Merger Control
2021

Consulting editor
Thomas Janssens
Freshfields Bruckhaus Deringer

LEXOLOGY
Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the twenty-fifth edition of *Merger Control*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on New Zealand and Vietnam.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Thomas Janssens of Freshfields Bruckhaus Deringer, for his continued assistance with this volume.

LEXOLOGY
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ABNR

LEGISLATION AND JURISDICTION

Relevant legislation and regulators

1 | What is the relevant legislation and who enforces it?

Merger control in Indonesia is governed by:
- Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unhealthy Business Competition (the Indonesian Competition Law);
- Law No. 11 of 2020 on Job Creation (the Job Creation Law);
- Government Regulation No. 57/2010 on Mergers, Consolidation and Acquisition of Shares that may result in Monopolistic or Unfair Business Competition Practices (GR 57/2010);
- Indonesian Competition Commission (KPPU) Regulation No. 4/2012 on Guidelines for the Imposition of Penalties for Late Notification of a Merger, Consolidation of a Company or an Acquisition of Shares in a Company (the Guidelines on Penalties for Late Notification);
- KPPU Regulation No. 3/2019 on the Assessment of Mergers or Consolidations of Undertakings or Acquisitions of Shares in a Company that may result in Monopolistic Practices or Unhealthy Competition (the Merger Regulation); and
- KPPU Guidelines on the Assessment of Mergers, Consolidations, or Acquisitions issued on 6 October 2020 (the Merger Guidelines). The following KPPU regulations are also relevant:
- KPPU Regulation No. 3/2009 on Guidelines for the Interpretation of Relevant Markets (the Guidelines on Relevant Markets);
- KPPU Regulation No. 1/2020 on Electronic Case Handling; and
- KPPU Regulation No. 3/2020 on the Relaxation of Legal Enforcement against Monopolistic Practices and Unhealthy Business Competition and the Monitoring of the Implementation of Co-operatives in the Framework of Supporting the National Recovery Programme.

The KPPU enforces the above merger control legislation.

Scope of legislation

2 | What kinds of mergers are caught?

The following mergers are caught:
- Mergers, defined as the legal act of one or more undertakings merging with another undertaking resulting in assets and liabilities being transferred by operation of law to one undertaking and the legal status of the other to cease by operation of law.
- Consolidation, defined as the legal act of two undertakings or more to consolidate by establishing a new undertaking that obtains the assets and liabilities from the consolidating undertaking by operation of law, with the legal status of the consolidating undertakings ceasing by operation of law.
- Acquisition, defined as the legal act of an undertaking acquiring shares or assets of another undertaking resulting in a change of control of the undertaking or assets of the undertaking. It is generally assumed that a change of control could also involve a change from sole to joint control.

The concepts 'merger', 'consolidation' and 'acquisition', should be interpreted broadly, meaning any type of concentration of control over undertakings that were previously independent into one undertaking or one group of undertakings, or a change of control from one undertaking to another undertaking that results in a concentration of control or market concentration.

A share acquisition may be carried out through a direct purchase from the existing shareholder, the capital market, or via subscription of new shares by capital injection. It goes beyond the conventional understanding of the term by encompassing legal instruments conceptually similar to shares, which enable their owners to control and receive benefit from such ownership (eg, a participating interest commonly acquired in the oil and gas industry). An acquisition of shares with no, or limited, voting rights (preferred stock) is exempt from notification as no change of control results.

