



Navigating Online Platform Oversight: The Role and Challenges of Indonesia Business Competition Supervisory Commission

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ABSTRACT

This research aims to analyze how digital transformation impacts the behaviors of online platforms, which presents challenges for competition law. The business strategies and behavior of online platforms have raised concerns about their negative effects on the competitive landscape. These concerns include the legality of such practices and the necessity of specific regulatory measures. The research method is normative legal research with a conceptual approach, which involves identifying and analyzing legal issues and providing solutions. Based on the legal analysis, the results showed that the Business Competition Supervisory Commission (KPPU) faces challenges in regulating online platforms. These challenges consist of the regulatory challenges that must be addressed include the inadequate preparation of competition authorities, the influence of Indonesian culture on market behavior, and the substance of rules. Therefore, it is crucial for KPPU to properly navigate online platforms by establishing *sui generis* rules within the competitive landscape. In the context of a competitive business landscape, it is imperative to ensure oversight of online platforms, particularly given the preeminent position of this business model within the Indonesian market.

Keywords: Online Platform; The Supervision of Business Competition; The Role and Challenges of KPPU

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INTRODUCTION

The advent of information and communication technology has precipitated a paradigm shift in the realm of business transactions on a global scale.¹ The advent of the digital age has precipitated a paradigm shift in the global economic landscape, giving rise to a novel cultural epoch.² In Indonesia, the digital economy is undergoing rapid growth, with the Gross Merchandise Value (GMV) projected to reach approximately USD360 billion by 2030, potentially establishing Indonesia as the foremost digital market in Southeast Asia.³ The digital economy possesses the potential to become the primary catalyst for national economic growth. The digital economy is frequently referred to as the new economy because it has given rise to a variety of novel business models.⁴ The digital ecosystem is regarded as a novel engine that has engendered unprecedented challenges in the 21st century. This has resulted in the emergence of opportunities across various sectors, including education, culture, the economy, and the business world. In the context of business transactions conducted electronically, the development of more practical, modern, fast, easy, and cost-effective business transaction models has had a significant impact. These models have been shown to be more advantageous than conventional business transactions in a number of ways. The integration of technological devices and telecommunications systems fosters remarkable advantages in terms of ease, speed, and precision, thereby enabling businesses to achieve substantial benefits in their transactional processes.⁵

A significant consequence of this digital transformation is the emergence of large, online-based businesses, which present novel challenges for competition law practices. The business strategies and behaviors of companies based on online platforms have given rise to critical discussions about their effects on competition law. In any event, the establishment of legal frameworks is imperative to regulate business activities and prevent the emergence of conflicts.⁶

¹ Sascha Kraus, and others "Digital Transformation in Business and Management Research: An Overview of The Current Status Quo." *Internasional Journal of Information Management* 63 (2022) 102466, <https://doi.org/10.1016/j.ijinfomgt.2021.102466>.

² Dian Mega Erianti Renouw, *Perlindungan Hukum E-Commerce*, (Jakarta: Yayasan Taman Pustaka, 2017), 25.

³ Kementerian Komunikasi dan Digital Republik Indonesia, *Kominfo Perkuat Ekosistem Digital Nasional*. Available from: <<https://www.komdigi.go.id/berita/artikel/detail/kominfo-perkuat-ekosistem-digital-nasional>>. [Accessed: 21 July 2024].

⁴ Agus Sugiarto, *Mengenal Ekonomi Digital*, (Jakarta: PT. Kompas Media Nusantara, 2022), 5.

⁵ Mimma Maripatul Uula & Handika Surbakti, " Digital Economics in Indonesia: Development and Research Trend." *Digital Economic Review* 1, no. 1 (2023), <https://doi.org/10.58968/der.v1i1.473>.

⁶ Susanti Adi Nugroho, *Hukum Persaingan Usaha di Indonesia: Dalam Teori dan Praktik serta Penerapan Hukumnya*, Cetakan Ketiga (Jakarta: Prenadamedia Group, 2018), 1.

These corporations, which are substantial players in the digital economy, derive benefit from network effects, both directly and indirectly.⁷ This phenomenon enables businesses within the market to reduce their transaction costs. From the perspective of competition law enforcement, this business model is a unique and complex market model that necessitates a more intricate analysis of the market in question. These businesses leverage existing data (big data), utilize advanced technology, and invest significant capital to gain a competitive edge over their rivals.⁸

Conversely, new businesses encounter significant challenges in competing with these entrenched entities. Given the dynamic and innovative nature of online platforms, competition authorities should consider not only the efficiency offered by these platforms, but also other relevant factors.⁹ It is imperative that they develop the capacity to anticipate a range of business models, including those that may involve anti-competitive practices that differ from those observed in conventional markets.¹⁰ Therefore, ensuring the preservation of competitive levels in the digital era, particularly within the contemporary Indonesian context, is imperative to sustaining a secure and equitable market environment conducive to the operations of competing businesses and new market entrants. This is a crucial issue to address, as, in other countries as well, the enforcement of business models influenced by digitalization has become a separate concern for the relevant authorities.¹¹

Online platforms, as a phenomenon of the digital economy, have deleterious impacts that are not impossible to occur and will continue to arise in the future, despite their current potential and position.¹² This is the issue that will be examined in this study. Disruption is characterized by the emergence of novel business models that are not yet recognized by existing regulatory frameworks. This lack of recognition often results in barriers to entry, hindering the adoption of these new business models and impeding

⁷ Bundeskartellamt, *Working Paper – Market Power of Platforms and Networks*. Available from: <https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Berichte/Think-Tank-Bericht-Langfassung.pdf?__blob=publicationFile&v=2>. [Accessed: 7 August 2024].

