The Merger Control Review

Eighth Edition

Editor
Ilene Knable Gotts

The Law Reviews

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THE LAWREVIEWS

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INDONESIA

Theodoor Bakker, Luky I Walalangi and Miriam Andreta[1]

I INTRODUCTION

Mergers in Indonesia are generally governed by Law No. 40 of 2007 regarding Limited Liability Companies dated 16 August 2007 (Company Law). Article 126 of the Company Law[2] states that when conducting a merger, the companies concerned must consider, *inter alia*, the public interest and the state of competition that results from the merger. Increasingly, the government has become aware that mergers can cause monopolistic or monopsonic practices harmful to the public, and it now supervises merger activities in Indonesia more actively than ever before to prevent unfair business competition practices. Law No. 5 of 1999 regarding the Prohibition of Monopolistic and Unfair Competition Practices, dated 5 March 1999 (Antimonopoly Law),[3] prohibits certain activities, certain agreements and dominant positions that are contrary to fair business practices. Mergers, consolidations and acquisitions are regulated by Articles 28 and 29. Further discussions on merger and unfair business practices below will be pursuant to the Antimonopoly Law.

The Antimonopoly Law designates two approaches to unfair business practices: practices that fall under the 'rule of reason' and practices that are '*per se* illegal'. The 'rule of reason' is an approach whereby the potential pro-competitive features of restrictive business practices are evaluated in comparison with the potential anticompetitive effects to determine whether the practice should be prohibited. On the other hand, the *per se* illegal approach is to declare certain business practices as automatically illegal and prohibited if such business practices meet the terms of the prohibition, without the need to substantiate whether the business practice in question has a negative implication on the competitive process.

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1 Theodoor Bakker is a foreign counsel, and Luky I Walalangi and Miriam Andreta are partners at Ali Budiardjo, Nugroho, Reksodiputro.

2 Article 126 of the Company Law:
Legal acts of merger, consolidation, acquisition, or division must have due regard to the interest of:
a the Company, the minority shareholders, employees of the Company;
b the creditors and other business partners of the Company; and
c the public and fair competition in doing business.
Elucidation of Article 126 of the Company Law:
These provisions emphasise that Mergers, Consolidations, Acquisitions or Division may not be conducted if they will damage the interest of certain parties. Further, in Mergers, Consolidations, Acquisitions, or Division, the possible occurrence of monopoly or monopsony in any form that will incur damages to the public, must be prevented.

3 In the remainder of this chapter, references to articles are, unless otherwise stated, to articles of the Antimonopoly Law.

Under Article 27 of the Antimonopoly Law, share ownership that results in a dominant position will be considered *per se* illegal. A dominant position is a condition in which a business entity does not have any significant competitors in the market concerned in connection with the market share that it controls, or a condition in which a business entity occupies the highest position among the competitors in the market concerned in connection with its financial capability, the capacity to access supplies or sales, and the capacity to adjust the supplies of or demand for a certain good or service.

A business entity shall be deemed to have a dominant position if:

a one business entity or a group of business entities controls 50 per cent or more of the market share of one particular good or service; or

b two or three business entities or groups of business entities control 75 per cent or more of the market share of one particular good or service.

Article 29 of the Antimonopoly Law further provides that if the merger, consolidation or acquisition results in the assets or sales value of the resulting entity exceeding certain thresholds, then such acts must be notified to the Business Competition Supervisory Commission (KPPU), which is the governmental competition supervision agency in Indonesia. The underlying tenet of its supervision is to ensure that mergers do not cause monopolistic or unfair competition practices.[4]

The implementing regulation for Article 28 was not issued by the government for more than 10 years, and this caused much uncertainty for both practitioners and academics. The KPPU took several interim measures to address these areas of uncertainty, including issuing Regulation No. 1 of 2009 regarding Pre-Notification of Mergers, Consolidations and Acquisitions (as amended – Pre-Notification Regulation). The Pre-Notification Regulation is intended to fill the vacuum created by the absence of the government regulation. The Pre-Notification Regulation, however, has been criticised by practitioners, who viewed it as lacking a strong legal basis.

On 20 July 2010, the government finally issued the government regulation that was needed to implement the merger control provisions of Articles 28 and 29 of the Antimonopoly Law. The long-awaited regulation, known as Government Regulation No. 57 of 2010 (GR No. 57), addresses a number of uncertainties in the provisions of Articles 28 and 29, as well as issues raised by the Pre-Notification Regulation.

