

## Indonesian competition authority starts 2021 with the first predatory pricing decision

21 January 2021

In a release, Komisi Pengawas Persaingan Usaha (KPPU) – the Indonesian Competition Authority, published its first Article 20 (Predatory Pricing) decision. The [KPPU Decision No. 03/KPPU-L/2020](#) was issued on a virtual hearing on 15 January 2021, whereby KPPU found that PT Conch South Kalimantan Cement (CSKC), subsidiary of Anhui Conch Cement Co. Ltd., to have violated Article 20 of the Law No. 5 of 1999 on the prohibition of monopolistic and unfair business practices (the Indonesian Competition Law). The full decision is yet to be uploaded and accessible to the public.

The examination of this case began on 23 June 2020 whereby previously, KPPU investigators looked into the sales of CSKC in 2015-2019 for Portland Composite Cement (PCC) in South Kalimantan. KPPU was convinced that the sales price of CSKC's PCC is on average lower than the base sales price of the same products throughout South Kalimantan. Furthermore, KPPU also found that in 2015 CSKC suffered a loss as a result of such conduct.

KPPU further assessed that since Anhui Conch Cement Co. Ltd. as the parent company of CSKC is a multinational company with strong financial fundamentals, they can provide support to allow CSKC to sustain such a loss. KPPU also stated that the conduct has forced five other players to leave the PCC market in South Kalimantan, making the relevant market more concentrated and prone to monopolistic and/or unfair business practices.

KPPU imposed IDR22,352,000,000 (around RMB10 million) of administrative fines to CSKC.

In accordance with Article 118 of the Law No. 11 of 2020 on Job Creation (the Omnibus Law) that amended parts of the Indonesian Competition Law, CSKC may appeal to the KPPU Decision within 14 days from the official receipt of the KPPU decision to the commercial court. If filed, this could be the first appeal to the commercial court filed under the new appeal regime.

However, complexities remain. Currently, the appeal procedure at the commercial court is yet to be determined by the government of Indonesia, and the regulatory instruments for this purpose have not yet been published. The government of Indonesia is preparing a draft of government regulation as an implementing regulation from the Omnibus Law that will regulate the appeal process, sanctioning, and calculation of fines in competition cases.

The KPPU decision is noteworthy, as it is unfortunately a further piece of evidence of the regulatory headwinds that multinational companies face when doing business abroad. Therefore, multinational companies need to step up their game and identify, assess, and mitigate regulatory risks.

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