

Indonesia: Competition Compliance Program

What Is the Competition Compliance Program (“CCP”)?

The Indonesian Competition Commission (*Komisi Pengawas Persaingan Usaha*) (“KPPU”) is an independent government agency established to supervise the implementation of Competition Law.¹ Apart from actively carrying out its enforcement duties, the KPPU also actively prevents unfair business competition.

As an effort towards prevention, KPPU published Regulation No. 1 of 2022 concerning the Competition Compliance Program on 24 March 2022. In essence, the KPPU expects the CCP to become a tool (i) to ensure compliance with Competition Law, and (ii) to detect any violation of Competition Law and allow businesses to take appropriate and timely remedial actions. In light of this, we sense that KPPU is trying to encourage companies to take Competition Law compliance even more seriously. Why do we say “encourage”? Because, in principle, the CCP is not itself mandatory. Despite its non-compulsory status, the KPPU may reduce penalties if a business which has registered its CCP program violates the Competition Law.

The next issue would be: what’s in a CCP programme? A CCP may include elements such as training to raise legal awareness, especially Competition Law, the use of guidelines, commitments, and checklists, with the aim of ensuring compliance by individual staff with company policies, a record system to document every contact staff have with competitors, and a review of agreements, conduct, and staff to monitor ongoing compliance. At the very minimum, however, a CCP programme would consist of the following matters:

1. Code of Ethics	The company's internal rules containing values, norms, and/or ethical principles related to fair business competition as the basis for the company's behaviour in carrying out its business activities.
2. Compliance Guide	A company document that contains work guidelines and commitments for every element in the company to carry out business activities and interact with stakeholders in accordance with the principles of fair business competition.
3. Implementation of socialization, counselling, training, and/or other activities in implementing the Compliance Program in the company.	Activities of providing knowledge, increasing specific and systematic understanding, and developing competence and technical skills regarding the principles of fair business competition for each element and/or on certain aspects within the company.

¹Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, as amended by Law No. 11 of 2020 concerning Job Creation.

Since each business is unique, each business must tailor its steps to ensure compliance with Competition Laws through the CCP programme to its own particular circumstances. There could be numerous factors that differentiate each CCP programme, including the size and nature of the business, the frequency with which employees have contact with their competitors, and its market power. For instance, businesses that are able to significantly influence the market in which they operate or have a large market share, may be more vulnerable to allegations of abuse of their dominant position in that market.

Registration and Evaluation of CCP

The CCP must be registered with the KPPU, following which the KPPU will evaluate and approve the CCP.

Key Points

The CCP is not mandatory. Hence there will be no sanction if a business opts out of the program. As for the benefits, even though it is only voluntary, registering a CCP may reduce penalties should there be a KPPU finding of an infringement. Additionally, a successful CCP minimizes the risk of businesses violating competition laws and helps detect potential infringements early. Good knowledge of competition laws also helps identify anti-competitive practices by competitors or suppliers and consequently enables a business to file a complaint with the KPPU if the business is negatively impacted.

Registration	Businesses (including those which do not have a CCP and/or which already have an internal CCP which is not yet registered with the KPPU) may register their CCP with the KPPU.
Preparation of CCP Report	Businesses must report on the preparation of the CCP to the KPPU, which report must include at least: <ul style="list-style-type: none"> a. commitment of businesses; b. person in charge; c. risk identification; d. risk mitigation; e. socialization, counselling, other activities; f. company control scheme; g. internal reporting mechanism; h. monitoring and evaluation; i. internal sanctions; and j. periodic adjustments.
Evaluation by the KPPU	The KPPU will evaluate and approve the CCP through a hearing. The CCP will be valid for 5 years and can be extended.

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