

Penerapan prinsip notifikasi post merger berdasarkan hukum persaingan usaha di Indonesia (studi kasus terhadap pengambilalihan saham PT Axis Telekom Indonesia oleh PT XL Axiata TBK) = The application of post merger notification based on the principle of business competition law in Indonesia (case study against acquisition of shares of PT Axis Telekom Indonesia by PT XL Axiata Tbk)

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Abstrak

Pengambilalihan saham berbeda dengan merger karena pengambilalihan saham tidak menyebabkan pihak lain bubar sebagai entitas hukum. Perusahaan-perusahaan yang terlibat dalam akuisisi secara yuridis masih tetap berdiri dan beroperasi secara independen, tetapi telah terjadi pengalihan pengendalian oleh pihak pengakuisisi. Pengambilalihan saham Axis oleh XL dilakukan melalui notifikasi post merger, maka agar proses merger dan akuisisi dapat berjalan efektif disarankan agar dilakukan pre notification dengan melakukan amandemen UU Nomor 5 Tahun 1999. KPPU mewajibkan XL memberikan laporan perkembangan pasar, produk dan tarifnya setiap 3 (tiga) bulan selama jangka waktu 3 (tiga) tahun. Apabila di kemudian hari terdapat perilaku anti persaingan uang dilakukan oleh XL maupun anak perusahaannya, maka perilaku tersebut tidak dikecualikan dari UU Nomor 5 Tahun 1999. Setelah pengambilalihan saham sampai dengan saat ini, XL hanya menguasai 30% (tiga puluh tiga persen) pangsa pasar selular di Indonesia. Namun terjadi peningkatan konsentrasi pasar setelah pengambilalihan saham, sehingga terdapat potensi terjadinya coordinated effect pasca pengambilalihan saham. Oleh karena itu, diperlukan pengawasan terhadap perkembangan industri selanjutnya untuk mencegah timbulnya praktek persaingan usaha yang tidak sehat di dalam industri telekomunikasi seluler di Indonesia.

.....Different from the merger, the acquisition of shares does not cause the other party broke up as a legal entity. The companies that are involved in the acquisition, legally still stands and operates independently, but there has been a transfer of control by the acquirer. Axis taken over by XL through post merger notification, in order to be effective, it is suggested that the process of mergers and acquisitions is done by pre-notification process which required amandement of the Act No. 5 of 1999. The Commission believes that in this case is XL must report market developments, products and rates every 3 (three) months for a period of 3 (three) years. If in the future there are anti-competitive behavior made by XL or it subsidiary, then the behavior is not excluded from the Act No. 5 of 1999. After the acquisition up to this time, XL only has a 30% (thirty three percent) of shares of the mobile market in Indonesia. However, there is an increase in market concentration after the acquisition, so there are potential for coordinated effects to occur after takeover. Therefore, the oversight to the development of the next industry practice to prevent unhealthy competition in the mobile telecommunications industry in Indonesia is necessary.