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Mergers & Acquisitions: new anti-monopoly rules

By Rusmaini Lenggogeni

When the Parliament and the Government of Indonesia passed *Law No.5 of 1999 regarding the Prohibition of Monopolistic Practices and Unfair Business Competition* (the Anti-Monopoly Law), it was not anticipated that the implementation of the regulation would take years. Nevertheless, it was not until July 2010 that the Government finally passed the implementing regulation (GR 57/2010) that implements Article 28 and Article 29 of the Anti-Monopoly Law. Article 28 prohibits mergers or acquisitions that may result in monopolistic practices and/or unfair business competition, while Article 29 requires post-notification for mergers or acquisitions which meet a certain minimum threshold in terms of assets and/or sales value within 30 days as of the effective date of the merger or acquisition.

In addition, GR 57 also provides authority to the Business Competition Supervisory Commission (KPPU) to conduct assessments of mergers or acquisitions suspected of creating monopolistic practices and/or unfair business competition.

Upon the discovery of such violations, the KPPU is authorised to impose administrative sanctions on the violators. The sanctions include, among other things, the possible cancellation of agreements and even cancellation of the merger/acquisition itself.

Regarding Article 29, the minimum thresholds of assets and/or sales values that require post-notification for mergers or acquisitions are:

(i) an asset value of IDR2.5 trillion (IDR20 trillion for banks); and/or
(ii) a sales value of IDR5 trillion.

The minimum thresholds mentioned above shall be calculated based on the total asset value and/or sales value of:

(i) the business entity resulting from the merger, or the acquiring business entity and the acquired business entity; and
(ii) the business entity(ies) which controls or is controlled by, either directly or indirectly, the business entity resulting from the merger or consolidation, or the acquiring business entity and the acquired business entity.

GR 57 authorizes the KPPU to impose a fine of IDR1 billion per day up to a maximum of IDR25 billion to businesses that fail to notify the KPPU of any mergers or acquisitions that meet the above-mentioned criteria.

Pre-merger consultation

Furthermore, GR 57 also gives businesses an option to have a pre-merger consultation with the KPPU, either verbally or in writing, before the completion of the merger or acquisition. The consultation is voluntary. However, the KPPU will only give its written opinion in the case of a written consultation. No written opinion will be given when the consultation is held verbally.

The main benefit of having the pre-completion consultation is that the KPPU is committed to making only one evaluation of each acquisition, as long as there are no material changes in the data submitted by the businesses conducting the acquisition and no material changes in the prevailing market conditions. Therefore, if a business has voluntarily conducted a pre-completion consultation in writing, then the KPPU will not change its post-completion decision.

Implementing regulations of GR 57

The KPPU has issued additional regulations for further details on the implementation of GR 57, such as KPPU Regulation No. 10/2010 dated August 20, 2010, which contains the necessary template for the post-notification of a merger and/or acquisition, KPPU Regulation No. 11/2010 dated August 20, 2010 regarding a written consultation and KPPU Regulation No. 13/2010 dated October 18, 2010, which contains the guidelines for mergers and acquisitions.

Soewito Suhardiman Eddymurthy Kardono (SSEK)
14th Floor Mayapada Tower
Jl. Jend. Sudirman Kav.28 Jakarta 12920 Indonesia
Tel: (62) 21 5212038 / (62) 21 5212130
Fax (62) 21 5212039
Email: rusmainilenggogeni@ssek.com
www.ssek.com