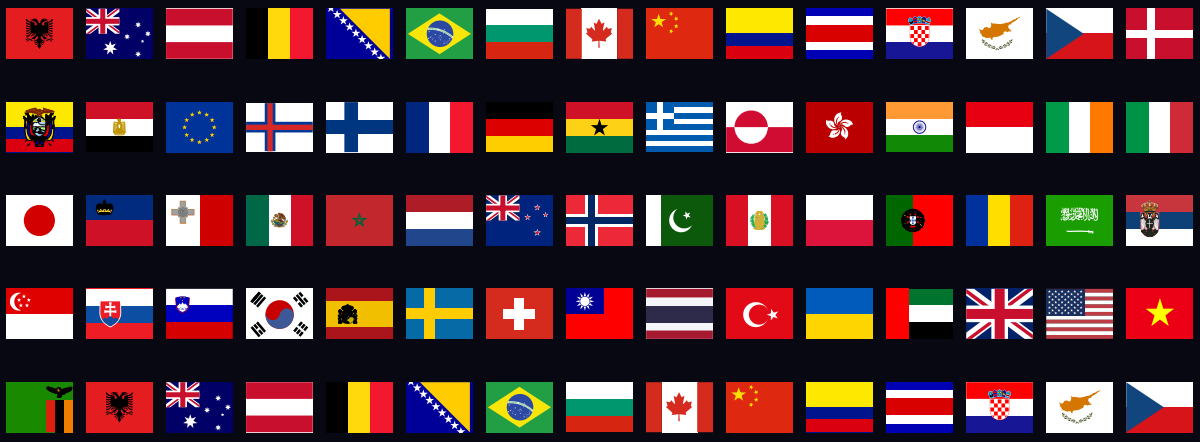
MERGER CONTROL

Indonesia



LEXOLOGY
Getting The Deal Through

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Merger Control

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Quick reference guide enabling side-by-side comparison of local insights into legislation and regulators; scope of legislation; thresholds, triggers and approvals; notification and clearance timetable; substantive assessment; remedies and ancillary restraints; involvement of other parties or authorities; judicial review; enforcement record and reform proposals; and recent trends.

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Table of contents

UPDATE AND TRENDS

Key developments of the past year

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Indonesia

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LEGISLATION AND JURISDICTION

Relevant legislation and regulators

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, as amended by the Job Creation Law;
- Law No. 11/2020 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;
- Government Regulation No. 44/2021 on Implementation of the Prohibition of Monopolistic and Unhealthy Business Competition Practices;
- 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 Acquisition of Shares in a Company;
- 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;
- KPPU Guidelines on the Assessment of Mergers, Consolidations or Acquisitions issued on 6 October 2020 (the Merger Guidelines); and
- Supreme Court Circular Letter No. 1/2021 on Transfer of Examination of Objection Upon KPPU Decision to the Commercial Court.

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); and
- KPPU Regulation No. 1/2020 on Electronic Case Handling;

The KPPU enforces the above merger control legislation.

Law stated - 27 May 2022

Scope of legislation

What kinds of mergers are caught?

Mergers, consolidations and acquisitions are caught.

- A merger is 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.
- A consolidation is 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.
- An acquisition is 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 of mergers, consolidations and acquisitions should be interpreted broadly to mean any type of concentration of control over undertakings that were previously independent into one undertaking or 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 or 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 that are 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 KPPU if there is:

- 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 less than 250 billion rupiahs;
2. a bank asset transfer transaction valued at less than 2.5 trillion rupiahs;
3. a transfer of assets that 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:
    1. 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); and
    2. 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. a transfer of assets specifically in the property sector that meets one of the following criteria:
    1. space for use by the buyer; or
    2. social facilities or facilities proposed for general use.
5. Assets that are 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 points (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 a legal or non-legal entity, that is established and domiciled or is carrying out activities within Indonesia, either individually or jointly, by virtue of an agreement, while 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:

- it either directly or indirectly controls or is controlled by that company;
- both it and the other company, directly or indirectly, are controlled by the same parent company; or
- there is a 'main principal shareholder' relationship with the counterparty.

The principal shareholder should be a controlling shareholder. Affiliation means a relationship of control.

Law stated - 27 May 2022

What types of joint ventures are caught?

