

## The New Regime of KPPU Notification for M&A Transaction <sup>P1</sup>

### The New Regime of KPPU Notification for M&A Transaction

The Government of Indonesia through the Indonesian Competition Commission (“KPPU”) issued KPPU Regulation No. 3 of 2023 on Assessment of Mergers, Consolidations or Acquisitions of Shares and/or Assets That May Result in The Occurrence of Monopolistic Practices and/or Unfair Business Competition (“KPPU Reg 3/2023”). This regulation came into force as of 31 March 2023 and revoked KPPU Regulation No. 3 of 2019 on the same subject (“KPPU Reg 3/2019”). The following are the key changes between those two regulations:

#### 1. Limitation and Calculation of Asset Value and/or Sales Value for Merger

KPPU Reg 3/2023 has now determined that the value of assets, as the threshold variable, will only apply to assets located in Indonesia. Previously, KPPU Reg 3/2019 only applied this approach to the sales variable. However, the threshold for notifiable transactions does not change, i.e., combined asset value exceeding IDR 2.5 trillion and/or combined annual sales value exceeding IDR 5 trillion based on the latest financial year before the date of the transaction.<sup>1</sup>

#### 2. Mandatory Notification Criteria

In addition to emphasizing the threshold, change of control and unaffiliated transaction as the criteria for mandatory notification, KPPU now includes transactions between the business actors who have the assets and/or sales turnover in Indonesia as one of the criteria. This inclusion signifies that the notification is required if all parties involved in the transaction have assets and/or generate sales in Indonesia and, if otherwise, the transaction does not need to be notified to KPPU.<sup>2</sup>

<sup>1</sup> Article 6 paragraph 1 KPPU Reg 3/2023 jo Article 2 paragraph (2) KPPU Reg 3/2019

<sup>2</sup> Article 3 of KPPU 3/2023

### 3. Notification System

KPPU Reg 3/2023 introduces the electronic submission through KPPU website at <https://notifikasi.kppu.go.id>, which was initially introduced by KPPU Regulation No. 1 of 2020 on Electronic Case Handling.<sup>3</sup> Previously, notifications were submitted manually (face-to-face or postal) or by email.

### 4. Efficiency of Notification Document Examination

KPPU Reg 3/2023 shortens the period for reviewing the completeness of notification documents to three working days after the notification is registered, which was previously sixty working days.<sup>4</sup> During the three-day period, KPPU will also determine whether the transaction meets the notification criteria. This change eliminates the clarification process which was regulated under KPPU Reg 3/2019.

### 5. Pre-consultation

Previously, consultation with KPPU could only be done in writing. KPPU Reg 3/2023 introduces the verbal consultation for the business actor to get initial information from KPPU with regards to the proposed transaction.

### 6. Fees for the assessment process of notifications

Apart from KPPU Reg 3/2023, the Government has issued Government Regulation No. 20 of 2023 on Types and Tariffs on Types of Non-Tax State Revenue Applicable to the Business Competition Supervisory Commission (“**GR 20/2023**”) that is effective as of 5 May 2023.

Through GR 20/2023, business actors now will be subject to a notification fee of 0.004% of the asset value or sales value or a maximum of IDR150,000,000 (one hundred and fifty million rupiah) if the transaction fulfils the mandatory notification criteria.<sup>5</sup> The asset or sales value is calculated based on the total asset or sales value of the following entities:

- The surviving entity in a merger, or consolidating entity, or the acquiring entity and acquired entity in the acquisition; and
- The entities that directly or indirectly control or being controlled by any of the above entity(ies).

Based on certain consideration, the percentage of the fee can be IDR 0 or 0%. However, further provisions related to this exemption have not been regulated.

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<sup>3</sup> Article 13 KPPU Reg 3/2023

<sup>4</sup> Article 16 paragraph (3) KPPU Reg 3/2023

<sup>5</sup> Article 2 GR 20/2023

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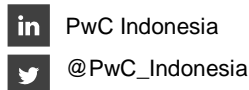
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