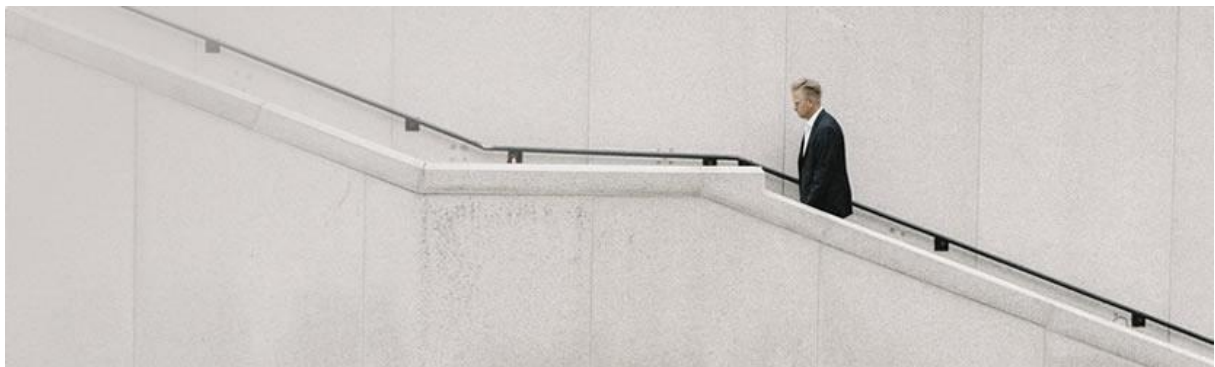


Unprecedented Administrative Fines Over IDR 25 Billion Imposed by the KPPU



On 2 July 2020, the Indonesia Competition Commission (*Komisi Pengawas Persaingan Usaha* or “KPPU”) imposed a record-breaking administrative fine of IDR 30 billion on PT Solusi Transportasi Indonesia (“STI”), the Indonesian entity of Grab. The KPPU also imposed an IDR 19 billion administrative fine to PT Teknologi Pengangkutan Indonesia (“TPI”), a provider of transportation rental service that has entered into a cooperation with Grab for the provision of partner drivers.

Both administrative fines were imposed based on the allegation that STI and TPI had engaged in discriminatory practices through, among others, the implementation of priority order, and tying practice. The KPPU started its review of the allegation last year, and while the tying allegation was dismissed, the KPPU still found that the discrimination is a breach of Articles 14 and 19(d) of the Competition Law (Law No. 5 of 1999). The KPPU viewed that the parties intended to dominate or control the market for the supply of technology-based transportation rental services application in Indonesia as their cooperation had resulted in the declining number of partner drivers as well as orders received by non-TPI partner drivers. The KPPU also found that Grab had discriminated non-TPI partner drivers by prioritising orders and imposing more favourable partnering terms to TPI partner drivers.

Unprecedented Decision during these Uncertain Times

There are at least two unprecedented approaches taken by the KPPU in its decision.

The first approach is the new precedent of imposing over IDR 25 billion administrative fine in one decision against one company. Prior to this decision, the KPPU has never issued an administrative fine against a single company, in a single decision, exceeding IDR 25 billion.

The second approach is the new precedent of imposing such fines based on each violated article. The total administrative fines imposed against STI and TPI are the sum of two separate administrative fines

under Articles 14 and 19(d) of the Competition Law. Here, STI incurred fines of IDR 7.5 billion and IDR 22.5 billion for each violated article, while TPI incurred fines of IDR 4 billion and IDR 15 billion for the same articles. Previously, the KPPU has only ever imposed a single administrative fine (which never exceeded IDR 25 billion) on a company even if the KPPU found that that company has violated multiple articles of the Competition Law in one case.

Possible Legal Impact

It is important to note that the Competition Law only regulates the range of the administrative fine that can be imposed of between IDR 1 billion to IDR 25 billion and is silent on whether an administrative fine can be imposed on each violated article. But it is worth noting that the KPPU Regulation No. 4 of 2009 states that the level of violation is one of the factors that the KPPU can consider in determining the administrative sanction. Further, each type of violation will be assessed on a case-by-case basis by also considering the overall situation in the relevant case.

