Considering Competition Law in Indonesia: Challenges and Approaches

INTRODUCTION

In 1999, Indonesia introduced a domestic competition law (called Law No. 5 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition) intended to accompany Indonesia's economic reform process. In June 2000, the 11 members of the Commission for Business Supervision (KPPU) were appointed by the President of Indonesia and the KPPU began its operations. On October 18, 2000, the APEC Study Center, the Center on Japanese Economy and Business and the School of International and Public Affairs at Columbia University hosted a workshop to discuss the policy challenges facing the new Indonesian competition agency and more generally competition authorities around the world. A diverse group of experts participated in the workshop including: competition officials from Indonesia, South Africa, Ireland, France and the United States along with scholars, antitrust experts, economists, lawyers, political scientists and experts on Indonesia. Excerpts from the discussion are presented below.

ROUNDTABLE DISCUSSION

Merit E. Janow
Professor in the Practice of International Trade
School of International and Public Affairs,
Director, Program in International Economic Policy
Co-Director APEC Study Center
Columbia University

Columbia University and the Centre for Strategic and International Studies (CSIS) in Jakarta have underway a two-year project on investment, competition, trade, and corporate governance reform in Indonesia, entitled *Columbia-CSIS Program on Economic Institution Building in a Global Economy*. The purpose of this USAID-funded effort is to offer policy relevant advice to Indonesian policy makers and other experts as they consider further reforms in these areas of economic activity. This workshop is the third of its kind initiated by the Program. The first workshop was held in conjunction with Georgetown University Law School last March in Washington D.C. At that gathering, a variety of university-based experts who are providing advice to the Indonesian government on economic matters, along with representatives from the World Bank and the Federal Trade Commission, assembled to exchange views and perspectives. A second workshop was hosted by CSIS in Jakarta in May 2000. Members of the Columbia-CSIS Program presented papers on each of the four areas under examination by the Program and engaged in an active discussion with invited Indonesian policymakers, business executives and academics, among others.

This workshop focuses specifically on the challenges facing the new Indonesian competition agency. Wherever possible and appropriate, the Columbia-CSIS program is attempting to offer comparative international data and perspectives. This workshop has benefitted from the participation of experts from both developed and developing nations as well as mature and young competition systems. The workshop aimed to have officials and experts offer informal perspectives on the challenges to sound

enforcement of competition laws that arise in each jurisdiction. To facilitate discussion, participants were invited to comment on a series of questions: What are the defining characteristics or objectives of competition law and policy in their jurisdiction? What are the institutional and analytical requirements of sound enforcement? What steps have been taken, if any, to make the work of the competition agency known, credible and supported within their domestic communities? How are domestic enforcement priorities selected, and what are they? Is there a role for citizen or competitor complaints? What is the relationship between competition policy and other areas of economic law and policy management?

Dr. Syamsul Maarif
Vice Chairman
Supervisory Commission for Business Supervision (KPPU)

In March 1999, the current Indonesian competition law was adopted by the Indonesian Parliament. The circumstances that led to the passage of this law are unusual in that it was tabled by the Parliament; it did not come out of the government. This was not the first time that Indonesia had contemplated introducing such a law. Indeed, about twenty years ago there was some consideration of the merits of having an anti-monopoly law, but this idea was not welcomed by the government at the time. Instead, government policy looked favorably on big enterprises. At present, Indonesia has introduced a competition law but it is still dealing with the after-effects of economic crisis.

The law is comprehensive, providing rules and guidance both with respect to substantive and procedural matters. Law number 5, as it is sometimes called in the vernacular, has some standard features--e.g., the identification of practices that are permissible under either a rule of reason or per se standard. The law covers monopolistic practices, price fixing, price discrimination, cartels, trusts, and vertical integration, among other features. Importantly, the law deals with both prohibited agreements *and* activities.