II YEAR IN REVIEW

i Regulations

In 2009 and 2010 there came the introduction of other key regulations to further implement the Antimonopoly Law and enhance the KPPU in conducting its supervisory role. The regulations are as follows.

4 Recently, the Indonesian House of Representatives passed a latest draft amendment to the Antimonopoly Law to be discussed with the government and the President of the Republic of Indonesia. Among the proposed changes, the most significant are the change to the merger notification requirement from 'post-notification' to 'pre-notification', which coverage now includes acquisition of assets and establishment of a joint venture company, and the proposed amendment on the definition of 'business actor', which will include those conducting business outside Indonesia but affecting the Indonesian market. The draft amendment will be discussed with the government for further amendment.

Code of Ethics for KPPU members

The Code of Ethics is provided in KPPU Decision No. 22 of 2009, and is intended to address the issue of the credibility and integrity of KPPU members.[5] The Code is enforced by an internal honorary council, which consists of internal appointees and holds closed hearings. Although the decisions of the council are read out at an open session, the closed internal process has triggered the criticism that the Code does not promote transparent and accountable processes.

Pre-Notification Regulation

Generally, the Pre-Notification Regulation provides parties the opportunity to test the waters prior to embarking on a transaction. Any final opinion of the KPPU given under the Pre-Notification Regulation is binding on the KPPU. In contrast, and as described below, any notification under GR No. 57 is post-transaction (that is, once the merger, consolidation or acquisition is effective). Although GR No. 57 allows a party to consult in writing or verbally with the KPPU prior to the commencement of a merger, a consolidation or an acquisition (consultation process), it clearly states that the consultation process is not binding upon the KPPU and does not exempt parties from filing a post-closing notification. However, according to its implementing guidelines, the KPPU will not reassess a transaction for which the parties have received pre-closing guidance unless there have been material changes in the transaction structure or the market conditions after closing. This may be seen as a backwards step by the government in providing legal certainty for investment in Indonesia. As per the discussion on the *Temasek* case below (which was resolved prior to the issuance of the Pre-Notification Regulation), the considerable issues surrounding that matter could largely have been avoided had a pre-notification process been in place.

With the issuance of GR No. 57, the opportunities afforded by the Pre-Notification Regulation have become less relevant, and hence are not elaborated on.

Guidelines on intellectual property rights and franchises

Through the enactment of KPPU Regulation No. 2 of 2009, the KPPU has laid down the rules on how intellectual property rights licences and franchises can enjoy exceptions under the Antimonopoly Law. The KPPU wishes to make clear that, although exempt, intellectual property licences and franchises should not violate certain practices; the exception under the Antimonopoly Law is not absolute. For example, the KPPU sets out six basic characteristics of the licence or franchise that will be reviewed to ensure that no monopolistic and unfair business competition ensues:

a pooling and cross-licensing;
b tying arrangements;
c restrictions on raw materials;
d restrictions on production and sales;
e restrictions on the sale and resale price; and
f the grant back.

5 Earlier in 2009, a KPPU member was named as a suspect in a corruption scandal, which resulted in a considerable loss of public confidence in the KPPU.

Guidelines on Articles 51[6] and 1(10)[7]

KPPU Decision No. 3/2010 on Article 51 clarifies the criteria on how a state-owned company might be exempt. There are circumstances where a state will permit monopolies to exist to protect its public activities. The rationale for this 'legal monopoly' is because the goods or services controlled by the state-owned companies are strategic for the development and economic success of the nation or the greater community in general. KPPU Regulation No. 3/2009 on Article 1(10) introduces the definition of a relevant market, its scope and area of business, and its impact when analysing monopolistic and unfair business practices.

During 2011 and 2012, the KPPU issued various guidelines clarifying a number of articles under the Antimonopoly Law, *inter alia*:

a Guideline No. 1 of 2011 on the duties, function and authorities of the KPPU;
b Guideline No. 3 of 2011 on Article 19 relating to discrimination practice;
c Guideline No. 4 of 2011 on Article 5 relating to price fixing;
d Guideline No. 5 of 2011 on Article 15 relating to exclusive agreements;
e Guideline No. 6 of 2011 on Article 20 relating to selling at loss;
f Guideline No. 7 of 2011 on Article 27 relating to shares ownership;
g Guideline No. 8 of 2011 on Article 8 relating to resale price;
h Guideline No. 9 of 2011 on Article 50(H); and
i Guideline No. 11 of 2011 on Article 27 relating to monopoly practices.

