



CONSPIRACY IN TENDER AND ITS CHALLENGES FOR COMPETITION AUTHORITY: INDONESIAN EXPERIENCES

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Outlines

- Introduction
- KPPU, the Commission
- Bid Rigging in Indonesia Competition Law
- Various Types of Bid Rigging
- Cases and Findings
- How to Detect Collusive Tendering
- Challenges in Enforcement

Introduction: Indonesia



6.435 Km

Populations: 245 million
(1.33% p/a);

17,504 islands;

34 provinces;

Hundred of ethnics;

US\$ 3,563 per capita
income (in 2012)

Total land area of
Indonesia is 1,919,000
square km;

5,800,000 square km of sea
area.

KPPU, the Commission

- Established in June 7th 2000
- The Commission consist of 9 Commissioners and a Secretariat General
- Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition
- Guideline for Prohibition of Conspiracy in Tender

Bid Rigging in ICL

- Article 22 Law Number 5/1999
 - “ Business Actors shall be prohibited from entering into conspiracies with other parties in order to determine awardees of tenders which may results in unfair business competition”
- Tender shall be bids submitted to contract certain work, for the procurement of goods, or the provision of services

Bid Rigging in ICL (cont)

- Definition of tender based on Law Number 5/1999 include the bid ask prices for:
 - a. To Contract certain works;
 - b. To Procure goods and/or services;
 - c. To Buy goods and/or services;
 - d. To Sell goods and or services
- To include private and public tender/procurement

Various Type of Bid Rigging

- The most common forms of bid rigging are as follows:
 - Sub-contract Bid Rigging
 - Complementary Bidding
 - Bid Rotation:
 - Bid Suppression:
 - Market Division:
 - Common Bidding



