

**Template pursuant to Section 3 (a) of the
ICN Framework on Competition Agency Procedures**

[Indonesia Competition Commission, Republic of Indonesia]

The following template is submitted by **[Indonesia Competition Commission, Republic of Indonesia]** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

The Indonesia Competition Commission (ICC/KPPU) or the Commission is the only institution dealing with competition law in Indonesia. It introduced through the Law No. 5/1999 and the organization formed by the Presidential Decree No. 75 Year 1999. The Law is formulated under Pancasila and the 1945 Constitution and on the basis of democratic economy by taking into account the balance between interests of the business actors and the public with the purposes to maintain the public interest and to create conducive business climate through the creation of a fair business competition.

ICC consists of nine Commissioners, including Chairman and Vice Chairman. They are elected by the Parliament with recommendation from the President for five years term. The term is renewable for one time. ICC has three main tasks from the competition law. We enforce the law, provide advice to government’s policy, and review merger and acquisition transaction. Since 2008, the Law No. 20 Year 2008 concerning Micro, Small, and Medium-sized Enterprises (MSME) provided this agency with additional task to supervise business partnership between MSME and large-sized enterprises. In implementing our duties, ICC could receive complaints, conducting research and or investigation, summoning any parties related to investigation, requiring assistant from national police, issuing decision, and imposing sanction.

ICC is based in Jakarta but can establish Regional Offices throughout the capital cities in Indonesia. Now, ICC has 6 (six) Regional Offices that spread through five major islands, namely Medan, Lampung, Bandung, Surabaya, Balikpapan, and Makassar.

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

1. Article 1, Paragraph 5, of Indonesian Competition Law (Law Number 5 Year 1999) stated that *“Business actors shall be **any** individual or business entity, either incorporated or not incorporated as legal entity, established and domiciled or conducting activities within the jurisdiction of the state of the Republic of Indonesia, either individually or jointly based on agreement, conducting various business activities in the field of economy”*.
2. Article 1, Paragraph 6, of Government Regulation Number 57 Year 2010 on Merger or Consolidation of Business Entities and Acquisition of Shares of Companies which may cause Monopolistic Practices and or Unfair Competition, and Article 1, Paragraph 16, of Commission Regulation Number 3 Year 2019 on Assessment of Mergers or Consolidations or Acquisitions of Business Entities which may cause Monopolistic Practices and or Unfair Competition, stated that *“Business Entity shall be a company or business entity, either incorporated or unincorporated, engaging in a permanent and continuous type of business with the objective of gaining profits”*.
3. Article 1, Paragraph 8, of Government Regulation Number 57 Year 2010 on Merger or Consolidation of Business Entities and Acquisition of Shares of Companies which may cause Monopolistic Practices and or Unfair Competition, and Article 1, Paragraph 15, of Commission Regulation Number 3 Year 2019 on Assessment of Mergers or Consolidations or Acquisitions of Business Entities which may cause Monopolistic Practices and or Unfair Competition, stated that *“Business Actor shall be **any** individual person or Business Entity, incorporated or unincorporated, established and having its domicile or engages in activities in the jurisdiction of the Republic of Indonesia both severally and jointly through an agreement to engage in various business activities in the economic sector”*.
4. Article 1, Paragraph 3, of Commission Regulation Number 1 Year 2019 on Procedures for Case Handling stated that *“Reporting Party shall be **any** individual submitting the report to the Commission on a violation that has taken place or that could reasonably be expected, either that which conducts a Compensation Assertion or not”*.
5. Article 1, Paragraph 4, of Commission Regulation Number 1 Year 2019 on Procedures for Case Handling stated that *“Reported Party shall be a Business Actor and/or other parties alleged to commit a violation”*.
6. Article 1, Paragraph 5, of Commission Regulation Number 1 Year 2019 on Procedures for Case Handling stated that *“Other Parties shall be other Business Actors and/or parties related to other Business Actors involved in a monopolistic practice and/or unfair business competition”*.

As could be seen above, Indonesia’s competition law and procedural rules applies to all business actors/business entities/companies and/or other parties relevant to the violation, regardless of their ownerships, nationalities, or origins.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*

- v. *Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

The government of Republic of Indonesia established Law Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Competition to guard fair competition in its territory, later in 2000 the “Komisi Pengawas Persaingan Usaha” (KPPU) or Indonesia Competition Commission (ICC) is established. The English version of Indonesia’s Competition Law could be accessed through this link: <http://eng.kppu.go.id/competition-law/>

In 2010, the government of Republic of Indonesia issued Government Regulation Number 57 Year 2010 on Merger or Consolidation of Business Entities and Acquisition of Shares of Companies which may cause Monopolistic Practices and or Unfair Competition, to assist ICC’s in assessing merger and acquisition transactions in Indonesia. The English version of this regulation could be accessed through this link: <http://eng.kppu.go.id/merger-regulation/>