A transfer of assets (tangible or intangible) is tantamount to an acquisition of shares and, accordingly, should be notified to the Indonesian Competition Commission (KPPU), if:
- a transfer of their management control or physical control; or
- an increase in the ability of the acquirer to control a relevant market;

The following asset transfers are exempt:
1. a non-bank asset transfer transaction valued at < 250 billion rupiah (approximately US$ 17.9 million);
2. a bank asset transfer transaction valued at < 2.5 trillion rupiah (based on an exchange rate of US$1 = 14,000 rupiah);
3. the transfer of assets is carried out in the ordinary course of business. This depends on the business profile of the acquiring party and the purpose of the acquisition. Transactions in the ordinary course of business are:
    - transfers of assets that are finished goods from one undertaking to another for resale to consumers by an undertaking that is active in the retail sector (eg, the sale of consumer goods by retailers);
    - transfers of assets that are supplies to be used within three months in the production process (eg, the purchase by an undertaking of raw materials and basic components from various sources for production);
4. transfer of assets specifically in the property sector that meet one of the following criteria:
    - space for use by the buyer;
    - social facilities or facilities proposed for general use.
5. assets not intended for business use by the acquirer (eg, land for corporate social responsibility or not-for-profit activities, or to comply with statutory requirements).

The transferred asset value in (1) and (2) above is as cited in the latest financial statements or as calculated at the sale or purchase or other legal asset transfer. The highest of these should be the basis for calculation of the threshold. If the transferred assets are privately owned, the asset value would be based on the value as referred to in the seller's tax filing.

An undertaking is defined as any individual or business entity, either as a legal or non-legal entity, established and domiciled or carrying out activities within the Republic of Indonesia, either individually or jointly, by virtue of an agreement, in carrying out various business activities in the economic field.

If the transaction is carried out between affiliates, the transaction is exempt. A company is an affiliate of another if: (1) it either directly or indirectly controls or is controlled by that company, (2) both it and the other company, directly or indirectly, are controlled by the same parent company, or (3) there is a 'main principal shareholder' relationship with the counterparty. The principal shareholder should be a controlling shareholder. Affiliation means a relationship of control.

3 | What types of joint ventures are caught?

Joint ventures are, in principle, caught by Indonesian merger control legislation, unless they are a greenfield joint venture. For the avoidance of doubt, mergers, consolidations or acquisitions carried out by a joint venture after its establishment are still caught, provided that the other criteria are met.

4 | Is there a definition of 'control' and are minority and other interests less than control caught?

There is control if the acquiring party holds more than 50 per cent of the shares or voting rights or holds 50 per cent of the shares or voting rights or less but the ability to influence or direct the company's policy or management, or both.

Whether the acquiring party has the ability to influence or direct the undertaking's policy or management is to be determined case by case. Case law shows that an acquiring party may, for instance, have control because it has certain veto rights and a right to nominate the majority of directors, including the president director, or even if it has more expertise than the other shareholder in the business in which the target is engaged.

Thresholds, triggers and approvals

5 | What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

The jurisdictional thresholds for notification are:

- combined worldwide value of assets exceeds 2.5 trillion rupiah or if *all* undertakings involved in the transaction are active in the banking sector, 20 trillion rupiah; and/or
- combined sales value exceeds 5 trillion rupiah in Indonesia.

Undertakings that do not need to notify a transaction because the above thresholds are not met, are not immune to Indonesian Competition Commission (KPPU) investigation.

Of relevance to the calculation are worldwide assets or sales in Indonesia of the acquirer, and all undertakings (ie, including the target) that following the merger, consolidation or acquisition directly or indirectly control or are controlled by the undertaking that carries out a merger, consolidation or acquisition of shares or assets. This includes the ultimate beneficial owner, which is the highest controller of a group of business entities that is not controlled by any other business entity.

The jurisdictional thresholds would also be met if only one party involved in the transaction meets the threshold.

'Target' will include the target and its subsidiaries, and the seller is not taken into account. However, if the transaction results in a change from single to joint control, the worldwide assets or sales in Indonesia, or both, of the existing shareholder and its affiliates are also relevant (unless the target is a joint venture within the meaning discussed below).

The asset and sales value are calculated based on the latest consolidated audited financial report of the ultimate beneficial owner or, if no consolidated financial report is available, the financial reports of the ultimate beneficial owner and each of its subsidiaries. Sales value includes sales of products produced domestically and imported products. Exported products should be excluded from the calculation.

