Perspektif Hukum dan Ekonomi atas Pengendalian Merger: Teori Efisiensi versus Doktrin Kekuatan Pasar dalam Penegakan Hukum Persaingan Usaha

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ABSTRACT

Merger control is one of the central instruments in the enforcement of competition laws, in which there is always a tug-of-war between two opposing schools of legal and economic thought: efficiency theory rooted in the Chicago School, and market power doctrine rooted in Harvard School. This article aims to analyze how these two schools of thought affect the normative architecture and law enforcement practices of merger control in Indonesia, using normative legal research methods through legislative approaches, conceptual approaches, and comparative approaches. The results of the study show that the five-factor framework used by the Business Competition Supervisory Commission (ICC) in assessing merger and acquisition transactions as stipulated in Commission Regulation Number 3 of 2019—namely market concentration, market entry barriers, potential anti-competitive behavior, efficiency, and potential for corporate bankruptcy—is basically a hybrid synthesis that accommodates both structural elements in the style of Harvard School and efficiency elements in the style of Chicago School. without explicitly choosing one of the dominant streams. The tension between the two doctrines is most evident in the cases of mergers in the digital market, as reflected in the consolidation of Tokopedia and Gojek into GoTo, which reveals the limitations of conventional market concentration indices in capturing market power that comes from data ownership and network effects. This article recommends strengthening ICC's analytical capacity to integrate efficiency defense in a more structured manner, without sacrificing structural vigilance on market concentration, especially in the face of the rapidly growing two-sided digital market characteristics in Indonesia.

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ABSTRAK

Pengendalian merger merupakan salah satu instrumen sentral dalam penegakan hukum persaingan usaha, yang di dalamnya senantiasa terjadi tarik-menarik antara dua aliran pemikiran hukum dan ekonomi yang saling berseberangan: teori efisiensi (efficiency theory) yang berakar pada Chicago School, dan doktrin kekuatan pasar (market

Kata Kunci:
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power doctrine) yang berakar pada Harvard School. Artikel ini bertujuan menganalisis bagaimana kedua aliran pemikiran tersebut memengaruhi arsitektur normatif dan praktik penegakan hukum pengendalian merger di Indonesia, dengan menggunakan metode penelitian hukum normatif melalui pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan komparatif. Hasil kajian menunjukkan bahwa kerangka lima faktor yang digunakan Komisi Pengawas Persaingan Usaha (KPPU) dalam menilai transaksi merger dan akuisisi sebagaimana diatur dalam Peraturan Komisi Nomor 3 Tahun 2019—yaitu konsentrasi pasar, hambatan masuk pasar, potensi perilaku anti persaingan, efisiensi, dan potensi kepailitan perusahaan—pada dasarnya merupakan sintesis hibrida yang mengakomodasi baik elemen struktural ala Harvard School maupun elemen efisiensi ala Chicago School, tanpa secara eksplisit memilih salah satu aliran secara dominan. Ketegangan antara kedua doktrin tersebut paling nyata terlihat pada kasus-kasus merger di pasar digital, sebagaimana tecermin dalam konsolidasi Tokopedia dan Gojek menjadi GoTo, yang menyingkap keterbatasan indeks konsentrasi pasar konvensional dalam menangkap kekuatan pasar yang bersumber dari kepemilikan data dan efek jaringan. Artikel ini merekomendasikan penguatan kapasitas analitis KPPU untuk mengintegrasikan pembelaan efisiensi (efficiency defense) secara lebih terstruktur, tanpa mengorbankan kewaspadaan struktural terhadap konsentrasi pasar, khususnya dalam menghadapi karakteristik pasar digital dua sisi yang berkembang pesat di Indonesia.

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INTRODUCTION

The law of modern business competition cannot be separated from the economic scientific foundation that supports it. In contrast to other branches of law that rely largely on doctrinal reasoning, competition law has since its inception in the United States been a battleground of ideas between jurists and economists regarding the true purpose of state intervention in market structures and behavior. The battle of ideas crystallizes in two major opposing schools of thought: the Harvard School school that places market structure as the primary determinant of business behavior and performance through the Structure-Conduct-Performance paradigm, and the Chicago School school that emphasizes that markets are essentially self-correcting and that the only legitimate goal of business competition law is to maximize consumer welfare through economic efficiency (Posner, 1979; Piraino, 2007).

