
Competition

More Companies are Fined by KPPU For Late Notifying Their Transactions

Although the Merger Control Regulations have been in place for eight years, it appears that some big companies are still unaware of their obligations to notify certain transactions to the *Komisi Pengawas Persaingan Usaha* (“KPPU”), the Indonesian competition commission. In February 2018, KPPU imposed fines on the following two companies for their late notifications on the below transactions:

- 1) PT Plaza Indonesia Realty, Tbk. was fined IDR 1 billion (approximately USD 72 thousand) for its late notification on the acquisition of PT Citra Asri Property (*Plaza Indonesia/Citra Asri*); and
- 2) PT Nirvana Property was fined IDR 1 billion (approximately USD 72 thousand) for its late notification on the acquisition of PT Mutiara Mitra Bersama (*Nirvana Property/Mutiara Mitra*).

According to our records from the KPPU website, these fines bring the number of late notification fines since 2012 to nine. We believe the number of companies that are fined will continue to increase because we understand that KPPU is in the process of investigating other late notification cases.

Legal Background on Mandatory Notification to KPPU

The above companies only filed the notifications upon a reminder letter from KPPU, which is usually received long after an acquisition has been completed. According to:

1. Article 29 of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition;
2. Article 5 of Government Regulation No. 57 of 2010 on Merger or Consolidation of Business Entities and Acquisition of Shares that may result in Monopolistic Practices and Unfair Business Competition; and
3. KPPU Regulation No. 2 of 2013 on the Third Amendment of Commission Regulation No. 13 of 2010 on the Guidelines for Mergers or Consolidation of Business Entities and Acquisition of Shares of Other Companies

(hereinafter collectively referred to as “**Indonesia Merger Control Regulations**”), any mergers, consolidations, and acquisitions (“**Mergers**”) that meet certain criteria must be notified to KPPU within 30 working days after the Mergers become legally effective. There are several criteria that must be satisfied for a transaction to be deemed as a notifiable one. However, the main criterion is that the combined assets of the parties exceed IDR 2.5 trillion (approximately USD 181 million) or the combined sales of the parties exceed IDR 5 trillion (approximately USD 363 million). Based on the Indonesia Merger Control Regulations, KPPU is authorized to impose fines for late notifications in the amount of IDR 1 billion (approximately USD 72 thousand) per day of delay, with a maximum fine of IDR 25 billion (approximately USD 1.8 million).

Facts of the Cases

The *Plaza Indonesia/Citra Asri* acquisition was legally effective on 4 November 2014. The combined assets and sales of the parties exceeded the statutory thresholds. However, the notification was only made to KPPU on 13 May 2016. Therefore, it was 345 days past due according to the KPPU press release. This sets the record for longest period of failure to notify to date.

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Similarly, the *Nirvana Property/Mutiara Mitra* acquisition exceeded the statutory thresholds. The transaction was legally effective on 29 December 2015, but was notified to KPPU on 7 October 2016. Therefore, according to the KPPU press release, the notification was 161 days late and represents the second longest period of failure to notify to date.

Even though the Merger Control Regulations clearly stipulate that the fine for late notification is IDR 1 billion (approximately USD 72 thousand) per day of delay with a maximum of IDR 25 billion (approximately USD 1.8 million), the above cases demonstrate KPPU's practice of not imposing the maximum fine. However, KPPU has not elaborated the reasons behind its practice of setting the fines lower than the amount permitted under the Merger Control Regulations. As such, there is no guarantee that KPPU will remain lenient for other late notifications and it may start applying the maximum late notification fines. For example, LG International Corp received the highest fine for late notification at IDR 8 billion (approximately USD 582 thousand), when it acquired PT Binsar Natorang Energi on 12 June 2014 and notified KPPU 20 days after its notification period passed.

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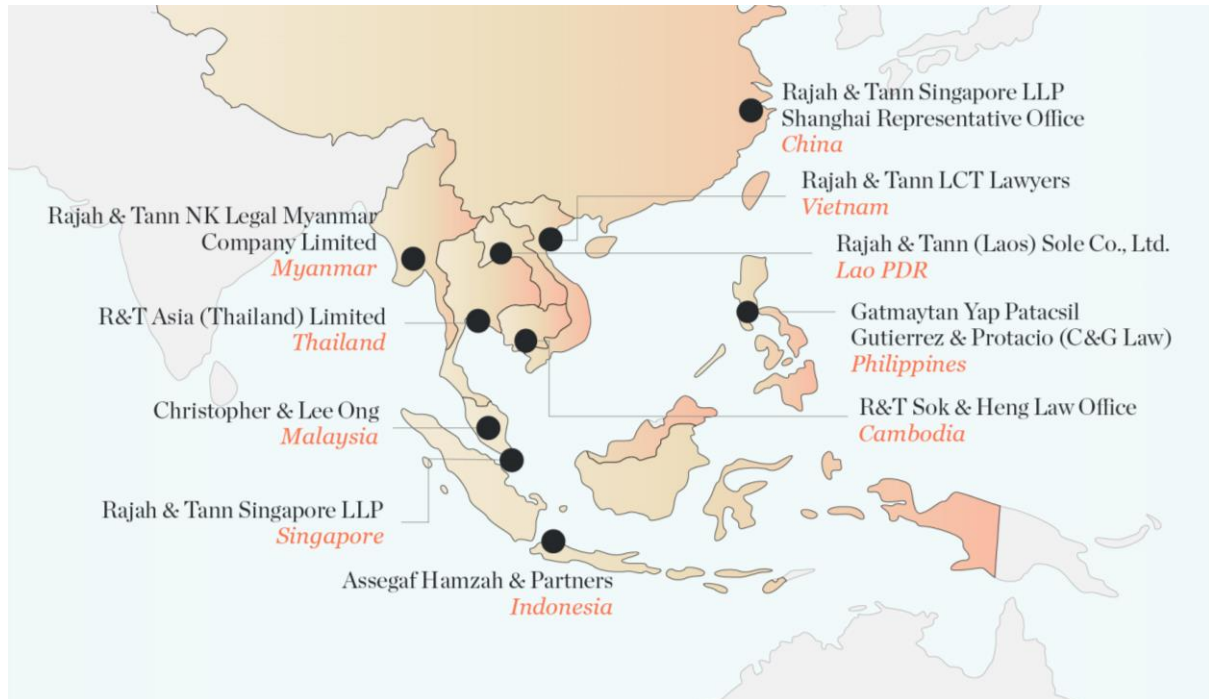
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