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## **Legal Implications of Post-Merger Notification Policy on Digital Companies in Indonesian Competition Law**

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### **Abstract**

In any market structure, potential competition violations arising from merger, consolidation, and acquisition (M&A) activities cannot be completely avoided. This holds true for digital markets that involve multi-sided markets, network effects, and significant consumer data. The intricate nature of the digital market poses a challenge for competition authorities in effectively monitoring M&A transactions between digital companies. A notable example is the GoTo merger, which is set to become the largest digital company in Southeast Asia. To address this issue, this legal research aims to discuss the legal implications of the current notification policy based on Law No. 5 of 1999 by conducting contextual research on digital market operations and studying previous violations committed by foreign digital companies. This research follows a normative legal research approach, employing statutory,

conceptual, and case analysis to address the problem formulation. The findings indicate that digital companies possess various possibilities to violate competition law, including monopolistic practices and unfair business competition, if the existing post-merger notification policy remains in place. As many countries are already grappling with complex issues such as data ownership thresholds, Indonesia is taking its initial steps towards implementing changes to its merger policy. By adopting a pre-merger notification policy as a reporting obligation, Indonesia will enable the Commission for the Supervision of Business Competition (KPPU) to assess M&A transactions more effectively and provide legal certainty for businesses regarding the lawfulness of their M&A activities.

### **Keywords**

*Competition Law, Digital Company, Post-Merger Notification*

## **Introduction**

Business model had changes from conventional system to digital system. In recent years, the digital economy has become a highlight to the Indonesian government due to the high activity of online transactions in the digital market. The rapid growth of digital business should lead to healthy competition in the market. Due to the increase of business actors in the digital market, there will be more choices for the consumers and will vary the prices in the market. However, we cannot avoid potential competition law violations that might be occur in every market structure, including the digital market. Indeed, the digital marketplace provides many significant benefits to society, but it also has significant control over consumer data which makes it a challenge for governments and competition authorities. One of the potential violations of fair business competition in the digital market can occur in the implementation of mergers, acquisitions and consolidations (“M&A”) in digital companies.

Companies in digital markets are remarkably involved in M&A activity. Many cases had occurred in several countries where digital companies were constantly seeking out interesting startups and purchasing them (called as killer acquisition). The incumbent company may have the objective to prevent the target company (mostly startup) from ever becoming a competitive threat.

Startup as a new company who is still trying to develop their business and monetization, will easily accept the offering.<sup>1</sup>

As an example, in the last decades, Facebook has acquired 71 companies, some of the largest include Instagram and WhatsApp. Followed by the acquisition of Giphy, a gif publisher and supplier company, which could be integrated into Instagram. These transactions can have a negative impact on innovation, particularly in terms of availability and motivation to develop. The biggest platforms in the sector, in particular, draw their power not just from internal growth, but also from a strategic acquisitions approach that is aggressive.<sup>2</sup>

Mergers in digital market between non-competing business actors are also risky due to a combination of network effects, big data competitive advantage, and high barriers to entry that make the dynamics of competition a winner-takes-all. Business actors use user data extensively to adapt pricing strategies, map consumers, and forecast market trends that can be leveraged to create competitive advantage and exploit consumers. By that, the dominance of market power can lead to unfair business competition and such M&A activity must be assessed by KPPU. In order to avoid anti-competitive behavior carried out by digital companies, it is necessary to evaluate the M&A regulation. One of them is by changing the merger notification system in Indonesia, which initially applied post-merger notification system, to pre-merger notification system. Article 5 of Government Regulation No. 57 of 2010 on Merger or Consolidation of Business Entities and Acquisition of Company Shares which may result in Monopolistic Practices and Unfair Business Competition (“GR No. 57/2010”), re-affirmed that after the M&A with the asset value and/or sales value of a certain amount, it must be notified to KPPU. Then, in Article 10 paragraph (1) of GR No. 57/2010 explains that Business Actor who will conduct M&A can voluntarily have consultation both orally or in writing to KPPU. It can be concluded that the nature of the notification given to KPPU is the compulsory post-merger notification and voluntary pre-merger notification.<sup>3</sup> Furthermore, it is highlighted that pre-merger notification is important because this mechanism can provide more legal certainty and

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<sup>1</sup> A. Ezrach & M. E. Stucke (2016). *Virtual Competition: the Promise and Perils of the Algorithm-Driven Economy*. Harvard University Press, p.56.