⁸ Organization for Economic Co-operation and Development, *The Evolving Concept of Market Power in the Digital Economy, OECD Competition Policy Roundtable Background Note*. Available from: <www.oecd.org/daf/competition/the-evolving-concept-of-market-power-in-the-digital-economy-2022.pdf>. [Accessed: 10 August 2024].

⁹ The Geneva Association, *Virtual Competition: Online Platforms, Consumer Outcomes and Competition in Insurance*. Available from: <https://www.genevaassociation.org/sites/default/files/research-topics-document-type/pdf_public/research_brief_virtual_competition_and_insurance.pdf>. [Accessed: 10 August 2024].

¹⁰ Kate Gibson, *Partnering With Platform Companies: Benefits and Risks*. Available from: <<https://online.hbs.edu/blog/post/platform-companies>>. [Accessed: 10 August 2024].

¹¹ Organization for Economic Co-operation and Development, *Rethinking Antitrust Tools for Multi-Sided Platform*. Available from: <https://www.oecd.org/en/publications/rethinking-antitrust-tools-for-multi-sided-platforms_a013f740-en.html>. [Accessed: 11 August 2024].

¹² Yogesh K. Dwivedi, and others, "Setting The Future of Digital and Social Media Marketing Research: Perspectives and Research Propositions." *International Journal of Information Management* 59 (2021), <https://doi.org/10.1016/j.ijinfomgt.2020.102168>.

the innovation process. The existing regulatory framework is limited in its scope, failing to address the oversight of competition in the digital market in a specific manner. Nevertheless, this issue remains a pressing concern for the Competition Supervisory Commission (KPPU). A more thorough examination of online platforms reveals that they do not possess transparent real costs due to their construction and development based on investment. Investment carries with it an inherent risk, a fact that is especially salient when foreign entities are involved. Platforms that depend exclusively on investors may eventually withdraw their capital investment, which could have deleterious effects on the platform itself and ultimately consumers. For instance, prominent Indonesian online platforms such as Tokopedia and TikTok Shop have implemented widespread employee layoffs from 2022 to 2024.¹³ Additionally, there is a paucity of clarity regarding the mechanisms that govern the sharing economy between platforms and their partners, as well as between platforms and investors. This encompasses the potential for unfavorable behaviors to emerge, which, by their nature, intersect with the domain of competition law.

Consequently, the present study aims to examine the role and challenges of KPPU in supervising business competition in the digital era, with a particular focus on online platforms. The role of KPPU in supervising online platforms, particularly those that hold a dominant position in Indonesia, will be delineated. Furthermore, the challenges faced by KPPU in regulating digital businesses will be delineated.

The discrepancy between the rapid evolution of society and the gradual development of legislation has emerged as a salient issue, particularly in the context of unregulated domains. This statement suggests that it is not feasible for legislation or legal policies to regulate all aspects of human life. Consequently, existing rules in a country are regarded as inadequate and unable to guarantee legal certainty for its citizens. This results in a legal vacuum (*rechtsvacuum*) in society.¹⁴ This legal vacuum is a matter of significant concern for the KPPU, as it pertains to the appropriate course of action to address it. This is closely related to the development of strategic steps to reform Law No. 5 of 1999 to align it with the dynamics of competition in the digital and globalized era.

METHOD

The research method employed is normative legal research. The author identifies legal issues, followed by a thorough analysis of the encountered problems and the subsequent proposal of solutions to address these issues.¹⁵ The research approach

¹³ Tempo, *10 Startup Indonesia yang PHK Massal Karyawan sampai Juni 2024, Terbaru Tokopedia-TikTok Shop*. Available from: <https://www.tempo.co/ekonomi/10-startup-indonesia-yang-phk-massal-karyawan-sampai-juni-2024-terbaru-tokopedia-tiktok-shop-47326#goog_rewarded>. [Accessed: 12 August 2024].

¹⁴ Hario Mahar Mitendra, *Fenomena Dalam Kekosongan Hukum*. Available from: <https://rechtsvinding.bphn.go.id/jurnal_online/Fenomena%20Dalam%20Kekosongan%20Hukum.pdf>. [Accessed: 14 August 2024].

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum, Edisi Revisi, Cetakan ke-12*, (Jakarta: Kencana, 2016), 60.

utilizes the Conceptual Approach. This approach is employed when the author's analysis does not diverge from prevailing legal regulations. This is due to the absence of explicit legal regulations that address the particular concerns in Indonesia. Even in the presence of an indirectly related rule, the author will not ascertain the intended meaning with clarity; the author will only encounter a general meaning that is ill-suited for the development of a legal argument. The legal materials employed in this study encompass primary legal materials, comprising legislation and official records. Secondary legal materials, including textbooks and scientific journals, are also employed.¹⁶ The utilization of legal writings encompasses the employment of articles disseminated through official electronic media.¹⁷ The method of collecting legal materials is through literature study. This method involves the analysis of legal materials, which are evaluated through the provision of prescriptions on appropriate courses of action. These prescriptions may take the form of recommendations, suggestions, or solutions, which are derived from the analysis of the legal materials in question.

