPU task force and can be extended (for preliminary investigations based on the KPPU's initiative).

The preliminary investigation may result in either KPPU recommending the case proceed to the investigation stage or cessation of the case. If a further investigation is recommended, the reporting party will be notified within 14 working days.

### **The Second Stage: Investigation**

During the investigation stage, which lasts for up to 60 working days of the receipt of the report (and can be extended), KPPU may undertake various actions, including:

1. Summoning and presenting witnesses, experts, and/or the reported party for questioning.
2. Conducting site visits and examinations.
3. Requesting assistance from a full investigator<sup>2</sup>, including in witnesses or the reported party who are unwilling to comply with the summons for questioning.
4. Obtaining letters, documents, data and information related to the case, including economic evidence and communication evidence.
5. Collecting market data to gain clarity on industry characteristics, determine the relevant

market, and analyze the impact of violations.

6. Obtaining data on the assets and turnover of the reported party.

Witnesses and/or reported parties who are summoned, either directly or electronically, must comply with the summons to provide a statement and with the KPPU's request for letters and/or documents. Failure to comply may lead to the KPPU investigators requesting assistance from a full investigator to present them or referring the case for a full investigation (penyidikan) in accordance with the applicable laws and regulations. It is currently KPPU's stance to not allow staff members who accompanied company representative(s) when giving statements as a reported party, to be named witnesses in the investigation. KPPU's reason behind this is that such staff members, when accompanying the company representative(s) are acting on behalf of the reported party and therefore may lack objectivity when providing witness statements.

The investigation can result in one of the following outcomes:

1. Transfer of the case to the filing stage.
2. Cessation of the investigation. KPPU will inform both the reporting party and the reported party of the cessation of investigation.
3. Request for behavioral change.<sup>3</sup>

### **The Third Stage: Filing Stage**

The filing stage is carried under the following circumstances:

- (i) KPPU investigators have completed the investigation;
- (ii) KPPU rejects a request for behavioral change; or
- (iii) KPPU assesses that the behavioral change is not implemented.

The filing team has up to 30 working days from the date of the handover of the investigation report to assess its feasibility for presentation to KPPU. If the investigation report is deemed feasible, the filing team must present the case to KPPU within 14 working days from the date the filing team approves the report.

On the other hand, if the investigation report is not deemed complete or clear, the KPPU investigators have 30 working days (extendable for another 14 working days) to revise the report. Following the revision, the filing team will have 30 working days to reassess the completeness of the revised investigation report. If the filing team determines that the investigation report is still not suitable for presentation, it will return the investigation report along with a recommendation to cease the investigation.

Once the investigation report is declared complete, the filing team should present the report at a meeting with KPPU. If the filing team's presentation is acceptable to KPPU, the case will be referred to the preliminary examination stage, chaired by the KPPU's Commission Panel, which consists of at least three KPPU members.

#### **The Fourth Stage: Preliminary Examination – Quick Examination**

The preliminary examination stage lasts for up to 30 working days, during which the presiding KPPU's Commission Panel must summons both the KPPU investigator and the reported party with a proper summons<sup>4</sup>. In this stage, the KPPU investigator will present the report on the alleged violation and the reported party can either deny or admit the allegation.

If the reported party denies the allegation, it must submit a response to the allegation, as well as a list of evidence to support its position. However, if the reported party admits the allegation, it must submit a response stating that it will not submit any evidence to deny the allegation and/or it will apply for a behavioral changes<sup>5</sup>. The things that may be assessed by KPPU on whether or not approving a behavioral change application include the period of violation, the significance of the actual impacts of the violation, the form of violation. Such assessments will be conducted on a case-by-case basis.

If the behavioral change application is:

- **approved**, KPPU will supervise the implementation of the behavioral change and if KPPU found that the reported party failed to commit to the approved behavioral change, the proceedings against the reported party will be resumed by KPPU; or
- **denied**, with the reported party's consent, the case may proceed with either **(i)** a quick examination procedure, or **(ii)** to the further examination stage.

In cases where all the reported parties admit the allegation, the KPPU's Commission Panel will proceed with the quick examination procedure. In this procedure, the Commission Panel will render a ruling stating that the reported party is proven to have violated the law. On the other hand, if some of the reported parties deny the allegation, the case will be referred to the further examination stage and leniency will be provided to the reported parties that admit the allegation.

#### **The Fifth Stage: Further Examination / KPPU Ruling**

This is the final enforcement stage under KPPU Reg. 3/2023. The further examination stage lasts for up to 60 working days, extendable for another 30 working days. During this stage, the KPPU Commission Panel conducts the following activities:

1. examination of evidence;
2. site visit examinations; and/or
3. submission of the conclusion of trial result by the KPPU investigator and/or the reported party.

The further examination stage is generally open to the public unless there is a specific request by the KPPU investigator and/or the reported party to examine confidential evidence.

The KPPU Commission Panel deliberates based on, among others, **(i)** the quick examination, and **(ii)** the further examination. The result of the deliberation is then read as the KPPU's ruling on the case within 30 working days of either **(i)** the preliminary examination (for cases tried using the quick examination procedure), or **(ii)** the further examination stage.

The excerpt and copy of the KPPU's ruling must be given to the KPPU investigators and the reported party within 14 calendar days of the reading of the ruling. Subsequently, the reported party must comply with the ruling within 30 working days of receiving the official excerpt and a copy of the ruling or after its publication on the KPPU's website. To enforce such compliance, KPPU may, among other perform certain actions such as announcing in the printed or electronic media that the decision of KPPU has not been implemented by the reported party and/or requesting an executorial order from the commercial court.

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[1] Revoked by KPPU Regulation No. 6 of 2023

[2] Indonesian National Police officials or certain civil servants granted special authority by law to conduct full investigations (penyidikan).

[3] Not applicable for violations of Article 5 (price fixing), Article 9 (market area allocation), Article 11 (cartels), Article 22 (bid-rigging), and Article 29 (late merger filing) of Law No. 9 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (“**Indonesian Competition Law**”).

[4] Under Article 15 of KPPU Reg. 2/2023, a proper summons is, among others, a summons that is received at least 3 working days before the date of the investigation or examination.

[5] Not applicable for violations of Article 5 (price fixing), Article 9 (market area allocation), Article 11 (cartels), Article 22 (bid-rigging), and Article 29 (late merger filing) of the Indonesian Competition Law.

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If you have any questions, please contact:

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