

## Is there Room for Cartel and Collaboration in the New Normal?



Among the many devastating impacts, the Covid-19 outbreak has demonstrated how a pandemic can have a significant and adverse effect on economic activities, both from supply and demand perspectives. Market distortion, disruption of supply-chain and increasing demand for various healthcare products and services are among the main issues sparked by the pandemic.

In responding to these issues, businesses might have contemplated certain collaborative measures to aid in alleviating shortage, ensuring that the public receives reliable supply, helping themselves survive, and even achieve efficiency. However, businesses must be aware that the implementation of those joint measures are not without potential legal implications as they may be recognised as anti-competitive conduct under Indonesian Competition Law.

We made this crucial issue the main topic in our recently held webinar, where Mr. Kurnia Toha, the Chairman of the Indonesia Competition Commission (KPPU) participated as one of the panellists. Below are some of the key takeaways on any collaborative business measures, particularly those taken during this pandemic:

1. despite the absence of any regulations and guidelines on antitrust immunity or cooperation between businesses outside the merger control's scope, the Chairman of KPPU expressed his support for businesses considering collaborative measures that may be beneficial to the country and aid the government in dealing with the current health and economic crisis;
2. the measures taken must have justifiable economic and legal reasons that may outweigh the potential adverse effects of the collaboration;
3. businesses seeking guidance are welcome to consult with the KPPU on their proposed collaboration;

4. businesses are advised to come fully prepared with a comprehensive analysis of the proposed collaboration, including its potential public benefits and impacts before reaching out to the KPPU; and
5. if the KPPU deems that there are sufficient and justifiable reasons, it is committed to being supportive and will issue a “comfort letter” for the proposed arrangement.

This unprecedented gesture by the KPPU will undoubtedly be welcomed and appreciated by businesses. It is worth noting that some types of joint measure can help businesses thrive during this pandemic, while also benefitting to the public when implemented appropriately.

In this respect, we recommend that businesses consider this option based on intensive planning. Given that the KPPU’s prior approval is needed to implement a proposed collaboration that may conflict with Indonesian Competition Law, businesses are strongly advised to carefully prepare their proposal to ensure that the economic and legal benefits of the proposed collaboration are captured to the satisfaction of the KPPU.

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## Contacts



**HMBC Rikrik Rizkiyana**  
Partner

D +62 21 2555 7855  
F +62 21 2555 7899  
[rikrik.rizkiyana@ahp.id](mailto:rikrik.rizkiyana@ahp.id)



**Farid Fauzi Nasution**  
Partner

D +62 21 2555 9998  
F +62 21 2555 7899  
[farid.nasution@ahp.id](mailto:farid.nasution@ahp.id)

## Our Regional Contacts

### RAJAH & TANN | *Singapore*

**Rajah & Tann Singapore LLP**  
T +65 6535 3600  
sg.rajahtannasia.com

### R&T SOK & HENG | *Cambodia*

**R&T Sok & Heng Law Office**  
T +855 23 963 112 / 113  
F +855 23 963 116  
kh.rajahtannasia.com

### RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP  
Shanghai Representative Office**  
T +86 21 6120 8818  
F +86 21 6120 8820  
cn.rajahtannasia.com

### ASSEGAF HAMZAH & PARTNERS | *Indonesia*

**Assegaf Hamzah & Partners**

#### Jakarta Office

T +62 21 2555 7800  
F +62 21 2555 7899

#### Surabaya Office

T +62 31 5116 4550  
F +62 31 5116 4560  
www.ahp.co.id

### RAJAH & TANN | *Lao PDR*

**Rajah & Tann (Laos) Co., Ltd.**  
T +856 21 454 239  
F +856 21 285 261  
la.rajahtannasia.com

### CHRISTOPHER & LEE ONG | *Malaysia*

**Christopher & Lee Ong**  
T +60 3 2273 1919  
F +60 3 2273 8310  
www.christopherleeong.com

### RAJAH & TANN | *Myanmar*

**Rajah & Tann Myanmar Company Limited**  
T +95 1 9345 343 / +95 1 9345 346  
F +95 1 9345 348  
mm.rajahtannasia.com

### GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

**Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)**  
T +632 8894 0377 to 79 / +632 8894 4931 to 32  
F +632 8552 1977 to 78  
www.cagatlaw.com

### RAJAH & TANN | *Thailand*

**R&T Asia (Thailand) Limited**

T +66 2 656 1991  
F +66 2 656 0833  
th.rajahtannasia.com

### RAJAH & TANN LCT LAWYERS | *Vietnam*

**Rajah & Tann LCT Lawyers**

#### Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673  
F +84 28 3520 8206

#### Hanoi Office

T +84 24 3267 6127  
F +84 24 3267 6128  
www.rajahtannlct.com

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