ASSEGAF HAMZAH
& PARTNERS

RAJAH & TANN ASIA

LAWYERS WHO KNOW ASIA

Client Update: Indonesia

14 October 2020

KPPU Introduces New Guideline on Simplified Assessment

In response to the multiple interpretation of the latest Merger Regulation ("**2019 Merger Regulation**"), the KPPU finally issued implementing guidelines on merger, consolidation, or acquisition, which came into force in 6 October 2020.

Assessment

First introduced in July 2020 (despite already being a common practice of the KPPU from an earlier period), (click here to read our client update on this topic), the KPPU has now formally acknowledges the simplified merger[1] notification procedure under the new guideline. Now, the simplified procedure is referred to as an "simplified assessment.".

Once KPPU approves or decides to implement an assessment, eligible businesses will essentially be on the "fast track" for receiving their merger review. The guideline regulates that the KPPU must complete this simplified assessment within 14 business days, which is expected to occur and be completed within the 60 business days clarification and research phase. This is a significantly shorter timeframe compared to the maximum 150 business days of the traditional merger notification process.

Either the KPPU or the notifying party can request for a simplified assessment if, among others:

1. the parties are not engaged in overlapping or vertically related markets, or if they are, the HHI[2] value after the transaction falls within a certain range;

2. the relevant parties to the transaction are engaged in overlapping markets and the HHI value after the transaction is:

[1] For easy reference, merger under the 2019 Merger Regulation and the new guideline means a merger, consolidation, and a shares/asset-based transaction.
[2] Herfindahl-Hirschman Index.

(i) less than 1,500 ("**Spectrum I**");
(ii) between 1,500 and 2,500 with the increased HHI, or also known as delta HHI, of less than or equal to 250; or
(iii) over 2,500 with the increased HHI of less than or equal to 150.

3. the relevant parties to the transaction are engaged in vertically related markets in which the HHI value of each market is within the Spectrum I;

4. the parties do not engage in tying, bundling, or other practices that may result in a network effect;

5. the merger notification is submitted within 30 business days from the date when the transaction becomes effective; and/or

6. the merger results in a change of control in the target from being jointly controlled by the acquirer and the previous shareholders, to being solely controlled by the acquirer.

Exempted Asset Acquisition

The guideline also affirms that an asset acquisition that satisfies one of the criteria below would not trigger the mandatory notification post-acquisition to the KPPU:

1. the value of the asset acquisition is below IDR 250 billion (for non-banking industries) or IDR 2.5 trillion (for banking industry);

2. the asset acquisition is part of the purchaser's ordinary course of business;

3. for businesses in the real property industry, the asset acquired is intended to be used as an office by the purchaser or as a social/public facility; or

4. the asset acquired is not related to the purchaser's business activity, e.g. asset is acquired as part of the purchaser's corporate social responsibility or non-profit activities.

Other Notable Items

Lastly, the new guideline also asserts or clarifies notable topics within the competition law framework in Indonesia. First, the KPPU confirms that it will assess any acquisition that is equivalent to a shares acquisition. This means that transactions such as a transfer of asset or an acquisition of participating interest are now subject to the KPPU's scrutiny.

Second, the KPPU clarifies that the value of the acquired assets as part of the threshold calculation is calculated based on either the value of the target asset as stated in the latest financial statements of the seller or the transaction value, whichever is higher.

Third, in a merger involving a joint venture entity, the KPPU will consider the joint venture entity as the ultimate parent entity of the group. Consequently, the calculation of thresholds and local nexus test will only take into account the Indonesian sales value, the worldwide assets value, and the local presence of the joint venture and its subsidiaries. This will also be the case where the purchaser is a subsidiary of a joint venture. As a result, the list of relevant parties in a merger involving a joint venture will significantly change.

Here, it is worth noting that a greenfield joint venture is exempted from the notification obligation. But a joint venture created as a result of a shares or asset acquisition will still trigger the notification obligation if it meets the necessary criteria.

Fourth, a foreign merger that has an impact to the Indonesian market will be notifiable. The impact criterion will be satisfied if, among others, a party to the transaction has business activities in Indonesia and the other party has a sister company that conducts business activities in and/or sales into Indonesia.

Lastly, the KPPU confirms that financial statements and articles of association that will be submitted to the KPPU must either be summarised or translated into Indonesian. This has always been the approach of the KPPU and in the past, KPPU could refuse to register a notification for failure to provide the Indonesian summary or translation.

