

The Indonesian Commercial Court renders its first decision following the appeal procedure changes for competition cases

Overview

On 4 March 2021, the Commercial Court division of the Central Jakarta District Court upheld a decision of the Indonesian Competition Commission (*Komisi Pengawas Persaingan Usaha*, **KPPU**) in an objection filed by PT Conch South Kalimantan Cement (**Conch**) regarding Case No.03/KPPU-L/2020 (the **Cement Case**). The case concerned a violation of Article 20 of Law No.5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (**Competition Law**).

The Cement Case marked the first decision handed down by the Commercial Court following an appeal against a KPPU decision after the enactment of Law No.11 of 2020 on Job Creation (popularly referred to as the **Omnibus Law**), a law that recently introduced many important changes to a wide variety of laws to boost domestic growth and investment, and Government Regulation No.44 of 2021 on the Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition (**New Competition Regulation**).

Before the Omnibus Law was passed, an objection to a KPPU decision had to be filed with the relevant district court, not the Commercial Court (Please see our relevant client update on this matter [here](#)). Under the Omnibus Law and New Competition Regulation, the Commercial Court, which specialises in commercial disputes (including bankruptcy and intellectual property disputes) has expanded its jurisdiction to include appeals in competition cases.

Background

The Cement Case was initially based on public complaints that Conch was selling cement at a loss and/or at very low prices, causing unfair business competition. Article 20 of the Competition Law prohibits businesses from selling goods or services without making any profit or by setting a very low price with the intention of eliminating competitors (**Predatory Pricing**), resulting in monopolistic practices and/or unfair business competition.

On 15 January 2021, KPPU determined that Conch had sold its products at a loss in 2015 and at very low prices during the 2015-2019 period. This practice resulted in a significant increase in Conch's market share, but to the exclusion of five competing businesses from the relevant market in the South Kalimantan region from 2015 - 2019. Therefore, KPPU found Conch to have engaged in Predatory Pricing in violation of the Competition Law and imposed an administrative penalty of Rp22,352,000,000 (approximately US\$1.5 million) on Conch. In response to KPPU's finding, Conch appealed the KPPU decision to the Commercial Court at the Central Jakarta District Court on 3 February 2021.

The Commercial Court's Panel of Judges concurred with all the considerations that formed the basis for KPPU's decision, and affirmed KPPU's decision against Conch.

Further information

If you have any queries on KPPU's Predatory Pricing decision described above or have any other competition issues that may impact your business, please do not hesitate to get in touch with us. We are closely monitoring developments in the competition sector and will report them in future client updates.

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If you would like to discuss any aspect of this update, please feel free to contact us.



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