



**Commission for the Supervision of Business Competition**

**Regulation**

**Commission for the Supervision of Business Competition**

**Number 1 Year 2009**

**Concerning**

**Pre Mergers, Consolidations, and Acquisitions Notification**

**Commission for the Supervision of Business Competition**

Considering:

- a. whereas in the framework of enhancing control over merger, consolidation and acquisition which may result in monopolistic practices and/or unfair business competition, it is deemed necessary to have a clear procedure and assessment of the related pre merger notification.
- b. whereas therefore it is necessary to issue Regulation of the Commission for the Supervision of Business Competition on Pre Merger, Consolidation, and Acquisition Notification.

In view of:

1. Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition (State Gazette of The Republic of Indonesia Year 1999 Number 33, Supplementary to State Gazette of The Republic of Indonesia Number 3817);

2. President Decree of the Republic of Indonesia Number 75 Year 1999 concerning Commission for the Supervision of Business Competition;
3. President Decree of the Republic of Indonesia Number 59/P;

With due observance of:      Decision of the Commissioners Meeting dated 11 March 2009 and 28 April 2009;

**Has Decided to:**

Stipulate      : Regulation of the Commission for Supervision of Business Competition Concerning Pre Merger, Consolidation, and Acquisition Notification

**Chapter I**

**General Provisions**

**Article 1**

Referred to in this Regulation:

1. Merger means a legal action conducted by one or more Companies/Business Entities to merge with another existing Company/Business Entity that results in the assets and liabilities of the merging Companies/Business Entities are, by law, transferred to the merged Company/Business Entity while the merging Companies/Business Entities shall dissolve by law.
2. Consolidation means a legal action conducted by one or more Companies/Business Entities to consolidate by way of establishing a new Company/Business Entity which by law obtains the assets and liabilities of the consolidating Companies/Business Entities and the consolidating Companies/Business Entities shall dissolve by law.
3. Acquisition means a legal action conducted by a business entity to obtain or acquire, either in whole or in part, shares and/or assets of a Company/Business Entity which may result in the transfer of control over the Company/Business Entity.

4. The Commission means the Commission for Supervision of Business Competition as referred to in Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.
5. Business Actor means any individual or business entity, either incorporated or not incorporated as legal entity, established and having domiciled or engaging in activities within the jurisdiction of the Republic of Indonesia, either independently or jointly based on agreement, conducting various business activities in the economics fields.
6. Pre-Notification means voluntary notification submitted by business actor contemplating to have merger or consolidation of business entity or shares acquisition so as to get the Commission opinion on the impact of or arising from merger or consolidation or acquisition plan.
7. Relevant market means the market in relation to a specific marketing scope or area by [of] business actor for goods and or services of the same or similar type or substitutes for such goods or services.
8. Day means working days which is Monday to Friday except national holiday.
9. Law means Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

## **Chapter II**

### **Purposes**

#### **Article 2**

The purposes of enacting this Regulation shall be as follows:

- a. to protect the interest of the public and to promote national economics efficiency as one of the efforts to improve the people's welfare;
- b. to ensure legal certainty of business actors contemplating to have merger, consolidation, and acquisition;
- c. to prevent monopolistic practices and or unfair business competition that may be committed by business actors through merger, consolidation, and acquisition;
- d. the creation of effectiveness and efficiency in business activities.

### **Chapter III**

#### **(Value) Thresholds**

#### **Article 3**

- 1) Business Actors may submit a pre-notification if a merger or consolidation of business entity meets the following conditions:
  - a. Value of total assets of business entity as a result of merger or consolidation is exceeding Rp. 2.500.000.000.000,00 ( two trillion five hundred billion rupiahs);  
or
  - b. Value of total sales (turnover) of business entity as a result of merger or consolidation is exceeding Rp. 5.000.000.000.000,00 (five trillion rupiahs); or
  - c. Resulting in the acquisition of market share of more than 50% (fifty percent) of the relevant market
- 2) Especially in the financial service industry (bank and non-bank) applies the following provisions:
  - a. Value of total assets of business entity as a result of merger or consolidation is exceeding Rp. 10.000.000.000.000,00 (ten trillion rupiahs); or
  - b. Value of total sales (turnover) of business entity as a result of merger or consolidation is exceeding 15.000.000.000.000,00 (fifteen trillion rupiahs); or
  - c. Resulting in the acquisition of market share of more than 50% (fifty percent) of the relevant market

