

Voluntary Pre-Notification for Mergers, Consolidations, and Acquisitions-KPPU Regulation

The Commission for the Supervision of Business Competition (*Komisi Pengawas Persaingan Usaha / KPPU*) in its efforts to provide greater legal certainty while simultaneously endeavoring to increase control over the processes of merger, consolidation, and acquisition in order that monopolistic and unfair business practices do not occur has issued Regulation No. 1 of 2009 on Pre-Notification on Mergers, Consolidation, and Acquisition. However, it must be noted that pre-notification is voluntary and as such there is no specific penalty in place for not notifying the KPPU before undertaking a merger, consolidation, or acquisition.

The rationale is that companies and institutions that fall within the parameters of the pre-notification measures will voluntarily make the notification as a means of providing greater legal certainty and to ensure that they are in compliance with all prevailing laws and regulations in the sector. Simply, the KPPU envisages that companies and institutions will take advantage of the pre-notification system so as not to encounter any legal problems at a later date as a result of a breach.

For example, if pre-notification had been in-place then where a problem or potential breach exists this can be identified and the necessary changes made or the merger, consolidation, or acquisition can be abandoned before any breach occurs. In essence, cases such as Temasek, where post-transaction problems arose, will not occur in the future.

Not all mergers, consolidations, or acquisitions qualify for prior notification. The Regulation sets out different criteria for mergers and consolidations, and acquisitions. Furthermore, mergers and consolidations are classified into two types: (i) mergers and consolidations for businesses, and; (ii) mergers and consolidations for the financial services sector (such as banks or non-banks).

Pre-notification can be undertaken once there is an a contract or agreement, a Memorandum of Understanding (MoU), or some other written document in place that evidences and intent / plan to carry out a merger, consolidation, or acquisition. The KPPU will conduct the pre-notification over two phases:

- Preliminary Assessment-evaluation on the existence of any potential monopolistic practices and / or unfair business competition by measuring the impact of the merger, consolidation, or acquisition on the market, and;
- Full Assessment-evaluation on the basis of, among others, the possibility of bankruptcy if the merger, consolidation, or acquisition is not performed, and furthermore whether there would be any loss to the community or the public interest..

Interestingly, the result of the evaluation is binding on the KPPU but is not binding on the businesses or institutions that submit their intent to undertake a merger, consolidation, or acquisition.

The Regulation has been in force since 13 May 2009.

❖ Past Issues

- ✍ Linkage Program between Conventional Banks and Cooperatives - Guidelines (Issue 1097 - 15/05/2009)
- ✍ Re-Registration Duty for IUIPHHK Holders - Minister of Forestry Regulation (Issue 1096 - 14/05/2009)
- ✍ Article 26 Income Tax on the Sale and Transfer of Assets in Indonesia (Issue 1095 - 14/05/2009)
- ✍ Deductions from Gross Income for the Supply of Food and Beverages or Other In-Kind

❖ Documents

KPPU Regulation No. 1 of 2009
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