DISCUSSION

The Role of the Business Competition Supervisory Commission (KPPU) in Online Platforms

The Business Competition Supervisory Commission (KPPU) is a business competition authority established under Article 30 of Law No. 5 of 1999. As an autonomous institution within the Indonesian context, the KPPU is endowed with extensive authority, including authority analogous to that of judicial institutions. This authority encompasses a range of functions, including investigation, prosecution, consultation, examination, adjudication, and decision-making. The establishment of the KPPU is fundamentally aimed at ensuring the creation of a conducive business environment, characterized by healthy competition. This ensures equal opportunities for large, medium, and small businesses.¹⁸ The KPPU was also established to promote efficiency and effectiveness in business activities. While the KPPU is responsible for enforcing the law, particularly competition law, it does not function as a specialized competition court. This is due to the fact that the KPPU lacks the authority to impose criminal or civil penalties; rather, it is only authorized to impose administrative penalties. Consequently, the KPPU functions primarily as an administrative entity, given that the authority entrusted to it is of an administrative nature.¹⁹

¹⁶ *Ibid*, 182-183.

¹⁷ *Ibid*, 195-196.

¹⁸ Nur Kholis, "Urgensi Penegakan Hukum Dan Penguatan Peran Pengawasan KPPUDi Era Industri Digital." *Cendekia Niaga Journal of Trade Development and Studies* 8, No. 1 (2024): 40-56, <https://jurnal.kemendag.go.id/index.php/JCN/article/view/899/414>.

¹⁹ Hukumonline, *Menanti Kiprah Komisi Pengawas Persaingan Usaha yang Baru*. Available from: <https://www.hukumonline.com/berita/a/menanti-kiprah-komisi-pengawas-persaingan-usaha-yang-baru-lt65b1d2c3d085f/>. [Accessed: 15 August 2024].

An examination of the role of the Indonesian Competition Commission (KPPU) in the supervision of online platform competition in Indonesia is warranted. In 2024, KPPU plans to make breakthroughs in key sectors that are its focus, one of which is the digital market. The digital market has emerged as a primary area of interest for the KPPU. The KPPU is currently conducting various investigations in the digital market, including e-commerce, online lending, and cases involving major platforms such as Google and Shopee. Furthermore, the KPPU is prioritizing the implementation of preventive measures within the digital market through the execution of various studies. Specifically, it is examining the dual role of dominant online platforms in using their own platforms while competing with retailers that directly offer goods and services to consumers. The KPPU is also analyzing agreements among technology companies to enhance market power, such as data collection, control, and the use of large amounts of personal data.²⁰

Furthermore, regulations supporting Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE) are currently being formulated. These regulations will be codified in the form of a Government Regulation on the Digital Ecosystem, with one of its objectives being to prevent monopolies and the use of technology that hinders competition.²¹

In 2024, the KPPU collaborated with Muhammadiyah University Magelang (UNIMMA) by organizing a public lecture on the subject of "Law and Competition Policy in the Digital Economy Era." Hendri Setiawan, the Head of the KPPU Regional Office VII for the Special Region of Yogyakarta, presented an exposition on the evolution of competition policy in the context of the rapidly evolving digital landscape. This phenomenon is attributable to the integration of technological advancements and the augmentation of productivity, which is precipitated by a competitive market environment. In the contemporary digital era, the competitive landscape of business has undergone a unique transformation. The advent of digital platforms has precipitated a fundamental transformation in the modus operandi of businesses.²²

This assertion is supported by the findings of the article titled "The Algorithm That Gives Rise to Cartels," published in 2024. The proliferation of online platforms is not without its drawbacks. The rapid advancements in technology have been known to have both positive and negative consequences. While the substance has been demonstrated to

²⁰ Radio Republik Indonesia, *Sektor Pasar Digital, KPPU Lakukan Penegakan Hukum*, Available from: <<https://www.rri.co.id/hukum/803185/sektor-pasar-digital-kppu-lakukan-penegakan-hukum>>. [Accessed: 18 August 2024].

²¹ Radio Republik Indonesia, *Kominfo Terus Pelajari Isi PP Penciptaan Ekosistem Digital*. Available from: <<https://www.rri.co.id/nasional/532243/kominfo-terus-pelajari-isi-pp-penciptaan-ekosistem-digital>>. [Accessed: 18 August 2024].

²² Fakultas Ekonomi, Universitas Muhammadiyah Magelang, *Hukum dan Kebijakan Persaingan di Era Ekonomi Digital*. Available from: <<https://feb.unimma.ac.id/feb-unimma-selenggarakan-kuliah-umum-dengan-tema-hukum-dan-kebijakan-persaingan-di-era-ekonomi-digital/>>. [Accessed: 19 August 2024].

have beneficial effects on human life, it also poses significant concerns if misused. This phenomenon is especially pronounced in the business sector, where it can result in market distortions and the exploitation of dominant market positions by technology-based companies or online platforms. The rapid development of digital technology has indeed posed challenges for competition authorities worldwide. This is due to the fact that the conventional approaches that have been employed heretofore are considered to be inadequately compatible in the assessment of competition law violations.²³ Competition authorities, such as the KPPU, face the ongoing challenge of enhancing their capacity to address the evolving challenges of the contemporary era.