The tension between these two streams is most acutely seen in the context of merger control. For the adherents of the doctrine of market forces, any merger that significantly increases market concentration is suspect, because high concentration in itself opens up opportunities for business actors to abuse their dominant position, regardless of whether or not there is concrete evidence of anti-competitive behavior that has or will occur. For efficiency theorists, on the other hand, large mergers are not in themselves bad for competition; Many mergers are driven by the motive of increasing operational efficiency, economies of scale, and synergies that ultimately benefit consumers through reduced costs and prices (Bork, 1978). This normative tension is not just an abstract academic debate, but has concrete consequences for how competition authorities in various jurisdictions design thresholds, notification procedures, and evidentiary standards in assessing merger and acquisition transactions.

In the United States itself, the pendulum shift between these two streams can be traced historically through the evolution of the Merger Guidelines published jointly by the Department of Justice (DOJ) and the Federal Trade Commission (FTC). The 2010 Guidelines tend to accommodate the Chicago School's approach by raising the Herfindahl-Hirschman Index (HHI) threshold that fuels anti-competitive prejudices, while the new 2023 Merger Guidelines explicitly lower that threshold and remove a number of previously applicable safe harbors, reflecting a resurgence of structural vigilance closer to the legacy of the Harvard School (U.S. Department of Justice & Federal Trade) Commission, 2023; U.S. Department of Justice & Federal Trade Commission, 2010).

Indonesia, as a relatively young business competition jurisdiction with Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition as its main foundation, cannot be completely separated from the dialectic of these two schools of legal and economic thought. The provisions regarding the valuation of mergers and acquisitions in Indonesia, as further regulated in Government Regulation Number 57 of 2010 and operationalized through the Regulation of the Business Competition Supervisory Commission (ICC) Number 3 of 2019, use a five-factor assessment framework that includes both structural indicators (market concentration through HHI or CR4, as well as market entry barriers) and efficiency-oriented indicators (economic efficiency and potential for company bankruptcy). This hybrid framework raises the fundamental question that this article focuses on: to what extent does ICC's merger assessment framework coherently integrate the two philosophically opposing schools of thought, and how are the tensions between the two manifested in the practice of business competition law enforcement in Indonesia, especially in the face of increasingly dominant characteristics of the digital market?

The urgency of this study is even more evident given the rapid development of merger and acquisition transactions in Indonesia's digital economy sector in recent years, which is most prominently reflected in the consolidation of Tokopedia and Gojek into a joint entity of GoTo. This kind of transaction presents new analytical challenges for business competition authorities, because conventional market concentration indicators based on market share and sales turnover are not always able to capture non-traditional sources of market strength, such as the ownership of massive amounts of user data (big data) and the network effect that are characteristic of the two-sided digital market (Parluhutan, 2021). This phenomenon demands a re-evaluation of the extent to which the framework of efficiency theory and market power doctrine that developed in the era of conventional industrial economics is still relevant and adequate to be applied in the context of the contemporary digital market.

Based on this background, this article was prepared with three main objectives: first, to map the theoretical foundations of efficiency theory and the doctrine of market forces and their historical influence on the development of business competition law in the United States and the European Union; second, to analyze the extent to which the merger assessment framework in Indonesia accommodates the tensions between the two schools of thought; and third, evaluate the implications of these tensions on the handling of merger cases in the Indonesian digital market, as well as formulate recommendations for strengthening ICC's analytical framework in the future.

The significance of this study also lies in its contribution to the development of business law in Indonesia more broadly, especially in integrating the theoretical framework of economic disciplines into the normative analysis of business competition law. So far, the study of business competition law in Indonesia tends to focus solely on procedural and doctrinal aspects, such as notification procedures, administrative sanctions, and objection mechanisms to ICC's decisions, without adequately examining the philosophical-economic foundations that form the architecture of the substantive assessment framework itself. By integrating efficiency theory and market force doctrine as the primary analytical lenses, this article seeks to fill those gaps and offer a framework of thought that can be used not only by legal academics, but also by business law practitioners, economists, and policymakers involved in the process of assessing and assisting merger and acquisition transactions in Indonesia.