Conclusion

The introduction of the simplified assessment is one of the major breakthroughs from the KPPU. But in order to be able to enforce it, the KPPU is likely to request for more comprehensive information and documents in complex transactions compared to the traditional merger notification process. Thus, it is crucial that transacting parties ensure the availability of documents (such as market data) before applying for an assessment.

The other clarifications are certainly welcomed, and we expect that transacting parties will benefit greatly from this guideline.

Contacts

HMBC Rikrik Rizkiyana
Partner

D +62 21 2555 7855
F +62 21 2555 7899
rikrik.rizkiyana@ahp.id

Farid Fauzi Nasution
Partner

D +62 21 2555 9998
F +62 21 2555 7899
farid.nasution@ahp.id

Vovo Iswanto
Of Counsel

D +62 21 2555 9938
F +62 21 2555 7899
vovo.iswanto@ahp.id

Anastasia Pritahayu R. D., Albert Boy Situmorang, Aulia Alkausar, Ingrid Gratsya Zega, M. Ridha Thanthawi, and Umery Lathifa also contributed to this alert.

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

Rajah & Tann Asia is a network of legal practices based in Asia.

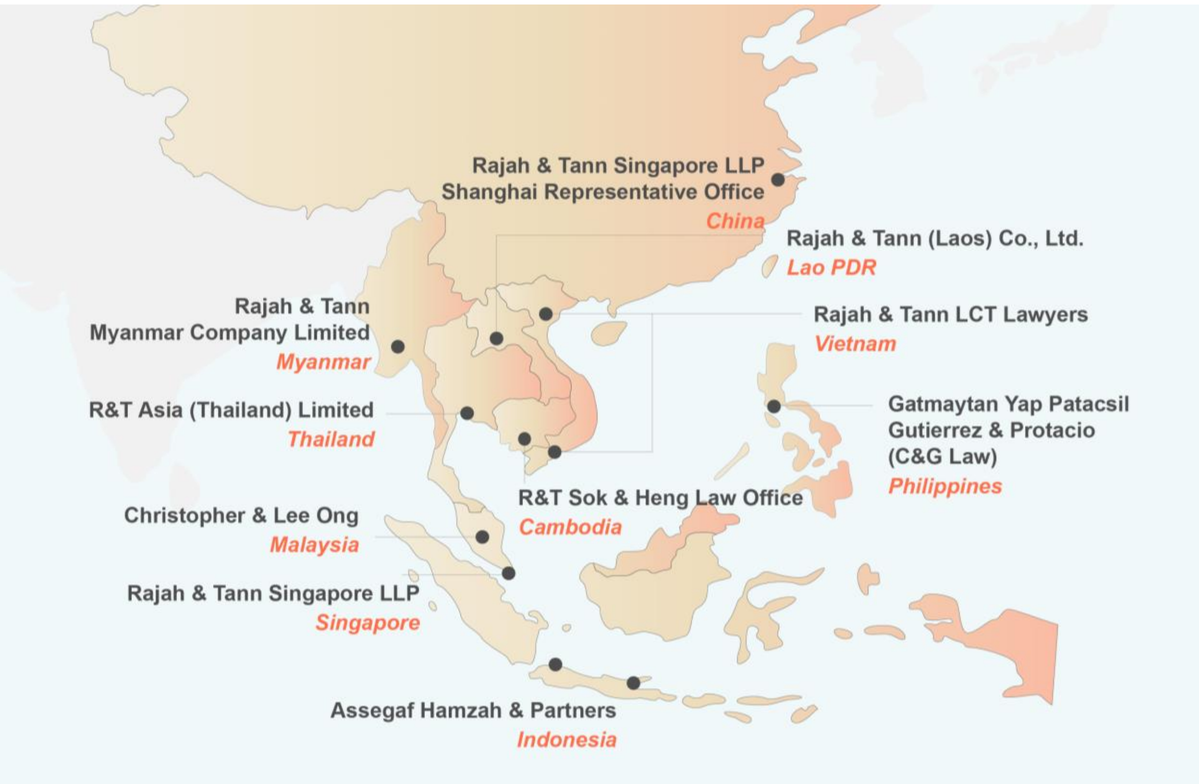
Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Client Update: Indonesia

14 October 2020

Our Regional Presence



Based in Indonesia, and consistently gaining recognition from independent observers, Assegaf Hamzah & Partners has established itself as a major force locally and regionally and is ranked as a top-tier firm in many practice areas. Founded in 2001, it has a reputation for providing advice of the highest quality to a wide variety of blue-chip corporate clients, high net worth individuals, and government institutions.

Assegaf Hamzah & Partners is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.