Based on the explanations regarding how KPPU responds to online platform issues in Indonesia, it can be concluded that KPPU has meticulously formulated a range of measures designed to address the prevalent anti-competitive practices, both those currently in effect and those that are anticipated to emerge in the future. In this case, KPPU has made various efforts, but it will still take a considerable amount of time to identify potential anti-competitive practices by digital business actors.

While the pursuit of innovation by online platforms has yielded favorable outcomes, authorities must acknowledge the potential for market consolidation, which could impede the entry of new competitors.²⁴ A more thorough examination of this issue is necessary, particularly in the context of the KPPU's initiatives to address and implement supervision. It is imperative to acknowledge that the emphasis should extend beyond mere preparation and preventive measures. It is equally crucial for the competition authorities in Indonesia to articulate more definitive "statements" that delineate their stance in addressing these issues.

The supervision of online platform competition in Indonesia is in its nascent stages, particularly in light of the rapid advancements and transformations in the digital landscape that are redefining the competitive environment for businesses. This is particularly concerning given the authorities' reluctance to undertake comprehensive measures and instead opting for a more superficial approach, failing to delve into the institution's "position" in addressing this issue. Despite the fact that the KPPU is still conducting research to assess the importance of accommodating online platform competition in a *sui generis* manner within the scope of competition law, the KPPU could at least take several progressive steps, including:

- a. The following assertion is made: The publication of a "positioning paper" is indicative of a commitment to address competition issues in the digital market era. Instead of merely stating the actions to be taken, the KPPU utilizes the "positioning paper" to methodically present its research and findings on addressing online

²³ Aru Armando, *Algoritma yang Melahirkan Kartel*. Available from: <<https://kppu.go.id/blog/2025/04/algoritma-yang-melahirkan-kartel/>>. [Accessed: 19 August 2024].

²⁴ Annabelle Gawer and Carla Bonina, "Digital Platforms and Development: Risks to Competition and Their Regulatory Implications in Developing Countries." *Information and Organization* 34, Issue 3 (2024): 100525, <https://doi.org/10.1016/j.infoandorg.2024.100525>.

platform competition in Indonesia. This approach aligns with the strategies employed in other countries, such as Germany, which have also implemented similar measures. In 2016, the German Competition Authority, formally known as the Bundeskartellamt, published a working paper bearing the title "The Market Power of Platforms and Networks." This paper analyzes competition law concepts in how to describe a market and determine market power in the context of digital platforms and networks. While there are extant KPPU articles that address digital competition, it would be advisable to further refine such efforts.

- b. By implementing concrete measures, KPPU has the potential to establish a Task Force (Satgas) that focuses on the domain of online platforms, a strategy that has been employed by the Federal Trade Commission. As a preventive measure, the Task Force could be subject to oversight by the "Deputy Directorate for Research and Advocacy,"²⁵ which was specifically established by the "Directorate of Economics" to identify potential monopolistic practices and/or unfair competition in business processes within specific industries and markets. Furthermore, in the process of revising or evaluating existing regulations, the "Competition Policy Directorate" can establish this principle. As a repressive measure, the Task Force can be subject to the oversight of the "Deputy for Law Enforcement," a position specifically established by the Investigation Directorate for the purpose of investigating alleged violations of the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition, in accordance with the KPPU's mandate. Additionally, the establishment of a Working Group to address cases pertaining to online platforms is a potential course of action. The establishment of this unit is imperative to facilitate a more profound examination of online platform issues that are currently a priority for the KPPU.
- c. Moreover, the KPPU possesses the authority to promulgate "Commission Regulations," a prerogative that is further reinforced by the absence of regulatory frameworks concerning online platforms within the ambit of Competition Law. In this case, the Legal Bureau, an entity within the purview of the Secretariat General, is authorized to formulate regulations and guidelines pertaining to the oversight of online platforms. This is of particular importance in light of the ongoing supervision within the scope of online platform regulation in Indonesia.

Challenges in Competition Law Regarding Online Platform di Indonesia

A comprehensive overview of the challenges associated with online platform issues can be found in the White Paper "Indonesia's National Strategy for Digital Economic Development 2030". The contents of the book address challenges in various domains, including infrastructure, human resources, business climate and cybersecurity, research, innovation and business development, funding and investment, as well as

²⁵ Pasal 64 Peraturan Komisi Pengawas Persaingan Usaha No. 2 Tahun 2019 tentang Organisasi dan Tata Kerja Komisi Pengawas Persaingan Usaha (Perkom No. 2 Tahun 2019) berkaitan dengan tugas dan kedeputian bidang Kajian dan Advokasi. Aturan khususnya terkait dengan Dewan Penasihat dan Dewan Pakar telah diubah dalam Peraturan Komisi Pengawas Persaingan Usaha Republik Indonesia Nomor 4 Tahun 2024 tentang Perubahan atas Peraturan Komisi Pengawas Persaingan Usaha Nomor 2 Tahun 2019 tentang Organisasi dan Tata Kerja Komisi Pengawas Persaingan Usaha.

policies/regulations.²⁶ However, when viewed from the perspective of business competition, the challenges faced by authorities can be mapped into several categories, including:

