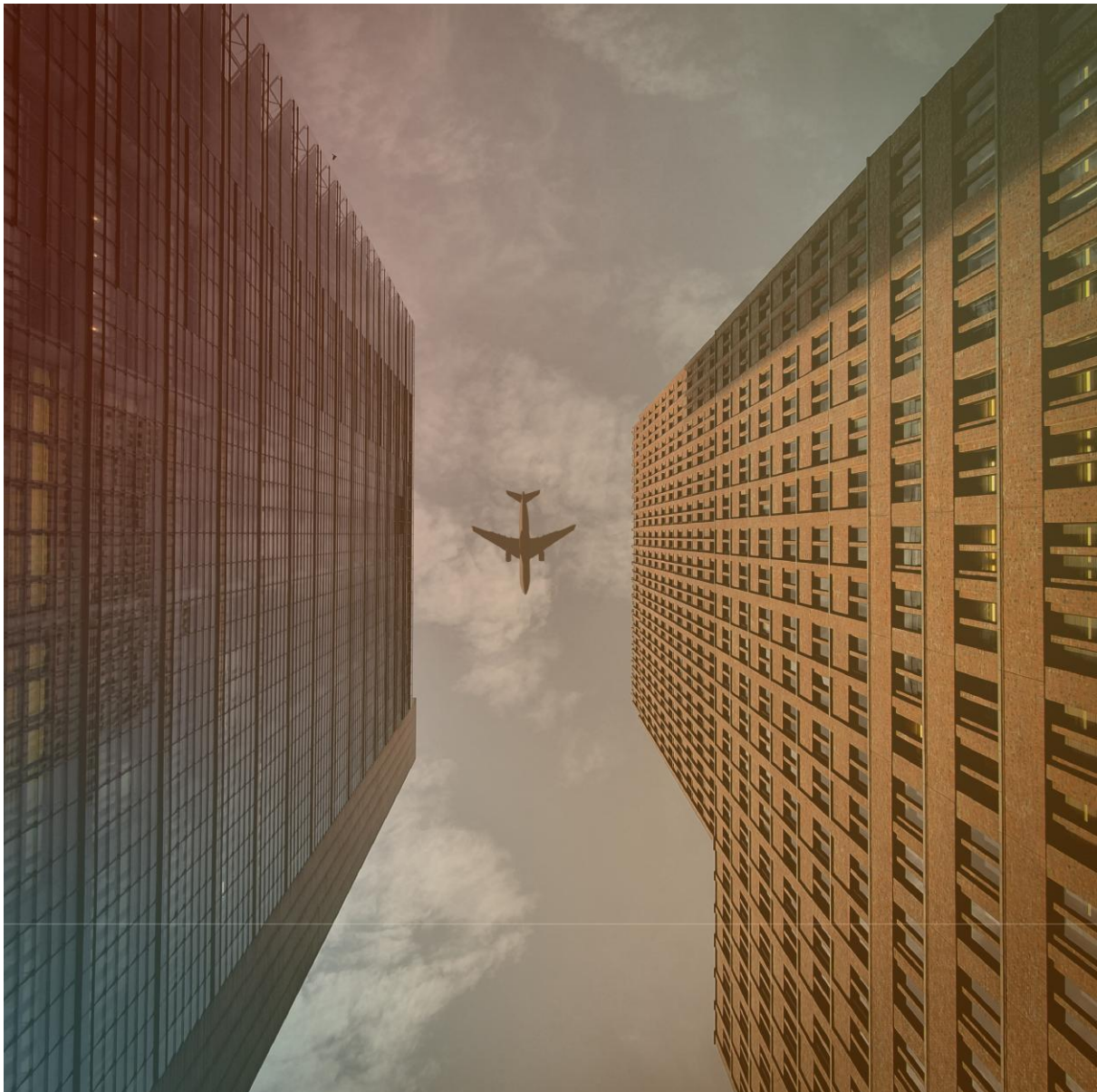


COMPETITION

KPPU Sets Precedent: First Antitrust Approval for Non-Merger Business Cooperation Agreement Issued - A Boost for Business Certainty



The Indonesia Competition Commission (*Komisi Pengawas Persaingan Usaha* or "**KPPU**") has issued its first-ever antitrust approval for a non-merger business cooperation agreement. This decision, announced in a press release on 27 February 2025, involves a joint business agreement between PT Garuda Indonesia (Persero) Tbk ("**Garuda**") and Japan Airlines ("**JAL**"). The agreement encompasses a range of collaborative activities, including providing additional flight options, a broader network, improved connectivity, and enhanced frequent flyer programs.

