

Notification Procedure Simplified, and Asset Notification Clarified



Under the new Indonesian merger regulation (“**2019 Merger Regulation**”), businesses are required to notify their asset transactions to the Indonesia Competition Commission or the KPPU. But the lack of clarity on various technical aspects for the notification has caused different interpretations to emerge. As a result, businesses often have to informally consult with the KPPU to obtain its confirmation, which is impractical and time-consuming.

At the end of July 2020, the KPPU held a public webinar to discuss asset acquisitions from a merger control perspective as part of its effort to clarify the scope of the asset acquisition notification. In the webinar, the KPPU clarified the asset acquisition exemptions, as well as simplified the merger notification procedure.

Exempted Asset Acquisitions

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

1. The value of the asset acquisition is below the transaction value threshold

An asset acquisition valued at less than IDR 250 billion (for businesses in non-banking industries) or IDR 2.5 trillion (for businesses in the banking industry) does not need to be notified to the KPPU.

2. *the asset acquisition is not part of the ordinary course of business*

An asset acquisition that is not part of an acquirer's ordinary course of business will be exempted from the mandatory notification. In determining whether an asset acquisition satisfies this criterion, the KPPU provides the following examples as exempted asset acquisitions:

- a. acquisition of consumer goods by a retail company for the purpose of reselling to the company's customers;
- b. acquisition of finished goods, for example, motor vehicles, by a leasing company for the purpose of leasing to the company's customers; or
- c. acquisition of goods that will be stored in inventory, such as raw materials and basic components, to be used within the next three months to produce other goods.

3. *the acquired asset is intended for a specific use*

The exemption applies if the acquired asset is a building that is intended for specific use by the acquirer, i.e. for an office, or a social or public facility.

4. *the use of the acquired asset is unrelated to the acquirer's business activities*

The KPPU confirms that an asset acquired to be used as part of the acquirer's corporate social responsibility, non-profit activities, or other activities pursuant to the applicable laws and regulations does not need to be notified to the KPPU.

Simplified Notification Procedure

The KPPU also simplified the merger notification procedure for both shares and assets acquisition. By doing so, the KPPU hopes to expedite the notification procedure and prevents a backlog of notifications.

Eligible transactions are those with no or minimum anti-competitive concerns, namely:

1. a transaction that involves no horizontal overlaps and vertically integrated businesses; and
2. a transaction that involves overlapping businesses and the parties' combined market shares falls in:
 - a. spectrum I (low concentration) with less than 1,500 HHI;
 - b. spectrum II (medium concentration) with HHI ranging from 1,500-2,500, but delta HHI of less than 250; or

- c. spectrum III (high concentration) with more than 2,500 HHI, but delta HHI of less than 150.

Timeline and Impact

In the webinar, the KPPU confirmed that the exemption and the simplification would be covered in the implementing guidelines for the 2019 Merger, which is currently being finalised by the KPPU and is expected to be released in the near future.

However, until the KPPU issues the implementing guidelines, caution should always be exercised by transacting parties, especially for transactions that fall into any of the above categories. This is particularly important considering that any late notification will be subject to an IDR 1 billion fine per day of delay up to a maximum fine of IDR 25 billion per transaction.

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