RESEARCH METHODS

This article was prepared using the normative (juridical-normative) legal research method, which is research that places law as a norm or rule that applies in society and makes legal materials, both primary and secondary, as the main data of research. This study uses three complementary approaches. The statute approach is used to examine Law Number 5 of 1999, Government Regulation Number 57 of 2010, and ICC Commission Regulation Number 3 of 2019 as the main normative framework for merger control in Indonesia. The conceptual approach is used to examine the theoretical construction of efficiency theory and market force doctrine as it develops in the international legal and economic literature. The comparative approach is used to compare the merger control framework in Indonesia with the practice in the United States, as the jurisdiction of origin of the two schools of thought that are the object of the study.

The primary legal materials in this study include Indonesian laws and regulations related to business competition as mentioned above, as well as the Merger Guidelines issued by the Department of Justice and the United States Federal Trade Commission. Secondary legal materials include legal and economic literature on the Chicago School and Harvard School, national and international competition law journals, and official reports and publications of the Competition Supervisory Commission. The analysis was carried out qualitative-descriptive with a content analysis technique on these legal materials, which was then synthesized into a comparative analysis framework as visualized in Figure 1.

THEORETICAL FRAMEWORK: EFFICIENCY THEORY VERSUS MARKET FORCE DOCTRINE

To understand the tensions underlying merger control in competition law, it is important to first map the differences in economic assumptions, legal standards, and policy implications of the two schools of thought that this article focuses on. The doctrine of market forces, which has its roots in the Harvard School tradition from the 1950s to the 1970s, is built on the Structure-Conduct-Performance paradigm which assumes that market structures—specifically concentration levels—directly influence the behavior of business actors and ultimately the overall performance of the market. In this view, competition authorities and courts tend to adopt relatively firm rules (bright-line rules) against mergers, joint ventures, or agreements that have the potential to increase or strengthen market power, without always requiring proof of a real anti-competitive impact (Piraino, 2007).

The Chicago School, which began to gain significant influence in the 1970s through the works of Robert Bork and Richard Posner, offered a fundamental critique of the Harvard School's approach. Bork (1978) in his influential work, The Antitrust Paradox, argued that the sole legitimate purpose of competition law is to maximize consumer welfare, which is defined through lower prices, greater output, and more efficient allocation of resources. Posner (1979) added an important methodological dimension: that the legal analysis of business competition should be based on strict price theory, not on structural intuitions that are not always empirically proven. In the Chicago School's view, the market is essentially self-correcting; Horizontal cartels tend to be volatile because of strong incentives for their members to commit fraud, and mergers, especially those that do not lead to full monopoly, are generally efficiency-enhancing and are carried out precisely for that purpose.

Table 1 summarizes the systematic comparison between the two schools of thought based on the literature review used in this study.

Comparison Dimensions	Efficiency Theory (Chicago School)	The Doctrine of Market Power (Harvard School)
Basic economic assumptions	The market is self-correcting; Cartels tend to be unstable	Market structure determines behavior and performance (SCP paradigm)
Tokyo Central	Robert Bork; Richard Posner	Carl Kaysen; Donald Turner; Joe Bain
Proposed legal standards	Consumer welfare standard; Economic efficiency	Prevention of concentration & dominance of the market itself
Key analysis tools	Price theory; Cost-benefit analysis	Market share; concentration index (HHI/CR4)
Attitudes towards major mergers	Permissive, as long as it is proven to increase efficiency	Skeptical/strict, especially if it significantly increases HHI
The main criticisms received	Considered too permissive thd market consolidation & ignoring long-term structural risks	Considered rigid, ignores real efficiency, & is difficult to prove empirically
Source	Bork (1978); Posner (1979)	Piraino (2007)

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Table 1. Comparison of Efficiency Theory (Chicago School) and Market Force Doctrine (Harvard School)

Source: Edited by the author from Bork (1978); Posner (1979); and Piraino (2007).

Figure 1 presents a workframe that illustrates how the two schools of thought, although departing from different philosophical assumptions, ultimately meet in the practice of business competition law enforcement through a multifactorial merger assessment framework, as applied by ICC in Indonesia.