Since its establishment, ICC has issued many Commission Regulations and Guidelines to assist the implementation of the Law. The updated procedural rules that applicable to investigation and enforcement proceedings in Indonesia are as follow: (i) Commission Regulation Number 1 Year 2019 on Procedures for Case Handling, (ii) Commission Regulation Number 3 Year 2019 on Assessment of Mergers or Consolidations or Acquisitions of Business Entities which may cause Monopolistic Practices and or Unfair Competition, (iii) Commission Regulation Number 4 Year 2019 on Procedures for the Supervision and Handling of Partnership Cases. These regulations could be accessed through this link (English version is still in editing process): <http://www.kppu.go.id/id/produk-hukum/peraturan-kppu/>

The Commission is obliged to follow those procedural rules, as hearing sessions are open for public attendance (unless the parties involved requested for a closed hearing session due to the confidentiality of testimonies or information) and the procedural aspect may be under scrutiny. Failure to comply might cause the ICC losing its case decision in the appeal process, as Reported Party could submit procedural flaw in its appeal, and the case decision could be regarded as defective.

With regards to the appeal process of competition cases in Indonesia, the Supreme Court of Republic of Indonesia issued the Supreme Court Regulation Number 3 Year 2019 on Appeal Procedures for Case Decisions by Indonesia Competition Commission/KPPU. This regulation is the improved version of Supreme Court Regulation Number 3 Year 2005. These regulations could be accessed through this link (English version is not available): https://jdih.mahkamahagung.go.id/index.php?option=com_remository&Itemid=46&func=fileinfo&id=8375

d) Investigative Process

- i. *Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. *Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal,*

economic, and procedural issues, according to the status and specific needs of the Investigation.

iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.

i. In the beginning of investigation process, ICC shall notice the Reported Parties under investigation, this notice typically connected to the summoning of Reported Parties for interviewing session. The summoning letter shall include the case number, conduct or action under investigation, the articles in the Law that allegedly violated (legal basis for investigation), the objective of the summoning, status of the summoned parties (reported parties or witnesses), venue and time of the interviewing session. The letter should be received no later than 3 (three) days before the session, which is proven with a receipt by the courier. In the review of voluntary pre-merger notification and mandatory post-merger notification, notification should be submitted with supporting documents. Once the notification and supporting documents deemed as complete, a receipt of acceptance will be issued. Should there are more information/documents needed, the Merger Analyst will summon the parties during the clarification period which shall be within a maximum period of 60 (sixty) days after the issuance of receipt of acceptance.

ii. The Reported Parties could submit their facts, information, documents, anytime during the investigation process, it does not have to be submitted during the interviewing session only. At the interviewing session, Investigators will inform the Reported Parties on the timeline of the investigation, including how long it will likely take if an extension applied. Thus the Reported Parties could determine the timing for them to submit additional facts, information, and or documents to the Investigators. In merger review, the merging parties could submit their facts, information, documents, during the clarification period of notification (maximum 60 (sixty) days after the issuance of receipt of acceptance).

iii. In the investigation process, the Investigators shall obtain relevant information and documents for the case. With regards to the timeline, the investigation process shall be concluded in a timely manner according to the timeline that provided in ICC's procedures for case handling (see the table below). In merger review, after 60 (sixty) days of clarification period, the assessment of transaction should be concluded within a maximum period of 90 (ninety) days.

e) *Timing of Investigations and Enforcement Proceedings*

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

In conducting investigation and enforcement proceedings, ICC endeavors to conclude its cases within a reasonable time period, by taking into account the nature and complexity of its cases.

Each stages and timeline of ICC's enforcement proceedings as stated in Commissioner Regulation Number 1 Year 2019 on Procedures for Case Handling and Commission Regulation Number 3 Year 2019 on Assessment of Mergers or Consolidations or Acquisitions of Business Entities which may cause Monopolistic Practices and or Unfair Competition, are as below:

Clarification of Complaints:

- ICC may open their case based on submitted complaints or its own initiative.
- Any complaints will be clarified within the period of 14 days. In the event that the Clarification Result has yet to meet the requirements, the working unit handling complaints shall notify and return it to the Complainant.
- The Complainant shall be obligated to complete their complaint within the maximum period of 14 (fourteen) days.
- In the event that the Complainant does not complete the complaint within the period of 14 (fourteen) days, the complaint shall be declared incomplete and the handling thereof shall be suspended.
- The suspended complaint handling shall be notified to the Complainant by no later than 14 (fourteen) days following the declaration of the complaint incomplete. The handling of complaint suspend due to incompleteness may be resubmitted by the Complainant by submitting a new complaint along with adequate information.