1. The inadequate preparation of competition authorities

a) The formulation of policies that effectively address the shifting business landscape is a complex undertaking. A critical factor that must be given full consideration is the degree to which the institution is internally prepared. It is evident that the KPPU's human resources structure is characterized by limitations in both quantity and quality. Consequently, the KPPU is obligated to select and determine which cases to prioritize. In light of the paramount importance of HR in addressing contemporary business world issues, it is essential to consider both the quality and quantity of HR practices. This is particularly salient in the context of implementing concrete actions that yield tangible outcomes, which can prove advantageous not only for consumers in general but also for businesses. A thorough examination of the KPPU's organizational structure reveals the absence of a unit, whether it be a directorate or a task force, that is specifically designated to address concerns pertaining to online platforms. This is noteworthy, given that such issues are identified as a priority for the KPPU. Consequently, it is reasonable to conclude that the authority within the organization continues to encounter difficulties in addressing this issue, resulting in the absence of definitive actions to resolve competition-related challenges in the online platform sector.

b) Indonesia's business competition policy, namely Law No. 5 of 1999, is currently under discussion in the House of Representatives (DPR) and will subsequently be redrafted. The salient points enumerated in the draft legislation include the following:²⁷

- 1) The following is a confirmation of the position of the KPPU;
- 2) The Business Actors definition is to be expanded to include business actors domiciled outside of Indonesia whose behavior has an impact on the Indonesian market and economy;
- 3) The following changes to the regulations have been made: Notification of business mergers or consolidations, share acquisitions, or the formation of joint ventures is now required through pre-merger notification;
- 4) A more comprehensive set of regulations has been established to govern the mechanisms and procedures for resolving business competition cases;

²⁶ Kementerian Koordinator Bidang Perekonomian Republik Indonesia, *Buku Putih "Strategi Nasional Pengembangan Ekonomi Digital Indonesia 2030"*. Available from: <<https://www.ekon.go.id/publikasi/detail/5533/luncurkan-buku-putih-strategi-nasional-pengembangan-ekonomi-digital-indonesia-2030-pemerintah-siapkan-3-fase-transformasi-digital-nasional>>. [Accessed: 21 August 2024].

²⁷ Pusat Perancangan Undang-Undang Bidang Ekonomi, Keuangan, Industri, Pembangunan, dan Kesejahteraan Rakyat, Badan Keahlian DPR RI, *Rancangan Undang-Undang tentang Larangan Praktik Monopoli dan Praktik Persaingan Usaha Tidak Sehat*. Available from: <<https://berkas.dpr.go.id/puuekkukesra/na/file/na-150.pdf>>. [Accessed: 21 August 2024].

- 5) A modification has been made to the sanctions administered in an administrative capacity, whereby the values previously designated as nominal have been replaced with values expressed as percentages;
- 6) The transfer of provisions regarding collusion to the chapter on prohibited agreements is hereby indicated;
- 7) The transfer of provisions concerning vertical integration to the chapter on prohibited activities is hereby indicated.
- 8) The elimination of accords pertaining to intellectual property and accords pertaining to franchises as exceptions in competition policy is imperative.

New content has been added, including:

- 1) Strengthening the functions of the KPPU;
- 2) Regulations related to prohibiting business actors from abusing dominant bargaining positions;
- 3) Regulations on the leniency program; and
- 4) The imposition of criminal penalties for acts that prevent or obstruct the KPPU from carrying out its investigation and/or examination processes, as well as for respondents who fail to comply with KPPU decisions.

A thorough examination of these points of change reveals an absence of any indication of supervision or enforcement of business competition against online platforms. Consequently, it can be posited that the competition authorities in Indonesia have not yet developed regulations or even issued a "positioning paper" pertaining to online platforms. The fundamental regulations are ambiguous and require further refinement. This is one of the major challenges currently faced by the KPPU. The KPPU is obligated to issue a "statement" elucidating its position on addressing competition issues related to online platforms. In addition to publishing a "positioning paper" as a sign of seriousness in addressing this issue, as a concrete step, the KPPU could establish a Task Force (Satgas) in the field of online retail under the supervision of the KPPU. The KPPU has the authority to establish a "Commission Regulation," as there is currently an absence of regulations that govern online platforms within the context of Competition Law.

2. Indonesian Culture

In Indonesia, advancements in technology have had a profound impact on people's lifestyles, including their shopping habits. The advent of numerous online platforms has facilitated convenient, expeditious, and cost-effective shopping opportunities, surpassing the conventional business transaction models in these regards. Given its status as a nation with the highest number of internet users, including in terms of e-commerce, it is unsurprising that Indonesian consumers exhibit a marked preference for online-based buying and selling activities and demonstrate a propensity to adopt changes in any aspect influenced by the digitalization process. Furthermore, the shopping culture of Indonesian society is predominantly characterized by a predilection for products that are either inexpensive or offered at discounted rates. This consumer behavior is logical, as lower prices for products tend to result in increased consumer

preference for the transaction. Consumers stand to benefit from reduced prices and more affordable products or services. This dynamic renders competition authorities ill-equipped to effectively regulate or address this issue, in contrast to their capacity to manage public response. The primary challenge confronting policymakers is the delicate balancing act of fostering healthy competition between dominant online platforms and small and medium-sized businesses while ensuring that consumers continue to benefit from fair prices for all products sold.