If the asset or sales value of a party involved in the merger, consolidation or acquisition has decreased by 30 per cent or more in an accounting year as compared to the year before, the value is calculated on the basis of the average in the past three years, or if the decrease occurred in under three years, the average in the past two years.

If the transaction involves a joint venture, the ultimate controlling entity for the calculation of the asset and sales value is the joint venture itself, so the calculation should be based on financial statements of the joint venture as well as of the target and its subsidiaries (if any). The asset and sales value of other affiliates of the joint venture (eg, the controlling entities, sister companies) may be ignored for the calculation of the threshold.

According to the KPPU, the joint venture referred to above should form an independent business unit, independent from each of the shareholders that have formed the joint venture. The joint venture should have its own financial statements, separated from each of the undertakings that have formed it.

The KPPU does not seem to require that the shareholding of parent companies in the joint venture is equal (ie, 50:50), or that they have exactly the same rights over the governance of the joint venture; but rather that both parent companies are given rights over strategic decisions (including veto rights) that would confer on them joint control over the joint venture.

6 | Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

A post-merger filing is mandatory if all criteria are met. Parties involved in the transaction may carry out a voluntary pre-merger filing. However, even if parties carry out a voluntary pre-merger filing, the post-merger filing will still be mandatory. No exceptions exist.

7 | Do foreign-to-foreign mergers have to be notified and is there a local effects or nexus test?

Foreign-to-foreign mergers may have to be notified if they have nexus or impact on the Indonesian market.

A transaction has nexus if at least one party engaged in the transaction carries out business activities in or sales to Indonesia.

In addition, the transaction should have an impact on the Indonesian market. According to the Merger Guidelines, this 'includes' the situation where one party that carries out the merger, consolidation or acquisition has business activities in Indonesia and the other party does not, but has a sister company that carries out business activities in or has sales to Indonesia. The Indonesian Competition Commission (KPPU) has confirmed that this is just one example. Other transactions with an impact would be if two parties involved in the transaction have sales. In other words, transactions that create a concentration in Indonesia (ie, with at least two parties involved in the transaction having business or sales in Indonesia) would, in principle, need to be filed in Indonesia

Based on the Single Economic Entity doctrine, a party as mentioned above can form part of a business group with (1) the surviving undertaking in a merger or the undertaking that carries out the consolidation or acquisition, (2) the undertaking that carries out the consolidation or (3) the undertaking that carries out the acquisition or the undertaking that is being acquired. Other parties involved in the transaction relevant to establish nexus are the seller that becomes a joint controller or target, and any of its affiliates

'Business activities in Indonesia' can be broadly interpreted and include direct and indirect (portfolio) equity investment in an Indonesian limited liability company (PT), investment in financial instruments other than shares, such as loans or assets, contractual rights, participation in a unit or trust, no matter whether directly or indirectly, or opening of a representative office.

Whether a company has 'sales in Indonesia' is not always easy to determine. Note that parallel sales could also trigger a notification requirement.

Although a transaction is believed not have impact on the Indonesian market if just one party has business or sales in Indonesia, the KPPU recommends that parties still file the transaction so the KPPU can assess the impact of the transaction on the Indonesian market comprehensively.

8 Are there also rules on foreign investment, special sectors or other relevant approvals?

Indonesia has a general foreign investment regime as set out in Law No. 25/2007 on Investment (the Investment Law), and implementing legislation, including Presidential Regulation No. 44/2016 on Lists of Business Fields Closed to Investment and Business Fields Conditionally Open to Investment (the Negative List).

Under the Investment Law, all business fields are open to foreign investment, unless declared otherwise. Foreign investment must be carried out through a foreign investment company in the form of a limited liability company under Indonesian Law (PT PMA), and domiciled within the territory of the state of the Republic of Indonesia, unless provided otherwise by the law. Foreign investors who make investment through a PT PMA should:

- subscribe to shares at the time the PT PMA is established;
- purchase shares; or
- invest through another method in accordance with laws and regulations.

