

Client Alert

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Merger Control Update: KPPU Clarifies Important Points of Its New Merger Filing Regulation

For More Information:

Wimbanu Widyatmoko

Senior Partner
+62 21 2960 8694
wimbanu.widyatmoko
@bakermckenzie.com

Mita Djajadiredja

Senior Partner
+62 21 2960 8689
mita.djajadiredja
@bakermckenzie.com

Mochamad Fachri

Associate Partner
+62 21 2960 8547
mochamad.fachri
@bakermckenzie.com

This is a follow-up to our [client alert of 23 October](#) on the Indonesian Business Competition Supervisory Commission Regulation Number 3 of 2019 on Assessment of Merger or Consolidation of Business Entities or Share Acquisitions of Companies ("**KPPU Regulation 3/2019**").

As discussed in this previous alert, we intend to publish updates on this topic, as more details come to light.

Since then, we have received verbal clarifications from the KPPU on several of the questions that we discussed in our October client alert. Below is a summary of these clarifications:

Mere change of control over assets does not require the filing of merger notice.

As we discussed in our October client alert, the text of KPPU Regulation 3/2019 seems to suggest, oddly, that the mere fact that control over the assets changes hands, without there being any impact in the relevant market, is sufficient to trigger the requirement to notify the KPPU. The KPPU has clarified that this requirement is only triggered if the change of control has an impact on the condition in the relevant market. It is not enough that ownership of the assets changed hands.

It is still a post-closing system.

With regard to offshore acquisitions of assets and acquisitions of stakes in other forms of entities (not limited liability companies) some wording of KPPU Regulation 3/2019 suggests that the execution date of the acquisition agreement is the effective date of the transaction, the date to start counting the deadline for filing. The KPPU has clarified that because the merger filing system remains a post-closing system, the effective date will always be the closing date, i.e., the date when control over assets is handed over and the date when the transfer of ownership of the stake becomes effective.

Also with regard to public companies that are acquired through a rights issue, it has been clarified that if the date of the disclosure letter to the



Indonesian Financial Services Authority (OJK) is used, this should refer to a disclosure after the transaction has been closed. Again, this is in line with the post-closing system.

Not all assets of the target are relevant for calculating thresholds.

KPPU Regulation 3/2019 does not specify which assets of the target are relevant for calculating the assets threshold in the case of an assets acquisition. This suggested that all assets of the target might have to be calculated even though only some of its assets are purchased. The KPPU has clarified that only the assets that are being acquired are relevant to the threshold for merger calculation.

Voluntary pre-closing consultation remains a full-dress rehearsal of mandatory post-closing notification.

KPPU Regulation 3/2019 does not specify the level of detail and extent of documentation that is required for a party to file for the voluntary pre-closing consultation with KPPU. The KPPU has clarified that the previous practice of requiring the same forms and documents for consultation as those submitted for the mandatory post-closing notification will continue. The timeline will likewise be the same: 60 working days for clarification of the submission plus up to 90 working days of review.

Market concentration standard for lessening of competition remains in place.

Under the previous merger filing guideline, the KPPU sets out that in the review stage, KPPU will initially assess whether the relevant transaction gives rise to a high market concentration. High market concentration is indicated by a Hirschman-Herfindahl Index ("HHI") above 1800 and a change above 150. If the HHI post acquisition is below 1800 or above 1800 but the change is below 150, KPPU will stop the review and consider that the acquisition neither occurred in a highly concentrated market nor increased the concentration of the market significantly. KPPU Regulation 3/2019 no longer mention these standards.

The KPPU has clarified that these HHI standards will continue to apply but they would be confirmed in upcoming technical guidance for merger control which will implement KPPU Regulation 3/2019.

We will issue further updates as more clarifications arise, such as when the technical guidance to KPPU Regulation 3/2019 is issued.



www.hhp.co.id

HHP Law Firm
Pacific Century Place, Level 35
Sudirman Central Business District Lot. 10
Jl. Jenderal Sudirman Kav. 52-53
Jakarta 12190
Indonesia

Tel: +62 21 2960 8888
Fax: +62 21 2960 8999