Two institutions are responsible for enforcing the law: the Competition Commission and the courts. The Commission has the initial responsibility for enforcing the law. Decisions can be appealed to the first district court. The Commission is an independent body comprised of 11 members appointed by the President. The jurisdiction of the Commission is broad and it has four main duties: (1) A *legal function*, as the only institution that supervises the implementation of the law; (2) an administrative *function*, since the Commission is responsible for adopting and implementing regulations; (3) an *adjudicative function*, since the Commission accepts private complaints, conducts independent investigations, conducts hearings with all parties, and renders a decision; and (4) a *police function*, since the Commission is responsible for enforcing its decisions.

Commission decisions can be appealed to the District Court, with a final appeal to the Supreme Court. Complaints involving the competition law have a thirty day deadline, which applies both to the District Court and the Supreme Court. Enforcement procedures operate as follows: the

Secretariat first examines a document to see that the complaint is complete. Then, an initial investigation is carried out by the Commission, which must be completed in thirty days. This thirty day schedule can be very tight and difficult to implement. After the initial investigation, if all Commission members review the record and find sufficient cause, the Commission may then decide to launch a full-scale investigation. The formal investigation is conducted by a panel, which includes three members of the Commission. The panel has sixty days to conduct the investigation, with the possibility of another thirty day extension if necessary. The panel can ask all affected parties to participate in some fashion and may conduct site visits. In the event that parties do not cooperate, the panel can seek and obtain assistance from the police, particularly by requiring all parties to attend any scheduled hearing. During the investigation, the panel can obtain a second opinion. Thirty days after the close of the investigation, the Commission must issue a decision, which must be read in a session that is open to the public. This represents a binding and final decision of the KPPU. The losing party then has thirty days to comply or contest the decision and initiate an appeal. If the respondent has not complied with the decision after thirty days, the Commission can then either submit a request to the court for a decree or initiate criminal proceedings.

Various steps have been taken to introduce transparency into this law and its operation. For example, the Commission notifies the complainant if the complaint is not complete; deadlines associated with each step of the process are clearly indicated; lawyers can be brought into the proceedings; and the final decision is read in an open hearing. In most circumstances, it is expected that the arguments of the Commissioners will be published along with all of the associated opinions of individual Commissioners, including dissenting opinions.

Vice Chairman Maarif also commented on some features of the Indonesian policy environment that pose significant challenges to the Commission and the smooth operation of the law. First, he noted that there was some discrepancy between the law as structured and public expectations. Many Indonesians believe that Indonesia's competition law is overly influenced by the West, especially by the World Bank and the IMF. For this reason, its legitimacy is not fully established. Further, Indonesia is still recovering from the economic crisis. The population is under great economic strain. This is not an easy environment in which to consider opening up the market still further to competition. Third, there is a spirit of revenge in some parts of society--with reformists challenging the old regime and small business seeking to redress abuses by big business, among other examples. It is not uncommon to hear the view that companies that were previously protected by President Suharto should have to pay some price for their earlier privileges and that small firms should now be given a chance to succeed. The legal system is also in a state of uncertainty and there is a gap between how laws are structured on the books and how they operate in practice.

David Lewis
Chairperson
Competition Tribunal, South Africa

South Africa's new competition law and its associated institutions are only 13 months old. There are three institutions now responsible for competition law: an agency responsible for prosecuting and investigating cases, which is the competition commission itself; a competition tribunal, which is an administrative tribunal that has exclusive jurisdiction over competition matters***;*** and the competition appeal court, which is a special division of the high court, and is the body to which decisions made by the tribunal can be appealed.

A number of very significant institutional changes were introduced in the revised system. First, the competition law and enforcement system is designed to operate independently from the political decision-making process. The government has now abdicated all authority and veto power with respect to the implementation of the Competition Act, but for a minor exception in the case of bank mergers. This change was itself a remarkable and courageous reversal on the part of the government. Further, there is now a clear separation of the investigative authority from adjudicative authority, which has helped to establish the credibility of the system. Third, the Competition Tribunal now has exclusive jurisdiction over competition matters, which has therefore removed the high court from competition matters, although appeals are taken to a division of the High Court.

