



Comparative Analysis of Competition Authority Decisions Based on Mergers and Acquisitions in the Philippines, Malaysia, and Indonesia

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Abstract

In order to compare merger and acquisition decisions made by competition authorities in the Philippines, Malaysia, and Indonesia, this study will investigate each country's decisions. This study aims to pinpoint the variations in the strategies and practices used by competition authorities in the three nations and examine how they affect the preservation of healthy economic competition and the general welfare. The research involves gathering and studying merger and acquisition-related decisions made by competition authorities in the Philippines, Malaysia, and Indonesia. Differences in each nation's determination of the approval requirements, oversight procedures, and sanctions were discovered through this investigation. The findings demonstrate that there are differences between the strategies used by competition authorities in Indonesia, Malaysia, and the Philippines in relation to mergers and acquisitions. The applied threshold standards, sanctions policies, and legal interpretations vary. The results shed light on the initiatives taken by each nation to uphold fair competition and consumer protection.

Keywords: Competition Authorities, Merger, Acquisitions, Business Competition

Introduction

Merger and acquisition activities have proliferated in the corporate sector in the age of globalization and rapid economic expansion (Das & Khaton, 2020). Although mergers and acquisitions have the potential to build more substantial, more competitive business entities, they also raise questions about how they may affect market competitiveness.

In order to ensure fair competition and safeguard consumer interests, the government must play a significant role in ensuring that merger and acquisition activities are carried out (Wang, 2008). Competition authorities are tasked with keeping an eye on and controlling

merger and acquisition activity in nations like the Philippines, Malaysia, and Indonesia to prevent monopolistic behaviors that harm consumers and slow economic growth.

In light of this, the study's objective is to compare and contrast the decisions made by these nations' competition authorities regarding mergers and acquisitions. The study will focus on the Philippines, Malaysia, and Indonesia because each country has a different legal framework for controlling corporate competition and experiences significant merger and acquisition activity. This study will compare and contrast the approaches and strategies used by competition authorities in the three nations. This study compares the judgments made by various authorities to pinpoint the variables that affect merger and acquisition decisions and their effects on consumer and competitive interests.

Policymakers, regulators, and companies in the three nations are anticipated to benefit significantly from the study's findings. Fair competition and consumer interests can be preserved by taking more effective and efficient actions with a greater understanding of the differences and similarities in decisions made by competition authorities.

In order to conduct this study, data on competition authority rulings, current regulatory frameworks, and related literature will be gathered and analyzed. Ultimately, this research will significantly advance knowledge about how mergers and acquisitions are governed and how competition authorities preserve fair competition in the Philippines, Malaysia, and Indonesia.

Literature Review

Mergers and acquisitions are important business activities for developing industries in various countries, including the Philippines, Malaysia, and Indonesia (Ma & Chu, 2009). However, such activities can also affect business competition, especially if conducted by large companies with significant market power.

Therefore, in these countries, there are competition authorities tasked with monitoring and supervising merger and acquisition activities to ensure that such activities do not harm fair business competition (Lin & Pursiainen, 2023). In addition, competition authorities also have the authority to reject or approve merger and acquisition activities based on specific considerations. (Cumming et al., 2023)

Research Method

The research design, data collection tools, participants/samples, and process are all included in this section. Research Style According to Castellan (2010), this study employs a qualitative and descriptive-comparative methodology. Literature research can be used to gather data, and it comprises official papers, reports, publications, articles, and several other related sources. Identify indicators or variables that will be examined in this study, such as merger and acquisition policies applied, procedures for examining and approving mergers and acquisitions, impacts on business competition, and decisions of competition authorities in each country.

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The data to be used in this study will be secondary data, such as official documents, reports, publications, articles, and other related sources (Sileyew, 2019). Data analysis techniques will include a comparison of competition policies implemented by competition authorities in the Philippines, Malaysia, and Indonesia, an analysis of differences in procedures for supervision and control of mergers and acquisitions, and the impact of competition authority decisions on the industry and consumers in each country. The results of the data analysis will be interpreted to find patterns or trends in competition policies implemented in the Philippines, Malaysia, and Indonesia, as well as their impact on mergers and acquisitions in each country. More effective in the future.

Result and Discussion

The history of competition law in the world has existed even though it has not been written and is partial, starting from the beginning of the civilization of several countries that have known the concept of trade and competition. However, competition is not prohibited as long as the competition does not have an unfair impact on the people of a country (Asmah, 2017).

