

BEEF IMPORT CARTEL

On 22 April 2016, the Business Competition Supervisory Commission (KPPU) found 32 importer and feedlot companies in violation of Articles 11 and 19(c) of the anti-monopolies law and levied fines totaling over Rp. 107bn (approximately USD8m at current exchange rates).

Article 11 of Law No. 5/1999 prohibits production and distribution cartels, while Article 19(c) prohibits anti-competitive actions which may limit the supply of goods in the relevant market. In this case, the relevant market was the trade of imported cattle in Jakarta, Bogor, Depok, Tangerang and Bekasi (Jabodetabek).¹

This case stems from the behavior of trader and animal abattoir (slaughterhouse) associations in the Jabodetabek area, which suspended operations in early 2013 and in early August 2015 in reaction to a sharp increase in the price of imported cattle. The KPPU found evidence of an agreement between competitors to regulate marketing and sales through the Association of the Indonesian Meat Producers and Feedlots (APFINDO).

The case brings to the fore again the KPPU's concern with the role of industrial associations and their role in facilitating cartel behavior such as the exchange of pricing and other sensitive commercial information. The most recent preceding cartel case, regarding car tires, also involved an industrial association. In the KPPU's view, an industrial association is an instrument formed by business actors, the purpose of which is to facilitate communication between the members and the Government as the regulator, and for information sharing regarding recent regulations issued by the Government. It should not be a forum for discussing sensitive commercial matters regarding production, distribution and pricing between competitors.

From a technical perspective, the KPPU appears to have glossed over the question of consumer losses, which may cause it difficulties on appeal to the District Court, as both Article 11 and Article 19 are rule of reason provisions (the KPPU needs to prove consumer losses or injury to the public interest).

Another matter of interest is the KPPU's exposition of its views on what constitutes an 'agreement', in which it explores the meaning of agreement under Article 1313 of the Indonesian Civil Code (BW) and Article 1 paragraph 7 of Law No. 5/1999 and then goes on to discuss concerted actions, noting in the end that in this case the 'agreement' was fulfilled by the APFINDO facilitation during a series of meetings, followed by the concerted action of the members.

In any case, an important take-away message is that the beef import cartel case reinforces the KPPU's willingness to tackle food cartels as one of its seven strategic sectors.²

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13 July 2016



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¹ http://www.kppu.go.id/docs/Putusan/2015/Putusan_104-2015_Up06062016.pdf

² The others being education, health, energy, infrastructure, logistics and banking sectors.

Makarim & Taira S. Practice Profile
Matters concerning the KPPU (Competition Law), Litigation, Transactional



Makarim & Taira S. has an experienced team of lawyers handling KPPU matters (competition law) in Indonesia. With an experienced team of local corporate/transactional lawyers and litigators, a technical advisor with 12 years' experience at the competition regulator (KPPU), most recently as Senior Investigator (2009-2015) and a foreign legal consultant to assist with client matter management, Makarim & Taira S. has the full range of expertise to handle Indonesian competition law matters and to advise and represent clients in their dealings with the KPPU.

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