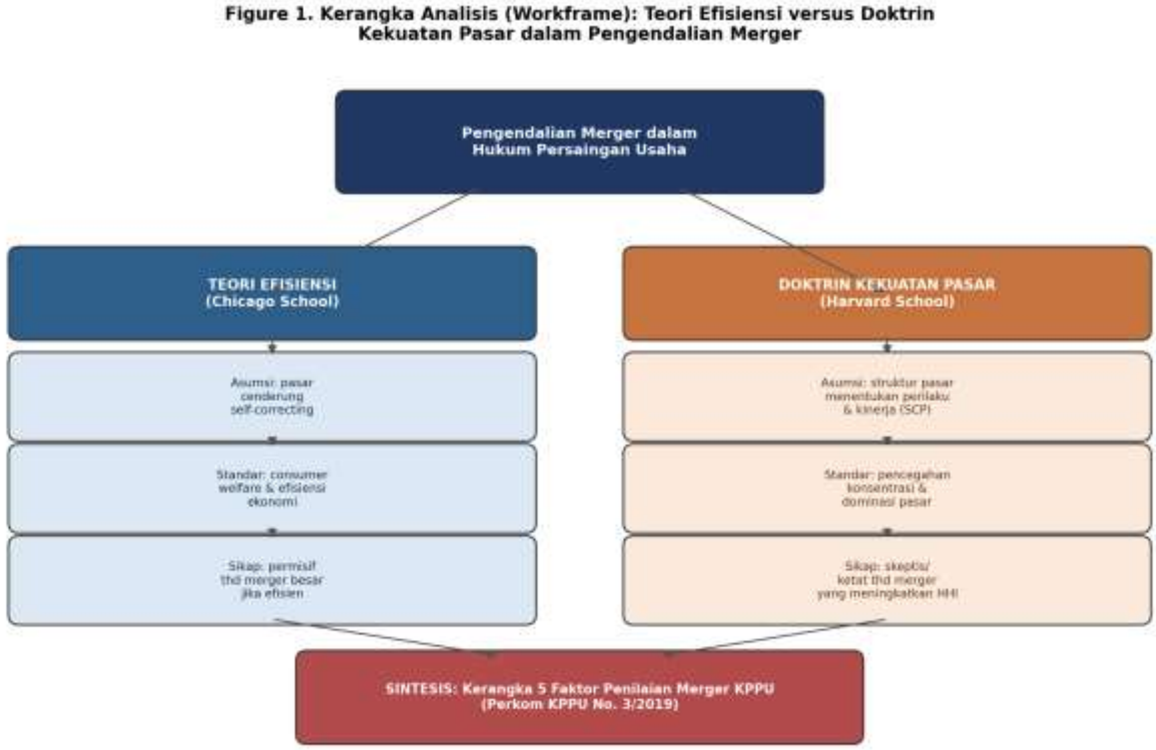

Figure 1. Workframe: Efficiency Theory versus Market Force Doctrine in Merger Control

Source: Compiled by the author based on Bork's (1978) synthesis; Posner (1979); Piraino (2007); and ICC Commission Regulation Number 3 of 2019.

As shown in Figure 1, the two schools of thought differ in the level of assumptions, legal standards, and policy attitudes toward large mergers, but they are empirically synthesized within the five-factor assessment framework used by competition authorities—a pattern of practical convergence that, as will be discussed in the next section, is also reflected in the Indonesian legal framework.

It should be emphasized that the meeting of the two schools of thought within a single multifactor assessment framework, as illustrated in Figure 1, does not necessarily mean that the philosophical tension between the two has been fully resolved. Such convergence is in practice more accurately understood as procedural coexistence—in which both types of considerations have a place within a formal legal framework—than as a theoretical resolution that truly reconciles the fundamentally conflicting assumptions between the view that the market is self-correcting and the view that the market structure itself requires preventive intervention. This latent tension then determines how the competition authority, in practice, gives different weight to the five factors of merger valuation depending on the characteristics of the sector and the transaction at hand, as will be further elaborated in the Results and Discussion section.

