

Client Update: Indonesia 8 April 2022

Back to Business as Usual as KPPU Reverts to the Original Notification Deadline and Reaffirms the Competition Compliance Program



On 6 April 2022, the Indonesian Competition Commission (“**KPPU**”) published two new regulations. The first Regulation revokes the relaxation introduced at the height of the pandemic, including reverting the deadline to file a post-closing notification to the KPPU from 60 business days to 30 business days from the effective date. The second Regulation specifies further details on the Competition Compliance Program (*Program Kepatuhan Persaingan Usaha*).

End of the KPPU’s Relaxation of Competition Law Enforcement

The relaxation of competition law enforcement was introduced by KPPU Regulation No. 3 of 2020 on 9 November 2020 (click [here](#) to read our previous client alert on the enforcement relaxation). Among others, the Regulation extended the deadline to submit the mandatory post-closing notification to the KPPU from 30 business days to 60 business days.

The enforcement relaxation has now been revoked by KPPU Regulation No. 2 of 2022 on the Revocation of KPPU Regulation No. 3 of 2020 on the Relaxation of Legal Enforcement of Monopoly Practices and Unfair Business Competition and Monitoring of Partnership Implementation to Support the National Economic Recovery. Starting from 1 May 2022 (the Regulation grants a grace period of 30 days from its enactment of 1 April 2022), businesses must submit their mandatory post-closing notification to the KPPU within 30 business days from the effective date. Further, based on the KPPU’s verbal confirmation, this also means that transactions whose 60-business day period would fall on or after 1 May 2022 need to be filed to the KPPU and obtain the KPPU receipt by Friday, 29 April 2022 to avoid being considered as late filings.

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It is also worth noting that in the context of a partnership between large corporations and small and medium enterprises, KPPU Regulation No. 2 of 2022 reverts the period to implement a warning letter from the KPPU from 30 business days to 14 business days.

KPPU Introduces Approval System in the Competition Compliance Program

Reinforcing the significance of competition compliance introduced under the Omnibus Law (click [here](#) to read our previous client alert), on 24 March 2022, the KPPU published KPPU Regulation No. 1 of 2022 on the Competition Compliance Program.

In this Regulation, the KPPU encourages businesses to prepare and implement a competition compliance program, which should comprise of at least the following three elements: (i) a code of ethics; (ii) a competition and antitrust handbook; and (iii) general or specific training. In preparing the program, businesses must consider their commercial activities, market power, and interaction with third parties (suppliers, competitors, and consumers).

Businesses with existing competition compliance programs or those that do not have a competition compliance program can register their programs or proposals, respectively, for KPPU's review. While registration is voluntary, if a business registers its compliance program, such business would be required to submit a report to the KPPU on the program's implementation. Please note that the Regulation does not specify the timing of such a report, and it might be the case that the KPPU would determine the timing upon registration. Assuming that a business registers its compliance program, the KPPU will evaluate the program and issue a determination to approve such a program. A program can be valid for five years, and upon its expiry, its validity can be extended.

To encourage businesses in preparing and implementing a competition compliance program, the Regulation stipulates that a business may receive a reduced fine if it is found to have violated the Competition Law but has a registered compliance program. However, because the Regulation does not specify the exact reduction, in our view, such reduction will be determined by the KPPU Panel of Commissioners on a case-by-case basis.

Key Takeaway

With respect to the revocation of the relaxation, businesses must note that as of 1 May 2022, the deadline for post-closing notification is back to 30 business days. Particularly for businesses whose 60-business day notification deadline falls on or after 1 May 2022, we advise such businesses to file their notifications to the KPPU and obtain the KPPU receipt by Friday, 29 April 2022, to avoid the risk of late filings.

Meanwhile, on the competition compliance programs, while Regulation No. 1 of 2022 contains more detail on the program, including criteria, procedure of preparation and registration, and benefits, we have yet to see its implementation in practice. Moreover, as we mentioned earlier, registration of the program is voluntary. As a result, it is also unclear how the KPPU will calculate the reduction in fine in cases where the violating business has not registered or obtained KPPU's approval for its compliance program.

Contacts



Farid Fauzi Nasution
Partner

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



Vovo Iswanto
Partner

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



Wisnu Wardhana
Senior Associate

D +62 21 2555 9932
F +62 21 2555 7899
wisnu.wardhana@ahp.id

[Tsurayya Nurrahma](#) 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

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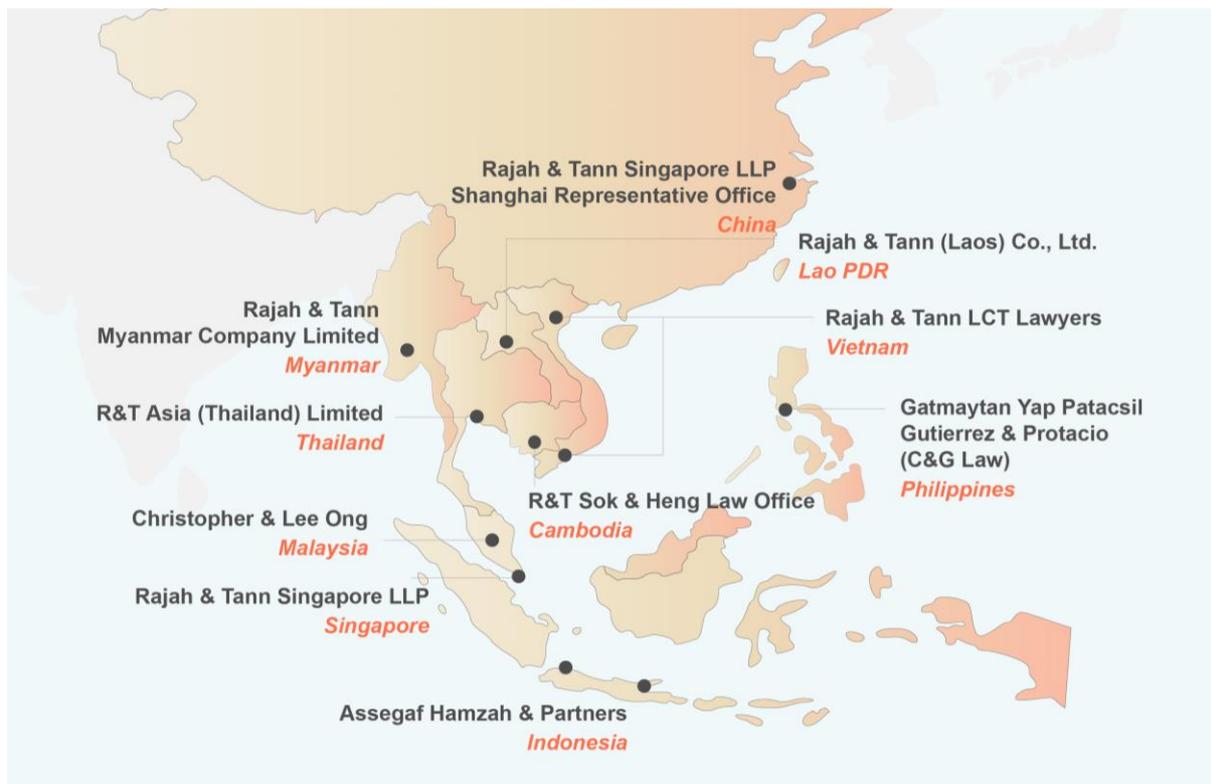
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