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

Law stated - 27 May 2022

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 it holds 50 per cent of the shares or voting rights or less but has 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 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 if it has more expertise than the other shareholder in the business in which the target is engaged.

Law stated - 27 May 2022

Thresholds, triggers and approvals

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:

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

Undertakings that do not need to notify a transaction because the above thresholds are not met are not immune to 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 are also met if only one party involved in the transaction meets the threshold.

'Target' includes 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 transaction is carried out by a joint venture within the meaning discussed below).

The asset and sales value are calculated based on the most recent 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 with the year before, the value is calculated on the basis of the average of the past three years, or if the decrease occurred in under three years, the average of the past two years.

If the transaction is carried out by 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 the 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 and sister companies) may be ignored for the calculation of the threshold.

According to the KPPU, the joint venture should form a business unit that is 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.

Law stated - 27 May 2022

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.

Law stated - 27 May 2022

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 a nexus in the Indonesian market. A transaction has a 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 in which 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 KPPU has confirmed that this is just one example. Other transactions with an impact are situations in which 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:

- the surviving undertaking in a merger or the undertaking that carries out the consolidation or acquisition;
- the undertaking that carries out the consolidation; or
- the undertaking that carries out the acquisition or the undertaking that is being acquired.

Other parties involved in the transaction relevant to establish a 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 to 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.

Law stated - 27 May 2022

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, as amended by the Job Creation Law (the Investment Law), and implementing legislation, including Presidential Regulation No. 10/2021 on Investment Sectors as amended by Presidential Regulation No. 49/2021 (the 2021 Investment 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 investments 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 2021 Investment List indicates:

- 37 business fields are subject to specific requirements, which may be classified as:
- six business fields that are completely prohibited from FDI under the Job Creation Law (narcotics, gambling or casinos, harvesting of fish listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora, utilisation or harvesting of coral, chemical weapons and chemicals that may damage the ozone layer);
- 60 business fields that are reserved for cooperatives and small and medium-sized enterprises (SMEs); and
- 46 business fields that are open to FDI if in partnership with cooperatives and SME.

Several sectoral laws (eg, in banking, non-banking financial services (venture capital, multi-finance and securities companies), insurance, mining, oil and gas, and shipping) introduce foreign investment rules and restrictions. It goes beyond the scope of this overview to discuss those sectoral laws in detail.

Law stated - 27 May 2022

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

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 of the date that the transaction becomes legally effective.

Owing to the covid-19 pandemic, the Indonesian Competition Commission (KPPU) 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 that became effective on or after 9 November 2020, or on or before 8 November 2020 but that have not yet reached the Commission hearing stage; however, the regulation on the basis of which this grace period was granted has now been revoked by the KPPU. Accordingly, a transaction should again be filed within 30 business days as of the transaction becoming legally effective.

'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 submitted to the Financial Services Authority or the last date of payment of shares or other equity securities in the exercise of a rights issuance, merger, consolidation or acquisition carried out by a public company in connection with a public company, or a private company in connection with a public company;

The legal effectiveness of foreign-to-foreign transactions is 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.

For late notification, the KPPU can impose a penalty of 1 billion rupiahs per day, with a maximum of 25 billion rupiahs.

As at the time of writing, the KPPU has confirmed that the recently introduced profit or turnover-based penalty regime does not apply to late notifications.

The KPPU has so far imposed penalties for late notification in at least 49 cases, 33 of which occurred in the past three years, showing an increase in enforcement activity. To the best of our knowledge, three cases are related to foreign-to-foreign transactions.

The penalties imposed recently ranged between 1 billion rupiahs and 10.33 billion rupiahs per transaction and 20.66 billion rupiahs in total for a single 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 rupiahs) was imposed in October 2019 for a delay of 240 days.

Law stated - 27 May 2022

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.

Currently, no filing fees are required; however, we understand that the KPPU is considering the introduction of filing fees in the near future.

Law stated - 27 May 2022

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 the implementation of the transaction does not have to be suspended prior to clearance.

Law stated - 27 May 2022

Pre-clearance closing

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 for closing or integrating the activities of the merging businesses before clearance.

Law stated - 27 May 2022

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

Not applicable.

Law stated - 27 May 2022

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

Not applicable.