<sup>2</sup> Directorate for Financial and Enterprise Affairs Competition Committee (2020). *Start-Ups, Killer Acquisitions and Merger Control – Note by France*. DAF/COMP/WD (2020)16. Organisation for Economic Co-operation and Development, 2.

<sup>3</sup> M. Andreta, R. F. Jonathan, & P. B. Larasati (2019). *Merger Control 2019: Indonesia* (8th Edition). Global Legal Group, p.105.

efficiency for business actors.<sup>4</sup> In addition, as identified by Manaek Pasaribu, pre-merger notification will also be beneficial because, particularly for KPPU, preventing violations against competition law before a merger and acquisition occur is easier than prohibiting and canceling the merger and acquisition process that had occurred.<sup>5</sup> That is the reason for many countries to choose this mechanism such as in the United States, as stipulated in the Clayton Act, Section 7, and in Europe, as stipulated in Article 4 paragraph 1 European Community Merger Regulation No. 13/2004.

However, during the implementation of the post-merger notification system policy, this policy is considered to have many weaknesses, both of which have an impact on business actors and the KPPU. For example, the absence of prevention of monopolistic behavior because the merger has been legally enforceable. This research was conducted based on the issue of merger and acquisition of two big technology companies of Indonesia, Gojek and Tokopedia. After legally carrying out the merger and acquisition transaction, Gojek just made a notification of its acquisition of Tokopedia to KPPU on August 9, 2021.<sup>6</sup> The assessment process conducted by KPPU stated that there is no indication of monopoly or unfair business competition in the GoTo merger. Even though it has been stated so, over the past year the assessment process for the GoTo merger has made business competition authorities and academics wary because they are considered to be dominating the digital market and have the potential to violate business competition. In order to prevent massive mergers and acquisitions carried out by digital company incumbents, protect consumers, and maintain a healthy business competition in the digital market, it is essential to change the merger and acquisition policy in the laws and regulations on business competition.<sup>7</sup> Analyzing the legal implications is a requisite before making a policy change. The writers hope this research could help legal practitioners consider the policy change to improve the merger notification system particularly for digital companies in Indonesia.

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<sup>4</sup> S. Ratna, & D. Rianda (2021). The Implementation of Pre Merger Notification in The Draft Law on The Prohibition of Monopoly Practices and Unhealthy Business Competition in Indonesia. *Journal of Legal Studies*, 8(1), p.70.

<sup>5</sup> P. Manaek S.M. (2016). Challenges of Indonesian Competition Law and Some Suggestions for Improvement. *ERIA Discussion Paper Series*, p. 34.

<sup>6</sup> Roy (2021, May 20). *Waspadai Monopoli, KPPU Pantau Ketat Gojek-Tokopedia GoTo*. CNBC Indonesia. <https://www.cnbcindonesia.com/tech/20210520172403-37-247133/waspadai-monopoli-kppu-pantau-ketat-gojek-tokopedia-goto>, accessed on April 21, 2022.

<sup>7</sup> F. Schoning, & C. Ritz (2018). *Mergers in the Digital Economy: A Practitioners' Outlook on Key Merger Control Aspects of Big Data and Innovation in Digital Markets* (Issue February, pp. 1–6). CPI Antitrust Chronicle, p.5

Based on the aforementioned background, there are two problem formulations as the focus of this study. Are there any possibilities violation of competition law carried out by digital companies if post-merger notification systems remain applied? How is the legal implication of post-merger notification policy on M&A practice carried out by digital companies based on Indonesian Competition Law?

## Method

This study uses a normative legal research by using the statutory approach, conceptual approach and case approach to answer the problems formulation. Statutory approach applied to analyze the ICL, Government Regulation No. 57 of 2010, KPPU Regulation No. 3 of 2020 and Assesment Guidelines on M&A activity. Conceptual approach will be applied to explain market definition in digital market and the post-merger notification system. The case approach will be used by providing examples of cases of business competition violations committed by digital companies abroad and how the same case might occur in Indonesia. This research will be conducted by studying the books and regulations related to the legal problems and analyze how it would be applied based on the Indonesian legal system. The sources of law used in this study are primary legal sources, namely statutory regulations such as Law No.5 of 1999 and Law No.11 of 2020. Secondary legal sources also used in this study, came from books, and articles from accredited and indexed journal such as Sinta and Scopus, both print and electronic media.

