

Indonesia Merger Control Implementation



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Outline

- **Introduction of Indonesia Merger Control**
- **10 Years Merger Control Implementation**

Why Merger Control?

- **To prevent anti-competitive consequences of changes in market concentrations (market power)**
- **To ensure that merger and acquisition will increase the efficiencies and furthermore improve the national economy**
- **To safeguard the public interest, such as to prevent unemployment.**

Regulation of Merger Control in Indonesia (1)

- **Law Number 5 Year 1999:**
 - **Article 28 prohibit merger and acquisition that may result monopolistic practices and or unfair business competition**
 - **Article 29 ordered the business actors that have met threshold to notify the Indonesian Competition Commission (ICC) no later than 30 days after the transaction complete (Post-Notification)**

Regulation of Merger Control in Indonesia (2)

- **Government Regulation Number 57 Year 2010:**
 - **Notification Threshold:**
 - a) **2,5 trillion rupiahs of combined asset or 5 trillion rupiah of combined sales for non-banking sector and 25 trillion rupiahs of combined asset or 50 trillion rupiah of combined sales for banking sector**
 - b) **Non Affiliated and**
 - c) **changes of control**
 - **Voluntary Consultation**
 - **Administrative Fine for Late Notification**

Review in Notification

- **Commissioner Rules Number 3 Year 2019 concerning Merger Assessment Guidelines**
 - **Verification phase: maximum 60 working days**
 - **Assessment phase: maximum 90 working days**
 - **Verification and Assessment phases durations is flexible and can be shorten, it depends on characteristic of the transaction and the availability of data and information**
 - **The outcome is ICC Ruling**

Safe Harbors (1)

- **Safe Harbors for Horizontal Merger:**
 - **HHI below 1500: there are no concerns of violation article 28 Law No. 5/1999**
 - **HHI above 1500 but below 2500 the increase HHI below 250 : there are no concerns of violation article 28 Law No. 5/1999**
 - **HHI above 1500 but below 2500 the increase HHI above 250 : Comprehensive Assessment**
 - **HHI above 2500 but the increase HHI below 150 : there are no concerns of violation article 28 Law No. 5/1999**
 - **HHI above 2500 but the increase HHI above 150: Comprehensive Assessment**

Safe Harbors (2)

- **Non Horizontal Merger:**
 - **Non Integrated Business Process : there are no concerns of violation article 28 Law No. 5/1999**
 - **Integrated Business Process:**
 - **No Dominant Position: there are no concerns of violation article 28 Law No. 5/1999**
 - **Dominant Position: Comprehensive assessment**

Comprehensive Analysis..1)

1. Entry Barrier:

- **Identify the entry barrier in the market or industry**
- **In the market or industry with low entry barrier, merger and acquisitions doesn't raise a concern in monopoly practices and unfair business competition**
- ***Vice versa*, in the market or industry with high entry barrier, merger and acquisitions can raise a concern in monopoly practices and unfair business competition from the merging parties**

Comprehensive Analysis...2)

2. Anticompetitive behavior from the result of Merger Acquisition such as:

- **Unilateral Conduct**
- **Coordinated Conduct; or**
- **Market Foreclosure (for vertical merger)**

3. Efficiency Defense:

- **An argument can be made by parties to show that merger and acquisition can be pro-competitive through efficiency gain which will be pass through to consumers**
- **The Commission will review the efficiency defense to determine whether the efficiency defense is plausible**

Comprehensive Analysis...3)

4. Bankruptcy Defense:

- **An argument can be made by parties that show without merger acquisition, the company will bankrupt**
- **The argument will also show that with the company bankrupt, competition in the market or industry will be significantly reduced**
- **The Commission will review the bankruptcy defense to determine whether the bankruptcy defense is plausible**

Remedies (1)

- **Commissioner Rules Number 3 Year 2019 concerning Merger Assessment Guidelines**
 - **Should the Commission find any concern about of potential lessening competition resulting from merger and acquisition therefore the Commission shall impose remedies to the parties**

Remedies (2)

- **The parties must comply with ICC Ruling or The Commission will start investigation**
- **Remedies can be either:**
 - **Structural Remedies:**
 - **Asset Divestitures**
 - **Stock Divestitures**
 - **Behavioral Remedies:**
 - **Notation concerning access to intellectual proprietary**
 - **Notation concerning remove the barrier that reduce competition**
 - **Notation about price and output of production**

