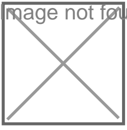

# Indonesia’s Merger Control Rules Revised: Threshold Reversal, Introduction of a New System, and Filing Fees

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Indonesia has issued two new regulations related to merger control matters. Government Regulation No. 20 of 2023 on Type and Tariffs on Non-Tax State Revenue Applies to the Indonesian Business Competition Supervisory Authority (“**GR 20/2023**”) and Indonesian Business Competition Supervisory Authority (“**KPPU**”) Regulation No. 3 of 2023 on the Assessment of Mergers, Consolidations or Acquisitions of Shares and/or Assets that May Result in Monopolistic Practices and/or Unfair Business Competition Practices (“**KPPU Reg 3/2023**” or “**New Regulation**”). KPPU Reg 3/2023 replaced the previous KPPU Regulation No. 3 of 2019 (“**KPPU Reg 3/2019**” or “**Previous Regulation**”).

The GR 20/2023 and the New Regulation introduce the following significant changes:

**1. Filing Fees**

Following the enactment of GR 20/2023, businesses that submit mergers filing to KPPU are now required to pay the official filing fees in the form of non-tax state revenue (*Penerimaan Negara Bukan Pajak* – PNBP). The assessment tariff will be calculated using the following formula:

***0.004% x the amount of the sales or asset figures of the transacting parties, which one is the lower.***

These figures will be those combined sales or assets of the companies involved in the transaction on a group of companies’ basis. The total assessment tariff is capped at the value of IDR150,000,000 or at approximately USD10,000 (assuming USD1 = IDR15,000). From the wording of the regulation, this new policy should be applied only on transactions deemed reportable to KPPU and meet certain threshold of assets or sales value. KPPU will further

regulate the implementation of this new policy, including any possible exemptions that may be applicable in certain situations.

2. **Reportability Threshold**

The requirements for determining whether or not a transaction should be reported to KPPU have mostly remained the same, as described in our advisory titled "*Overview of Merger Reportability Analysis*", with the following notes:

(i) the combined assets or sales figures must exceed IDR2.5 trillion or IDR5 trillion, respectively;

(ii) change of control must occur;

(iii) there must be no affiliation between transacting parties before the transaction;

(iv) the transacting parties must have assets and/or sales in Indonesia;

**With respect to point (i)**, under the Previous Regulation, KPPU used to calculate the asset figures on a global basis, which included assets of the transacting parties outside of Indonesia. This approach was controversial as it significantly lowered the reporting threshold, resulting in a significant increase in the number transactions that were reportable to KPPU, particularly for foreign mergers and transactions involving multinational companies. With the issuance of the New Regulation, KPPU has now clarified that the method for calculating the asset figures will revert to the previous approach, which only takes into account assets of the transacting parties in Indonesia.

**With respect to point (iv)**, it can be assumed that this requirement refers to the local effect test that is typically imposed on foreign mergers. Based on the Previous Regulation, the threshold for this requirement was lowered from an earlier regulation, such that if even one transacting party had business or sales in Indonesia, the local effect test would be deemed met. However, the New Regulation states that this requirement is met only if the transaction is conducted between business entities that have business or sales in Indonesia. It may be open to interpretation that if only one of the transacting parties has business or sales in Indonesia, but the other does not, the transaction should not be reportable. If this is the case, it appears KPPU reverts requirement (iv) to the threshold prior to the issuance of KPPU Reg 3/2019, similar to requirement (i) above.

3. **Filing procedure overhaul**

Previously, KPPU received filings through emails, as mandated by the Previous Regulation. Under the New Regulation, KPPU introduces a new Electronic Notification System for merger

assessments. Merger filings must now be submitted through an electronic portal accessible through KPPU's website (notifikasi.kppu.go.id) ("**Online System**").

Additionally, the timeframe for KPPU to review the completeness of filing documents ("**Completeness Assessment**") has been substantially shortened from 60 working days to just 3 working days. If KPPU finds that the filing documents are complete, it will issue a letter opining on whether the transaction meets the reportability threshold. Meanwhile, if the filing documents are not complete, KPPU shall issue a note through the Online System on the list of pending documents that needs to be completed by the submitting party. In this case, we believe KPPU will only complete the Completeness Assessment after the pending documents are submitted by the submitting party. Nonetheless, since the New Regulation does not specifically state so, it is unclear for how long KPPU will extend the Completeness Assessment period. In the absence of such clarity, this may cause uncertainty on the total duration for a filing timeframe, similar to the timeframe before the issuance of KPPU Reg 3/2019.

After the Completeness Assessment, KPPU will proceed to assess the merit of the notification which is decided as reportable within the period of 90 (ninety) business days ("**Merit Assessment**"). During the Merit Assessment, KPPU may ask for additional information or documents through the Online System. In the **first stage** of the Merit Assessment, a designated task force (*satuan tugas*) will first assess whether the notified transaction may result in a significant change to the market concentration. If the task force observes such an indication, the assessment will advance to the **second stage** of the Merit Assessment, where a full assessment will be conducted.

If, during the second stage assessment, the transaction is established to have the potential to result in monopolistic practices or unfair business competition, a hearing with the KPPU Panel (*Majelis Komisi*) will be held. During the hearing process, the KPPU Panel may summon the notifying party and in parallel, the KPPU investigator will also ask for additional information or documents. Upon the hearing, the KPPU Panel shall issue a decision either (i) to issue a conditional approval on the transaction deciding that there is potential no anti-monopoly or unfair competition on the transaction; (ii)or to proceed the transaction to a further investigation.

**Conclusion**

KPPU's initiative to simplify and digitalize merger filing notifications is commendable. First, it lowers the reportability threshold, which means smaller non-significant transactions should no longer be subject to the reportability requirement simply because of their group's significant global asset figures. Second, it allows notifying parties to benefit from the shorter filing timelines.

However, it remains to be seen how these simplifications and digitalization can be optimized in practice. Businesses and legal counsels may also need to revisit their filing strategies to anticipate last-minute complications and system breakdowns, as most, if not all, communication with KPPU during filing will be done through the Online System.

Possible multiple interpretations of the current regime also need to be anticipated. For example, it is unclear whether the local effect test will only be satisfied if both transacting parties having sales or business in Indonesia. Furthermore, it is still not clear how the official filing fees (PNBP) will be calculated by KPPU and what will be the exemptions on this filing fees policy.

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