Competition law, antitrust, and anti-monopoly are terms used throughout the world that apply competition law (Susanti et al., 2012), currently almost one hundred (100) countries have implemented competition law with its rules to increase investment in a country, improve people's welfare and to provide justice in business, the economy is no longer centralized but more democratic.

Philippines, Malaysia, and Indonesia are ASEAN member countries that apply competition law with their respective rules, Philippines with The Philippine Competition Act passed on July 21, 2015, Malaysia with the Competition Act of 2010, and Indonesia with Law No.5 of 1999 concerning the prohibition of Monopolistic Practices and Unfair Business Competition, each country has a Competition institution or authority, Philippine Competition Commission (PCC), Malaysia Competition Commission (MYCC) and Indonesia Competition Commission / Business Competition Supervisory Commission (KPPU).

Despite having the same duties, competition authorities in the Philippines, Malaysia, and Indonesia have differences in supervision, control, and decisions related to mergers and acquisitions. In addition, the results of this analysis can also help policymakers in the three countries to improve or enhance the supervision and control of mergers and acquisitions to be more effective in maintaining fair business competition.

In addition, knowing the comparative business competition policies in other countries can also draw lessons and appropriate strategies to strengthen the supervision and control of mergers and acquisitions in the Philippines to prevent monopolistic or oligopolistic practices that harm consumers and industries in the Philippines.

Discussions related to competition law in ASEAN began with the first conference on competition in 2003 initiated by Indonesia and Thailand, which at that time were the only two

countries with competition law; with the support of the ASEAN secretariat, discussions at the conference supported the need for regular dialogue between countries on the substance, after several meetings of various countries to form a joint informal forum called the ASEAN Conciliative Forum on Competition (ACFC) in 2004 and began conducting meetings in 2006 (Lubis et al., 2017).

Philippine, Malaysia, Indonesia, which is the most populous country in the ASEAN region, took part in the cooperation carried out in Bangkok Thailand for the unity of the three (3) countries in an effort to form a regional cooperation organization called the Association of South East Asian Nation (ASEAN), with the aim of the declaration is to accelerate economic growth, social progress and cultural development in the Southeast Asian region, increase stability and peace in the ASEAN region, encouraging active cooperation and mutual assistance in member countries both in the economic, social, cultural, technical, and scientific and administrative fields, providing assistance to each other in the form of training and research facilities, creating greater cooperation in agriculture, industry, trade, transportation, communication and efforts to improve the living standards of their people, increasing studies on Southeast Asian problems, maintaining and promoting beneficial cooperation with each country (Abdul Muthalib, 2018).

It is interesting to study if seen in competition law in the Philippines, an ASEAN member country that has the second population in Asean after Indonesia, in the merger and acquisition decisions on cases that have been decided by the Philippine Competition Commission (PCC), namely the case of mergers and acquisitions by grab-uber in its decision the PCC conducted supervision and investigation of the deal, which had a significant impact on the transportation service sector and public vehicles in the Philippine. In contrast, the Malaysian Competition Commission authorities decided and give a daily fine of RM 15. 000 to grab because it is considered to create obstacles for the business world, especially online transportation and market expansion, while Indonesia through KPPU monitors the acquisition and merger and actively monitors. However, it does not impose fines, but from the results of the merger and acquisition, grab, and Uber must regularly report to KPPU to prevent potential price leadership or price fixing. (cnbcindonesia.com)As a comparison in the decisions of the competition authorities of each country in deciding the merger and acquisition of grab-uber.

Table 1. Comparison of Competition Authority Decisions

No.	Philippine	Malaysia	Indonesia	Note
1	The legal system is a combination of command and civil law	Command law legal system with customary law and some Islamic law	Civil law legal system, Islamic law, customary law	Each country makes different decisions by the provisions of the legal system and the rules of law that apply to each country.

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2	Philippine Competition Act 2015	Competition Act 2010	Act Law No.5 the Year 1999 on the prohibition of monopolistic practices and unfair business competition
3	Philippine competition commission (PCC)	Malaysia Competition Commission (MCC)	Komisi pengawas persaingan usaha (KPPU)
4	Ruling on the Uber-grab merger and acquisition, sanctioning reporting so there is no disparity in online land transportation.	Ruling on the merger acquisition of grab-uber, imposing a daily penalty of RM.15,000.	Sanction the merger and acquisition reporting to Grab and Uber so that there is no market dominance in the field of land transportation.