In 2012, the KPPU issued Guideline No. 4 of 2012 on the imposition of a penalty for delay in submitting a notification on a merger, consolidation or acquisition.

ii Cases

The KPPU has issued some interesting decisions on mergers, acquisitions and consolidations of companies in Indonesia. Among the more notable were the *Temasek* and *Carrefour* cases.

Temasek

Temasek Holdings, which holds significant stakes in Indonesia's biggest mobile-telecommunications operators PT Telekomunikasi Selular (Telkomsel) and PT Indosat Tbk (Indosat) through its subsidiaries Singapore Telecommunications (SingTel) and Singapore Technologies Telemedia (STT), was found to be in violation of the prohibition of a dominant position by the KPPU because of its cross-ownership in Telkomsel and Indosat.

The *Temasek* case originated from the government's approval of the sale of the state-owned PT Telkom shares in Indosat to STT. Prior to such divestment, Temasek Holding, through its other subsidiary, SingTel, was already a shareholder of Telkomsel. Therefore, Temasek Holdings' ownership of Telkomsel and Indosat, through its respective

6 Article 51 reads: 'Monopoly and/or concentration of activities relating to the production and/or the marketing of goods and/or services which control the requirement of the public as well as branches of production important for the state shall be regulated by act and run by the State-Owned Corporations and/or agencies or institutes established or appointed by the Government.'

7 Article 1(10) reads: 'The market concern shall be the market relating to a certain market scope or area by the business operator on the goods and/or services which are similar or of the same type or the substitution of said goods and/or services.'

subsidiaries, created cross-ownership of Temasek Holdings in two major telecommunications companies in Indonesia and arguably gave Temasek Holdings a dominant position in the cellular market in Indonesia.

Upon concluding its investigation, the KPPU ruled that Temasek Holdings, through such cross-ownership, had indeed violated the provisions of Article 27(a), and ordered Temasek Holdings to sell its entire stake in either Telkomsel or Indosat.

Temasek Holdings disagreed with the decision and submitted an appeal to the District Court of Central Jakarta and later to the Supreme Court. Both appeals were rejected. The courts held that Temasek Holdings was proven to control more than 50 per cent of the Indonesian telecommunications market and therefore violated the provisions of Article 27(a). In the end, Temasek Holdings sold its shares in Indosat. Temasek Holdings had to roll back a major acquisition, which, as mentioned above, arguably could have been prevented had a pre-notification process been in place.

Carrefour

PT Carrefour Indonesia (Carrefour) acquired PT Alfa Retailindo Tbk (Alfa), a major player in the retail market. By acquiring Alfa, Carrefour effectively held a dominant position in the downstream retail market. After the acquisition process was completed, KPPU received a report stating that Carrefour Indonesia had abused its dominant position in the downstream retail market and consequently caused monopolistic practices. From its investigation, the KPPU found that *Carrefour/Alfa* had abused its dominant position and had dictated the trading terms of its suppliers. The trading terms, which were favourable to *Carrefour/Alfa*, have prevented customers from obtaining goods and services at competitive prices from other market retailers.

Based on its investigation, the KPPU ruled that Carrefour had abused its dominant position, and ordered Carrefour to sell its entire stake in Alfa to an unaffiliated party within one year.

Carrefour submitted an appeal to the South Jakarta District Court, which Carrefour won. According to the judgment, the KPPU's accusations were unsubstantiated, and therefore they released Carrefour from all obligations stemming from the KPPU decision. According to the South Jakarta District Court, Carrefour did not have a dominant position in the retail market and hence had not engaged in any monopolistic practices in the 'modern market' sector (which includes hypermarkets, supermarkets and minimarkets). The KPPU then appealed the discrepancy over the consideration of a 'modern market' to the Supreme Court. On November 2010, the Supreme Court rejected the KPPU's appeal.

It should be noted that both the *Temasek* and *Carrefour* transactions had been legally completed and approved by or reported to the Minister of Law and Human Rights. It was only later, after the completion of the acquisition process, that there were allegations that the completed acquisitions resulted in unfair business practices, triggering an investigation by the KPPU.