## Possibilities of Violation in Competition Law Carried Out by Digital Companies if Post-Merger Notification Systems Remain Applied

Violations of unfair business competition always have the potential to manifest in the market structure, including the digital market. Competition in major digital markets such as platform-based business models, multi-sided markets, and network effects that make business competition problems more complex is different from the competition in more traditional markets in several respects.<sup>8</sup> Business developments in this digital era increase the ability of digital

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<sup>8</sup> A. Sabirin, & R. H. Herfian (2021). Dampak Ekosistem Digital terhadap Hukum Persaingan Usaha di Indonesia serta Optimalisasi Peran Komisi Pengawas Persaingan Usaha (KPPU) di Era Ekonomi Digital. *Jurnal Persaingan Usaha*, 02(5), p.75.

companies to collect more data, increasing their competitiveness. This chapter elaborates some cases where merger and acquisitions in a digital realm.

As a disclaimer, the case here is a case of violation committed by a digital company that uses a pre-merger notification system policy in accordance with the laws of its country. Foreign technology companies that have used the pre-merger notification system as a policy can still violate business competition laws. For example, The Big Five in tech—Google, Amazon, Apple, Facebook, and Microsoft—operate more than half of the global internet market.<sup>9</sup> The growth of these conglomerates and their acquisition of an increasing number of companies has allowed them to engage in anti-competitive activities, such as deep and pervasive control of markets, abuse of dominance, and signing of horizontal and vertical agreements. Such activities have put these companies on the radar of antitrust regulators in various jurisdictions.

In the case of Facebook/Whatsapp, the US Government along with 48 states have sued Facebook for illegally crushing competition, and are seeking to break up the company by overturning its acquisition of Instagram and Whatsapp.<sup>10</sup> Some of the potential activities that are prohibited include abuse of dominant position, companies can discriminate against competitors in retail, enter into exclusive agreements with consumers, and establish a loss policy that can result in competitors becoming uncompetitive in the market and leaving the market.

Moreover, the possibilities for cartel practices is exist due to the ability of business actors to predict market trends, map consumers, and adjust their pricing strategies through data and algorithms. Pricing with algorithms can facilitate collusion among business actors considering it is easy to monitor (because prices are transparent) and provide penalties for business actors who deviate from the agreement. Potential violations of M&A practices can occur when a merger that meets the criteria must be reported to the competition authority, but the criteria do not include the value of data controlled by the parties conducting the merger. This has resulted in several merger transactions being not required to be notified because they do not meet the initial criteria, even though the data held by the parties has a high value.<sup>11</sup>

In countries like the US and Germany, potential violations of M&A practices can occur when a merger that meets the criteria must be reported to

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<sup>9</sup> J. Haucap, & U. Heimeshoff (2014). Google, Facebook, Amazon, eBay: Is the Internet driving Competition or Market Monopolization? *International Economics and Economic Policy*, 11(1–2), p.166.

<sup>10</sup> See, Jay B. Sykes. (2021). The Facebook Antitrust Lawsuits and the Future of Merger Enforcement. in *Legal Sidebar* (Issue December 2020). Congressional Research Service.

<sup>11</sup> Monopolkommission. (2015). *Competition Policy: The Challenge of Digital Markets (Summary)* (Vol. 44, Issue 1), p.9.

the competition authority, but the criteria do not include the value of data controlled by the parties conducting the merger. This has resulted in several merger transactions being not required to be notified because they do not meet the initial criteria, even though the data held by the parties has a high value. In other words, they are challenged by a substantial threshold of M&A which is the data threshold.