These positive developments notwithstanding, South Africa continues to face a number of enforcement challenges. Reforming this branch of law and policy in the context of a new constitution has resulted in a number of constitutional and jurisdictional challenges, which still continue. For example recently the jurisdictional responsibility of the competition commission over regulated industries has been challenged. This is emblematic of a process that continues to unfold. A second challenge has been to identify and learn skills that are required to administer this law properly. The new South African agency often faces formidable resources on the part of those firms that come before the Commission. And, while the Commission has bright talented young lawyers and economists on its staff, there is sometimes a disparity in the level of experience that must be overcome by the Commission. South Africa has benefitted from some technical assistance to help with this problem. A third challenge lies in identifying enforcement priorities. In South Africa's case, the sheer volume of complaints has forced the competition authority into a reactive role. And finally, the law embodies many diverse objectives. Competition is a top priority but the law embodies other values as well, including: employment objectives, protection of small businesses, supporting diversity of ownership among the black population, etc. Balancing and appropriately managing these issues can be complex, especially in the context of mergers. This requires both discretion and judgement. It is hard to imagine a South African law that did not embody these various objectives but, at the same time, sound enforcement practices require that officials manage these different objectives in an appropriate and non-protectionist fashion.

Early developments have been very positive. The Commission and the tribunal have operated in a very transparent fashion, judgements have been widely disseminated and there has been wide public discussion and debate of decisions. It is incumbent on the South African competition officials to

demonstrate to the public that the tribunal operated in an efficient and non-corrupt fashion and that it is committed to establishing its public credibility and undertake speedy adjudication of merger disputes.

John Fingleton
Chair, Irish Competition Authority

The Irish law has been in effect since 1991 but, in 1996, the competition commission was turned into an enforcement body. The enforcement activities of the agency are particularly important because cases are brought before the court. The law provides a private right of action and also provides criminal sanctions, which are recently being utilized to a degree.

The Irish policy environment appears to share several similarities with other systems discussed at this workshop. First, it is relatively new and the legal system still retains a degree of uncertainty. Second, the competition agency itself lacks much public support and hence the agency is obliged to focus on public relations and effective interaction with the press. These are significant obstacles, but Ireland also has certain advantages. Competition policy is governed by the Treaty of Rome, which does have supra-national authority and legitimacy. This can insulate the competition agency from challenge to a degree that is perhaps unavailable in other jurisdictions.

At present, the agency is still in the process of articulating its core standards. It has decided to attack cartels as a top priority but recently has also decided to take on state restrictions on competition, entry and mobility. The Irish law provides a private right of action. This is useful because the agency does not bear the full and only responsibility for bringing cases; parties can initiate their own matters. The rights of complainants are very important in Ireland; hearings should protect complainants particularly in cartel cases where they may not want to be identified.

Competition officials are also faced with the challenge of dispelling common myths about competition policy. For example, one such myth is that competition policy is in direct conflict with industrial policy. Another myth is that there is a conflict between increasing employment and competition policy. Further, it is sometimes argued that as a small open economy, Ireland must embrace every merger.

The Irish agency has benefitted from some technical assistance from abroad and from having skilled professionals, often trained abroad, on its staff. This has enhanced the quality of the agency and its decisions.

Frederic Jenny
Vice Chairman, Conseil de la Concurrence (Paris)
Chairman, WTO Working Group on Trade and Competition Policy

Chair, OECD Committee on Competition Law and Policy

Dr. Jenny noted that this roundtable is discussing a subject that is now under discussion in many parts of the world and in a variety of international fora including the WTO Working Group on Trade and Competition Policy and at the OECD. He highlighted several questions or issues that emerged from this workshop and are also surfacing in other global settings. For example, people are asking: Do we really need a competition law, particularly given the Asian crisis, or is this a law that has been imposed by international organizations or individual governments? What is the relationship between competition and economic development? Competition policy and industrial policy?