Horizontal Collusion

COMMITTEE

**BUSINESS
ACTOR**

**BUSINESS
ACTOR**

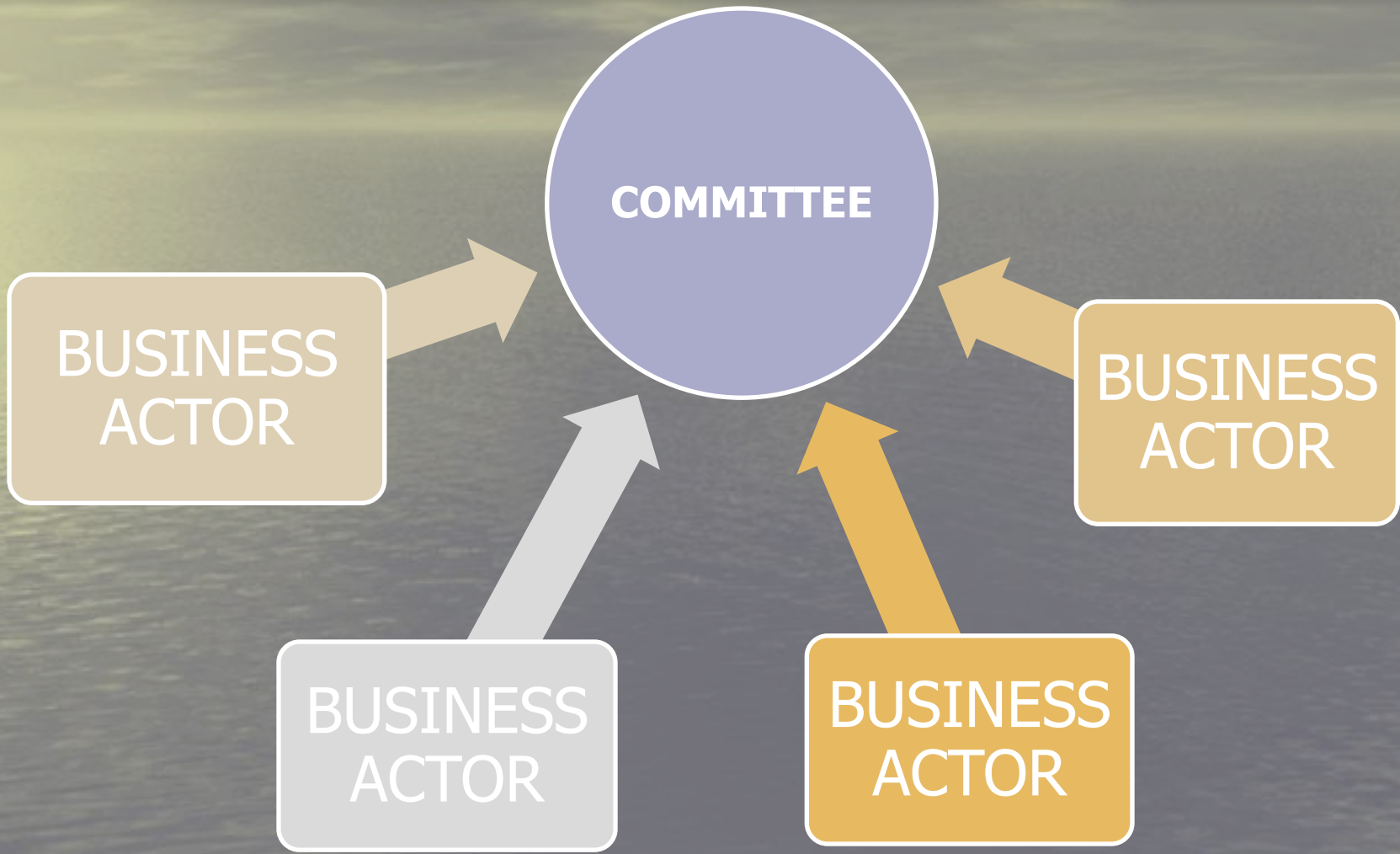
**BUSINESS
ACTOR**

**BUSINESS
ACTOR**



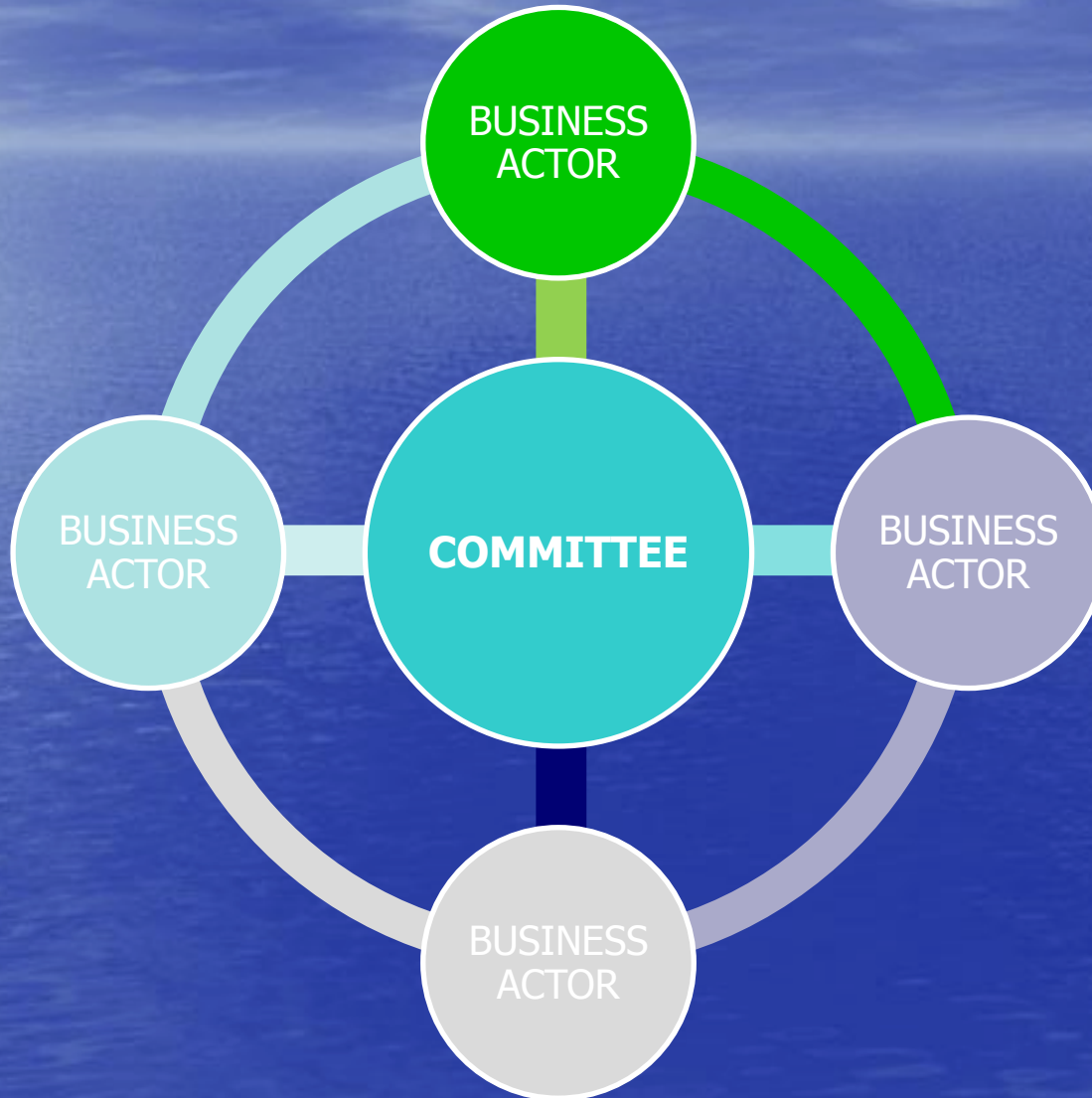


Vertical Collusion



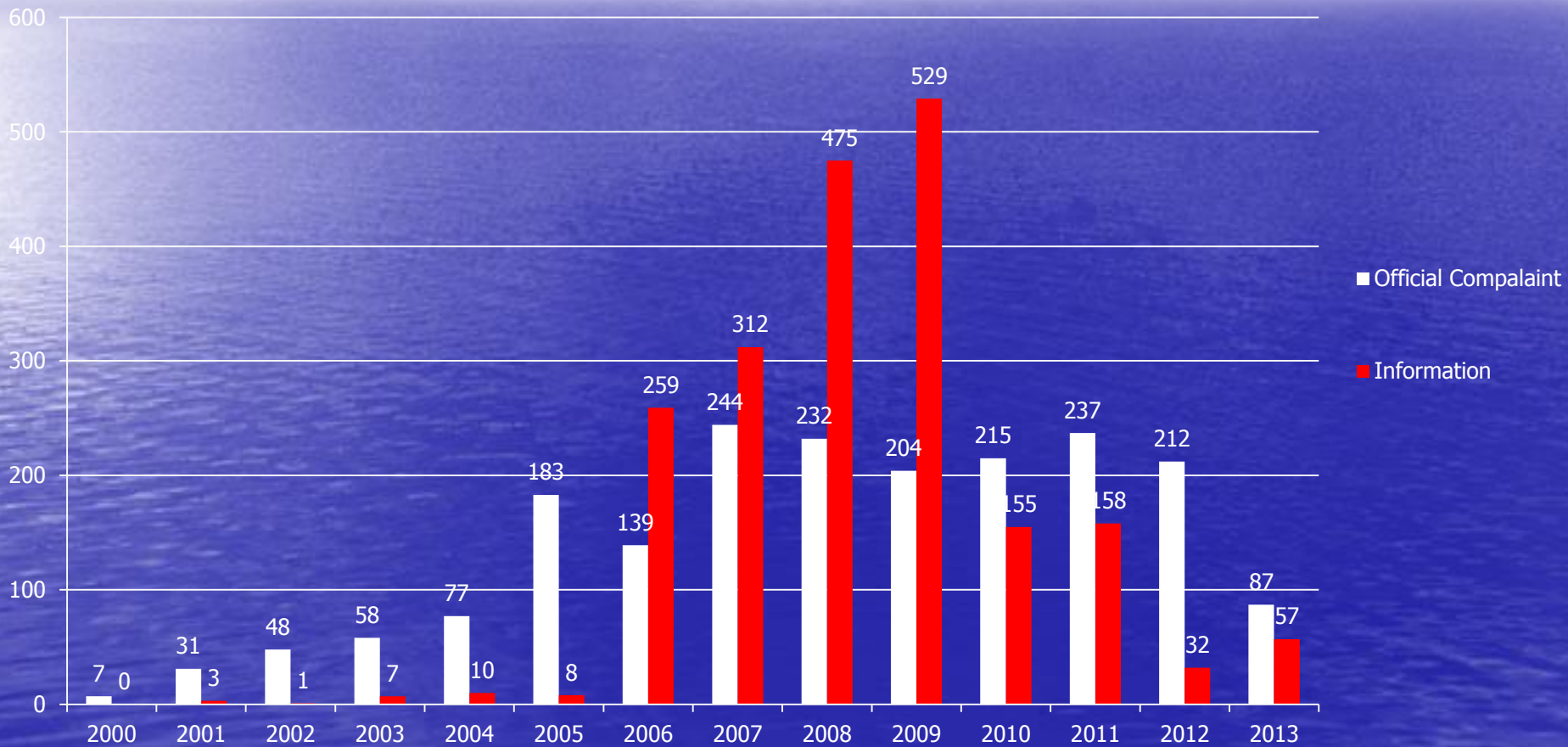


Horizontal and Vertical Collusion





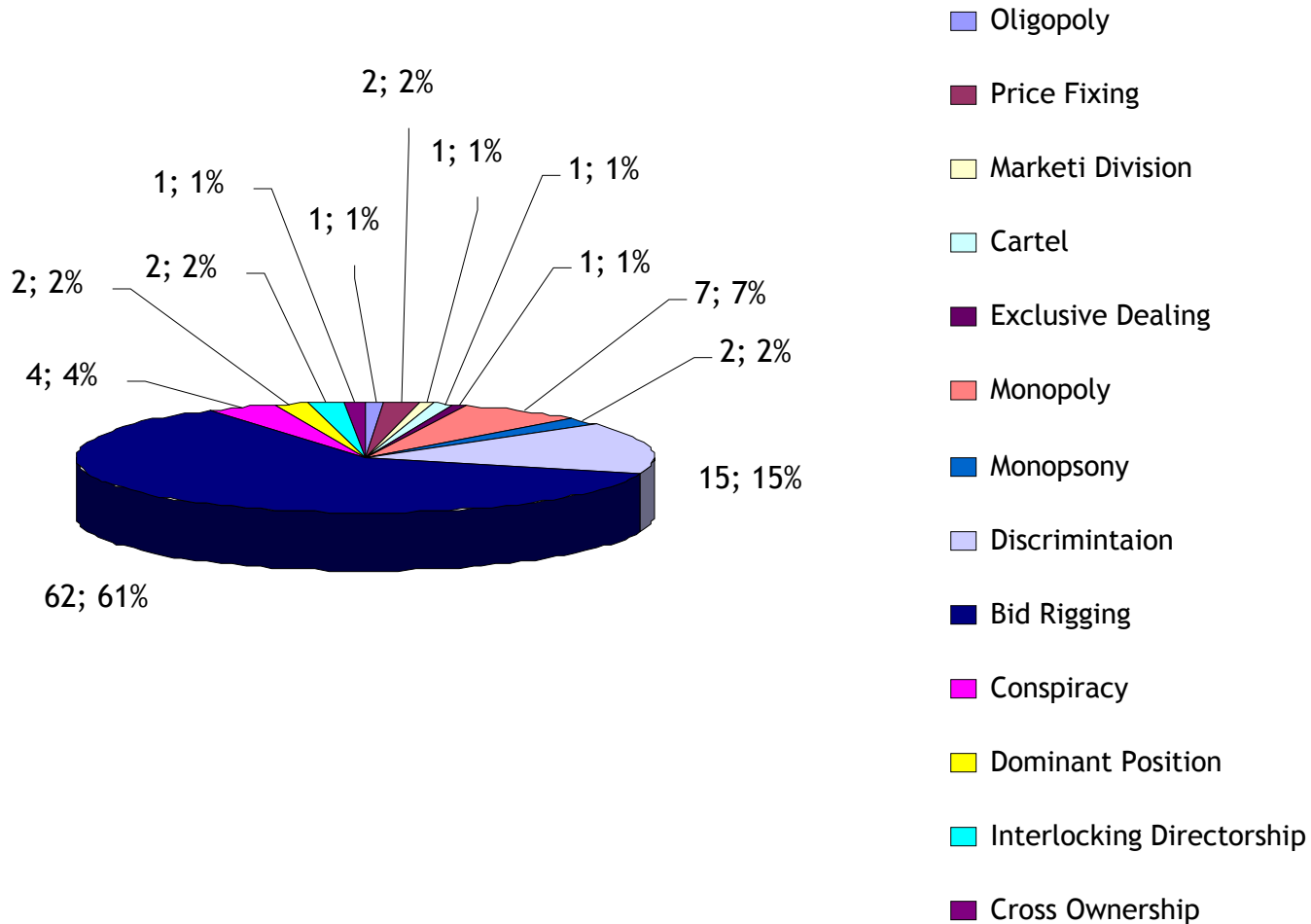
Complaint Statistic





Types of Complaints

Types of Complaints 2000-2013





Case Handling as of May 2014

YEARS	ACTS		DECISIONS		RUNNING CASES		TOTAL		PERCENTAGE	
	Bid Rigging	Non-Bid Rigging	Bid Rigging	Non -Bid Rigging	Bid Rigging	Non -Bid Rigging	Bid Rigging	Non -Bid Rigging	Bid Rigging	Non -Bid Rigging
2000	0	0	1	1	0	0	1	1		
2001	0	1	3	1	0	0	3	2		
2002	4	0	1	3	0	0	5	3		
2003	2	0	1	6	0	0	3	6		
2004	1	1	3	4	0	0	4	5		
2005	1	3	10	8	0	0	11	11		