Digital companies can possibly violate competition because they have access to consumer data which is dominant. The significance of user data is a key feature of digital markets and digital business models. Having control over and being able to analyze large volumes of data can be a crucial competitive advantage, particularly as such data are frequently in the exclusive possession of the private companies.<sup>12</sup> Data can be used for e.g. the personalization services and products as well as to create or improve these. Companies can process data to display targeted advertisements online.<sup>13</sup>

Another practice that is often conducted by big technology companies, known as killer acquisition. In these markets, young small companies with considerable access to data and a high innovation potential may become relevant players and, as such, be attractive targets for large incumbent firms. Competition authorities are concerned about killer acquisitions, whether through exclusionary behavior or the acquisition of rival companies, dominant firms have a clear motive to preserve their dominance by removing competitive threats. Big tech markets have highlighted these worries in particular.<sup>14</sup>

According to the Furman review, over 400 acquisitions were completed globally in the last ten years by Amazon, Apple, Facebook, Google, and Microsoft. For instance, according to The Economist, Alphabet (Google), Amazon, Apple, Facebook, and Microsoft collectively spent USD 31.6 billion acquiring start-ups in 2017. It was noticed that between 2008 and 2018, Google, Amazon, and Facebook made a total of 299 acquisitions.<sup>15</sup>

While killer acquisitions are a way to ring-fence the success and ultimately market dominance of many digital companies, acquisitions of digital companies, especially of start-ups that have insufficient capital to scale up to become fully competitive without outside financing, are an important part of the digital ecosystem. The acquiring company can add to its resources valuable

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<sup>12</sup> J. B. Sykes (2021). The Facebook Antitrust Lawsuits and the Future of Merger Enforcement. In *Legal Sidebar* (Issue December 2020). Congressional Research Service, p.5.

<sup>13</sup> Monopolkommission. (2015). *Competition Policy: The Challenge of Digital Markets (Summary)* (Vol. 44, Issue 1), p.9.

<sup>14</sup> Monopolkommission. (2015). *Competition Policy: the Challenge of Digital Markets (Summary)* (Vol. 44, Issue 1), p.10.

<sup>15</sup> J. Furman, D. Coyle, A. Fletcher, D. McAuley, & P. Marsden (2019). Unlocking Digital Competition: Report of the Digital Competition Expert Panel. In *HM Treasury* (Issue March), 42.

innovations, IP and skill sets in a timely manner to achieve a greater economy of scope of its business, while the acquired company offers market exit for those who invested in it on purely financial grounds, such as angel and venture capitalists or entrepreneurs who are not so interested in longer-term management.<sup>16</sup>

The market power of digital platforms is also increasing through vertical integration. The existence of vertical integration in a digital platform will raise the issue of abusive behavior and exclusionary conduct by dominant business actors. Due to its characteristics, a multi-sided market on a digital platform will provide an opportunity for dominance on one side of the market that is used to conduct anti-competitive behavior on the market side.

Potential articles that are violated after the M&A transaction in the above cases if applied to the ICL, can be subject to many articles. Some of them are articles on price fixing which is stipulates under Article 5 - Article 8 of the ICL. Furthermore, Article 17 concerning Monopoly activities and Article 19 concerning Market Control. Violation of Article 17 can occur if the activities carried out by business actors bind other business actors cannot enter into business competition for the same goods and/or services. Violations of Article 19 may occur if a business actor refuses and/or prevents certain business actors from carrying out the same business activities in the relevant market, and prevents consumers from conducting business relations with their competing business actors. Then, Article 14 concerning Vertical Integration. Vertical integration can affect the work of the market by influencing competition either with companies that are already in the market or with potential companies that will enter the market.

Ownership of consumer data owned by digital companies may be difficult to avoid because every internet user who will use the application from the technology company has agreed to the data privacy policy that is displayed when the consumer registers as a user of the application. The relationship with M&A activities is that digital companies' consumer data ownership will be wider if the company conducts M&A transactions with other digital companies. The mistake is if the ownership of consumer data is misused by digital companies to limit the market and technology development, and/or hinder other business actors who have the potential to become competitors to enter the relevant market. This violation refers to Article 25 on the Prohibition of Abuse of the Dominant Position of the ICL.