The three comparisons show that each country has different laws and legal systems to provide fair business opportunities and economic equality for each country.

Competition law in the Philippines has existed since the French colonial era, which has influenced competition law enforcement, especially in mergers, acquisitions, dominant position and market restriction, and monopolistic practices (Drexl, 2012). The country has general antitrust laws and regulations as well as the Criminal Code (KUHP) that prohibit unfair competition, and arrangements and combinations that aim to restrain trade or prevent by artificial means free competition in the market, various violations in the field of unfair competition such as monopolistic practices, cartels, restraint of trade and mergers and acquisitions have been imposed sanctions and fines both criminally and administratively, as well as protection for consumers from fraudulent business practices (Asmah, 2020).

Competition law in Malaysia has existed since 2010 and has been in effect since the promulgation of the competition act 2010 and has been in effect since 2012 as a particular guideline for business competition in the country to run well; this Act also prohibits agreements that have the object or effect of significantly preventing, restricting and distorting Malaysian competition, as well as doing the same with the abuse of dominant position and mergers and acquisitions in the Malaysian market (ibid, 2020).

The Law of Business Competition in Indonesia discusses the law of business competition in Indonesia; the legal basis is focused on Law No.5 of 1999 concerning the prohibition of

monopolistic practices and unfair business competition; the purpose of this law is to provide economic democracy with due regard to the balance and order of the business world to provide people's welfare (UU Tahun, 1999).

In Law No.5 of 1999, the regulation on acquisitions and mergers is in Articles 27 and 28; this law accommodates all previous and subsequent regulations with a wide range. In addition, acquisitions, mergers, and share ownership are regulated in the Banking Law, with different arrangements. In Indonesia, with the largest population in Southeast Asia, the use of public transportation with the use of applications is an outstanding market share that promises profits, so potential violations of Article 28 and Article 29 of Law No.5 of 1999, especially related to mergers, consolidations, takeovers of shares that can cause monopolistic practices.

Talking about business competition, especially share takeovers, can cause unfair competition not only limited to competition that affects fellow business actors, but of course, it is also closely related to consumer protection as an effort to achieve public welfare, as stated in Article 3 of Law No.5 of 1999 (Desi Apriani, 2022).

Against the decision of the competition authority in the Philippines (PCC), Malaysia with (MYCC), and Indonesia with (KPPU), each country makes a decision on mergers and acquisitions with a different approach by the legal provisions, legal substance, legal structure and culture of each different country. Each country must have different regulations, following the history of the country, the political situation, government, and also the state system of the country so that it dramatically impacts the development of business, economy, and fair business competition (La Porta et al., 2000)

Increasingly fierce business competition has encouraged companies to use various strategies to obtain profits. One strategy that is often done is by making acquisitions of other companies. However, such acquisitions only sometimes run smoothly and can lead to competition issues that affect consumers and society. Therefore, there is a need for regulations that can supervise and control unfair competition practices (Miller, 1941). Their own competition authorities have been established in Malaysia, Indonesia, and the Philippines to monitor and regulate unfair business activities. 2018 saw increased public anxiety over Grab's takeover of Uber, which was being watched by both nations' competition authorities. Both competition agencies made final decisions on the transaction.

Conclusion

The protection of fair competition and the interests of the public are prioritized in the competition law frameworks of the Philippines, Malaysia, and Indonesia; it may be said. Although there are differences in approaches and rulings related to the supervision of mergers and acquisitions, competition authorities in all three countries strive to maintain a balance between fair competition and consumer protection.

A comparative analysis of competition authority rulings in these three countries can help improve the process of supervising and controlling mergers and acquisitions in the Philippines. In the face of global economic challenges, ASEAN countries must continue to strengthen their

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competition law frameworks and cooperate to address harmful competition infringements. The success of competition law depends on practical implementation and cooperation between the government, the business sector, and society. With a solid and efficient legal framework in place, the Philippines, Malaysia, and Indonesia can promote sustainable economic growth, prevent monopolistic and cartel practices, and ensure fair and equitable competition for all businesses.

Declaration of conflicting interest

The authors declare that there is no conflict of interest in this work.

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