III THE MERGER CONTROL REGIME

GR No. 57 states that a company is not allowed to enter into any merger, consolidation or acquisition (for either shares) that may result in the occurrence of monopolistic or unfair competition practices. For share acquisitions, GR No. 57 limits the restriction only to acquisitions that cause a change of control in the acquired company.

A company may be alleged to have conducted monopolistic or unfair competition practices if the entity that results from the merger engages in prohibited agreements (e.g., oligopoly, price fixing, market division, boycotts, cartels, trusts, oligopsony, vertical integration, closed agreements, agreements with foreign parties), prohibited activities (e.g., monopoly, monopsony, market control, conspiracies), or abuse of a dominant position (cross-ownership, double position or interlocking directorate).

GR No. 57 also sets the following thresholds for a mandatory notification to the KPPU:

a where a merger, consolidation or share acquisition transaction will result in a company with an asset value that exceeds 2.5 trillion rupiah;

b where a merger, consolidation or share acquisition transaction of banks will result in a bank with an asset value that exceeds 20 trillion rupiah; or

c where a merger, consolidation or share acquisition transaction will result in a company with a sales value that exceeds 5 trillion rupiah.

If a proposed transaction meets any of the above thresholds, a notification must be submitted within 30 business days of the merger, acquisition or consolidation becoming effective (mandatory notification). The penalty for any delay in this submission is 1 billion rupiah per day, up to a maximum of 25 billion rupiah. In March 2016, the KPPU imposed a 2 billion rupiah penalty on a foreign company for four days' delay in submitting its acquisition notification to the KPPU.

For the calculation of the assets and sales value, GR No. 57 adopts the vertical line method (i.e., from the controlling shareholders to the controlled companies). It specifically stipulates that the threshold is calculated as follows:

a for mergers or consolidations: the combined assets value or sales value of the (merged or consolidated) company and the company that directly or indirectly controls or is controlled by the (merged or consolidated) company; and

b for acquisitions: the combined assets value or sales value of the acquirer company and the target company as well as the company that directly or indirectly controls or is controlled by the acquirer and the target companies.

The mandatory notification must be submitted to the KPPU using the form as prescribed by the KPPU containing information on the identity of the company, a summary of the merger, consolidation or acquisition plan, and the value of the asset or the transaction, and must be accompanied by, *inter alia*, documents relating to business plans reflecting the parties' business policies for the next three years and industrial conditions of the parties as a group, including competition mapping in such industry.

GR No. 57 exempts transactions among affiliated parties from mandatory notification. A company is an affiliate of another if:

a it either directly or indirectly controls or is controlled by that company;

b it and the other company, directly or indirectly, are controlled by the same parent company; or

c either company is the ultimate shareholder of the other.

In addition, to further implement GR No. 57, on 5 April 2013, the KPPU issued Guideline No. 2 of 2013, which provides that, *inter alia*:

a the mandatory notification also applies to a merger, consolidation or acquisition conducted offshore or outside Indonesia that:

- meets the threshold;
- is conducted between non-affiliated parties; and
- has a direct impact on the Indonesian market, either as a result of all parties to the transaction, directly or indirectly, conducting business in Indonesia, or of one of the parties having a subsidiary in Indonesia and the other conducting sales to Indonesia, or one of the parties is conducting business in Indonesia and the other party has a sister company conducting business in Indonesia;

b the threshold only applies to assets located and sales occurring in Indonesia. For the purpose of calculating the threshold, the assets value or sales value of the ultimate shareholder must include the assets value or sales value of all its direct and indirect subsidiaries;

c an increase of capital by a company resulting in that company becoming a controlling shareholder of a company must also be notified to the KPPU; and

d an increase in the number of controlling shareholders in a joint venture company resulting from a merger, consolidation or acquisition is not exempted from the requirement to notify the merger, consolidation or acquisition to the KPPU. Establishment of a joint venture company without going through a merger, consolidation or acquisition process, however, is not subject to the notification requirement under GR No. 57.

The determination of whether a merger, consolidation or acquisition will result in monopolistic or unfair competition practices will be made by the KPPU based on an analysis of one or more of the following:

a the market concentration;
b any barriers to entering the market;
c the potential for anticompetitive behaviour;
d the resulting efficiency; and
e the intended aversion of the bankruptcy of one of the merging entities.