In addition, Indonesia, in this case the KPPU, has not implemented specific regulations on the existence of big data as one of the parameters in

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<sup>16</sup> K. A. Bryan, & E. Hovenkamp (2019). Startup Acquisitions, Error Costs, and Antitrust Policy. *The University of Chicago Law Review*, 741, p.79.



assessing the effectiveness of business competition in the digital market in Indonesia. For Indonesia, which is still using the post-merger notification system, the potential for violating business competition law above might happen since we are highly encouraging digitalization which can lead to the high activity in M&A transactions among digital companies. One of the facts that can be considered as an example of potential violations of competitive business practices refers to PT Aplikasi Karya Anak Bangsa's (GOJEK) acquisition of PT Tokopedia, whose acquisition notification was submitted to the KPPU after the transaction had been completely effective. The two companies were two digital-based companies that have highly adequate big data for business, and are now being merged after the acquisition. In this case, of course, potential violations may occur given that the notification was made after the transaction became effective. Fortunately, after the KPPU conducted an assessment, the KPPU found that GOJEK's acquisition of PT Tokopedia did not violate the anti-competition provisions. However, it certainly signals a strong potential for violations. Therefore, we must be aware of this issue and evaluate the best strategy for our merger system to prevent the violation of competition law that would limit the invention of companies and harm consumers.

Following main headings should be provided in the manuscript while preparing. Tables and Figures are presented center and cited in the manuscript. The figures should be clearly readable and at least have a resolution of 300 DPI (Dots Per Inch) for good printing quality. Table made with the open model (without the vertical lines) as shown below.

## **Legal Implications of Post-Merger Notification System on Digital Company based on Indonesian Competition Law**

Merger notification, either pre and post-merger notification has these important functions, preventive and surveillance function. Preventive function is anticipating the occurrence of monopolies and unfair competition from related companies. Surveillance functions are the function of KPPU towards fair business competition, including the fulfillment of rights for minority shareholders, workers and the public as consumers. In anti-monopoly policies, mergers and acquisitions are judged in terms of the likelihood of reduced competition in a defined market. In this regard, regulators have two options:<sup>17</sup>

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<sup>17</sup> Ginting, S. B. (2015). Dampak Hukum Notifikasi Merger Menciptakan Persaingan Usaha yang Sehat. *Jurnal Law Pro Justitia*, 1 (1), p.56.

a. ex-ante presumption that market power will lead to abuse of power, in which case the merger or acquisition is either forbidden or re-structured; or

b. ex-post assessment of whether abuse has occurred or not, and whether product and technology innovations and new entrants after the merger or acquisition have changed the market.

If KPPU opines that the M&A has allegedly resulted in a monopolistic practice or unfair business competition, KPPU may take necessary measures, including to initiate an investigation as well as to impose administrative sanctions. The form of administrative sanctions varies from fines to unwinding the transaction.<sup>18</sup>

For this reason, the notification obligation applicable in Indonesia must mean that the proposed merger and acquisition must be reported to the KPPU in advance to examine whether the merger has a negative impact on competition or not. The obligation to report after the merger does not mean that this system adheres to post-merger notification, but only aims to notify the supervisory agency regarding the realization of the concentration process. KPPU's Commissioner, Chandra Setiawan, is of the opinion that in the Post-Notification regime, if all the requirements for mergers and acquisitions have been met from a legal perspective, but threaten fair competition according to KPPU's assessment, KPPU will recommend the merger and acquisition plan not to be continued, because if it is carried out it will harm the perpetrators, competitors' businesses and ultimately harm consumers. If this happens, it will be detrimental to the company that has spent and involved resources which of course are relatively large and create legal uncertainty.<sup>19</sup>

In order for these parties to have legal certainty and protection, KPPU set the voluntary consultation policy before the companies conducting M&A. The positive impacts of the implementation of this system on merger notification policy are as follows:<sup>20</sup>

a. Entrepreneurs will receive voluntary consultations from KPPU regarding the consequences that will result from the implementation of the merger, whether there will be potential to experience monopolistic practices or

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<sup>18</sup> Provisions about administrative sanction in the ICL has been amended in the Law No. 11 of 2020 about Job Creation. This amendment is followed by Government Regulation No. 44 of 2021 (GR No. 44/2021) about the Implementation of Prohibition on Monopoly Practice and Unfair Business Competition

<sup>19</sup> Explanation from Chandra Setiawan from KPPU in Official. FH Unsri (2021, April 27). Webinar Isu Hukum Persaingan Usaha atas Rencana Merger Gojek dan Tokopedia. <https://www.youtube.com/watch?v=bq-Fr1aKQcQ&t=4092s>, accessed on January 22, 2022.

