

**REGULATION OF
THE COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION
NUMBER 11 YEAR 2010**

**CONCERNING
CONSULTATION ON MERGER OR CONSOLIDATION OF BUSINESS ENTITIES
AND ACQUISITION OF COMPANY SHARES**

THE COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION

Considering : a. that to implement the provisions of Article 12 of the Government Regulation Number 57 Year 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares that that Could Result in Monopolistic Practices and/or Unfair Business Competition, it is deemed necessary to enact a Regulation of the Commission for the Supervision of Business Competition concerning Consultation on Merger or Consolidation of Business Entities and Acquisition of Company Shares;

Bearing in mind : 1. Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practice and Unfair Business Competition (State Gazette of the Republic of Indonesia, Number 33 Year 1999, Supplementary State Gazette of the Republic of Indonesia Number 3817);

2. Government Regulation Number 57 Year 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares that that Could Result in Monopolistic Practices and/or Unfair Business Competition;

Taking into account : Resolution of the Commission Meeting, dated August 11th, 2010;

DECIDES:

To Stipulate : **REGULATION OF THE COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION CONCERNING CONSULTATION ON MERGER OR CONSOLIDATION OF BUSINESS ENTITIES AND ACQUISITION OF COMPANY SHARES**

Article 1

Referred to in this Regulation as:

1. Consultation shall be the request for the advice, guidance, and/or written opinion submitted by a Business Actor to the Commission on the planned Merger or Consolidation of Business Entities and Acquisition of Company Shares before Merger or Consolidation of Business Entities and Acquisition of Company Shares become judicially effective.
2. A merger is a legal act performed by one legal entity when it merges with one or more existing legal entities with the result that the assets and liabilities of the merging legal entities are transferred by law to the surviving legal entity, and the merging company's status as a legal entity is subsequently extinguished by law
3. Consolidation is a legal act performed by two or more legal entities when they establish a new legal entity which acquires their assets and liabilities. The statuses of the consolidating companies as legal entities are subsequently extinguished by law.
4. Acquisition is a legal act performed by a business actor when the acquiring of shares by it in a legal entity results in the transfer of control in that legal entity.
5. Monopolistic practices shall be the centralization of economic power by one or more business actors, resulting in the control of the production and or marketing of certain goods and/or services thus resulting in unfair business competition and potentially harmful to the interests of the public.
6. Unfair business competition shall be competition among business actors in conducting activities for the production and/or marketing of goods and or services in an unfair or unlawful or anti-competition manner.

7. Legal Entity shall be company or type of business, either in the form of legal entity or not, which runs a certain type of permanent and continuous business with the purpose of earning profit.
8. Commission shall be the Commission for the Supervision of Business Competition as referred to in Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practice and Unfair Business Competition.
9. Business actors shall be any individual or business entity, either incorporated or not incorporated as legal entity, established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either independently or jointly based on agreement, conducting various business activities in the economic field.
10. Law shall be Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practice and Unfair Business Competition.

Article 2

Requirement of Consultation

Business Actor can consult the Commission on Merger or Consolidation of Business Entities or Acquisition of Company Shares under the requirements as follows:

- a. The Consultation can be done upon the execution of an agreement or Memorandum of Understanding or other written documentation between the parties stating a plan to conduct the Merger or Consolidation of Business Entities or Acquisition of Company Shares.
- b. Merger or Consolidation of Business Entities or Acquisition of Company Shares which results in the asset value and/or sales value exceeding the following amount:
 - (1) asset value of Rp. 2,500,000,000,000.00 (two trillion and five hundred billion Rupiah); and/or
 - (2) sales value amounting to Rp. 5,000,000,000,000.00 (five trillion Rupiah).
 - (3) asset value exceeding Rp. 20,000,000,000,000.00 (twenty trillion Rupiah) for Business Actor in banking sector.
- c. Merger or Consolidation of Business Entities or Acquisition of Company Shares must not be done between firms that are affiliated

Article 3

Methods of Consultation

- (1) Business Actor who has fulfilled the requirements as stipulated in Article 2 can consult the Commission orally and in writing.
- (2) Written consultation is done by filling out the forms and delivering the documents required by the Commission.
- (3) Consultation Forms consist of:
 - a. Consultation Form for Merger of Business Entities (Form M2);
 - b. Consultation Form for Consolidation of Business Entities (Form K2);
 - c. Consultation Form for Acquisition of Company Shares (Form A2).
- (4) The Consultation Forms are as contained in the Appendix of this Regulation.

Article 4

Commission Assessment

- (1) On the basis of the forms and documents received, the Commission will conduct a Preliminary Assessment, and if deemed necessary, the Commission can conduct a Comprehensive Assessment.
- (2) The Commission shall be entitled to inquire information from Business Actor and other parties in the assessment process;

Article 5

Preliminary Assessment

- (1) Preliminary assessment is conducted to measure the concentration level at the relevant market in a view to determine whether or not any alleged monopolistic practice and/or unfair business competition exists as a result from the planned Merger or Consolidation of Business Entities or Acquisition of Company Shares;
- (2) If the Preliminary Assessment indicates low concentration level as a result from the planned Merger or Consolidation of Business Entities or Acquisition of Company Shares, the Commission will give an opinion that the alleged Monopolistic Practice or Unfair Business Competition does not exist
- (3) If the Preliminary Assessment indicates high concentration level as a result from the planned Merger or Consolidation of Business Entities or Acquisition of

Company Shares that there is a concern that monopolistic practice and/or unfair business competition exists, then the assessment shall be continued to a Comprehensive Assessment;

- (4) The Preliminary Assessment is done by the Commission in a period of maximum 30 (thirty) days as from the receipt of the forms and documents completely by the Commission.

Article 6

Comprehensive Assessment

- (1) Comprehensive Assessment is done to determine whether or not any alleged monopolistic practice and/or unfair business competition exists as a result from the planned Merger or Consolidation of Business Entities or Acquisition of Company Shares;
- (2) The Comprehensive Assessment will at least consider the following matters:
 - a. barriers to entry;
 - b. potential anti-competition behaviors;;
 - c. efficiency; and/or
 - d. bankruptcy
- (3) The Comprehensive Assessment is done by the Commission in a period of maximum sixty (60) days as from the completion of the Preliminary Assessment..

Article 7

Results of Assessment

- (1) The Results of the Consultation Assessment shall not constitute an approval nor rejection for the planned Merger or Consolidation of Business Entities or Acquisition of Company Share to be done by Business Actor and shall not revoke the authority of the Commission to conduct assessment after the Merger or Consolidation of Business Entities or Acquisition of Company is judicially effective.
- (2) The Results of the Consultation Assessment are in the form of Written Opinion on whether or not any alleged monopolistic practice and/or unfair business competition exists

Article 8

Closing Provisions

- (1) When this Regulation commences to take effect, the Regulation of Commission Number 1 Year 2009 on Pre-notification of Merger, Consolidation and Acquisition shall be revoked and declared null and void.
- (2) This Regulation shall become effective as of the date of its stipulation.

Stipulated in : Jakarta

On : August 20, 2010

The Commission for the Supervision of
Business Competition,
Chairman

Prof. Dr. Tresna P. Soemardi