This approval followed a request from Garuda to the KPPU following the issuance of the Antitrust Immunity ("**ATI**") by the Japanese government. Along with the approval, the KPPU Chairman also issued a letter dated 26 February 2025, outlining specific conditions that Garuda and JAL must adhere to in the collaboration. Importantly, however, this approval does not prevent the KPPU from investigating any potential anticompetitive practices or monopolistic behaviour that may arise from this collaboration.

Competition Assessment of the Garuda-JAL Cooperation

On 3 October 2024, Garuda and JAL signed the cooperation agreement to enhance flight route coordination and offer more travel options between Indonesia and Japan. Following the granting of the ATI by the Japanese government, Garuda sought similar approval from the KPPU on 11 November 2024.

The KPPU conducted a thorough competitive analysis, which included examining market share and consulting with stakeholders. This analysis revealed that the combined market share of Garuda and JAL for round-trip flights between Indonesia and Japan had decreased since the COVID-19 pandemic. Meanwhile, All Nippon Airways maintains the largest share of this market. The KPPU also noted that other airlines, indirectly through airline alliances, could still offer Indonesia-Japan return flights. For this consultation, the KPPU consulted with the Ministry of Transportation of the Republic of Indonesia, the Indonesia National Air Carriers Association, and the Association of the Indonesian Tours and Travel Agencies.

Ultimately, the KPPU Chairman determined that the Garuda-JAL cooperation would benefit both consumers and the aviation industry. The KPPU concluded that the cooperation was acceptable and would not automatically lead to negative competitive outcomes in Indonesia, particularly for flights between Indonesia and Japan.

Conditional Approval of the Garuda-JAL Cooperation

The KPPU has approved the Garuda-JAL cooperation, but with specific conditions to ensure fair competition and consumer benefits. These conditions require both airlines to:

1. Maintain their current flight capacity and frequency, ensuring no reduction in available flights.
2. Enhance operational efficiency and improve services for passengers.
3. Avoid any contractual clauses that restrict them from cooperating with other airlines.
4. Submit quarterly reports detailing the progress of their cooperation, including flight plans, revenue, gross profits, and any policy changes that impact their agreement.
5. Publish an annual report disclosing key details of their cooperation to the public.

It is important to note that unlike the ATI granted by Japan, the KPPU's conditional approval does not shield Garuda and JAL from potential antitrust scrutiny. The KPPU retains the authority to:

1. Regularly monitor the implementation of the Garuda-JAL cooperation.
2. Request data or information from both airlines at any time.
3. Conduct research and/or investigations if they find discrepancies in the submitted information or observe any potentially anticompetitive behaviour.

Key Observations and Implications

The KPPU's decision and the conditions imposed on the Garuda-JAL cooperation reveal several key insights for businesses operating in Indonesia:

1. **Proactive Review:** The KPPU's approval of the Garuda-JAL cooperation reflects their willingness to review business agreements voluntarily. This provides companies with an opportunity to seek early assessments, ensuring compliance and clarity before proceeding.
2. **Shaping agreements:** The KPPU's ability to set conditions demonstrates their power to influence the terms of business collaborations. This helps to minimise potential anticompetitive impacts and ensures fair market practices.
3. **Ongoing Oversight:** Unlike the ATI, the KPPU approval does not grant immunity from future investigations. The KPPU retains broad monitoring and investigatory powers, emphasising the need for continued compliance.
4. **Strict Regulatory Environment:** Collaborations within air transport sector are subject to both international air service agreements and the Indonesian Competition Law. This dual regulatory framework underscores the importance of thorough due diligence to avoid legal risks and ensure that collaborative ventures are legally sound.

Key Takeaways and Recommendations

The KPPU's approval of the Garuda-JAL cooperation marks a positive step forward, offering greater clarity for businesses navigating competition regulations, especially for agreements involving significant capital investments. This decision provides a valuable precedent for how the KPPU may evaluate similar collaborations in the future.

While the process for obtaining such antitrust approvals is still evolving, businesses can take proactive steps to facilitate a smoother review. Engaging key stakeholders, including relevant government bodies, regulatory agencies, industry associations, and academic experts, can provide the KPPU with a comprehensive understanding of the proposed agreement. Emphasising the potential positive impact on Indonesia, such as consumer benefits, increased investment, and local content development, can further strengthen the case for approval.

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