10 Years of Merger Control Implementation

Merger Notification Figures

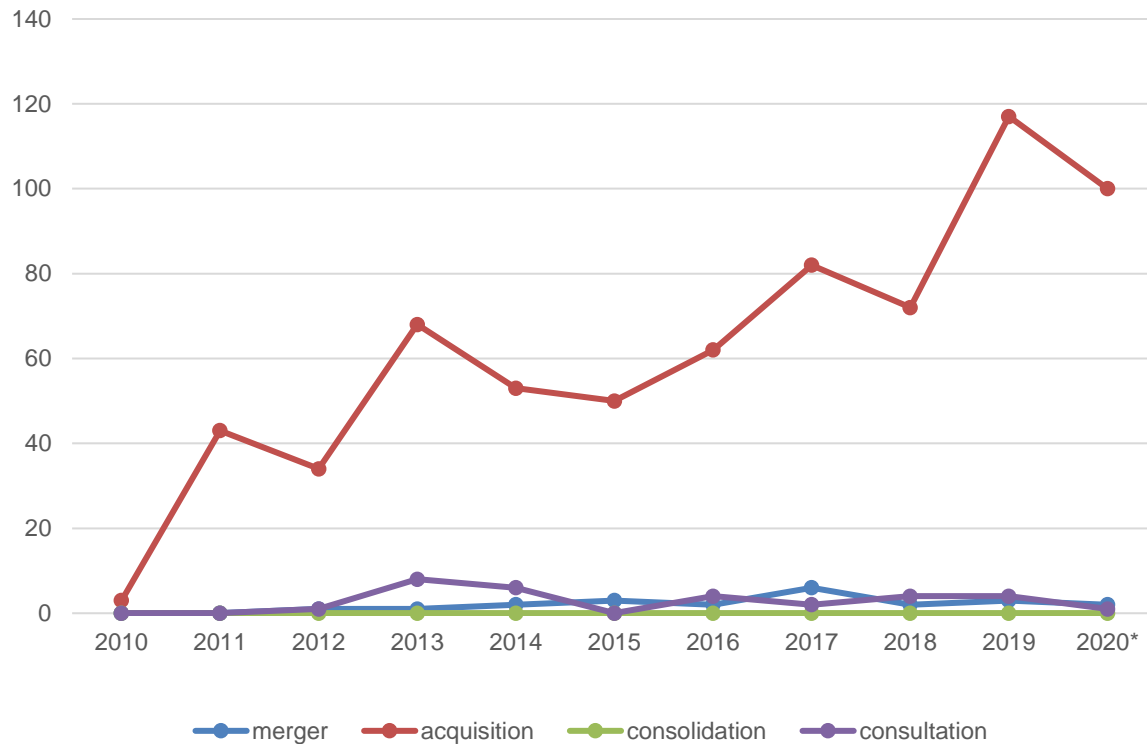


Figure 1. Trend of Merger and Acquisitions in Indonesia based on Type of Transaction/Notification (Merger, Acquisition, and Consolidation) During 2010- June 2020