However, it is also important to note that an antitrust case examination and decision process are led by an independent Commissioners Council, which consists of three or more KPPU Commissioners. The Commissioners Council has the authority to adopt their own approach in deciding a case. Such authority, however, must be carried out following the prevailing laws. To date, all Commissioners Councils for all antitrust cases in Indonesia have unanimously taken the approach that the maximum administrative fine against a single company in one decision is IDR 25 billion, irrespective of the number of violated articles. The media reported that both STI and TPI would appeal against the KPPU decision. Therefore, it remains to be seen how the court will apply the maximum administrative fines under the Competition Law.

Conclusion and Key Takeaway

Pending the court's view on this case, the KPPU may follow the same approach in applying the maximum administrative fines in other cases. Businesses should be more cautious and factor in this risk in their assessments.

As always, in case of any doubt, businesses are encouraged to approach the KPPU to seek the KPPU's guidance.

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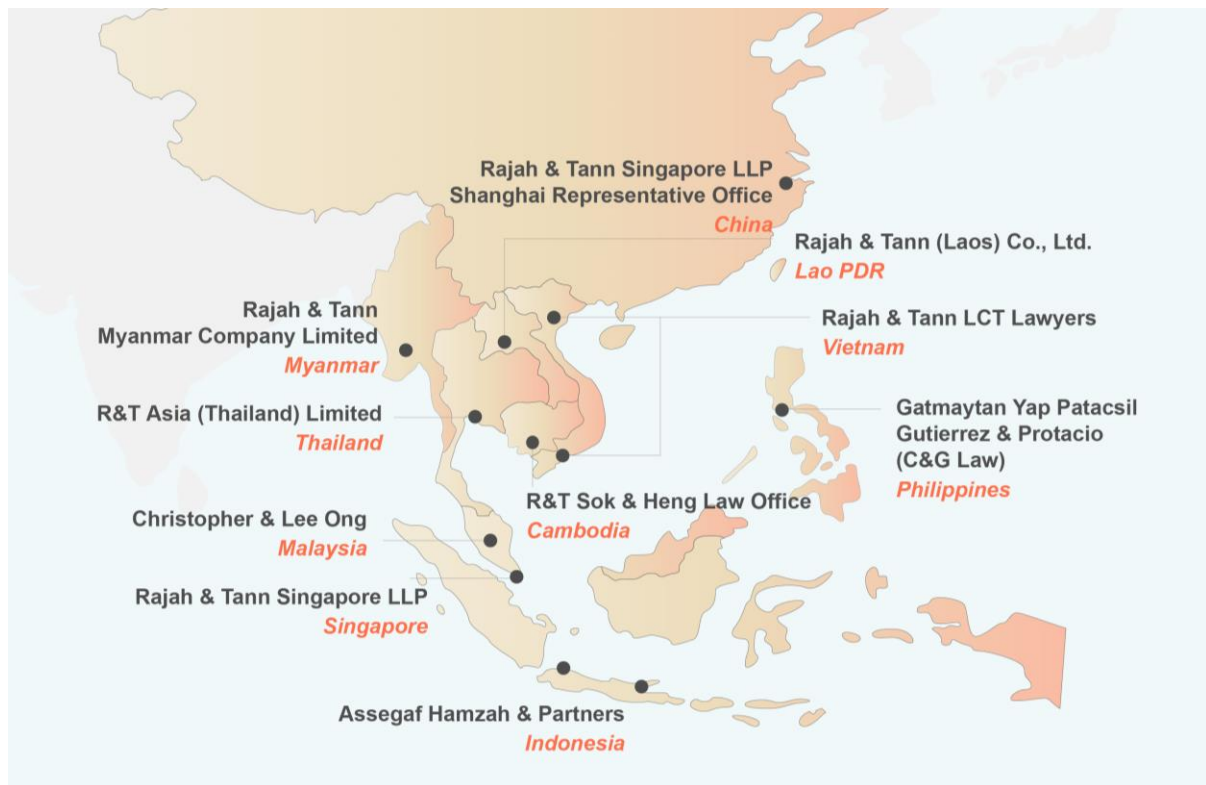
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