Law stated - 27 May 2022

Public takeovers

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

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

Law stated - 27 May 2022

Documentation

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 comprises a notification form and supporting documentation.

Even if the parties to a transaction have no overlapping market share, the KPPU still expects the notifying party to provide information on the products, competitors, customers and suppliers of the parties involved in the transaction. The KPPU also, in principle, expects to see relevant corporate documents and audited 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, the 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, particularly the transaction impact analysis, should be prepared by an economist.

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

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

Incomplete notifications will not be accepted, and the KPPU will not issue a receipt of submission. 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.

Law stated - 27 May 2022

Investigation phases and timetable

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 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 has 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 or an 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-day period, the KPPU has a further 90 business days to carry out its initial assessment, and perhaps a comprehensive assessment, and issue its opinion.

Law stated - 27 May 2022

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

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

However, under the KPPU Guidelines on the Assessment of Mergers, Consolidations or Acquisitions, the procedure can now be speeded up if the KPPU concludes that a notification is suitable for a simplified assessment, as a transaction not expected to create competition issues.

The simplified assessment takes 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, a limited joint market share of those activities;
- should vertically integrated business activities exist, a Herfindahl-Hirschman index below the required threshold for each of those activities;
- the transaction not having the potential for tying or bundling, or a network effect;
- submission of the notification within 30 business days of commencement of the transaction; or
- the transaction involving 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.

Law stated - 27 May 2022

SUBSTANTIVE ASSESSMENT

Substantive test

What is the substantive test for clearance?

The Indonesian Competition Commission (KPPU) applies the Herfindahl-Hirschman Index (HHI) or concentration ratio. The KPPU carries out a comprehensive assessment and looks at other aspects if:

- the HHI is between 1,500 and 2,500, and the change in the HHI is above 250; or
- the HHI is above 2,500, and the change in the HHI is above 150.

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, the strength of new players, the time needed to enter market, switching costs, homogeneity of products and brand loyalty.

Law stated - 27 May 2022

Is there a special substantive test for joint ventures?

No.

Law stated - 27 May 2022

Theories of harm

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

Theories of harm that the KPPU will investigate are potential unilateral or coordinated effects, and market foreclosure.

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

Law stated - 27 May 2022

Non-competition issues

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

The KPPU will assess a transaction more positively if it may prevent a party from bankruptcy. A decrease in market players through bankruptcy would be viewed as more harmful than one of market players becoming dominant as a result of the transaction.

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

- 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.

Law stated - 27 May 2022

Economic efficiencies

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

The KPPU will assess a transaction more positively if it has potential efficiency effects that benefit customers. Efficiency gains are balanced against the anticompetitive effects of a transaction. The KPPU will prioritise healthy competition over efficiency.

Law stated - 27 May 2022

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

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, it may initiate a formal investigation into violations of cartel or abuse of dominance rules under Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unhealthy Business Competition, as amended by the Job Creation Law (the Competition Law).

Law stated - 27 May 2022

Remedies and conditions

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

When the 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, such as exclusive contracts, consumer switching costs, tie-in or bundling, or supply or purchase barriers.

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

Law stated - 27 May 2022

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

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

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

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

Law stated - 27 May 2022

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

To the best of our knowledge, the 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.

Law stated - 27 May 2022

Ancillary restrictions

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 KPPU has addressed related arrangements.

Law stated - 27 May 2022

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

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 about the transaction as part of the merger review process; however, any party may file a complaint to the KPPU based on an alleged violation of article 28 or other relevant provisions of Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unhealthy Business Competition, as amended by the Job Creation Law, if they suffer losses as a result of the transaction. The case will be examined and adjudicated separately by the KPPU in the framework of a formal investigation.

Law stated - 27 May 2022

Publicity and confidentiality

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

The notification and a brief description of the transaction of the parties are publicised by the KPPU on its website.

Before 2019, the KPPU publicised its opinion of certain notifications. Since 2019, the information published by the KPPU is limited to the registration number and the date of the notification, the identity of the acquirer and the target, and the status of the notification.

Law stated - 27 May 2022

Cross-border regulatory cooperation

Do the authorities cooperate with antitrust authorities in other jurisdictions?

The 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.

Law stated - 27 May 2022

JUDICIAL REVIEW

Available avenues

What are the opportunities for appeal or judicial review?

