

## Indonesia: KPPU provides more clarity on negative impact of anti-competitive behavior

### In brief

After more than 20 years enforcing the Anti-Monopoly Law (Law No. 5 of 1999 on the Prohibition of Monopolistic and Unfair Business Practices), KPPU - the Indonesian Competition Commission - having experienced the highs and lows of investigating a wide range of anticompetitive behavior, issued **KPPU Chairman Regulation No. 2 of 2023 on Guidelines for Assessing Negative Impact from Monopolistic and Unfair Business Practices ("KPPU CR 2/2023")**.

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Negative market impact is an aspect that KPPU will assess in determining whether to impose sanctions for anti-competitive behavior. Under KPPU CR 2/2023, you don't need to be dominant to cause a negative impact. Anti-competitive conduct may still be interpreted as negatively impacting the market if the **intention** of a behavior is to limit, restrain, or lessen competition. In contrast, assessment of a party that has a dominant position in the market will be based on its **actual impact**.

KPPU will assess this by conducting a 'counterfactual test' to compare how the competition in the market would fare if there was anti-competitive conduct, and if there was no anti-competitive conduct.

KPPU will also assess whether the prices in the market are artificially high, whether consumers have options, whether innovation has been restrained, and whether there is any cartel behavior and to what extent.

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