



Indonesia

Global merger control handbook – update

APRIL 2020

Merger control legislation changes since 1 July 2018

The Business Competition Supervisory Commission (the “Commission”) has issued Reg No. 1/2019 concerning Procedures for the Settlement of Monopoly Practice and Unfair Business Competition Cases. This Reg No. 1/2019 regulates the procedures for settling any case regarding monopoly practice and unfair business competition from general perspective and not specific on merger cases.

Further, the Commission has recently issued Reg No. 3/2019 regarding Assessment of Mergers or Consolidations of Business Entities, or Acquisitions of Company Shares Which May Result in Monopolistic Practices and/or Unfair Business Competition. This Reg No. 3/2019 regulates the obligation for a business entity to notify the Commission regarding the merger of business entities, consolidation of business entities, or acquisition of shares of other companies which results in the value of assets and/or sales value to exceed a certain amount. Purpose of the obligation is to anticipate any monopolistic practices and/or unfair business competition resulting from such merger, consolidation and/or acquisition.

The certain amount provision as referred to in Reg 3/2019 applies for the following:

- a. the value of the assets of a business entity resulting from the merger, consolidation, or acquisition of company shares exceeds Rp2,500,000,000,000 (two trillion five hundred billion Rupiah); or
- b. the value of sales of a business entity resulting from the merger, consolidation, or acquisition of company shares exceeds Rp5,000,000,000,000 (five trillion Rupiah).

In summary of Article 3 paragraphs (1) and (2) of Reg No.3/2019, it regulates that the following category of business practitioner are obliged to submit such notification to the Commission:

- a. Business practitioner who receives the merger;
- b. Business practitioner resulting from consolidation;
- c. Business practitioner who carries out acquisition; or

d. Business practitioner who receives or acquires assets.

In submitting the notification, business practitioner may be represented by attorney.

Article 4 of Reg No. 3/2019 further regulates the calculation of assets and sales as follows:

1. The value of assets and/or sales resulting from the merger, consolidation, or acquisition of the company shares and/or assets shall be calculated based on the sum of the last year's sales and/or asset value that has been audited from each party conducting the merger, consolidation, or acquisition of the company shares and/or assets are added to the value of assets and/or sales of all business entities that directly or indirectly control or are controlled by business practitioner that conducts merger, consolidation, or acquisition of the company shares and/or assets.

In principal, Article 4 of Reg No. 3/2019 provides that the notification to be notified to the Commission shall comprise of the following calculation:

- i. sum of the last year's sales and/or asset value that has been audited from each party conducting the merger, consolidation, or acquisition of the company shares and/or assets. The term of 'each party' in this provision refers to (i) the buyer (i.e.: the acquiring party), and (ii) the target (i.e.: the acquired party); and
 - ii. value of assets and/or sales of all business entities that directly or indirectly control or are controlled by business practitioner that conducts merger, consolidation, or acquisition of the company shares and/or assets (i.e.: the acquiring party and its controlling shareholders up to its ultimate shareholders and its subsidiary (if any)).
2. The value of assets calculated as referred to in paragraph (1) shall be the value of assets listed in the financial statement.

3. The sales value calculated as referred to in paragraph (1) shall be the sales value in the territory of the Republic of Indonesia.

4. In the event that one of the parties conducting the merger, consolidation, or acquisition of the company shares and/or assets has a difference of 30% (thirty percent) or more between the value of assets and/or the value of sales of the recent year from the value of assets and/or sales of the previous year, the value of assets and/or sales shall be calculated based on the average value of assets and/or sales for the last 3 (three) years.

5. The difference as referred to in paragraph (4) shall be if the value of assets and/or sales value of the recent year is lower than the previous year.

6. In the event that the condition as referred to in paragraph (4) is less than 3 (three) years, then the average value of assets and/or sales of the recent year and the previous year shall be calculated.

In addition, Article 7 of Reg No. 3/2019 regulates that the notification of merger, consolidation, or acquisition of company shares and/or assets to the commission must be made no later than 30 (thirty) days from the juridical effective date of the merger, consolidation, or acquisition of the company shares and/or assets.

Landmark merger control cases since 1 July 2018

There have been no landmark merger control case since 1 July 2018.

Web link to the national competition authority

Competition Authority: <http://www.kppu.go.id/id/>

Your merger control contact in Indonesia

IABF Law Group

Jl. Jenderal Sudirman Kav. 32
Jakarta Pusat 10220
Indonesia
T +621 21-57905090
iab-net.com

Ivan F. Baely

T +62 912 9166 705
baely@iab-net.com

Almaida Askandar

T +62 816 111 9711
almaida@iab-net.com