
Merger control in Indonesia – New measures issued in response to COVID-19 pandemic

Background

In light of recent developments related to the COVID-19 pandemic in Indonesia, the Indonesia Competition Commission (*Komisi Pengawas Persaingan Usaha*, **KPPU**), the primary organ dealing with the merger control function in Indonesia, has issued a series of measures to support the government's efforts in containing the spread of the virus and to protect the health and well-being of its commissioners and secretariat staff, while ensuring that it will still be able to proceed with its mandate.

Sometime last week, we were informed by a KPPU official that in order to slow the spread of the COVID-19 pandemic, the KPPU would apply a work-from-home system for most of its staff, resulting in some of KPPU's services having to be conducted online and the M&A notifications that are in the clarification and evaluation phases needing to be temporarily suspended. However, these measures will not affect merger filing, as limited stand-by staff will still be available in the office during their restricted business hours (10am to 3pm), until 31 March 2020, with the intention of re-opening their office on 1 April 2020 (**Earlier Measures**).

As some of you may have noticed, Article 10 of KPPU Regulation No. 3 of 2019 on the Assessment of Mergers and Consolidations of Business Entities in the Acquisitions of Shares in a Company that May Result in Monopolistic and/or Unfair Business Competition Practices (**Regulation**) prescribes that KPPU can only accept notifications during business hours.

Recent Developments

On 23 March 2020, KPPU revised the Earlier Measures based on the continually developing COVID-19 pandemic situation in Indonesia (and made further revisions on 27 March 2020). This information can be publicly accessed through KPPU's website and Facebook fan page, in which KPPU sets out the following services that will be communicated through e-mail:

- Public information requests, legal and partnership consultation, and research/internship/study visit requests, may be sent to the following email address: infokom@kppu.go.id; and
- Complaints on alleged competition law and partnership violations may be sent to the following address: pengaduan@kppu.go.id.

Furthermore, KPPU also stated that it will not accept M&A notifications until 6 April 2020, and that this policy is effective from 17 March 2020 until 6 April 2020 (**Suspension Period**). We note that this may have a great impact on all parties that have a notification obligation during the Suspension Period, and may also potentially generate confusion or uncertainty, as the revised measures were published on 23 and 27 March 2020, a few days after the stated effective date of such measures. However, we note that KPPU's regulation governing what measures the KPPU may or may not take during an emergency situation like the COVID-19 pandemic does allow for some flexibility in this matter.

Article 7 of the Regulation prescribes that the M&A notifications must be made no later than 30 business days as of the juridical effective date of such transaction. However, as a result of these new measures, the Suspension Period will not be counted in the "30 business day" calculation, as referred to in Article 7 of the Regulation. This view has been officially confirmed by a KPPU official.

We understand that these issued measures will be subject to further review, depending on how the COVID-19 pandemic situation develops. The KPPU is expected to resume its merger control activities after 6 April 2020.

The Suspension Period does not exempt a business actor from mandatory notification of a transaction to the KPPU as soon as practicably possible. This is to avoid the "30 business day"



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period lapsing and the imposition of administrative penalties of Rp1 billion per each day of the delay, as well as a maximum of Rp25 billion in fines.

Further Information

Should you have any queries as to how KPPU measures may affect your transaction, please do not hesitate to get in touch with us. We will proactively monitor the development of the merger control situation in Indonesia and keep you updated, as more information becomes available.

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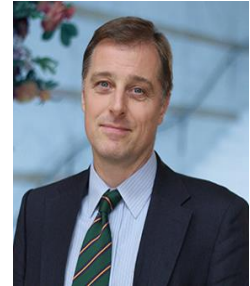
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