Parties cannot file an objection against the opinion of the Indonesian Competition Commission (KPPU) 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.

Law stated - 27 May 2022

Time frame

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

The authority to review competition law cases was recently transferred from the District Court to the Commercial Court. The time frame for the objection phase is from three months to 12 months.

Upon receipt of the Commercial Court's decision, the parties may file for cassation to the Supreme Court. The Job Creation Law revoked the Supreme Court's obligation under the Competition Law to render its decision within 30 days of receipt of the application; therefore, it could take up to 250 days to obtain a Supreme Court decision at the cassation level.

Law stated - 27 May 2022

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

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.

Law stated - 27 May 2022

Reform proposals

Are there current proposals to change the legislation?

The Indonesian legislature plans to enact a new competition bill that will replace Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unhealthy Business Competition; however, the competition bill will not be enacted in 2022 as it is not part of the 2022 national legislation programme.

Law stated - 27 May 2022

UPDATE AND TRENDS

Key developments of the past year

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

The Indonesian Competition Commission (KPPU) is still very active in imposing penalties against undertakings that have failed to notify a transaction within the 30-business-day deadline: since the beginning of 2022, it has imposed penalties in two cases.

The KPPU's increased enforcement activity in respect of late notifications, which started around three years ago, has had an immediate effect on the practice of merger control in Indonesia, with more undertakings notifying transactions, including foreign-to-foreign transactions, to the KPPU.

Law stated - 27 May 2022

Jurisdictions

Albania	Wolf Theiss
Australia	Allens
Austria	Freshfields Bruckhaus Deringer
Belgium	Freshfields Bruckhaus Deringer
Bosnia and Herzegovina	Wolf Theiss
Brazil	TozziniFreire Advogados
Bulgaria	Boyanov & Co
Canada	McMillan LLP
China	Freshfields Bruckhaus Deringer
Colombia	Posse Herrera Ruiz
Costa Rica	Zurcher Odio & Raven
Croatia	Wolf Theiss
Cyprus	Antoniou McCollum & Co LLC
Czech Republic	Nedelka Kubáč advokáti
Denmark	Kromann Reumert
Ecuador	Bustamante Fabara
Egypt	Zulficar & Partners
European Union	Freshfields Bruckhaus Deringer
Faroe Islands	Kromann Reumert
Finland	Roschier, Attorneys Ltd
France	Freshfields Bruckhaus Deringer
Germany	Freshfields Bruckhaus Deringer
Ghana	Bentsi-Enchill Letsa & Ankomah
Greece	Vainanidis Economou & Associates
Greenland	Kromann Reumert

India	Shardul Amarchand Mangaldas & Co
Indonesia	ABNR
Ireland	Matheson
Italy	Freshfields Bruckhaus Deringer
Japan	Freshfields Bruckhaus Deringer
Liechtenstein	Sele Frommelt & Partner Attorneys at Law
Malta	Camilleri Preziosi
Mexico	Castañeda y Asociados
Morocco	UGGC Avocats
Netherlands	Freshfields Bruckhaus Deringer
New Zealand	Russell McVeagh
Norway	Wikborg Rein
Pakistan	Axis Law Chambers
Peru	Payet Rey Cauvi Pérez Abogados
Poland	WKB Wiercinski Kwiecinski Baehr
Portugal	Gomez-Acebo & Pombo Abogados
Romania	Wolf Theiss
Saudi Arabia	Freshfields Bruckhaus Deringer
Serbia	Wolf Theiss
Singapore	Drew & Napier LLC
Slovakia	Wolf Theiss
Slovenia	Wolf Theiss
South Korea	Bae, Kim & Lee LLC
Spain	Freshfields Bruckhaus Deringer
Sweden	Mannheimer Swartling

Taiwan	Yangming Partners
Thailand	Weerawong, Chinnavat & Partners Ltd
Turkey	ELIG Gurkaynak Attorneys-at-Law
Ukraine	Asters
United Arab Emirates	Freshfields Bruckhaus Deringer
United Kingdom	Freshfields Bruckhaus Deringer
USA	Davis Polk & Wardwell LLP
Vietnam	Freshfields Bruckhaus Deringer
Zambia	Corpus Legal Practitioners