As regards market concentration, the elucidation of GR No. 57 states that a merger, consolidation or acquisition that creates a high level of market concentration has the potential to create monopolistic or unfair competition practices. Among the methods that will be used to measure market concentration are the Hirschman–Herfindahl Index method and the Concentration Ratio method.

The analysis of barriers to entering into the market can be performed by considering various elements of entry to the market, such as regulations, high capitalisation, technology, intellectual property and high sunk costs. The logic behind this analysis is that if there is no entry barrier, the chances of monopolistic or unfair competition practices occurring will be low, as the merged, consolidated or acquired company will have difficulty carrying out the anticompetitive behaviour.

The third analysis is an analysis of the potential for anticompetitive behaviour. This particular analysis will focus on the question of whether a dominant position is created as a result of the merger, consolidation or acquisition transaction, and whether such dominant position might cause the business entity to abuse its dominant position to raise profits and charge customers higher prices. Anticompetitive behaviour can also occur from vertical merger activity where the merger was conducted within the same chain of production, and

consequently created control over the production of a number of products, for example, a merger conducted between a raw material supplier and a processor of such raw material, or between a wholesaler and its retailers.

The fourth analysis, which is an analysis of efficiency, is primarily to determine whether the proposed merger, consolidation or acquisition will create greater efficiency, and whether such efficiency will have any positive impact on customers in the market.

The last analysis is an analysis on bankruptcy. If the proposed merger, consolidation or acquisition is being conducted to avoid the bankruptcy of the related companies, then it must be determined whether the impact of the transaction will be greater than the losses that might be incurred by the customers had the transaction not proceeded.

These five factors are not cumulative and need not be assessed by the KPPU in any particular order. In addition, the KPPU also has wide discretionary power to determine additional factors in the future that may be relevant in assessing a transaction.

The KPPU must complete its assessment on the merger, consolidation or acquisition transactions based on the above criteria within 90 business days of receipt of the complete notification form and supporting documents. The KPPU has the right to request additional documents as it deems necessary other than those initially required for the assessment.

The output of the KPPU's assessment will be an opinion[8] on whether there is an assumption of monopolistic or unfair competition practices resulting from the merger, consolidation or acquisition, or an opinion that there is no assumption of monopolistic or unfair competition practices resulting from the merger, consolidation or acquisition provided that certain conditions imposed by the KPPU are complied with by the parties (conditional opinion).

In the event that the KPPU issues a conditional opinion, the KPPU will monitor the relevant parties' compliance with the conditions provided under the conditional opinion. The KPPU may initiate a case against the relevant parties in accordance with the prevailing regulations if the relevant parties do not comply with the KPPU's conditions under the conditional opinion.

If a transaction is held to result in a monopolistic or unfair competition practice, the KPPU is authorised to impose sanctions ranging from administrative sanctions to the cancellation of the transaction.

Any objection to the KPPU's decision must be conducted in line with the requirement of the Antimonopoly Law and Supreme Court Regulation No. 03 of 2005 regarding Appeal Procedures against the KPPU's Decisions dated 18 July 2005. Accordingly, any objection to a KPPU decision must be submitted by the company to the competent district court within 14 business days from the acceptance of the relevant KPPU decision. The district court must render its decision on the appeal within 30 business days from the day on which the investigation started. However, if the court decides that an additional investigation is required then, with a provisional decision, it may order the KPPU to conduct such additional investigation with reference to the background of such order as well as the time period for conducting the additional investigation. During the implementation of the provisional decision, the decision period is halted and will commence running again after the court resumes its investigation into the appeal. The court must resume the investigation no later than seven business days after the acceptance of the brief including the additional investigation from the KPPU.

8 GR No. 57 refers to an opinion having the nature of a 'suggestion, guideline or opinion'.

IV OTHER STRATEGIC CONSIDERATIONS

As previously discussed, the report requirements under GR No. 57 only capture transactions that meet certain thresholds; however, the Antimonopoly Law authorises the KPPU to conduct investigations of mergers, consolidations or acquisitions below the stated threshold if there is any indication of unfair business practices by the company concerned.

In early 2010, the KPPU revised its case-handling procedures.[9] The KPPU will basically initiate investigations into allegations of monopolistic or unfair business practices pursuant to incoming reports or on its own initiative. When taking its own initiative, the KPPU will rely on data from:

a its own assessment;
b media reports;
c results of its supervision;
d reports (whether or not complete);
e information obtained from hearings in Parliament;
f findings in investigations; and
g other reliable sources.

