
New Merger Control Regulation: Asset Acquisitions are now subject to KPPU Notification

Pending the long-awaited amendment of the Indonesian Competition Law ([please click this link to see our previous alert on this issue](#)) and in response to the urgency from the KPPU to oversee non-share-based transactions that may raise anti-competitive concerns, the KPPU recently published KPPU Regulation No. 3 of 2019 on Assessment of Merger or Consolidation of Business Entities or Share Acquisition of Companies that could Result in Monopolistic and/or Unfair Business Competition Practices (“**New Regulation**”).

Notification of Asset Acquisitions

The most notable feature under the New Regulation is the mandatory notification of asset acquisitions to the KPPU. This means that after escaping scrutiny by the KPPU, asset acquisition is finally receiving the same treatment as share acquisition. An asset acquisition will have to be notified to the KPPU within 30 business days as of the effective date of the transaction if the following thresholds are met:

1. the combined Indonesian asset value of the parties exceeds IDR 2.5 trillion; or
2. the combined Indonesian sales value of the parties exceeds IDR 5 trillion.

While for any transaction involving parties in the banking sector, the following thresholds apply:

1. if both parties are in the banking sector, the combined Indonesian asset value of the parties exceeds IDR 20 trillion; or
2. if only one of the parties is in the banking sector, the combined Indonesian asset value exceeds IDR 2.5 trillion; or the combined Indonesian sales values of the parties exceeds IDR 5 trillion.

Other Key Changes

Aside from obligation to notify an asset-based transaction, other key changes in the New Regulation are as follows:

1. *Possibility of a simplified procedure*

The New Regulation provides that the notifying parties are not required to complete the information on certain market data as they can be submitted upon KPPU’s request. There is, nevertheless, no clear provision on any requirement that will trigger such request.

However, the New Regulation also requires an impact analysis of the transaction containing at least the estimated market shares of the parties, the relevant market affected by the transaction, and benefits of the transaction for the parties, as one of the supporting documents for the notification.

2. **Additional scope of assessment**

In addition to the scope of assessment under the previous regulation,¹ the KPPU, whenever necessary, will take into account the following aspects in assessing a notifiable transaction:

- a. competitive and national industry strengthening policy;
- b. development of technology and innovation;
- c. protection of small and medium enterprises;
- d. impact on labour; and/or
- e. implementation of laws and regulations.

3. **Deadline to notify rights issue transaction**

It has always been the case that a notifiable transaction must be notified to the KPPU within 30 business days as of its effective date. Particularly for a rights issue (*hak Memesan Efek Terlebih Dahulu*) transaction, the previous regulation does not clarify as to when a rights issue transaction would be considered as effective.

This has now been clarified under the New Regulation and the date of the last share payment will be considered as the effective date of a rights issue transaction.

4. **Calculation of days for failure to notify**

Previously, the KPPU would inform the parties about their failure to notify their transaction and accordingly instruct them to file a notification to the KPPU. The days of delay would be calculated as of the date when the parties file a notification to the KPPU.

Under the New Regulation, if the parties fail to file a notification, the KPPU does not have to wait until the parties file the notification and will calculate the days of delay up to the date when the KPPU initiates an investigation of such failure.

5. **Completeness review by the KPPU**

Under the New Regulation, the KPPU must complete its review on the completeness of the notification submitted by the parties within 60 business days. If the notifying parties fail to complete any request from the KPPU within this period, the KPPU can proceed to the assessment stage and review the transaction based on its assumption, submitted supporting documents and/or available data. This will hopefully give certainty on the overall notification process timeline.

6. **Rejection of the notification by KPPU**

Under the New Regulation, the KPPU may reject any incomplete filing upfront. The fact that the KPPU can now reject a notification means that parties should not leave their filing to the last minute.

¹ Which covers market concentration, entry barrier, possible anti-competitive conduct, efficiency and bankruptcy.

