

TEMASEK HOLDINGS

Temasek to Appeal to Indonesia's Supreme Court

Background Summary

- On 19 November 2007, Indonesia's Commission for the Supervision of Business Competition (KPPU) announced that it found Temasek guilty of engaging in monopolistic practices and anti-competitive behaviour in Indonesia's cellular market through two Indonesian telcos – Telkomsel and Indosat—which the KPPU alleged that Temasek controls through its subsidiaries.
- The KPPU said that the (alleged) “Temasek Business Group's” ownership of Telkomsel and Indosat has resulted in:
 - control of more than 50% of the cellular market by the (alleged) “Temasek Business Group”
 - control or collusion between Telkomsel and Indosat to impact Indosat's performance for the benefit of Telkomsel, leading to decreased competition in the Indonesian cellular market
 - Price leadership by Telkomsel
 - Excessive pricing causing consumer loss
- On 18 December 2007, Temasek filed an appeal at the Central Jakarta District Court to demonstrate that there is no basis for the KPPU decision and ensure that our legal rights under the laws of Indonesia are respected at all times.

Note:

According to the KPPU, the (alleged) “Temasek Business Group” comprises of Temasek and its subsidiaries which (allegedly) form a single economic entity owning shares in Telkomsel and Indosat. There is no such thing as the “Temasek Business Group” and Temasek's subsidiaries operate independently from Temasek. Temasek has no direct shares in Telkomsel and Indosat. The shares in these two companies are owned by SingTel and ST Telemedia.

Why the KPPU's allegations were flawed

- The KPPU's investigations were flawed from the very beginning. It was reported in the media that a complaint was made by FSP-BUMN Bersatu (United Federation of State Enterprise Workers – a labour union) in October 2006 alleging that Temasek had violated Indonesia's Anti-Monopoly Law. This **complaint was withdrawn in April 2007 due to the absence of evidence** to support the claim. Despite that, the KPPU continued with its investigations.
- The KPPU's alleged that Temasek has violated Article 27 of Indonesia's Anti-Monopoly Law which prohibits the holding of majority shares in two or more operators in the same market, if ownership of those operators results in control of more than 50% of the relevant market. Control of the relevant market must, in turn, be proved to have resulted in anti-competitive conduct.
- The KPPU has no evidence of any involvement on the part of Temasek. So it has created the so-called “**Temasek Business Group**” – an entity which does not exist – in order to allege that Temasek owns shares in and controls Indosat and Telkomsel through its subsidiaries. I. The “Temasek Business Group” **is an invention**. Temasek does not own shares in or control either Indosat or Telkomsel, whether directly or indirectly through its subsidiaries.

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- In any case, the shares owned by ST Telemedia and Sing Tel in Indosat and Telkomsel, respectively, are not more than 50%. ST Telemedia owns 41% of Indosat and SingTel owns 35% of Telkomsel. This has been acknowledged by the Indonesian Government in its White Paper passed in 2003 where it concluded that the **ST Telemedia's stake in Indosat and SingTel's stake in Telkomsel** were not more than 50% and therefore **not majority shares**. Recognizing that the shareholdings of the (alleged) "Temasek Business Group" in Indosat and Telkomsel were not more than 50%, the KPPU invented a creative definition of "majority shares". According to the KPPU, the term "majority shares" under Article 27 did not mean majority shares but rather, meant "control" over the relevant operator. Under the KPPU's definition, "majority shares" therefore referred to a minority shareholding where the minority shareholder has control over the company in question. Based on that definition, the KPPU alleged that Temasek (through its subsidiaries) has alleged control over Indosat and Telkomsel, and therefore owns "majority shares" in these two companies.
- Temasek's position has been that the KPPU's allegations are misconceived. **Temasek does not control, direct or manage the affairs of its subsidiaries**, ST Telemedia and SingTel, let alone Indosat and Telkomsel.
- **Temasek does not have shares in Indosat and Telkomsel.** It is ST Telemedia and SingTel which have the stakes in Indosat and Telkomsel respectively. Temasek does not get involved in the day-to-day decisions of ST Telemedia and SingTel, much less those of companies that these subsidiaries invest in.
- The **Indonesian Government**, through 51%-owned PT Telkom, **has a 65% stake in Telkomsel and owns 14.3% of Indosat** including a golden share which gives it special powers including veto rights. If any entity has control over Telkomsel or Indosat, it is the Indonesian Government.
- The boards of Indosat and Telkomsel include representatives of the Indonesian government and many prominent Indonesian businessmen who would have been aware of the operational and business issues at the respective telcos. **The majority of Indosat's directors, including the President Director, and the majority of Telkomsel's directors and commissioners, are nominated by the Indonesian Government.**
- **Temasek does not have any position**, let alone a dominant position **in Indonesia's cellular telecommunications market**. The market share owned by Indosat and Telkomsel cannot be attributed to Temasek.
- No evidence has been proffered to show abuse of Indosat's and Telkomsel's dominant position and the KPPU's findings of anti-competitive conduct were wholly inconsistent with the evidence submitted before it. Although Temasek cannot speak on behalf of Indosat and Telkomsel, information in the public domain demonstrates that the allegation of anti-competitive conduct by the two telcos is baseless. Internationally renowned economic experts have concluded from publicly available information that (among other things) there are **no signs of anti-competitive conduct in the Indonesian cellular telecommunications market**.
- The acquisition of (minority) shares in Indosat by ST Telemedia was approved by the Indonesian Government with full knowledge that SingTel had (minority) shareholdings in Telkomsel at that time (2002). With its investigations and findings, the KPPU has attempted to overturn a decision by the **Indonesian Government**, which **had effectively approved the shareholding structure of both Indosat and Telkomsel**. Significantly, during the process by which the Indonesian

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Government had approved the shareholding structure of Indosat and Telkomsel, the KPPU was specifically consulted and raised no objections to the acquisition of Indosat's shares by ST Telemedia.

- Despite the fatally flawed case and process, **Temasek**, without prejudice to its rights and position, **has cooperated fully with the investigation** as it wants to demonstrate that there is no basis for the complaint and to ensure that its legal rights are respected at all times.
 - **Temasek at all times upholds the principles of fair competition and rules governing the market economy wherever it invests.** It believes the flawed decision by the KPPU and its endorsement by the DC severely tarnishes Indonesia's reputation as an investment destination and gives rise to anxiety among foreign investors about the manner in which the country's laws and regulations are applied.
 - Temasek Holdings is deeply disappointed by the verdict announced today by the Central Jakarta District Court.
 - The facts are Temasek has no shares in Indosat and Telkomsel, and plays no role in their business decisions and operations. Telkomsel, in particular, is majority owned by PT Telkom, which in turn is majority owned and controlled by the Indonesian Government. Both Telkomsel and Indosat are professionally managed and regulated businesses, operating within the guidelines enacted by the Indonesian Government (in particular, the Indonesian Telecommunications Regulatory Authority or Badan Regulasi Telekomunikasi Indonesia (BRTI)). It is therefore not possible for Temasek to engage in any monopolistic or anti-competitive practices in the Indonesia mobile telecommunications market.
 - Temasek will appeal the District Court's decision under the laws of Indonesia and continue to seek legal redress.
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