#### **Article 4**

Business Actor may submit pre-notification if the acquisition meets the following conditions:

- a. acquisition of at least 25% (twenty five percent) of voting shares; or
- b. acquisition of less than 25% (twenty five percent) of voting shares but resulting in the transfer of effective control; or
- c. Asset acquisition or other transaction that results in transfer of effective control; and

- d. The acquisition has resulted in value of assets or turnover or market share reaches the threshold as stipulated in Article 3.

## **CHAPTER IV**

### **Preliminary Assessment**

#### **Article 5**

- 1) Pre-notification may be made upon an agreement or consensus or memorandum of understanding or other written documentation between the parties stating a plan to have merger or consolidation of companies or acquisition.
- 2) Preliminary Review shall be made to assess whether or not there is a concerns of monopolistic practices and/or unfair business competition as a result of merger or consolidation or acquisition plan, based on the measurement of the degree of concentration in the relevant market.
- 3) In case the Preliminary Review indicates the existence of high concentration as a result of merger or consolidation or acquisition plan which raises concerns of monopolistic practices and or unfair business competition, the assessment will proceed to the Complete Review.
- 4) The Commission has the right to call (summon) other parties to get information during the review process.
- 5) The Preliminary Review by the Commission shall last not more than thirty (30) days since the documents are declared to be complete and meet the administrative requirements.

## **CHAPTER V**

### **Comprehensive Assessment**

#### **Article 6**

- 1) The Complete Review shall be made to determine whether or not there is an allegation of monopolistic practices and or unfair business competition as a result of merger or consolidation or acquisition plan.

- 2) The Complete Review shall at least take into account the following issues:
  - a. Possible anti-competitive behavior in the relevant market conducted by business actor as a result of merger or consolidation or acquisition, either unilaterally or in association with its competitors.
  - b. Efficiency created by the merger or consolidation or acquisition.
  - c. Likelihood that the corporate/business entities concerned will be declared bankrupt or out of the market which may harm the community and public interest, if the merger or consolidation or acquisition is not carried out.
- 3) The Commission has the right to call (summon) other parties to be requested (heard) for information during the review process;
- 4) The Complete Review made by the Commission shall be conducted not more than 60 (sixty) days.

## **CHAPTER VI**

### **Review Result**

#### **Article 7**

- 1) The result of Pre-Notification Review shall be the Commission Opinion which shall be binding to the Commission but shall not bind to business actors implementing merger, consolidation or acquisitions.
- 2) The Preliminary Opinion of the Commission may be in the form of whether there is objection or no objection with conditions as required by the Commission with regard to the merger or consolidation or acquisition plan.
- 3) Business actors implementing merger or consolidation or acquisition may consult on the Preliminary Opinion of the Commission in the period of not more than 30 (thirty) days after the Commission Opinion received by the business actors.
- 4) After the expiration of consultation period, the Commission will announce the Commission Final Opinion on the merger or consolidation or acquisition plan.

## **CHAPTER VII**

### **Final Provision**

#### **Article 8**

The provision on the Guideline of the Pre Merger or Consolidation or Acquisition Notification shall be stipulated in the Supplement which is inseparable to this Commission Regulation.

#### **Article 9**

- 1) Unless otherwise specified in this Commission Regulations, the provisions pertaining to the case handling in or by the Commission for merger or consolidation or acquisition review will refer to the Law of Republic of Indonesia Number 5 Year 1999 and the Commission Regulation Number 1 Year 2006 on Case Handling Procedures in the Commission;
- 2) This regulation shall come into force on the date specified.

Stipulated in : Jakarta  
In : 13 May 2009

Commission for Supervision of Business Competition  
Chairman,

Benny Pasaribu PhD