2006	3	3	8	4	0	0	11	7		
2007	1	3	22	5	0	0	23	8		
2008	16	4	36	12	0	0	52	16		
2009	3	0	23	9	0	0	26	9		
2010	3	2	31	6	0	0	34	8		
2011	0	0	11	2	0	0	11	2		
2012	0	0	7	2	0	0	7	2		
2013	0	0	4	5	3	0	7	5		
2014	0	0	0	4	5	4	5	8		
SUB TOTAL	34	17	161	72	8	4	203	93	68,58%	31,42%



How to Detect Collusive Tendering

Commission Issued Prohibition of Conspiracy in Tender Guidelines based on Article 22 Law 5/1999, identify at least 14 indications of a conspiracy, of which frequently appear, but not limited to:

1. Indication in Tender Planning :

- Inclusion of technical Specifications, quantity, quality and / or the time of delivery of goods or services offered can only be supplied by a particular business actors;
- Selection of tender method that avoids a transparent implementation.
- Violation of the provisions by setting the requirements to perform direct appointment.



How to Detect Collusive Tendering (Cont)

2. Indication Conspiracy in forming the committee, as follows :
 - The member of the Committee has affiliation with certain bidder
 - information about board of member of the Committee is limited

3. Indication Conspiracy in Tender Announcement, as follows :
 - The tender announcement is not informative while a certain bidder got more
 - The tender announcement is published in small scale newspaper and/or on holiday
 - The tender announcement is published in special edition of the newspaper



How to Detect Collusive Tendering (Cont)

4. Conspiracy indication at the time of submission and opening of bid documents, as follows :
 - the documents received past the deadline;
 - the offer received by the Committee is from business actor who included in the envelope along with the offer of other tender participants / other auctions.
 - The document basically is not pass the qualification process or administrative process;



How to Detect Collusive Tendering (Cont)

5. Conspiracy indication in setting qualification of the goods or services , as follow:
 - The qualification of the project addressed to product qualification of certain bidder

6. Conspiracy indication at the time of tender explanation, as follows:
 - The committee has met certain bidder
 - The committee discriminatory inform the information of the project to certain bidder
 - The committee inform certain bidder about the project earlier than the others



How to Detect Collusive Tendering (Cont)