The Negative List indicates business fields that are closed or conditionally open to foreign investment. Business fields that are conditionally open to foreign investment may be subject to the following conditions:

- reserved for micro, small medium business or cooperatives;
- subject to a partnership requirement (ie, a nucleus-plasma system, subcontracts, agency, franchising, or other partnership systems);
- maximum foreign shareholding;
- only allowed in specific locations;
- subject to a special permit; and
- other conditions.

If foreign investment is carried out by an ASEAN investor, the maximum foreign shareholding may be higher. Business fields not listed in the Negative List are, in principle, open to foreign investment. However, in practice, restrictions may still apply. Therefore, it is always advisable to reconfirm with the relevant authorities.

Several sectoral laws (eg, in the fields of banking, insurance, mining, oil and gas and horticulture) introduce foreign investment rules and restrictions. It goes beyond the scope of this overview to discuss these sectoral laws in detail.

In early November 2020, the Job Creation Law was enacted. One of its main objectives is to make Indonesia a more attractive destination for foreign investment. To this end, the Job Creation Law, inter alia, introduces changes to the Investment Law and requires the Negative List to be replaced by an Investment Priority List within three months of enactment of the Job Creation Law. The law also changes several sectoral laws, which will result in a removal of existing restrictions on foreign investment in these sectors.

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

9 What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

A transaction that meets the relevant criteria should in principle be filed within 30 business days as of the date that the transaction become legally effective. However, due to the covid 19 pandemic, the Indonesian Competition Commission (KPPU) has granted a grace period of an additional 30 business days, giving 60 business days in total, for transactions that were notified to the KPPU after the 30 business day deadline and became effective (1) on or after 9 November 2020 or (2) on or before 8 November 2020 and have not yet reached the Commission Hearing stage.

'Business days' excludes Saturdays and Sundays, official national holidays and joint leave.

If the target is an Indonesian limited liability company, a transaction becomes legally effective on:

- (for a merger), the date of approval of the Minister of Law and Human Rights (MoLHR) of the amendment of the articles of association;
- (for a consolidation), the date of approval of the MoLHR of the deed of establishment;
- (for an acquisition of shares), the date of notification of the MoLHR; and
- (for an acquisition of assets), the date of the asset transfer.

A transaction involving a target that is a public company becomes legally effective on the date of the public disclosure letter of the transaction.

The legal effectiveness of foreign-to-foreign transactions is to be determined based on the closing date in the agreement between the parties or approval by the authorities in the jurisdiction in which the transaction is taking place.

If a transaction has more than one date on which the transaction is becoming legally effective, the last date will apply.

The KPPU can impose a penalty of 1 billion rupiah per day for late notification. As of the promulgation of the Job Creation Law, the upper limit of the penalty has been repealed, pending the issuance of a specific government Regulation.

The KPPU has so far imposed penalties for late notification in at least 36 cases, 20 of which occurred in the past two years, showing an increase in enforcement activity. To the best of our knowledge, only one case related to a foreign-to-foreign transaction.

The penalties imposed recently ranged between 1 billion rupiah and 10.33 billion rupiah per transaction and 20.66 billion rupiah) in total for the same company that acquired three different entities owing to a delay of 1,220 days. The highest penalty for a single transaction (ie, 12.6 billion rupiah) was imposed in October 2019 for a delay of 240 days.

10 Which parties are responsible for filing and are filing fees required?

The following parties are responsible for a notification filing:

- for a merger: the surviving undertaking of the merger;
- for a consolidation: the undertaking resulting from the consolidation;
- for an acquisition of shares: the undertaking that acquires the shares; and
- for an acquisition of assets: the undertaking that acquires the assets.

No filing fees are required.

11 What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

As Indonesia has a post-merger system, there are no waiting periods and implementation of the transaction does not have to be suspended prior to clearance.