Dr. Jenny suggested that competition policy is progressive: as a country develops it needs more market based competition and less industrial policy. Korea's example may be particularly interesting. In Korea, it is widely seen that the financial crisis was transformed into a real crisis because there was insufficient attention to matters of efficiency or corporate governance. As a result, economic opportunities were denied to large segments of the population. Some Korean officials have expressed the view that the crisis would have been less severe if the government had sought to introduce greater competition and efficiency in earlier stages of development.

The question of values, as noted in the South African context, is also important and complex. South Africa's law incorporates a number of objectives, including diversity of capital ownership. While this might appear suspect from a purely economic point of view, it simply would not be a South African law if it was not structured in that fashion. Competition officials know that efficiency is not the only goal of competition laws, fairness is also an issue in many countries. Competition law and policy also reflects a political compromise.

Indeed, it is hard to think of competition law as separate from the legal and social reality of a country. There has been discussion in international circles about whether there is such a thing as a one-size-fits-all competition law and whether harmonization of law is a good idea or not. It is now generally understood that no such single or uniform approach makes sense. Even if one believes that competition policy and economic development can go together, this still does not answer the question whether competition law is actually necessary. Hong Kong officials often argue that they do not have a competition law but, nevertheless, have a policy environment that encourages competition. Some experts claim that even if competition is good for economic development, it can prove extremely costly. It is not uncommon to hear the argument that competition laws that are designed for developing countries must be very simple because they are costly and difficult to enforce. Having clear per se rules is one way of dealing with this problem. Even mature antitrust systems such as the United States have undergone shifts in emphasis over time.

What then are the core principles of competition law? Without going into the details of substantive core principles of competition law, Dr. Jenny noted that transparency is extremely important. Competition policy is an economic proposition but it is also a political project. Political democracy

and economic democracy are linked. The acquisition of economic opportunities can lead people to think about political opportunities. This explains why transparency of legal process and transparency of competition laws and policies are often seen as useful policy measures for countries making the transition from one system to another.

When considering the needs of enforcement agencies, Dr. Jenny drew attention to the role of advocacy and maintaining adequate prosecutorial discretion. He noted that the exact structure of an agency may not be the key to its effectiveness. For example, in some countries the agency has influence in economic policy making because the head of the competition agency is a member of the Cabinet. A truly independent agency that was not part of the executive branch may be less effective. In other countries, however, a separate and independent agency may be important to its credibility and influence. Whatever the exact institutional structure, achieving a degree of prosecutorial discretion is essential, especially for a new agency. Competition authorities need to be able to select cases that make sense and make a difference to the population--i.e., to go after anticompetitive practices that affect many people.

Clearly, as the South African and Indonesian examples illustrate, the cost of effective enforcement is high for many developing economies. Few judges have the necessary training in these matters. There appears to be a need for designing specialized courts or when this goes against the constitutional order to try to concentrate the cases towards a fairly small number of judges that can become rapidly conversant in this complex area.

John Bresnan
Senior Research Scholar, East Asian Institute

Prospects for the KPPU are grounded in a general observation that the elite of Indonesia have made a fundamental decision to disperse power. As a consequence, there is a program of reform underway in most areas of the economy and legal system. This is a very turbulent period in Indonesia. This is an important backdrop against which to consider the environment where the Competition Commission will carry out its work. Many bankers in Indonesia have broken the banking laws of the country but the government can not take all of them to court because who will then rebuild the banking system? Moreover, these bankers are tied to conglomerates; where does one start with reform? The strength of the former regime is readily apparent. The Indonesian government is having great difficulty addressing the problems of the Suharto era. It is to be expected that the crony capitalists will put up a serious fight if competition tries to act against them.