This consumer shopping culture also compels businesses to devise a range of alternative marketing strategies that align with the cultural characteristics they encounter. A prevalent practice that merits attention is the implementation of predatory pricing strategies. This necessity arises from the understanding that effective management of cultural diversity necessitates the implementation of a range of strategies, given the unique demands imposed by each cultural characteristic. The comprehension of these cultural patterns enables businesses to map out consumption trends within a community. Consequently, businesses can predict relevant actions based on the situation through big data analysis. The confluence of consumer shopping culture and business strategies for collecting big data ultimately precipitates anti-competitive practices among businesses. A further challenge in navigating new regulations is the readiness of Indonesian society, in its capacities as consumers and businesses, to implement new market rules, which will entail an adjustment to their advantages and disadvantages.

3. Substance of Rules

In the context of online platforms, the rapid growth and development of the digital economy during the same period have rendered this business model a compelling challenge for competition authorities worldwide. This phenomenon can be attributed to the considerable digital growth that has precipitated heightened competition within increasingly complex markets.²⁸ In 2017, the Competition Committee of the Organization for Economic Co-operation and Development (OECD) convened a hearing to assess the efficacy of the prevailing rules and principles employed in defining markets, assessing market power and efficiency, and evaluating the impact of exclusive behavior. The hearing specifically addressed the question of whether these rules have been sufficiently effective in addressing anti-competitive practices within the context of online platforms. Consequently, this initiative has prompted a concerted effort among economic and legal experts, as well as academics, to conduct a meticulous analysis of existing regulations. This analysis aims to ascertain the necessity for redesign or

²⁸ Komisi Pengawas Persaingan Usaha, *Kompetisi: Meraup Pasar E-Commerce*. Available from: <<https://kppu.go.id/wp-content/uploads/2020/03/62-kompetisi-ebook.pdf>>. [Accessed: 24 August 2024].

reinterpretation of these regulations, with the overarching objective being to enhance their congruence with prevailing competition rules.²⁹

Conventional market analysis is currently ill-equipped to accommodate digital market analysis. Therefore, it is important to apply standard criteria to detect market power concentration on online platforms. Absent such oversight, anti-competitive practices on these platforms may go undetected, potentially resulting in consumer losses and competitive harm to businesses. Moreover, online platforms demonstrate elevated levels of dynamism and innovation; consequently, competition authorities should not prioritize efficiency alone. In the absence of appropriate oversight, dominant businesses may find themselves motivated to engage in exclusive, anti-competitive behavior. This behavior can have a chilling effect on new market entrants, impeding their ability to enter the market or otherwise exert market power.³⁰

Conversely, nascent business enterprises often encounter challenges in competing with these well-established entities. These businesses employ existing data (big data) to gain a competitive advantage over their competitors, a practice that can yield both positive and negative outcomes. A favorable aspect of this business model is that it has led to the emergence of a novel concept. However, this dynamic can also give rise to anti-competitive practices. This phenomenon occurs because big data can be used to identify the presence of new market entrants and impede their entry into the same market. The utilization of big data in the context of business competition has the potential to adversely impact consumers. This is due to the fact that businesses can gain a dominant market position by acquiring enterprises operating outside the relevant market through the analysis of big data.³¹ Therefore, safeguarding the competitive landscape among dominant digital businesses, particularly within the contemporary Indonesian context, is imperative to ensure the market remains accessible for competing businesses and new entrants. This issue has garnered the attention of regulatory authorities in other countries, who have begun to address it as a discrete concern.

Moreover, the application of conventional analytical methods, which are typically employed by authorities in the study of traditional markets, has become inadequate for the detection of anti-competitive practices within the context of digital market models. This phenomenon can result in the consolidation of market power, which can lead to financial losses for both providers and users of goods and services. This phenomenon

²⁹ Cristina Caffarra and Kai-Uwe Kühn, *The Competition Analysis of Vertical Restraints in Multi-Sided Markets*. Available from: <[https://one.oecd.org/document/DAF/COMP/WD\(2017\)36/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2017)36/FINAL/en/pdf)>. [Accessed: 24 August 2024].

³⁰ Kenneth A. Bamberger and Orly Lobel, "Platform Market Power." *Berkeley Technology Law Journal* 32:1051, <https://doi.org/10.15779/Z38N00ZT38>.

³¹ Stephane Ciriani and Marc Lebourges, "The Market Dominance of US Digital Platforms: Antitrust Implications for the European Union", (April 20, 2018). Available from: <SSRN: <https://ssrn.com/abstract=2977933>> or <<http://dx.doi.org/10.2139/ssrn.2977933>>. [Accessed: 26 August 2024].

presents a significant challenge for regulatory authorities, who must utilize more sophisticated tools to effectively monitor and analyze these concentrations.

The following is a mapping of current competition rules that face challenges and need to be adapted to digital markets, such as online platforms:

a) Determining the Relevant Market

The relevant market is defined as a market related to a specific marketing range or area by business actors for the same or similar goods and/or services, or substitutes for those goods and/or services.³² Two aspects of the relevant market are recognized: the geographical aspect, which concerns the location of sellers and buyers, and the product aspect, which concerns the existence of products in the market. As previously explained, digital business models are fundamentally different. This phenomenon can be attributed to the proliferation of businesses that assume diverse roles while maintaining an extensive reach, a characteristic that defies conventional boundaries. From the perspective of competition law enforcement, this business model constitutes a unique type of market that necessitates a more complex analysis of the relevant market. According to Ningrum Natasya Sirait, Professor at the Faculty of Law, University of North Sumatra (USU), with expertise in Competition Law, it is advisable that, in anticipation of the structure of online platforms that fall under multi-sided platforms, competition authorities may apply a modified version of the Small but Significant, Non-transitory Increase in Price test (SSNIP) based on the assumption of Hypothetical Monopoly Tests.