7. Conspiracy indication in getting tender documents, al :

- The documents provided by the committee is in different version
- the counter of provided documents is moved to other place in last minute

8. Conspiracy indication in setting of owner estimate, al:

- The Committee has two versions of the OE
- The OE is informed to certain bidder



How to Detect Collusive Tendering (Cont)

9. Conspiracy indication during the valuation of the winner, al :
 - The price of the winner substantially is lower or higher than the price of same project;
 - The price submitted by the bidders is identical;
 - There is two or more documents that seem very similar / identical;



How to Detect Collusive Tendering (Cont)

10. Conspiracy indication during the implementation and evaluation of the implementation, al :
- Winner tends to subcontract all project to another company;
 - Volume or value of projects submitted is not in accordance with the provisions of the project, without any justified reasons.



How to Detect Collusive Tendering (Cont)

11. Conspiracy indication during the announcement of the winner, al
 - The announcement is in limited access for the public
 - The date of the announcement delayed in last minute
 - The winner is “the defending champion” for many times
 - Take turn in winning a tender (bid rotation).
12. Conspiracy indication at the time of filing objections, as follows:
 - The committee did not respond to the objection of tender participants/ auction.
 - The committee tends to conceal the process and outcome of the evaluation



How to Detect Collusive Tendering (Cont)

13. Conspiracy indication during the implementation of the project, al :
- The contract is not dealt with the substance clause of the project
 - Winner tends to subcontract all project to another company;

Cases and Findings

- Investigation of Electronic Citizen Single Identification Number
- Investigation of Procurement Heavy Equipment in Ministry of General Affairs



Facts Findings

- Investigation Number: 46/Lid-L/XI/2012 Procurement of Heavy Equipment in Ministry of General Affairs Year 2011
 - Source of Fund: State Budget IDR 44 Billion (US\$ 4,737,527)
US\$ 1=IDR 9,300
 - Cross Ownership between 3 Companies led to shame competition;
 - Unprofessional conduct by Committee: Acts of Omission, Facilitated Winner by changing the Technical Specifications of Equipments led to Winner's
 - Horizontal and Vertical Collusion



Identical IP Address and Sequences of Upload Documents

	Information	PT. Ifani Dewi	PT Antar Mitra Sejati	PT Kinanti Perkasa
1	IP Address	114.79.55.242	114.79.55.242	N/A
	Documents and Upload Time	Akta Pendirian Ifani.zip (5/9/11,8:42PM) Akte Terakhir Ifani. Zip (5/9/11,8:48PM) Ifani Dewi DII (5/9/11,8:52PM)	Akta Pendirian (5/9/11,9:20PM) Akte Terakhir (5/9/11,9:24PM) AMS DII (5/9/11,9:34PM)	
2	IP Address	114.79.49.5	114.79.49.5	114.79.49.5
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Case Number 03/KPPU-L/2012 Bid Rigging in Procurement Electronic Citizen Single Identification Number



- Similarity nearly 75% of the products offered and the Consortium PNRI and Consortium Astragraphia including solutions to problems/troubleshoot, Methods of work;
- Ignorance by the procurement committee about many of the guidelines set by the government's Goods and Services Procurement Agency (LKPP) served as an initial move to reduce the level of competition among bidders
- irregularities were also found in the specifications set by the procurement committee, particularly on the demand for ISO-certified products, leading to a suspicion that the specifications were rigged to benefit the winners.



Challenges in Enforcement

- Cultural Barrier: Cooperation among Competitors instead of Compete
- Structural Barrier: Cooperation between Government Agencies
- Nation Wide: Central Government, Local Government and Corporations
- Lack of Powers: No Authority to conduct dawn raid, seizure, searches, detain etc. All documents obtained by voluntary
- Trade Associations have a potential threat to discriminate non member company
- Cooperation with National Police to present Non Cooperative Parties
- For information gathering, KPPU works closely with The Audit Board of Republic of Indonesia (BPK) and Indonesian Financial Transaction Reports and Analysis Centre (PPATK/INTRAC)
- For criminal proceeding, KPPU works closely with National Police, Attorney General and Corruption Eradication Commission (KPK)



THANK YOU

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