The KPPU's assessment of a particular sector must fulfil the following basic criteria:

a whether the sector or industry ensures the livelihood of many people;
b whether the sector or industry is a strategic industry that is crucial for the country;
c whether the sector or industry has a high market concentration level; and
d whether the sector or industry is a priority industry at the national and regional levels.

KPPU Regulation No. 1/2010 provides indications of the types of data that the KPPU will rely on, as well as the types of criteria that will be considered when conducting its investigation. On the one hand, it is helpful to know the criteria that will be used by the KPPU; however, much will depend on the data or, more precisely, on the quality of the data provided to the KPPU. How the KPPU collects its data and processes it in its database, therefore, will be as important as the criteria that it sets for the investigation.

In early December 2009, the KPPU issued another regulation, KPPU Regulation No. 7/2009 regarding Interlocking Directorates. This Regulation further clarifies Article 26 of the Antimonopoly Law. Article 26 states that a director or a commissioner of a company cannot at the same time be a director or commissioner of another company that operates in the same line of business or in a related market, or when acting jointly with that other company may create a substantial market share for goods or services (a dominant position).

Regulation No. 7/2009 broadens the meaning of directors and commissioners. The term 'directors' is not limited to persons appointed as such in a limited liability company, but also includes the top-level management of a firm, an association, any legal entity, a state or regionally owned company or a foundation. In addition, factual positions that suggest top management responsibility or decision-making authority, such as executive vice president, vice president and senior vice president, are included. The same is applicable for commissioners; it is extended to positions with a similar supervisory function, such as members of a supervisory board of a foundation.

9 KPPU Regulation No. 1/2010.

The key components to be examined under Regulation No. 7/2009 include the question of whether both companies operate in the same or a related market; whether both companies have a close connection for the production or marketing of a particular product or service; and whether the companies jointly control a significant size of the market (dominant position) in the relevant market during a particular period.

Possible scenarios for the operation of the companies are:

a horizontal coordination: a situation where two companies are competing in a single market; or

b vertical integration: a situation where two companies are supporting each other in a vertically integrated line.

Finally, notwithstanding fulfilment of the criteria, a situation where there is an interlocking directorate within two companies does not automatically render it illegal. Interlocking directorates follow the 'rule of reason' test; interlocking directorates are only prohibited if they cause monopolistic or unfair business practices. Although not specifically related, and not a primary consideration when assessing a proposed merger or acquisition, interlocking directorates can nevertheless present another entry point for the KPPU to examine whether the proposed transaction will cause monopolistic or unfair business practices.

V OUTLOOK & CONCLUSIONS

While GR No. 57 and the other KPPU regulations discussed above have answered certain questions and filled a number of gaps, several matters remain unclear, requiring further analysis and – if necessary – consultation with the KPPU. The following questions, for instance, remain:

a How far would the KPPU extend its authority to cancel a foreign transaction?

b Would a change of control for a short duration (such as two or three days) be subject to the provisions of GR No. 57?[10]

c Does the KPPU view the representative office of offshore banks as conducting business in Indonesia, and if so, would a merger, consolidation or acquisition conducted by its offshore principal office be subject to GR No. 57?

The contrasts between the Pre-Notification Regulation and GR No. 57 (notably, that a decision by the KPPU prior to commencement of a transaction is now not binding upon the KPPU) may be seen as a step backwards for investment in Indonesia, particularly if one focuses on legal certainty.

Furthermore, an important subset of its ability to render decisions is the question of how the KPPU will effectively enforce its decisions. Under the current Indonesian legal system, enforcement (especially if the defendant refuses to comply with the sanctions) might require the assistance of enforcement agencies (e.g., courts, prosecutors and the police). Also relevant to this discussion is whether the courts, when handling appeals of the KPPU's decisions, will uphold or overturn decisions and, in particular, whether they apply consistent standards when doing so.

10 An example of this is a temporary acquisition where a new acquirer holds the shares only temporarily and subsequently transfers the shares to an entity within the same group of the original controller.

As noted above, interlocking directorates as implemented by KPPU regulations might have implications in the analysis of proposed mergers and acquisitions, and therefore should be considered when structuring the proposed merger or acquisition; this is despite the ongoing discussions between practitioners and academics on legal theoretical questions regarding whether an implementing regulation can expand a definition provided in the law.