<sup>20</sup> J. Li, & L. Hou (2019). The Compulsory Notification Mechanism under Merger Control in China: Evaluation and Reform. *SSRN Electronic Journal*, 630, 1–15.

unfair business competition that threatens big losses for entrepreneurs which will be avoided. So that entrepreneurs can stop the process of implementing the merger and KPPU will help restructure the discourse on company mergers or can provide other solutions so that the implementation of the merger is avoided from monopolistic practices or unfair business competition.

- b. The company's shareholders will be better prepared to face changes in the composition of the share position in relation to the assets and liabilities of the company that will carry out the merger.
- c. KPPU as an institution obtains valid information regarding mergers and acquisitions that will be carried out by the company so that it can assess potential business competition violations from the company at an early time.
- d. For third parties or creditors who have collaborated with companies or bank mergers, the impact/influence is no less important. Merger notification, especially pre- notification conducted in consultation with KPPU to be an initial assessment prior to the merger, can help to pay attention to their position related to rights and obligations in accordance with the cooperation agreement with changes that become a logical consequence of the merger of the company/bank concerned. The third party will receive notification prior to the merger and also because of the publication of the merger plan which was consulted by the company/bank concerned.<sup>21</sup>

Meanwhile, the negative impact of the notification system, especially for companies and the KPPU, is that companies conducting consultations with KPPU are required to announce the discourse on the company's merger to the public in which the publication of the merger discourse is an important secret for the company.

Both mergers and acquisitions actually have a serious impact on business competition in Indonesia, there is a significant increase in the use of market power that is being abused by a digital company. The more concentrated the market share, the less competition in the market, accompanied by a smaller scope of competition and an increase in the possibility of abuse of market power that will harm small business actors and consumers.

The way to answer these questions is by explaining the difference identification in the assessment process of M&A conducted by digital companies. KPPU's assessment of the notification in general is through 1) Identification of the relevant market; and 2) Initial and thorough assessment.

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<sup>21</sup> J. Tarigan, S. Yenewan, & G. Natalia (2016). *Merger dan Akuisisi dari Prespektif Strategis dan Kondisi Indonesia (Pendekatan Konsep dan Studi Kasus)*. Ekuilibria, p.41.

The first, in terms of identifying the digital platform market, includes services and services, namely marketplaces, social networking, search engines, payment systems, and video sharing. The business models of digital companies are designed to collect and process data that will be used for their business development decisions (big data ownership).

The unique characteristics of multi-sided platforms pose a significant challenge for competition policy that differ with non-digital companies. Competition authorities and courts of law (legal institutions) are required to take into consideration the fundamental interrelations and the complexity of multi-sided platform markets when assessing the cases. It is important to consider all sides of a platform in the analysis, and to fully determine the direct and indirect network effects with regard to their economic significance.

KPPU finds that business competition on digital companies, especially in the sector of e-commerce is supported by two main interrelated factors, namely data control and the existence of information networks. This means that companies that are strong in data control will be very easy to form an information network. Meanwhile, companies that control information networks will find it much easier to collect large amounts of data. Control of the network is mostly done by maximizing the role of social media and search engines. This affects the actions that the KPPU needs to take in law enforcement in the sector, in particular to always pay attention to the two factors above. In determining the relevant market in this sector, the geographical aspect of determining the relevant market can no longer be determined by traditional methods. Because the geographical aspect of e-commerce is largely determined by shipping costs, item prices, and delivery time. These special characteristics in digital companies made the legal impacts between M&A in digital companies and in conventional companies differ at each other.