Further, at the present time, economic policy in Indonesia has become heavily politicized. The Ministry of Finance, the Bank of Indonesia, IBRA, etc. are all part of political turbulence. They are criticizing each other and competing with each other for control of turf. The KPPU (Indonesian Competition Commission) must look at these domestic interest groups, their relative access to financial resources and political parties, and recognize that the government is in a very weak position.

Parliament has felt free to overturn the decisions by IBRA. What would stop it from doing the same thing with respect to a decision by the KPPU? This cannot be ruled out. Finally, there is a danger that the investment community will see the KPPU as anti-Chinese and will adopt a wait-and-see attitude. If people want to be repaid for past wrongs and the Commission moves against those that profited from the earlier system then international anxiety and opposition is likely to surface as well. These are all very daunting challenges facing the new competition authority.

Robert Hornick
Partner, Morgan, Lewis & Bockius

Some features of the Indonesian competition law and policy system appear attractive while other parts are worrisome. For example, it may be a positive development that the Indonesian Parliament is now making law. Moreover, it is potentially positive that the adjudicating process will be governed by independent personnel not responsible to civil servants. This is unprecedented. The simple step of publishing decisions of the adjudicatory tribunal is also positive and unusual. At the same time, there are many troubling issues including: the substance of the law itself and the immense area that can be regulated. It is an unprecedented experiment to try to introduce a competition law into a country where the private sector is essentially bankrupt. It is not clear whether this law will really be helpful. Perhaps the most important first step for the agency is to ensure that it lives up to the maxim: do no harm. It is also important that the competition law not become an instrument of anti-Chinese sentiment.

Mark Joelson
Adjunct Professor and Co-Director of the Indonesia Project, Georgetown Law School

Conditions in Indonesia are certainly grounds for pessimism but this also needs to be put into perspective. The country has immense problems. It has not been open and ***is*** riddled with corruption and cronyism. Yet, if we believe in competition laws then proper enforcement on a non-discriminatory basis can help clear the problems *if* there is the will. Proper enforcement will open the economy to increased trade and foreign investment. There appears to be a real desire for reform in Indonesia and the belief that competition law can be a part of that reform process.

Eleanor Fox
Walter Derenberg Professor of Trade Regulation, NYU Law School

Indonesia is at the threshold of implementing its competition policy. It has the important challenge and opportunity to lay the groundwork for an effective policy. Obviously Indonesia must make any choices of its own and develop a policy suitable to its own economy. My own experience leads me to suggest the following. It is very helpful for a new competition agency to map out a plan of action that it knows that it can accomplish. It might, for example, in the first year choose to pursue the clearest restraints, such as price fixing and market division cartels and monopolistic action that blocks

market entry; particularly where the enforcement action can do the most good for the most people in making needed goods affordable. On the side of procedure and process, it is so important that decisions and action be transparent, and that they be neutral in the sense that the same rule is applied to all market actors in the same position. As a matter of internal transparency and efficiency in allocating the agency's own resources, it is always helpful for the agency to consider the costs and benefits of bringing contemplated action. In other words, to ask, for example: Will the particular enforcement help producers or consumers? Is it possible that a proposed action will raise rather than lower market prices, and if so is this a trade-off that the Commission wants to make? These three rules of thumb--priorities, transparency and neutrality, and foresight regarding the effects of enforcement--should stand the Commission in good stead as it begins to evolve an Indonesian competition policy.

Donald Baker
Former Assistant Attorney General Antitrust, U.S. Department of Justice
Partner, Baker and Miller

One problem that the new agency will need to try to avoid is what is sometimes called "the mailbag problem", meaning non-meritorious cases pouring through the doorway and subject to tight schedules. Indeed, a particularly disturbing aspect of the Indonesian system are the very tight timelines imposed by the statute. The agency will need to develop a mechanism by which it can get trivial but urgent cases dealt with as soon as possible. As a new agency with limited resources, limited precedents and considerable operational uncertainty, it is essential that the cases selected and undertaken are strong and meritorious. The message: pick cases carefully and then dramatize them because they serve to get the message out to the business community.