Pre-clearance closing

12 What are the possible sanctions involved in closing or integrating the activities of the merging businesses before clearance and are they applied in practice?

As Indonesia has a post-merger system, there are no possible sanctions involved in closing or integrating the activities of the merging businesses before clearance.

13 Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

Not applicable.

14 What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

Not applicable.

Public takeovers

15 Are there any special merger control rules applicable to public takeover bids?

No special merger control rules are applicable to public takeover bids.

Documentation

16 What is the level of detail required in the preparation of a filing, and are there sanctions for supplying wrong or missing information?

A high level of detail is required. A filing document consists of a notification form and supporting documentation.

Even if the parties to a transaction have no overlapping market share, the Indonesian Competition Commission (KPPU) still expects the notifying party to provide information on the products, customers, and suppliers of the parties involved in the transaction. Also, the KPPU, in principle, expects to see relevant corporate documents and financial reports of the parties and their affiliates.

The notifying party will need to grant power of attorney (notarised and consularised if signed abroad) to legal representatives preparing the filing for the KPPU.

The notifying party will also need to submit a business plan containing an industry analysis, management strategy for the next three to five years, an impact analysis (of transactions, market share, markets affected or the benefits of the transaction) and a summary of the transaction. The business plan especially the transaction impact analysis, should be prepared by an economist.

The KPPU can ask parties to submit supplementary documents in addition to the above.

Any foreign language documents, in principle, need to be translated into Bahasa Indonesia. A translated summary of each submitted document is permissible.

Incomplete notifications will not be accepted. If the submission is late, the KPPU may initiate a formal investigation and may impose penalties for the delay.

Further, if inaccurate or misleading data is suspected to have been submitted, the KPPU may carry out its own assessment using its own data.

Investigation phases and timetable

17 What are the typical steps and different phases of the investigation?

Informal and anonymised consultations are common, and may be advisable before notifying a merger, but none of these will be binding on the Indonesian Competition Commission (KPPU).

A party may choose to engage in voluntary, pre-merger consultation. This procedure is similar to the notification procedure. The KPPU's assessment carried out in the framework of a consultation will be valid for two years and if there are no substantial changes to the transaction information provided. A consultation will not exempt the party from the obligation to submit a notification after the transaction has become effective.

Upon submission of a consultation or notification, the KPPU will have 60 business days to review it and seek clarification, if necessary, from the notifying party.

If the KPPU is of the opinion that the transaction does not meet the thresholds, is a transaction between affiliates, does not result in a change of control, concerns the formation of a greenfield joint venture, a exempted transfer of assets, or is carried out to implement prevailing laws and regulations, the KPPU will issue a Statement of No Notification Required in respect of the transaction.

After the 60 business days, the KPPU has a further 90 business days to carry out its initial assessment and, if maybe a comprehensive assessment, and issue its opinion.

18 What is the statutory timetable for clearance? Can it be speeded up?

Upon submission of the notification, the Indonesian Competition Commission (KPPU) has 150 business days to issue its opinion. In practice, the KPPU may need more time to issue its opinion.

However, under the Merger Guidelines, the procedure can now be speeded up if the KPPU concludes that a notification is suited to a simplified assessment, as a transaction not expected to create competition issues.

The simplified assessment will take into account the following characteristics of the transaction:

- no involvement of the parties in overlapping business activities;
- no engagement in vertically integrated business activities;
- should overlapping business activities exist, they have a limited joint market share;
- should vertically integrated business activities exist, they each has the Herfindahl Hirschman-Index (HHI) below the required threshold;
- the transaction does not have potential for tying or bundling, or a network effect;

- the notification is submitted within 30 business days of commencement of the transaction; or
- the transaction involves an acquisition resulting in an undertaking that gains sole control (from joint control with another undertaking hitherto).

A simplified assessment may be carried out either by the KPPU or at the request of the notifying party.

If the KPPU approves a simplified assessment request, it should issue its opinion on the transaction within 14 business days.