Initiative Cases:

- As for initiative cases, there is no maximum period for research on initiative cases, however the Working Unit handling research shall report the progress of the result of the research to the Chairman of the Commission every 14 (fourteen) days.
- Based on the Research Report, pre-investigation of initiative cases shall be commenced at the approval of or under the direction of the Commission Meeting.

Pre-Investigation:

- Should the Clarification Result or Research Report fulfilled the criteria for Pre-Investigation, ICC will perform Pre-Investigation process for 60 (sixty) days to obtain at least 2 (two) evidences. The Pre-Investigation may be extended by virtue of a decision of the Coordination Meeting between the Secretariat and the Commissioners.
- After the Pre-Investigation process is concluded, the result will be incorporated in a Report on Pre-Investigation Result.

Dossiers Filing:

- The Report on Pre-investigation Result shall be handed over to the working unit handling dossiers filing. The working unit will then assess the completeness of the Report within the maximum period of 14 (fourteen) days since the Report is accepted.
- Should the Report deemed as complete, the working unit handling dossiers filing shall convey the Report concisely in the Commission Meeting.

- In the event that the Report on Pre-investigation Result is deemed not yet complete and clear, it must be returned to the working unit handling Pre-Investigations. The return shall be enclosed with reasons and suggestions for improvement.
- The working unit handling pre-investigations must make corrections by no later than 14 (fourteen) days and may be extended for maximum of 14 (fourteen) days. The extension of the period shall be conducted by the Head who handles law enforcement.
- In the event that following the extension, the Report on Pre-investigation Result still does not meet the requirements, then the case handling process shall be stopped and shall be recorded in the Pre-investigation Cessation List. The case handling process stopped may be proceeded again if new evidence is found.
- The working unit handling Pre-Investigations shall notify the Complainant and Reported Party within a period of 14 (fourteen) days following its recording in the Pre-investigation Cessation List.

Preliminary Examination:

- After the reporting of working unit handling the dossiers filing to the Commission Meeting, the case will be advancing to preliminary examination.
- The preliminary examination will be conducted within the maximum period of 30 (thirty) days.
- Panel of Commissioners in the Preliminary Examination will offer the Change of Behavior Opportunity (CBO) to the Reported Parties if they confess to the alleged violation. The offering of CBO is also depending on the severity of the alleged violation.
- If the Reported Parties agree to the CBO, both parties will set it out in an Integrity Pact and ICC will monitor its implementation (the monitoring period will be set on case by case basis). Should the Reported Parties comply, a Commitment Decision will be made.
- Should the Reported Parties do not comply, the case will be continued to Follow-Up Examination.

Follow-Up Examination:

- Follow-Up Examination is conducted within the period of 60 (sixty) days, and could be extended for maximum of 30 (thirty) days.

Decision and Appeal Process:

- After the Follow-Up Examination is concluded, the Panel of Commissioners will perform its deliberation to make a Decision within the maximum period of 30 (thirty) days.
- After 30 (thirty) days, the Decision will be read out in public and the Reported Parties must decide whether to submit their appeal to the District Court or to accept the Decision within the maximum period of 14 (fourteen) days after the Reported Parties receive the Copy of Decision or after the Decision is published in ICC's website.

Merger Review:

As for merger review, once the notification and supporting documents deemed as complete, a receipt of acceptance will be issued. Should there are more information/documents needed, the Merger Analyst will summon the parties during the clarification period which shall be within a maximum period of 60 (sixty) days after the issuance of receipt of acceptance.

After 60 (sixty) days of clarification period, the assessment of transaction should be concluded within a maximum period of 90 (ninety) days.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

Article 38, Paragraph 3, Indonesian Competition Law (Law Number 5 Year 1999), stipulates that the identity of Complainant/Reporting Party should be kept as confidential. Article 39, Paragraph 3, Law Number 5 Year 1999, also stipulates that any information that identified/marked as trade secret/company's secret by the business actors/business entities/companies should be kept as confidential.

Article 2 (a), ICC's Regulation Number 6 Year 2000 on Ethical Code, stipulates that all ICC's Officers/Officials should not disclose any information from investigation process/enforcement proceedings and any documents that marked as confidential, to other parties who are involved in investigation process/enforcement proceedings and or other parties who are irrelevant.

Limitation: ICC not yet stipulate any rules, policies, or guidance regarding identification and treatment of confidential information, and disclosure of confidential information during an enforcement proceeding.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

To avoid conflict of interest in enforcement proceedings, Article 32 (i) of Indonesian Competition Law (Law Number 5 Year 1999) stipulates that the Commissioners should not have any affiliation with business actors/companies.

Further to this, ICC's Decision Number 6 Year 2000 on Ethical Code stipulates codes for Member of Commissioners, as below:

a. In conducting its duties, the Member of Commissioners should be free from the influence of other parties.

b. The Member of Commissioners should not hold the position below:

1. Board of Commissioners and or Board of Supervisors for business actors/business entities/companies;

2. Board of Organizers and or Board of Auditors for Cooperative;

3. Parties who provide its services to business actors/business entities/companies, such as consulting services, accounting services, and appraiser services.