A difficult feature of competition is that when it is working it is an invisible hand. However those that are being inconvenienced by it are usually in opposition to it. The United States during the Depression put in a number of measures that were not very pro-competitive. For example, for a period of time even the U.S. tried to organize cartels under government supervision. This approach did not last long but is worth remembering because many competition agencies have felt under siege during periods of economic downturn.

William Kovacic
Professor, George Washington School of Law

Perhaps the best advice that Indonesian officials may receive is from other enforcement officials in other new systems. It may be particularly useful to hear the views from other enforcement officials from developing and transition economies because they will understand the intersection of the political, economic and social issues. As this discussion has served to underscore: new competition agencies are often fragile institutions that have very little political capital to begin with. They must, therefore, be particularly careful about how they start out. There have been some big failures. One

cause of failure is a mismatch between ambitious plans (sometimes contained in the competition law itself) and the political realities that competition officials face in doing their work. There is nothing more vital than to manage one's own agenda as carefully as possible. In other words, deflect demands to do too much too early; manage the enforcement agenda in a way that ensures that one is able to match commitments to resources.

The Indonesian law has some positive attributes but it also has some aspects that are a bit frightening. Per se rules can be useful tools. Yet, to an outsider, the fact that all of the provisions can be enforced criminally and individual violators can be put in prison is surprising and potentially worrisome. Indonesian officials will need to make clear to the business community when these harsh sanctions might be applied. The KPPU will need to establish that it will operate in a careful and conservative fashion.

Haryo Aswicahyono
Senior Economist
Centre for Strategic and International Studies

In examining the performance of manufacturing industries in Indonesia, economies of scale are an important variable to consider. Evidence suggests that economies of scale are important for firms to be globally competitive. But, this is difficult to achieve in Indonesia and there is also at present an anti-big mentality at work. The automotive sector is one example. The Indonesian automotive sector is comprised of some 25 small firms. How can these firms compete with a big company such as Toyota? While some sectors may sustain small firms, others cannot. This should be kept in mind by the KPPU. Another important variable for the KPPU is the question of government conduct and government enterprises. In the past, many forms of abuse of competition could be traced back to the government as the source of the market failure. It is very important that the KPPU be empowered to evaluate government policy and government regulation. A final issue to consider is the role of technology itself. In many sectors of the economy, telecommunications is a good example, technology can break through monopolies or concentrations. It may be useful for the KPPU to keep in mind the role that technology can play in increasing competition.

Edward Graham
Senior Fellow
Institute for International Economics

Dr. Graham focused on several economic examples. He noted that the automotive sector was interesting for several reasons. Looking at autos from a global perspective, there is likely to be a global consolidation in the industry to some 6-8 firms. Toyota is likely to be a very strong player under most any likely scenario. Indonesia, on the other hand, has a highly fragmented auto sector. It is also a protected sector of the economy. How should this protection be viewed? Is it in the best interest of the nation? If the various instruments of protection were to come down, Indonesian

consumers may benefit through more choice, lower prices and the importation of cars with emission technologies that are not currently in use in Indonesia. It is also true that indigenous produces may become uncompetitive and go bankrupt. This is a stark choice but is it better to have a local industry that is not up to world standards? It may be necessary for Indonesia to recognize those industries where it is not likely to succeed beyond the stage of infant industry protection.

Petros Mavroidis
Professor of Law, University of Neuchatel & Visiting Professor, Columbia Law School

Professor Mavroidis offered perspectives on the international debate underway about the intersection of trade and competition policies. He notes that the international discussion about what type of policies are appropriate at what level (domestic, international, etc.) often suffers from the lack of a comprehensive framework. It is not exactly clear what is at stake. Talking to the trade community, one gets the impression that a pure market access perspective (often unrelated to market power) is what is at stake: there is little doubt, in his view, that the US would have filed a WTO petition on Kodak v. Fuji even if Fuji had 1% of the Japanese market. Talking to the antitrust community, one gets the impression that what is at stake is some form of cooperation to address antitrust issues in an ever shrinking world--for example, bilateral antitrust cooperation treaties focus on cooperation in enforcement matters, usually collecting information but often extending beyond that.