b) Definition of Market and Market Structure in Online Platforms

The definition and delineation of the digital market and its structure, complete with multi-sided features and cross externalities, represents a significant challenge for KPPU. This process must be executed meticulously and comprehensively to ensure that there will be no subsequent debate regarding this digital business model. It is widely acknowledged that prominent businesses, which currently wield significant market power, have been utilizing online platforms for the purpose of conducting business transactions. Large businesses that currently dominate the market have been using online platforms for business transactions. These businesses operate in a market where profits are largely based on network effects. The aforementioned effects manifest in the growth of a platform or network as the number of users purchasing products or accessing the platform increases. Network effects are then classified into two categories: direct networks and indirect networks. In the context of online platforms, the most significant challenge lies in the impact of indirect networks, which

³² Pasal 1 angka 10 Undang-Undang No. 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat

accommodate two groups. These groups enable businesses in that market to reduce transaction costs as a result of the ease of interaction provided by the market.³³

Indirect network effects have the potential to induce a phenomenon known as "tipping," which refers to an increase in market share concentration due to the facilitation of conveniences for consumers, thereby attracting a greater number of visitors to the platform site. This phenomenon has led to an increase in the number of visitors, resulting in an escalating demand and a growing user base. The practice of tipping has been shown to have certain ramifications, including the facilitation of incentives that can influence anti-competitive strategies concerning products or services. This dynamic can potentially result in the practice of predatory pricing. Nevertheless, in practice, it is challenging to substantiate or evaluate market power concentration. However, when analyzing network effects, authorities must exercise caution and discernment in assessing their influence on competition and the potential for unfair practices to emerge. In light of the distinctive characteristics of the digital market, these aspects have yet to be sufficiently addressed within the framework of prevailing competition regulations.

c) Measuring Market Strength

Business actors who possess market power are designated as "price setters," while those lacking market power are categorized as "price takers." However, within the context of the digital market, market power concentration has been observed to occur as a result of businesses lowering the price of a product or service below marginal cost. This phenomenon can be attributed to the proliferation of services that are offered at a low cost or even free of charge, with numerous incentives being provided by online platforms. Consequently, the conventional definition of market power, which has historically served as a metric for assessing market dynamics, is no longer applicable in the context of the digital market.

Business Competition Supervisory Commission (KPPU) might erroneously gauge the extent of market power and reach the conclusion that competition concerns are non-existent within that market. The concept of zero-cost offerings can be regarded as a strategic approach to optimize profit maximization over an extended timeframe. This issue is also closely related to pricing issues and the determination of dominant market positions. The German competition authority, the Bundeskartellamt, has cautioned that the possession of substantial data has evolved into a catalyst for market dominance, particularly when such data is employed as a tactic to impede competition.

d) Assessing the Impact of Exclusive Behavior

³³ Howard Shelanski, Samantha Knox and Arif Dhillia, "Network Effects and Efficiencies in Multisided Markets". Available from: <[https://one.oecd.org/document/DAF/COMP/WD\(2017\)40/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2017)40/FINAL/en/pdf)>. [Accessed: 26 August 2024].

Exclusive conduct on online platforms³⁴, such as actions that lead to unfair business competition, is one of the challenges faced by authorities in relation to the substance of the rules. Such exclusive conduct is particularly related to strategies to reduce competition through the use of big data analysis and network effects. To date, there is a paucity of legal certainty with respect to the resolution of cases of digital exclusionary conduct. The assumption that only large businesses with access to advanced technology (i.e., the utilization of big data) possess significant market power has grown in tandem with the proliferation of these platforms. Furthermore, differentiating exceptions related to behavior that does not fall under anti-competitive practices in the digital market can be more complex and challenging. Therefore, caution is required when assessing such potentially exclusive behavior.

e) Determination of the Definition of Business Actors

As is well established, the definition of business actors in Law No. 5 of 1999 is only regulated in general terms and only covers individuals or business entities that conduct activities within the jurisdiction of the Republic of Indonesia. This definition has been expanded in the Draft Law on Business Competition, which also accommodates business entities with legal domicile outside Indonesia whose actions have an impact on the Indonesian market and economy. According to the aforementioned definition of business entities, it is evident that the definition is inadequate in sufficiently addressing digital business entities specifically. The definition remains quite general, which leads to its susceptibility to varied interpretations. This ambiguity poses a significant challenge for the KPPU as it seeks to clarify and elaborate on these provisions in the future. The question of whether the extant definition of business entities in the Competition Law or its amendments in the RUU are sufficient to accommodate online platforms, or whether a more concrete definition is needed, such as the concept of Electronic System Operators in the Law on Information and Electronic Transactions, remains unresolved. The aforementioned legislation explicitly delineates the entities deemed responsible for the provision, management, or operation of electronic systems, encompassing both individual contributors and government entities, in addition to business entities. Furthermore, it is imperative to consider the classification of online platforms to facilitate policymakers in mapping business entities within the digital market.

f) An investigation into the boundaries of predatory pricing strategies

In a conventional context, predatory pricing strategies³⁵ and discounts are generally regarded as non-anti-competitive practices, provided they are temporary and time-

³⁴ Bora Jedličková and Jonathan Crowe, "Exclusionary Conduct in Competition Law: A Consequence-Sensitive Deontological Account, *Jurisprudence* 12, no. 2 (2020): 123–150, <https://doi.org/10.1080/20403313.2020.1844981>.