Merger Notification Figures

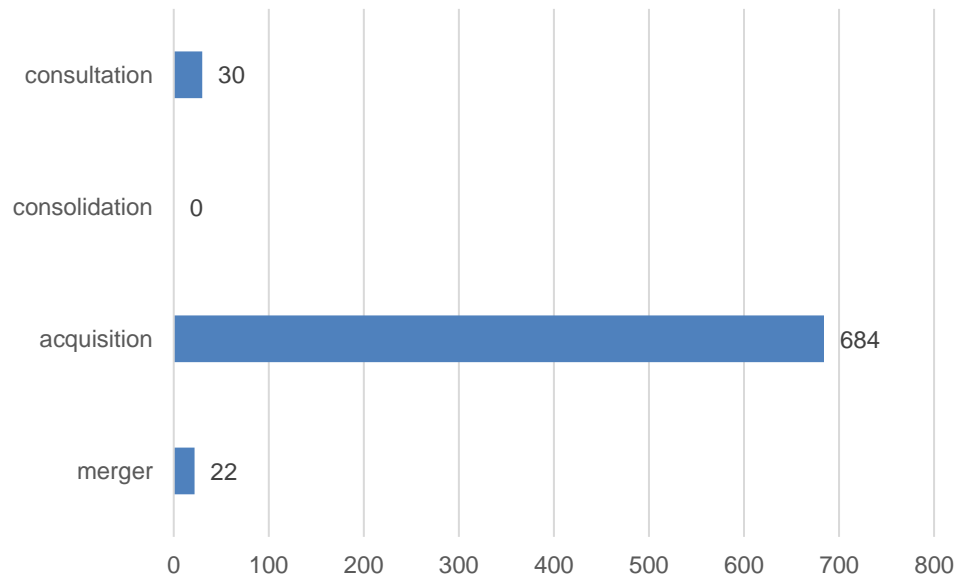


Figure 2. Number of Notification Reports based on Reporting Categories in KPPU During 2010- June 2020

Merger Notification Figures

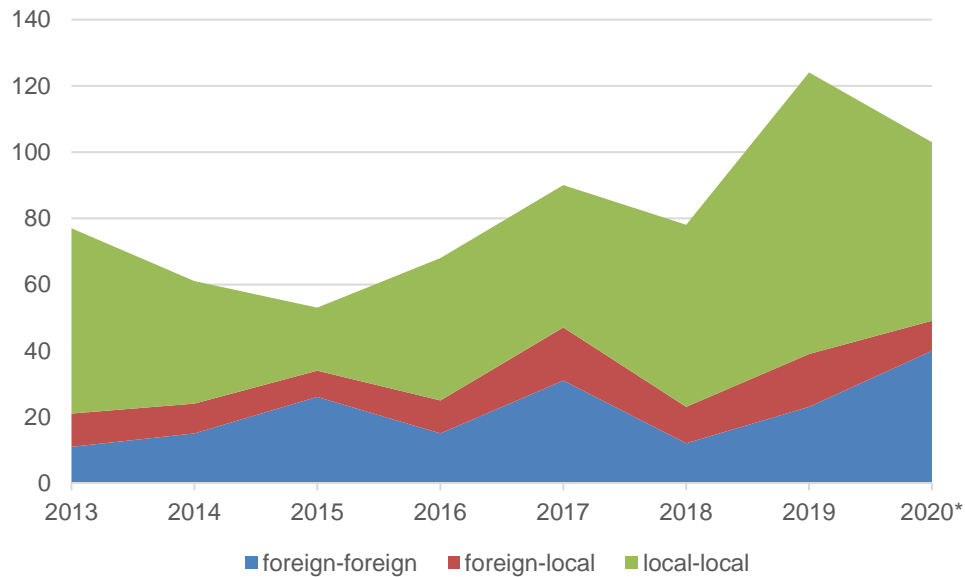


Figure 3. Trend of Number of Notifications Based on Countries Conducting Transactions