One potentially useful way to conceptualize a framework is to task the simple question: "has globalization made a persuasive case for moving the level of regulatory intervention in antitrust issues away from the nation state and into the international plane?" If the answer to the first question is affirmative, the adjunct question is: which issues then should be internationalized and who would be the players--some states, all states? Viewed from this angle, one could rid the existing debate of ideology and argue that the appropriate benchmark is not whether there is a role for the WTO or the antitrust community but indeed more generally the perspective gains from international cooperation.

The starting point in this debate must be that trade and competition policy are not complete surrogates. Rather the opposite is true: even the most liberal trade policies cannot do much about cartels and firms with market dominance in the non-tradable sectors of a national economy. Competition policy is thus recommended independently of the degree of market openness to imports. Moreover, small economies often face a situation where they source only from a few exporters and in such cases competition law could prove a useful deterrent against cartel like practices. The desirability of enacting national competition policies is hence logically delinked from the debate regarding the internationalization of competition policies. The quality of regulatory intervention can only be enhanced through contacts with other authorities. Comparative antitrust serves this purpose: although markets differ, some basic economic truths are applicable cross-border. Learning from experience of the other is also a stepping stone in the internationalization of antitrust: it can help authorities realize whether some issues should be left to national discretion or whether some form of

cooperation is indeed necessary.

Hugh T. Patrick
R.D. Calkins Professor of International Business
Director, Center on Japanese Economy and Business
Columbia Business School
Co-Director, APEC Study Center

The preceding discussion has been very useful. It points to both the importance and the difficulties of creating and building new strong economic institutions in general, and the Indonesian competition commission (KPPU) in particular. As the experience in the other countries reported here indicates, it is essential to establish the credibility of the KPPU, and transparency is one very important mechanism. While the commissioners have to deal with the complex Indonesian legal and social realities, those realities are indeed changing and KPPU has an opportunity to make those changes be for the better.

The immediately preceding discussion about the automotive industry indicates the importance of careful empirical economic analysis of the costs and benefits of protection and competition policies for any specific industry. For example there is complementarity between certain types of production that are large scale, such as auto assembly, and those related activities that are not based on economies of scale such as some component parts production, and especially auto repairs, maintenance and servicing. Much of the industry is devoted to such repair work and maintenance and these generate or create jobs. Thus, even if Indonesia should not be producing autos this does not mean that it should not be in the automotive sector. In fact, protection in Indonesia in autos could be quite low but the sector could generate many small businesses and jobs.

Summary and Conclusions

The workshop discussed recent developments in Indonesia's efforts to introduce a competition law and enforcement system and also highlighted the problems and challenges that new competition regimes anywhere in the world are likely to confront. A few of the themes revealed through the discussion included:

- Many new competition policy regimes are under pressure to demonstrate to their publics how this policy area can support economic development and how it intersects with other policy areas such as industrial policy and innovation policy. Competition policy officials will need to rise to this challenge.

- Competition policy officials around the world can face opposition to their enforcement actions by entrenched economic interests and anticompetitive arrangements that may stem back ultimately to the government. This is surely a problem in Indonesia but Indonesia is not alone.

- There is no uniform or single approach to competition policy that makes sense for all countries. Economic efficiency is an important objective of competition policies. It is not, however, the only value that countries have chosen to include in their competition laws.

- At the same time, sound enforcement has some identifiable attributes. For example, competition authorities must ensure that agency and enforcement practices are transparent and applied in a non-discriminatory fashion. It is also important that agencies efficiently manage the caseload so that a new agency is not simply responding to those cases that appear on the doorstep.