³⁵ Muhammad Alfath and Siti Anisah, "The Negative Impact of Predatory Pricing Practice to Fair Competition (The Study of KPPU Decision Number 03/KPPU-L/2020)" *Journal Of Private And Commercial Law*, (2024), pp. 66-88, *Journal Of Private And Commercial Law*, (2024), pp. 66-88, <https://doi.org/10.20885/JPCOL.vol1.iss1.art4>.

limited. It is important to note that such practices are generally legalized because they are part of a business operator's strategy. However, within the broader context of digital market competition in Indonesia, the practice of maintaining prices at remarkably low levels is a continuous phenomenon, frequently accompanied by various promotional activities. This practice is generally implemented as an implication of subsidies for the operation of digital marketplaces, with the aim of promoting the growth of their platform networks. This phenomenon is precipitated by the implementation of diverse promotional programs by preeminent digital enterprises. The position of online platforms in the relevant market will ultimately become increasingly dominant. This assertion is further substantiated by their propensity to function as comprehensive, integrated platforms, thereby achieving a predominant market position and exerting a monopoly.

Competition authorities face the challenge of determining the limits of setting extremely low prices through various promotional strategies, particularly within the context of online platform competition. In the context of competition in conventional markets, this practice is regulated under Commission Regulation No. 6 of 2011 on Guidelines for Article 20 (Selling at a Loss) of Law No. 5 of 1999 on the Prohibition of Monopoly Practices and Unhealthy Competition. This regulation is implemented through the above-cost test and limit-pricing strategy. The central question guiding this inquiry is whether the diverse promotional activities perpetually executed by a preeminent platform can be regarded as a lawful promotional strategy, or if the converse is true. Furthermore, the pertinence of the indicators of predatory pricing as defined for conventional businesses to digital businesses, or vice versa, is a subject of inquiry.

g) Mergers and Acquisitions

Mergers and acquisitions³⁶ are, in essence, a necessary component of future strategic direction, yet they also present considerable challenges for the KPPU. Companies, as economic entities, invariably endeavor to optimize profits. Mergers and acquisitions are a strategic business practice that companies often implement to optimize profits.³⁷ However, in practice, mergers and acquisitions are often exploited by businesses seeking to expand their markets.³⁸ This phenomenon is especially evident in cross-border transactions facilitated by online platforms. The implementation of competition policies that rely on big data analysis and network effects can result in potential consumer losses.

In the context of online platform competition, numerous inquiries persist. These include the following: The necessity of establishing systematic regulations to address anti-

³⁶ Alessandro Biraglia, and others, "When and Why Consumers React Negatively to Brand Acquisitions: A Values Authenticity Account", *Journal of Marketing*. ISSN 0022-2429, <https://doi.org/10.1177/00222429221137817>.

³⁷ Catur Agus Saptano, *Hukum Persaingan Usaha: Economic Analysis of Law dalam Pelaksanaan Merger*, (Depok: Kencana, 2017), 51.

³⁸ Andi Fahmi Lubis, and others, *Hukum Persaingan Usaha*, (Jakarta: Komisi Pengawas Persaingan Usaha, 2017), 266.

competitive practices by online platforms is a subject that merits rigorous examination. The existing regulations concerning oversight must be taken into consideration. Have there been any issues with the functionality of the equipment? What would be the reception of their implementation by Indonesian society? A discussion of the procedures and techniques for oversight is warranted. The efficacy of the actions taken by the competition authority regarding digital economic practices in terms of ultimately benefiting digital stakeholders and app users (consumers) in this business model is a subject of inquiry. These inquiries will undoubtedly pose significant challenges for the KPPU in the future. However, when addressing this issue, it is imperative to acknowledge the pivotal role that competition authorities play in the effectiveness of oversight, particularly in their response to the identified challenges. Competition can be observed in the context of market development, where sustained efficiency and innovation or increased market concentration may lead to the exploitation of dominant positions and stagnation in market competition.

CONCLUSION

KPPU plays a crucial role in overseeing online platforms, especially within the context of business competition, and their unique characteristics necessitate a specialized approach, often referred to as "sui generis" supervision. In essence, KPPU must consider the possibility of market power concentration and the substantial customer base of incumbent players, which could impede the entry of new businesses into the market. Consequently, both preventive and repressive measures should be meticulously delineated as specific actions by the KPPU to address this issue. The regulatory challenges that must be addressed include the inadequate preparation of competition authorities, the influence of Indonesian culture on market behavior, and the substance of rules. Furthermore, it is imperative to acknowledge that in the context of enhancing competition regulations to be more accommodating, the prevailing challenge for stakeholders, particularly the KPPU, pertains to the navigation of a clear oversight mechanism for online platforms, particularly those that are dominant in the digital market. This includes the identification of indicators of anti-competitive practices that are permitted within such oversight. In light of the intricate business models and the challenges in delineating anti-competitive practices in the borderless digital economy era, the need for "certainty" in the oversight of online platforms within the business competition landscape is paramount. This issue must be addressed expeditiously, as these business models currently dominate in the Indonesian market.

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