RESULTS AND DISCUSSION

The shift in the policy pendulum was also marked by the development of a third school of thought known as the Post-Chicago School, which sought to bridge the weaknesses of the two previous schools by adopting more complex economic models, including game theory, to identify anti-competitive behaviors that could not be adequately explained by fully rational and self-correcting market assumptions as embraced by the Chicago School. In the 2020s, a movement called the New Brandeisian also emerged, reviving the Harvard School's concern about the concentration of economic power, but with an added emphasis on broader political-economic dimensions, including the impact of market concentration on economic democracy and the balance of bargaining power between large corporations and workers, suppliers, and consumers. These three schools of thought—the Chicago School, the Post-Chicago School, and the New Brandeisian—continue to compete for influence over the direction of business competition policy in the United States, and these struggles are directly reflected in the changing approaches adopted by the Merger Guidelines from one decade to the next.

The Development of the Doctrine of Business Competition in the European Union

The development of the doctrine of competition in the European Union offers a valuable point of comparison with the dialectic of the Chicago School and the Harvard School that developed in the United States. Since its inception, the European Union's competition law through Articles 101 and 102 of the Treaty on the Functioning of the European Union has historically been more influenced by the German ordoliberal tradition, which emphasizes the importance of maintaining a competitive market structure as a prerequisite for individual economic freedom, an orientation that is philosophically closer to the Harvard School's market power doctrine than the Chicago School's consumer welfare standard. However, since the early 2000s, the European Union's competition authorities have also begun to adopt elements of a more economic approach, reflecting the indirect influence of the development of Chicago School thinking, without completely abandoning its structural orientation.

This difference in philosophical orientation between the United States and the European Union has direct implications for how the two jurisdictions handle specific issues such as big data ownership in digital platform merger transactions. As mentioned earlier, German competition law through the Act against Restraints of Competition (GWB) has explicitly regulated the existence of big data in the context of the doctrine of essential facilities, a proactive regulatory measure consistent with a structural orientation that has historically been more dominant in the European business competition law tradition than the United States tradition (Parluhutan, 2021). This comparison is relevant for Indonesia because it shows that the regulatory vacuum regarding big data in the legal framework of national business competition is not a structural necessity, but a policy choice that can and needs to be re-evaluated given the characteristics of the ever-evolving digital market.

The Evolution of the Doctrine in United States Business Competition Law

The pendulum shift between the doctrine of market power and the theory of efficiency in the history of United States business competition law can be clearly traced through the evolution of merger enforcement policy. During the era of Harvard School dominance throughout the 1950s and 1970s, the courts and competition authorities of the United States tended to take a very strict stance against horizontal mergers, even against transactions that had a relatively small absolute market share. The iconic case of Brown Shoe Co. v. United States (1962), for example, remains an important reference to how courts in that era were willing to block mergers even though the combined market share of business actors did not reach ten percent at the national level (Piraino, 2007).

Since the 1970s, the influence of the Chicago School began to dominate the enforcement of competition laws in the United States, as reflected in the implementation of the Consumer Welfare Standard as the sole legitimate purpose of competition policy. This development is most evident in the evolution of the Horizontal Merger Guidelines published jointly by the DOJ and FTC. The 1982 and 1992 guidelines set a post-merger HHI threshold of 1,800 as the boundary between the medium-concentration market and the high-concentration market, with various safe harbors for mergers that do not significantly increase HHI. The 2010 guidelines even relaxed this standard even further (U.S. Department of Justice & Federal Trade Commission, 2010).

Nevertheless, the policy pendulum shifted again in the 2020s. The 2023 Merger Guidelines jointly published by the DOJ and FTC explicitly lower the threshold of anti-competitive prejudice, by stipulating that a market with post-merger HHI above 1,800—and no longer 2,500 as in the previous guidelines—as well as an increase in combined market share above 30 percent, is sufficient to give rise to the presumption that the merger substantially reduces competition (U.S. Department of Justice & Federal Trade Commission, 2023). This shift has been widely interpreted as a resurgence of structural vigilance closer to the Harvard School's legacy, driven by concerns that the Chicago School's approach over the past few decades has been too permissive to the wave of market consolidation, particularly in the digital technology sector.