- Experts noted that new competition policy systems are often fragile institutions that have very little political capital, hence officials must be particularly careful about their early activities and enforcement officials must carefully weigh the costs of bringing a case.

- New competition agencies must identify early-on their enforcement priorities and select cases that are likely to generate positive responses in the domestic population. This can help to establish the credibility of the new agency.

- Every nation will have its own characteristics with respect to its absorptive capability. What may be particularly important for Indonesia over the medium term is to develop a cadre of specialists: economists, lawyers, accountants etc. that can help Indonesia improve its economic system.

Rangkuman dan Kesimpulan

Lokakarya ini membahas perkembangan terakhir dalam upaya-upaya meperkenalkan undang-undang persaingan dan penegakan hukumnya. Lokakarya ini juga membahas masalah-masalah dan tantangan-tantangan yang dihadapi oleh lembaga pengawas persaingan di berbagai negara. Beberapa hal terungkap dalam diskusi tersebut.

Di beberapa negara yang baru saja membentuk lembaga pengawas persaingan, masyarakatnya menuntut lembaga tersebut untuk menunjukkan bahwa kebijakan persaingan yang sehat dapat mendukung pembangunan ekonomi dan menunjukkan kaitan kebijakan persaingan dengan kebijakan-kebijakan yang lain seperti kebijakan industri dan inovasi.

Anggota komisi pengawas persaingan harus menghadapi tantangan-tantangan ini.
Anggota komisi pengawas persingan di berbagai negara seringkali menghadapi perlawanan dari pihak-pihak yang diuntungkan oleh pihak-pihak yang kepentingan ekonominya terancam oleh penegakkan hukum persaingan. Di samping itu, banyak bentuk-bentuk pengaturan ekonomi yang bersifat anti persaingan yang bila ditelusur kebelakang pemerintah ikut bertanggung jawab. Masalah-masalah ini

banyak terdapat di Indonesia namun Indonesia bukan satu-satunya negara yang menghadapi masalah-masalh tersebut.

Tidak terdapat satu pendekatan baku dalam penerapan kebijakan persaingan yang berlaku bagi semua negara. Peningkatan efisiensi ekonomi merupakan satu tujuan penerapan kebijakan persaingan. Namun tujuan tersebut bukan satu-satunya tujuan yang dicantumkan oleh beberapa negara dalam undang-undang persaingan mereka.

Namun terdapat kesamaan dalam upaya penegakan hukum persaingan. Misalnya, lembaga persaingan harus menjamin bahwa penegakan hukum persaingan bersifat transparan dan diterapkan secara tidak pandang bulu. Hal penting lain yang perlu diperhatikan adalah komisi persaingan harus menangani perkara-perkara secara efisien sehingga komisi yang baru dibentuk tersebut tidak hanya menangani perkara-perkara yang dilaporkan.

Pakar-pakar persaingan juga mengingatkan bahwa pada saat-saat awal penerapan kebijakan persaingan, sistem persaingan masih sangat lemah dan dukungan politik masih sangat terbatas. Jadi pejabat yang menagani kebijakan persaingan harus bersikap hati-hati dalam melakukan kegiatan awal mereka dan harus menimbang biaya dan manfaat dalam menetapkan suatu perkara perlu diproses atau tidak.

Komisi pengawas persaingan yang baru dibentuk, dimasa awal penegakan kebijakan persaing harus mengidentifikasi prioritas penegakan hukum persaingan, dan memilih perkara-perkara yang kemungkinan besar mendapat dukungan masayarakat. Tindakan ini dapat membantu meningkatkan kredibiltas komisi pengawas persaingan di mata masyarakat.

Masing-masing negara memiliki karakteristik berbeda dalam kemampuan menerapkan kebijakan persaingan. Hal penting yang perlu diupayakan oleh Indonesia adalah membentuk spesialis di bidang ini; termasuk di dalamnya pakar-pakar ekonomi, hukum, akuntansi dsb. Upaya ini akan membantu memperbaiki sistim ekonomi Indonesia.