

## Client Alert



November 2014

### KPPU Annuls Exclusive Insurance Arrangement between BRI and BRIngin Life - Heksa

On 11 November 2014, a Business Competition Supervisory Commission ("KPPU") commissioners panel decided that the bancassurance agreement between Bank Rakyat Indonesia ("BRI"), BRIngin Life and Heksa violated Article 15 (2) and 19 a of the Indonesian Anti-Monopoly Law. The panel imposed fines of IDR 25 billion, 19 billion and 13 billion on BRI, BRIngin Life and Heksa respectively.

Currently, life insurance is compulsory for mortgage holders. KPPU initiated this case when it found that BRI's mortgage customers did not have a choice of life insurance to cover their mortgages and could only subscribe to products provided by the BRIngin Life and Heksa consortium.

According to KPPU, customers must be free to choose the life insurance to cover their mortgage as evidenced by BI circular letter No 12/35/DPNP dated 23 December 2010 ("BI Circular Letter"), which states that banks must offer mortgage applicants insurance from at least three insurance companies.

KPPU found evidence that when setting terms and conditions for insurance companies that wish to engage with BRI, BRI set terms and conditions that can only be fulfilled by BRIngin Life - Heksa consortium. KPPU also found other evidence that BRI rejected offers from other insurance companies that wished to engage with BRI.

Article 15(2) of the Indonesian Anti-Monopoly Law prohibits tying-in agreements, i.e., agreements in which the recipient must agree to buy another product as a condition of receiving the first product. Article 19 a of the Indonesian Anti-Monopoly Law prohibits market foreclosure, i.e., conduct of business actors, unilaterally or jointly with others, to bar or restrict other business actors from doing the same business activities in the same relevant market.

It appears that KPPU considered BRI's unreasonable refusal to let other life insurance companies engage with BRI to provide life insurance for BRI's mortgage customers as market foreclosure, which violated Article 19 a of the Indonesian Anti-Monopoly Law. The refusal means that BRI's mortgage customers can only purchase life insurance from the BRIngin Life-Heksa consortium, which constitutes a tying-in practice.

Apart from the fines, KPPU ordered BRI to annul its agreements with customers that require the customers to use only life insurance products from the BRIngin Life - Heksa consortium. KPPU also ordered BRI to allow other insurance companies to offer their products to BRI's mortgage customers.

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Further, KPPU suggested that the Financial Services Authority (OJK) impose sanctions on banks that violate the BI Circular Letter. KPPU also suggested that OJK take into consideration competition principles in regulating/monitoring risk management implementation for banks that have marketing cooperation with insurance companies.

This report is based on summaries of this case published by KPPU and the media. It usually takes several months for KPPU to publish the full text of its decisions on its website.

It is interesting to note however that in this case, KPPU focused on two aspects of the link between life insurance and mortgage. The first aspect is the alleged foreclosure of competitors of BRIngin Life and Heksa who wish to market life insurance products through BRI. In the first aspect, KPPU appears to find that the BRI, BRIngin Life-Heksa cooperation has substantially barred competition.

The second aspect is tying-in between life insurance and mortgage. In the second aspect, KPPU found that consumers have no real choice. The market definition and market power measurement aspects of this decision are unclear from the materials that are published so far. It should be interesting to see how the full decisions tackle this aspect. Although BRI is a major bank, and BRIngin Life is a major player in life insurance, it does not appear obvious that they are dominant. KPPU may have opted to set a low threshold for market foreclosure which, if true, may mean that this decision could have potentially wide-ranging consequences for exclusive dealing arrangements and tie-ups in general.