4. Majority shareholders in companies.

c. The Member of Commissioners who hold a position in the Panel of Commissioners should not:

1. Having family relationship with the parties involved in the case.

2. Having any personal interest with the case.

3. Having any relationship with the parties involved in the case, which will potentially affect the outcome of examination.

4. Influencing or forcing other member in the panel during the deliberation of decision.

ICC's Decision Number 6 Year 2000 on Ethical Code also stipulates some codes for all ICC's Officials/Officers:

a. Each officials/officers shall not practicing corruption, collusion, and nepotism in conducting its duties.

b. Each officials/officers shall not colluding with other parties to put their influence in the result of investigation and or examination.

c. Each officials/officers shall not receiving any form of gifts from other parties, which related with the conducting of its duties.

d. Each officials/officers shall willingly inform the amount of their personal assets and savings to the authorized institution.

h) Notice and Opportunity to Defend

i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.

ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the

requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.

- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

In ICC's enforcement proceedings, the Reported Parties are being notified about their alleged violations and their status, starting from the early stage of investigation.

In the first hearing session of Preliminary Examination, the Prosecution Investigator shall read out and/or convey the Report on Alleged Violation, to the Reported Party. This Report on Alleged Violation contain the facts and relevant legal and economic reasoning relied upon by the ICC to support the allegation. The Reported Party shall be entitled to give response to the Report on Alleged Violation by submitting their instruments of proof.

In the Follow-Up Examination, the Panel of Commissioners shall examine the instruments of proof submitted by Prosecution Investigators and Reported Parties in accordance with the provisions of the Law. Prior to the end of the Follow-up Examination, the Panel of Commissioner shall give the opportunity to the Prosecution Investigators and the Reported Parties to convey a written conclusion of the result of the hearings to the Panel of Commissioners.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

As stated in ICC's Procedures for Case Handling, for defense purposes, the Reported Party shall be entitled to obtain legal assistance from one or more Advocates during and at any examination stages pursuant to the procedures as provided for herein. The Advocates providing legal assistance shall be obligated to present the original Advocate membership card to the Panel of Commissioners.

The legal assistance may also be provided by the internal attorney of the Reported Party. The internal attorney of the Reported Party shall be obligated to present his/her incidental Power of Attorney to the Panel of Commissioners.

Limitation: the Indonesian Competition Law (Law Number 5 Year 1999) and ICC's enforcement procedure (Commission Regulation Number 1 Year 2019) do not stipulate applicable privileges and treatment of privileged information.

j) Decisions in Writing

- i. *Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. *Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

i. ICC's Decision should be made in writings and published in ICC's Website. The Copy of the Decision should also be conveyed to the Reported Parties, no later than 14 (fourteen) days after the reading out of the Decision. The Decision shall at least contain the following: (a) the identity of the Reported Party; (b) the alleged violation; (c) the consideration and assessment of the instruments of proof submitted and/or obtained during the hearings; (d) the analysis of the application of the articles in the law alleged to be violated by the Reported Party; (e) orders of the Decisions; (f) the day and date of the Decision making; (g) the day and date of the reading out of the Decision; (h) the names of the Chairman and Members of the Panel of Commissioners; (i) the name of the Clerk; (j) the Decision shall be signed by the Panel of Commissioners and the Clerk.

ii. ICC's Decision on Change of Behavior (Commitment Decision) should be made in writings and published in ICC's website. The Decision shall at least contain the following: (a) the identity of the Reported Party; (b) the alleged violation; (c) the Behavior Change Integrity Pact; (d) the Report on the Monitoring of Behavior Change; (e) orders of the Decision; (f) the day and date of the Decision making; (g) the day and date of the reading out of the Decision; (h) the names of the Chairman and Members of the Panel of Commissioners; (i) the name of the Clerk; (j) the Decision shall be signed by the Panel of Commissioners and the Clerk.

Limitation: On commitment decision, there is no stipulation that obligated ICC to reference public materials in which those concerns are expressed and to provide a summary explanation of the commitment decision.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

The Reported Party may submit their appeal on the Decision by no later than 14 (fourteen) days after the acceptance of the excerpt and the copy of the Decision and/or after its

announcement through ICC's website. The appeal shall be lodged to the District Court at the legal domicile of the Reported Party.

As stated in the Supreme Court Regulation Number 3 Year 2019 on Appeal Procedures for Case Decisions by Indonesia Competition Commission/KPPU, the District Court shall make a decision within the period of 30 (thirty) days after the documents of the appeal is deemed as complete.

Following up the District Court Decision, the Reported Party or ICC may submit cessation to the Supreme Court. The time frame of cessation is not defined.