Although the Antimonopoly Law has been in place for more than 10 years, it is still, in many aspects, a work in progress. By necessity, it deals with general concepts, and implementing regulations – preceded by proper consultation allowing professional and market input – as well as detailed guidelines from the KPPU are required to effectively implement the general concepts formulated in the law.

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Theodoor Bakker has worked in South East Asia since 1984. During the first 10 years of his work in Indonesia he gained considerable experience in Indonesian project finance work and foreign direct investment, including private power and petrochemical projects, ship finance, infrastructure development and general manufacturing investment. Since Indonesia's economic recovery around the turn of the century, Mr Bakker's practice has centred on competition law, banking and structured finance. His regular clients include International Finance Corporation, Goldman Sachs, Merrill Lynch and BNP Paribas.

Mr Bakker now regularly serves on international commercial arbitration tribunals and is registered with BANI, the Indonesian National Arbitration Board. Mr Bakker graduated from Leiden University in the Netherlands, and is admitted to the Amsterdam Bar. He has published various articles on insolvency and cross-border investment issues, has taught at the Faculty of Law of University of Indonesia and at the Department of Law and Human Rights, and is a regular speaker at conferences on Indonesian legal issues.

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Luky I Walalangi joined ABNR in March 2001 and became a partner on 1 January 2009. He graduated from the Faculty of Law, Parahyangan Catholic University, majoring in business law. In 2000, he earned his LLM degree in the Netherlands, majoring in international business law. Prior to joining ABNR, he worked as a foreign trainee with a banking institution in Amsterdam.

Mr Walalangi has been involved in a number of major electricity projects in Indonesia, including the Cirebon Project, Paiton Projects (US$2.5 billion and US$1.6 billion), Sengkang, Tanjung Jati, Central Java Project and Jawa Power, and has extensive regulatory knowledge in these areas. He has also been involved in a number of major financings, including most recently in PT Pertamina's US$10 billion bonds issuance and US$800 million loan to PT Newmont Nusa Tenggara. His expertise covers antimonopoly issues, corporate restructuring, project and debt financing, land and investment projects as well as oil and gas projects.

Mr Walalangi has been listed by the *Legal 500 Asia Pacific 2014* as a recommended lawyer in corporate & M&A, banking and finance, and real estate. He is also listed by *Asialaw Profiles 2014* as a recommended individual.

In investment projects and M&As, Mr Walalangi has been representing various foreign companies in all aspects, including a number of Japanese group companies: Mitsubishi Heavy Industries, Ltd; Toyota Tsusho Corporation; Mitsui Co, Ltd; Itochu Corporation; Nippon Steel Sumitomo Metal Corporation; Osaka Steel Corporation; Kansai Paint Japan; Mitsubishi UFJ Lease; Japan International Cooperation Agency; JACCS Corporation; and Mizuho Trust & Banking Co, Ltd.

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Miriam Andreta joined ABNR as an associate in 2007. She graduated in 2006 from the Faculty of Law, University of Gadjah Mada, majoring in civil law.

At ABNR, she has been involved in major transactions relating to financing (including PT Pertamina's US$1.5 billion, US$2.5 billion and US$5 billion bonds issuances and PT Elnusa Tbk's bonds issuance), M&A (including representing Bakrie Group in acquiring a number of Indonesian plantation companies), oil and gas projects, infrastructure projects, project financing, corporate matters, investment, banking, debt restructuring and power projects (the Cirebon and Sengkang projects). She also has extensive knowledge in various Indonesian regulatory matters, and advises many foreign clients in a number of fields including construction, banking, finance, insurance and antitrust matters.

Regarding investment projects, Ms Andreta assists various foreign companies in their investment plans for Indonesia, including several Japanese companies, such as Nippon Steel & Sumitomo Metal Corporation, Osaka Steel Corporation, Mitsubishi Corporation, Mitsubishi Heavy Industries, Mitsui Co, Ltd, Kansai Paint Japan, Shimizu Corporation, Toyota Tsusho, Toyota Housing Corporation, Toyota Enterprise Inc, Tokyu Land, Recruit Inc, KDDI, JACCS Corporation, Yazaki Corporation, Mikakuto Co Ltd, Itochu Corporation, Orient Corporation, TIC Inc, Mitsubishi Hitachi Power System Ltd and Gree.

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