



WPG INDONESIA:

NEW INDONESIAN MERGER CONTROL GUIDELINES: FURTHER CLARITY ON NOTIFICATION THRESHOLDS AND PROCEDURES

By WongPartnership and Makes & Partners,
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New Indonesian Merger Control Guidelines: Further Clarity on Notification Thresholds and Procedures

Since the issuance of our beginner's guide to merger control in Indonesia (available [here](#)), the Supervisory Business Competition Committee (*Komisi Pengawasan Persaingan Usaha* or *KPPU*) has issued additional merger control guidelines to clear up some of the ambiguity regarding the implementation of KPPU Regulation 3/2019.¹

We have, in this update, summarised some of the key aspects of the new merger control guidelines that investors should be aware of.

Clarification on scope of “merger, consolidation or acquisition”

KPPU Regulation 3/2019 states that any transaction which involves a merger or consolidation, or acquisition of shares (which results in a change of control) or assets that meets the Thresholds (as defined below) must be notified to the KPPU in writing no later than 30 business days after the completion of the transaction.

The new guidelines have clarified that the term “acquisition” under KPPU Regulation 3/2019 includes not just the acquisition of shares but also the acquisition of other instruments which have similar attributes to shares and which confer on holders, rights to control and receive economic benefits of ownership. This would include participating interests which are commonly used in the oil and gas industry.

In addition, the new guidelines have clarified that KPPU Regulation 3/2019 applies to the acquisition of both tangible assets (e.g., buildings, factories and land) and intangible assets (e.g., trademarks, patents, licences, data etc.).

Exemptions for certain types of asset transfers

The new guidelines have exempted the following asset transfers from the requirements of KPPU Regulation 3/2019:

- (a) an asset acquisition transaction by a non-bank entity that is less than Rp250,000,000,000 (two hundred fifty billion Rupiah);
- (b) an asset acquisition transaction by a bank that is less than Rp2,500,000,000,000 (two trillion five hundred billion Rupiah);
- (c) asset acquisitions carried out in the ordinary course of business (e.g., acquisition of finished goods by a retailer or acquisition of raw materials by a manufacturer);
- (d) property acquisitions involving (i) assets intended by the acquirer for its office space; or (ii) assets designated as social and/or public facilities; and

¹ KPPU Regulation No. 3 of 2019 on the Assessment of Merger or Consolidation of Business Entities and Company's Acquisition that could result in Monopolistic Practices and Unfair Business Competition.

- (e) asset acquisitions not intended for business use (e.g., purchase of land to be used for corporate social responsibility or non-profit activities).

Calculation of asset values

The method of calculating asset values for the purposes of determining whether the relevant thresholds have been met has also been clarified. Asset values used for the calculations should be the higher of: (a) the value stated in the financial statements; and (b) the value used for the purchase of the assets.

However, there has been no clarification on whether the value of assets for the purposes of determining the relevant thresholds relate only to assets in Indonesia. As such, worldwide asset values should still be applied – and investors/businesses should note that this renders the asset value thresholds relatively easy to cross, even if the transaction parties have very minimal presence in Indonesia.

Foreign mergers, consolidations or acquisitions

The new guidelines have confirmed that mergers, consolidations or acquisitions that occur outside Indonesia would have to comply with the requirements under KPPU Regulation 3/2019. Essentially, if such transactions have an impact on the Indonesian market, they could be notifiable. Under the new guidelines, a transaction is presumed to have an impact if one of the parties directly or indirectly conducts business activities in Indonesia and a sister company of another party directly or indirectly conducts business activities in Indonesia.

Introduction of a simplified assessment track

The new guidelines have also provided for a simplified assessment to be undertaken. A notification is eligible for a simplified assessment if any of the following conditions are met:

- (a) there are no overlapping business activities between the parties;
- (b) the parties are not engaged in vertically related business activities;
- (c) there are overlapping business activities but the Herfindahl-Hirschman Index (“**HHI**”) value after the transaction is:
 - (i) less than 1,500;
 - (ii) between 1500 and 2500, and the difference in the HHI value before and after the transaction is not more than 250; or
 - (iii) above 2,500 and the difference in the HHI value before and after the transaction is not more than 150;
- (d) the parties are engaged in vertically related business activities but the HHI value after the transaction is less than 1,500;
- (e) the transaction will not potentially result in “tying”, “bundling” and/or any act which may trigger a network effect;
- (f) the notification is submitted to the KPPU no later than 30 calendar days from the effective date of the transactions; and/or

- (g) the transaction results in the sole control of the relevant entity where it was previously jointly controlled by the acquirer and other shareholders.

Applicants who wish to opt for simplified assessment must apply for their notifications to be reviewed under the simplified assessment track when they submit their notifications. Should the KPPU approve the application for a review under the simplified assessment track, it will provide its assessment within 14 business days, as opposed to the maximum 150-business day review period under the standard assessment process.

The new guidelines do not, however, make it clear whether all the conditions stated above have to be satisfied before a notification qualifies for simplified assessment or whether the satisfaction of any one of the conditions will suffice. It is hoped that the KPPU will clarify this in due course.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership or Makes whom you normally work with or any of the following Partners:



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