Merger Notification Figures

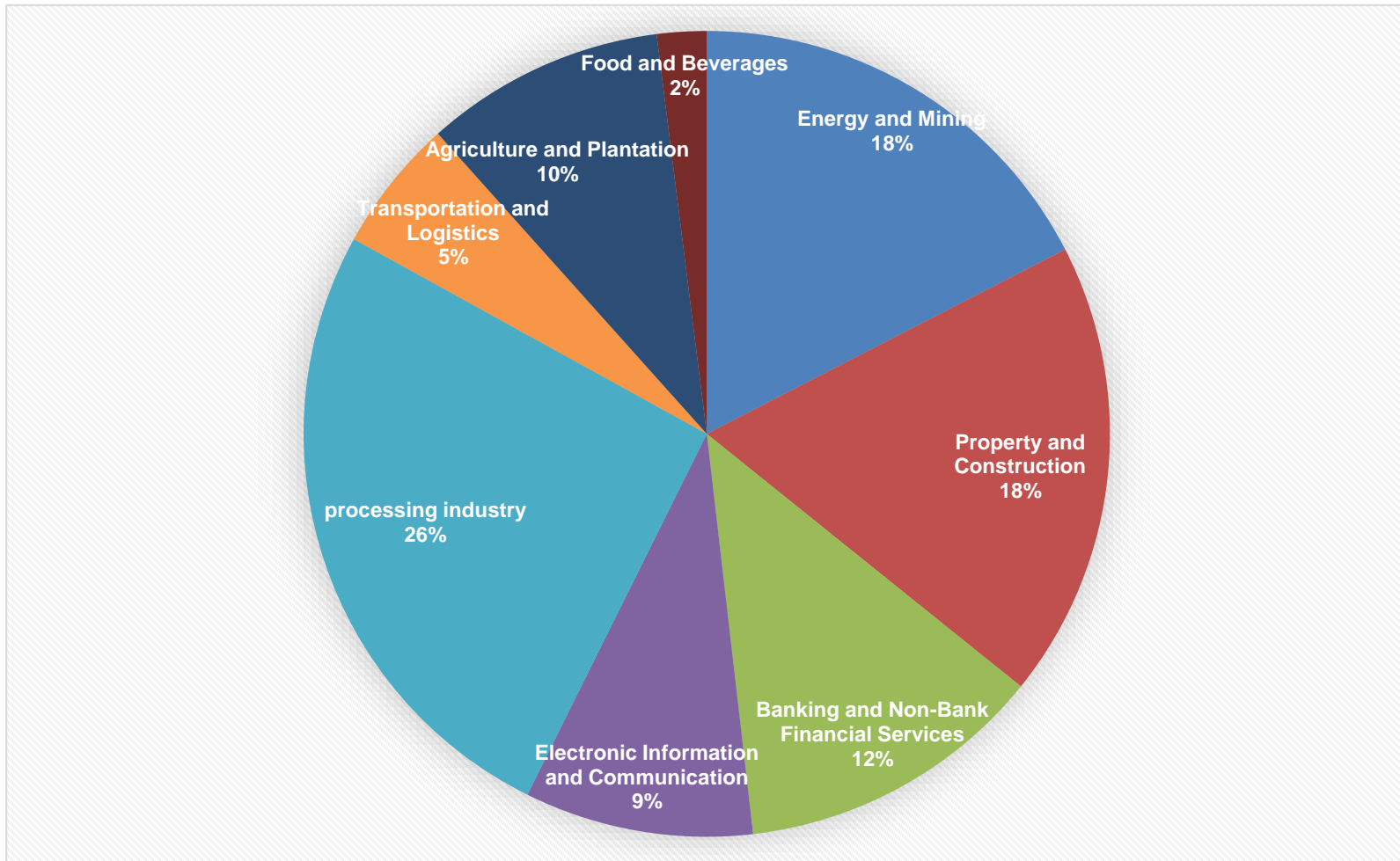


Figure 4. Notification Based on Industry Sector During 2013- June 2020

Merger Control Implementation...1)

What we can learn?

About the awareness in filling Merger Notification

Almost all relevant company notify within the given period

Many still not filling the notification and kept silent, we bring equality by investigation on late notification

Merger Control Implementation..2)

What we can learn?

About the reasons for merger and acquisition transaction

- 1. Expanding business**
- 2. Eliminating the competition for customers and/or resources**
- 3. Reducing costs or achieve economical scale (economic of scale)**
- 4. Improving product quality through ways that each party may not be able to do**
- 5. Consideration to reduce taxes**
- 6. Overcoming bankruptcy problems**

Merger Control Implementation..3)

What we can learn?

About the potency of anticompetition effect from merger and acquisition

Some transaction may give negative impact, lessening the competition.

Remedies is a solution for this type of transaction

Merger Control Implementation...4)

ICC keeps developing measures to make notification simpler and to bring fast and certainty in merger assessment

Based on those aforementioned, are we ready yet for a pre-notification approach?

Terima kasih

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KETERANGAN:

Pendapat yang dijelaskan dalam presentasi ini merupakan pendapat pembicara dan tidak harus mencerminkan pendapat KPPU. Semua informasi yang dicantumkan telah sesuai dengan batasan informasi di undang-undang kompetisi dan undang-undang keterbukaan informasi. Pembicara berusaha untuk memberikan data yang akurat dalam presentasi, namun tidak dapat dinyatakan bertanggung jawab atas ketidakandalan data yang disampaikan. Kutipan dari materi diperkenankan dengan menyebut sumber. Terima kasih.

Untuk informasi lebih lanjut, laporan tahunan, artikel, dan publikasi lainnya, dapat mengunjungi situs resmi kami.

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