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ECONOMIC ANALYSIS IN MERGER INVESTIGATIONS – Contribution from Indonesia

- Session III -

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More documentation related to this discussion can be found at: oe.cd/mergerinv.

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Economic Analysis in Merger Investigations in Indonesia

- Contribution by Indonesia -

1. Introduction

1. In controlling mergers and acquisitions, Indonesia adopts a mandatory post-merger notification system and a voluntary pre-merger notification. Business actors are obligated to give notification of any merger, consolidation, or acquisition transactions made, by no later than 30 (thirty) business days as from the date the transaction legally come into effect. In the event that such merger, consolidation, or acquisition transactions turn out to have an impact on causing unfair business competition, then ICC may propose remedies that must be implemented by the business actors to mitigate the said impact. In addition to the above, ICC may also put administrative fines into effect for delayed notification of mergers amounting to IDR1 billion/day for each delayed day.

2. Based on the post-merger notification mechanism, ICC will identify customers, suppliers, and consumers associated with the transactions to find out how the business relationship among the parties in a relevant market is. Therefore, ICC is more concerned with conducting investigations to assess the transactions and look for evidence of potential violations on competition law in the transactions.

2. The Role of Economists in Assessing Mergers and Acquisitions

3. Most of the Merger Analysts at ICC are economists so that economists are integrated into every internal team of merger and acquisition assessment. External economists are employed for cases that involve a comprehensive assessment, including, to assess efficiency in the market as a result of the merger, conduct Upward Pricing Pressure (UPP) analysis, and/or assist in defining the relevant market in cases where the assessment is more complex, such as, the case of the digital economy with the multi-sided market.

4. The choice of external economists is based on their educational backgrounds, experiences in handling cases of business competition, and/or experiences in handling cases in certain sectors, especially if the cases handled constitute cases from a special sector (e.g. digital economy), the backgrounds of economists chosen usually come from academics so as to be more neutral in providing their expertise.

5. One of the examples of merger and acquisition assessment employing external economists is the case of the acquisition of Vinythai Public Company, Ltd. by Asahi Glass Company, Ltd. (AGC), when AGC announced on February 22, 2017 that the acquisition of 696,511,059 shares (a ratio of 58.77% shareholders in the company) in Vinythai had been completed, with a nominal acquisition value of approximately 10,448 million Baht (33.5 billion Yen Japan).

6. The backgrounds of such share acquisition are among other things:

1. In order to get direct access to the growing Poly Vinyl Chloride (PVC) market in Thailand. The PVC market in Thailand is the second largest in Southeast Asia after Indonesia;
2. In order to increase the sales of PVC Group AGC in Thailand.

7. Based on analysis of market concentration value, ICC sums up that there is an increase in the concentration of the S-PVC market in Indonesia and there is a potential for decreased competition in the S-PVC product market as a result of the acquisition of Vinythai shares by AGC. Furthermore, the Commission sees that the existence of foreign markets and the opening of the S-PVC importation policy to Indonesia may put a fairly significant competitive pressure on the pricing among domestic business actors, therefore, ICC needs to monitor the prices charged by the AGC group following the acquisition transaction for a certain period.

8. Based on the results of the assessment, in the event that there is an anti-competitive behavior being committed by Vinythai, AGC or its subsidiaries in the future, then this behavior shall not be exempted from Law Number 5 Year 1999 regarding Prohibition of Monopolistic Practices and/or Unfair Business Competition.

9. In this regard, the expertise of external economists is availed of to assist the determination of the relevant market, wherein ICC uses the Relevant Market analysis with Cross Price Elasticity of Substitution (Eyx). Meanwhile, in determining geographic markets, ICC analyzes transportation costs, length of trips, tariffs, and regulations that limit the inter-city/marketing area trade traffics.

3. Qualitative and Quantitative Analysis in Assessing Mergers and Acquisitions

10. The focus of merger assessment conducted by ICC itself is more on seeing the potential for the emergence of monopolistic practices and unfair business competition in merger transactions so that ICC pays more attention on the qualitative aspect as compared to the quantitative one following the determination of the market concentration analysis. Referred to as qualitative aspect here includes, among other things, information on business actors related to the transaction, the existence of business actor associations, the potential for increased coordination of information exchanges among business actors following the occurrence of merger transactions, and the like. Occasionally, ICC also conducted an efficiency model, but not too often, as quantitative analysis is not that optimal following the determination of market concentration analysis. In conducting qualitative analysis, ICC sometimes engages economists as well to give inputs in seeing market structures, especially in the complex sectors.

11. In the meantime, the quantitative analyses that used by ICC were, among other things, Unilateral Effects Analysis, Coordinated Effects Analysis, UPP, and GUPPI. In determining the quantitative analysis used, data availability is a decisive factor. The analysis method considered optimal is the Upward Pricing Pressure (UPP) because the data used is the data provided by the parties. The use of new analysis methods usually needs to consider the availability of data and/or the assessment period, because it is not yet confirmed that the parties will be able to provide the requested data during the assessment period. In conducting quantitative analysis, ICC sometimes also employs external economists to assess cases in complex sectors.

12. Survey method was used by ICC, particularly in determining the definition of the relevant market, for example, in the acquisition transaction case committed by Nissan to Mitsubishi wherein Nissan had agreed to buy 34 percent of the shares of Mitsubishi Motors worth 237 billion yen or approximately IDR29.7 trillion. The acquisition has therefore made Mitsubishi a new member of the Nissan's global alliance with Renault as well. ICC needs to define the relevant market viewed from the demand-side (the consumer-demand side).

13. The positive impact of the use of survey method is the gain of real data that is in accordance with the facts in the field, but the challenge in the use of this survey method lies at building a strong argument that the data obtained from the survey results are valid.

4. Conclusions

14. The presence of internal and external economists in assessing merger and acquisition cases is so important, apart from being able to assist in analyzing market concentration and determining the relevant market, such economists may also help provide perspectives in qualitative analysis.

15. Meanwhile in determining an analysis method to be used in a case, the availability of data serves as the main decisive factor, but the more frequently used and deemed more optimal method is the Upward Pricing Pressure (UPP) method, since the data used is data provided by the parties engaged in the transaction.