So improving policies in terms of M&A is one way that can be done to prevent violations of business competition by digital companies. Because market dominance in the digital market can potentially occur if these companies conduct M&A. Chairman of KPPU, Kodrat Wibowo, in a forum with the World Bank, stated to the forum that the difficulty of KPPU in supervising mergers and acquisitions in the digital market is again the problem of the post-merger notification regime.<sup>22</sup> Changes and updates to the current merger notification system in Indonesia are currently being analyzed by KPPU as an effort to respond to the development of digital technology which is

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<sup>22</sup> Komisi Pengawas Persaingan Usaha (2021, February 2). *KPPU-World Bank Diskusi terkait Pengendalian Merger pada Pasar Digital*. <https://kppu.go.id/blog/2021/02/kppu-world-bank-diskusi-terkait-pengendalian-merger-pada-pasar-digital/>, accessed on September 16, 2022.

accompanied by the emergence of digital companies and plans for future mergers and acquisitions of digital companies.

Therefore, changing the notification obligation after the merger will avoid potential violations that can occur by digital economy business actors, one of which is killer acquisitions that may occur in startups that are just developing their business. Because KPPU as a competition authority can assess the condition of the company that will carry out the merger before the merger transaction is done. So that the purpose of preventing violations of business competition laws and monopolistic practices can be carried out more optimally.

If we referring to the merger activities carried out by Gojek with Tokopedia to become GoTo, this certainly cannot be separated from positive and negative impacts. The positive impact is that users will be more loyal with easy access to one platform and create new experiences in transactions. Meanwhile, the negative impact caused is that it inhibits innovation by other digital business actors, thus triggering the elimination of other business actors because GoTo collects all facilities in one platform based on efficiency considerations.<sup>23</sup> This can potentially lead to monopolistic practices in the future because there are no opportunities for other business players to develop their digital products because they feel they have lost to business competition by GoTo.

The Head of KPPU, considers that this merger notification is the largest during KPPU's assessment of the merger report so far. It can be seen that GoTo only carries out post-notification reporting and does not provide notification reports at the pre-notification stage. Until in March 2022,<sup>24</sup> KPPU announced that the merger and acquisition of Gojek and Tokopedia did not have the potential to monopolize the digital market and violate business competition laws. Seeing the magnitude of the mergers and acquisitions carried out by GoTo, it is undeniable that in the future there will be another major merger and acquisition in the world of business competition in the digital business in Indonesia. Therefore, the urgency to change the merger control policy in Indonesia will always be discussed by scholars, companies, and the KPPU.

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<sup>23</sup> Roy (2021, May 20). *Waspada! Monopoli, KPPU Pantau Ketat Gojek-Tokopedia GoTo*. CNBC Indonesia. <https://www.cnbcindonesia.com/tech/20210520172403-37-247133/waspada-monopoli-kppu-pantau-ketat-gojek-tokopedia-goto>, accessed on July 31, 2022.

<sup>24</sup> L. Jemadu (2022, March 29). *KPPU: Merger Gojek dan Tokopedia Tak Langgar Aturan Persaingan Usaha*. <https://www.suara.com/tekno/2022/03/29/175009/kppu-merger-gojek-dan-tokopedia-tak-langgar-aturan-persaingan-usaha>, accessed on August 1, 2022.

## Conclusion

This study highlighted and concluded that digital companies have the potential to violate business competition because of their dominance and market power. Among technology companies that compete with each other, many of these companies abuse their dominance position through mergers and acquisitions transactions. Some of the possible violations that can occur in the merger and acquisition transaction include abuse of dominance position, signing horizontal and vertical agreements, killer acquisitions, cartel and predatory pricing. This violation can occur because of the ability of business actors to predict market trends, map consumers, big financial assists, and adjusting their pricing strategies through consumer data and algorithms. These are examples of practices conducted by foreign digital companies whereas their jurisdictions mostly adopted the mandatory pre-merger notification policy. Potential violations might occur mainly because of the big data owned by digital companies. This should be a concern for competition authorities to pay attention to data ownership owned by digital companies when evaluating their M&A. Furthermore, in order to prevent the occurrence of unfair business competition and monopolistic practices that can occur in merger activities carried out by digital companies, one aspect that must be addressed is the merger notification system used. So this is a big challenge for KPPU in assessing mergers in the digital market. There are many aspects of the assessment, starting from market definition, market structure, prevalent network effects, the use of big data and assets, market dominance, market powers and theory of harms. A long process was carried out to prevent violations of business competition law in order to create a world of fair competition and away from monopolistic practices, especially in digital platforms, is not effective because Indonesia applying merger post notification.

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