If, following preliminary notification, the KPPU concludes that a notification is not required, it will issue a statement within 60 business days that the transaction is not notifiable.

SUBSTANTIVE ASSESSMENT

Substantive test

19 | What is the substantive test for clearance?

The Indonesian Competition Commission (KPPU) applies the HHI, or concentration ration (CRn). Only if HHI were above 1,800 or Delta HHI above 150 would the KPPU look at other aspects, as discussed below.

If the market concentration test is positive, the KPPU will consider entry barriers. In doing so it will, for instance, look at: the ease for new players to enter the market; strength of new players; time needed to enter market; switching costs; homogeneity of products; and brand loyalty.

20 | Is there a special substantive test for joint ventures?

No.

Theories of harm

21 | What are the 'theories of harm' that the authorities will investigate?

'Theories of harm' that the Indonesian Competition Commission (KPPU) will investigate are potential unilateral or coordinated effects, and market foreclosure.

If a transaction results in a conglomerate, the KPPU will also assess potential of tying or bundling effects, or both.

Non-competition issues

22 | To what extent are non-competition issues relevant in the review process?

The Indonesian Competition Commission (KPPU) will assess a transaction more positively if it could prevent a party from bankruptcy. A decrease in market players through bankruptcy would be viewed as more harmful than one of market players as a result of the transaction.

The KPPU may also take into account other non-competition issues when carrying out a review:

- policy to augment the competitiveness and strength of national industry;
- technology and innovation development;
- protection of small and medium-sized enterprises;
- impact on the labour force; and
- implementation of relevant laws or regulations.

Economic efficiencies

23 | To what extent does the authority take into account economic efficiencies in the review process?

The Indonesian Competition Commission (KPPU) will assess a transaction more positively if it has potential efficiency effects, benefiting customers. Efficiency gains are balanced against the anticompetitive effects of a transaction. The KPPU will prioritise healthy competition over efficiency.

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

24 | What powers do the authorities have to prohibit or otherwise interfere with a transaction?

The Indonesian Competition Commission (KPPU) cannot prohibit or otherwise interfere with a transaction within the framework of merger control. However, the KPPU may initiate a formal investigation into a cartel or abuse of dominance rules under the Indonesian Competition Law.

Remedies and conditions

25 | Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

When the Indonesian Competition Commission (KPPU) has concerns about a transaction, the parties are able to negotiate structural remedies (ie, divestiture) or behavioural remedies, for example:

- access to intellectual property rights related to essential facilities; or
- elimination of competition barriers, for example:
  - exclusive contracts;
  - consumer switching cost;
  - tie-in or bundling; or
  - supply or purchase barriers.

The KPPU may require an undertaking to provide information on price, production, costs and other data to ensure that the undertaking applies a justifiable price strategy.

26 | What are the basic conditions and timing issues applicable to a divestment or other remedy?

As Indonesia has a post-merger notification regime, a transaction will already be legally effective by the time remedies are imposed. The Indonesian Competition Commission (KPPU) will state the timing for remedy compliance. Where KPPU has imposed behavioural remedies, it required compliance for three years.

If the undertaking does not respond or refuses to accept conditional approval that imposes remedies, the KPPU can initiate an investigation into violation of the Indonesian Competition Law that may lead to the imposition of penalties as described above.

To the best of our knowledge, the KPPU has never imposed such penalties and sanctions as a result of a party's failure to comply with its remedies.

27 | What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

To the best of our knowledge, the Indonesian Competition Commission (KPPU) has so far only agreed to or imposed behavioural, not structural remedies. The KPPU has so far imposed behavioural remedies in at least five cases, usually consisting of reporting requirements. The KPPU has never imposed behavioural or structural remedies in foreign-to-foreign mergers.

Ancillary restrictions

28 | In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

The Merger Control Regulation is silent on the circumstances in which the clearance decision will cover related arrangements (ancillary restrictions). We are also not aware of any precedent in which the Indonesian Competition Commission (KPPU) addressed related arrangements.