7. *Unclear provisions on consultation*

Unlike the previous regulations, the New Regulation provides no details on consultation process, e.g., the required documents, the timeline and the output of the consultation. This item will still need further clarification from the KPPU.

8. *Introduction of paperless submission*

Finally, the New Regulation introduces electronic submission of the notification. A hard copy submission would still be allowed if needed.

This New Regulation is effective immediately on 3 October 2019 and supersedes the previous KPPU's merger guidelines. Any notifiable transactions that have not been notified to the KPPU following the effective date must be filed in accordance with this New Regulation. Meanwhile, notifications and consultations submitted prior to 3 October 2019 will continue to be subject to the previous regulation.

Conclusion

The move to regulate asset transaction without waiting for the amendment of the Indonesian Competition Law is indeed a huge step for the KPPU in assessing and regulating competition in the market.

Whether or not the New Regulation would effectively maintain a competitive market must be further assessed during its implementation. But, considering that there are no changes on the notification thresholds, an acquisition of even non-significant assets by well-established companies is very likely to trigger a notification to the KPPU, irrespective of the acquired asset's value. Thus, we strongly advise that close attention on the potential impact of the New Regulation on transactions be paid.

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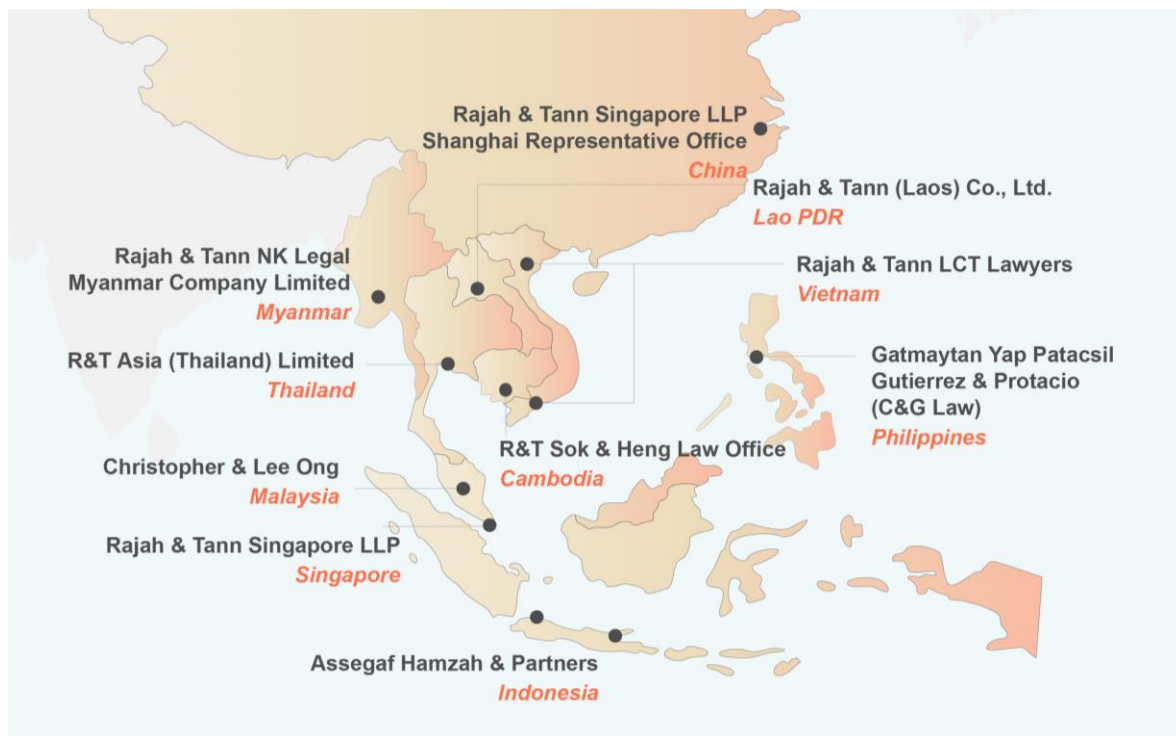
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