



Unbundling Competition

Episode 2: Competition law in Southeast Asia – Indonesia

In this episode, Adelaide Luke, who is a partner and Head of Competition Asia in the HSF Hong Kong office, and Sakurayuki, who is a partner and Head of Competition at our association law firm in Indonesia, Hiswara Bunjamin & Tandjung, look at some recent and ongoing developments in Indonesian competition law.

Indonesia was one of the first wave of countries in Southeast Asia to introduce a competition law after the Asian Financial Crisis. The Indonesian competition regulator, the KPPU, has been one of the most active in the region both in enforcing antitrust infringements and conducting merger control over the past 20 years. Although the Indonesian Competition Law has not been amended during this time, there have been several key developments recently.

First, together with a number of other laws, the Competition Law has been amended by the recent “Omnibus Law”, which was passed in October 2020 to further attract foreign investments and improve the ease of doing business in Indonesia. The changes to the Competition Law by the Omnibus Law include streamlining appeals against KPPU decisions, which will now fall under the jurisdiction of the commercial court, and removing the upper limit for fines for infringements. On the other hand, the Omnibus Law removes all criminal sanctions for antitrust infringements, except for those for obstructing investigation or examination.

More substantial changes are anticipated under a draft new competition law that is expected to be enacted at some stage in

the near future. Changes under the most recent draft law, from December 2018, include a new pre-closing merger filing regime, replacing the current post-closing regime. However, given the KPPU's record of long delays in merger review to date, it remains to be seen whether the KPPU will have sufficient resources to review filings in a timely manner. Another major change under the draft law is to introduce a cartel leniency system for the first time.

More recently, on 6 October 2020, the KPPU issued new Merger Control Guidelines, which provide greater clarity on its 2019 Merger Control Regulations. The 2019 Regulations expanded the types of transactions subject to merger notification to include asset acquisitions as well as transactions meeting the relevant thresholds even where only one party was active in Indonesia. The new Guidelines clarify, for example, which types of asset acquisition are subject to notification. They also provide that “foreign to foreign” transactions with no impact in Indonesia will not be notifiable.

We can expect ongoing changes in competition regulation in Indonesia, as well as for the KPPU to continue to be very active.