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

29 | Are customers and competitors involved in the review process and what rights do complainants have?

Suppliers and competitors, industry associations, or government agencies may be involved in the review process.

The notifying party is requested to provide contact details of third parties, and the Indonesian Competition Commission (KPPU) may invite them to be interviewed and hear their opinion about the impact of the transaction.

There is no formal procedure for these third parties to submit a complaint on the transaction as part of the merger review process. However, any party may file a complaint to the KPPU based on alleged violation of article 28 or other relevant provisions of the Indonesian Competition Law if they suffer losses as a result of the transaction. This case will be examined and adjudicated separately by the KPPU in the framework of a formal investigation.

Publicity and confidentiality

30 | What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

The notification and the description of the transaction are publicised by the Indonesian Competition Commission (KPPU) on its website.

There is always a delay in the publication of such information, but normally, this will appear on the KPPU's website before the KPPU issues its opinion. The notifying party would have an opportunity to review and redact confidential commercial information in the opinion.

Cross-border regulatory cooperation

31 | Do the authorities cooperate with antitrust authorities in other jurisdictions?

The Indonesian Competition Commission (KPPU) cooperates with competition authorities in other jurisdictions. This cooperation is on general policy matters and the sharing of generic information with other jurisdictions. The KPPU is under a legal obligation to respect the confidentiality of information.

JUDICIAL REVIEW

Available avenues

32 | What are the opportunities for appeal or judicial review?

Parties cannot file an objection against an Indonesian Competition Commission (KPPU) opinion on merger control. There is also no other access to judicial review. It is possible, but rare, for parties that have been imposed with a penalty for late notification to file an objection to the KPPU's decision.

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Time frame

33 | What is the usual time frame for appeal or judicial review?

In the past, it would take more than three months to obtain a District Court decision. However, the authority to review competition law cases was recently transferred from the District Court to the Commercial Court, we cannot estimate the time frame for appeal.

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

34 | What is the recent enforcement record and what are the current enforcement concerns of the authorities?

Unlike in other jurisdictions, a merger notification in Indonesia does not result in the Indonesian Competition Commission (KPPU) issuing a formal decision to permit or prohibit a transaction between the parties. Instead, the KPPU will render a non-binding opinion, which can be:

- no allegation of monopolistic practice or unfair business competition;
- an allegation of monopolistic practice or unfair business competition with conditional approval; or
- an allegation of monopolistic practice or unfair business competition.

In most cases, the KPPU issues a 'no allegation of monopolistic practice or unfair business competition' opinion. If the KPPU issues a conditional approval, the undertaking must accept behavioural or structural remedies. The authority has, so far, imposed behavioural remedies (reporting requirements) at least five times, none related to foreign-to-foreign transactions.

Reform proposals

35 | Are there current proposals to change the legislation?

The Indonesian legislature plans to enact a competition bill that will replace the current Indonesian Competition Law.

The bill was originally planned to be enacted this year but, due to the covid-19 emergency, the Parliament decided early in July to stop the deliberations. It is unclear when the deliberations will continue.

UPDATE AND TRENDS

Key developments of the past year

36 What were the key cases, decisions, judgments and policy and legislative developments of the past year?

Key developments of the past year were the introduction of the Merger Regulation and the Merger Guidelines. These pieces of legalisation have resulted in significant changes to Indonesia's merger control system, in particular because of the introduction of a notification obligation for certain asset acquisitions and new criteria to assess the need to notify foreign-to-foreign transactions. The Indonesian Competition Commission (KPPU) has also become more active in imposing penalties against undertakings that failed to notify a transaction within the 30 business days deadline. These developments have an immediate effect on the practice of merger control in Indonesia, with more undertakings notifying transactions, including foreign-to-foreign transactions. The cancellation, by the Job Creation Law, of the cap on penalties for late notifications may give undertakings even more reason to notify transactions to the KPPU.

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