Merger Control in Indonesian Business Competition Law

The legal framework for merger control in Indonesia is regulated through three interrelated levels of regulations. At the legal level, Article 28 and Article 29 of Law Number 5 of 1999 require business actors to notify the merger, merger, or takeover of company shares to ICC if the transaction has the potential to result in monopolistic practices and unfair business competition. At the government regulatory level, Government Regulation Number 57 of 2010 further regulates the criteria and procedures for such notifications. At the commission regulatory level, ICC Commission Regulation Number 3 of 2019 operationalizes the substantive assessment framework used by ICC in evaluating whether a merger transaction should be suspected of causing monopolistic practices and unfair business competition (Parluhutan, 2021).

ICC's substantive assessment framework uses five analytical factors as summarized in Table 2, which structurally demonstrates the synthesis of structural elements in the style of the

Harvard School and the efficiency-oriented elements of the Chicago School in one integrated assessment framework.

No.	Assessment Factors	Theoretical Orientation	Legal Basis
1	Market concentration (HHI or CR4 Index)	Struktural (Harvard School)	KPPU Regulation No. 3/2019
2	Barriers to entry	Struktural (Harvard School)	KPPU Regulation No. 3/2019
3	Potential anti-competitive behavior	Behavior (Harvard & Chicago elements)	KPPU Regulation No. 3/2019
4	Economic efficiency	Efficiency (Chicago School)	KPPU Regulation No. 3/2019
5	Potential for bankruptcy (failing firm defense)	Efficiency (Chicago School)	KPPU Regulation No. 3/2019

Table 2. Five Factors for Assessing ICC's Merger and Its Theoretical Orientation
Source: Processed by the author from ICC Commission Regulation Number 3 of 2019, as referred to in Parluhutan (2021).

As shown in Table 2, two of the five assessment factors—market concentration and market entry barriers—clearly reflect the Harvard School's structural orientation, while the other two—economic efficiency and the potential for corporate bankruptcy (known in the international competition law literature as failing firm defense)—clearly reflect the Chicago School's efficiency orientation. The third factor, namely the potential for anti-competitive behavior, is more theoretically neutral because it can be analyzed from both a structural perspective and a post-merger behavioral perspective. The structure of this kind of assessment framework suggests that Indonesian policymakers do not explicitly choose one of the dominant schools of thought, but rather adopt a hybrid approach that implicitly recognizes that both structural considerations and efficiency considerations are equally relevant in assessing the competitive impact of a merger transaction.

Musyafak, Atriani, Hasanah, Sari, and Astarina (2024) in their study on company acquisition according to business competition law emphasized that effective management in the acquisition process is the main key to avoiding transaction failures while preventing unfair business competition, and that merger agreements are ideally directed to realize synergy and efficiency that ultimately increase the company's profitability without sacrificing the competitive climate healthy. This view implicitly affirms that Indonesia's legal framework is indeed designed to accommodate both interests simultaneously, rather than choosing one exclusively.

Nasrulloh (2021) highlights the procedural dimension of Indonesia's merger control framework, especially regarding the impact of late notification of corporate share takeover on the effectiveness of enforcement of the prohibition on monopolistic practices. These findings are relevant to the debate on efficiency versus market power because the post-merger notification regime in Indonesia—different from the pre-merger notification regime in effect in many developed jurisdictions—is in practice closer to the spirit of the Chicago School which tends to be permissive, because the merger transaction can be executed before the competition authority has time to conduct a thorough substantive assessment. as also highlighted by

Anggraini (2015) in his study on the implementation of the post-merger notification system in Indonesia.

Since it was promulgated in 1999, Law Number 5 of 1999 has undergone important adjustments through Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, which, among other things, strengthens ICC's authority in enforcing business competition laws, including the authority to impose stricter administrative sanctions. While the changes do not fundamentally change the substantive assessment framework for merger transactions, the strengthening of ICC's institutional authority through the Job Creation Act is relevant to discussions of efficiency versus market power, as stronger institutional capacity allows ICC to conduct a more in-depth substantive analysis of efficiency claims submitted by business actors, rather than simply accepting the claims formally without verification adequate.

It is important to note that ICC's five-factor framework, while structurally accommodating both theoretical orientations, does not provide explicit weighting between factors. The absence of guidelines on how these five factors should be considered relative to each other—for example, whether strong evidence of efficiency can override significant market concentration concerns, or vice versa—has the potential to create legal uncertainty for businesses planning merger transactions. This is in contrast to the more structured approach in the United States Merger Guidelines, which explicitly places proof of efficiency as a factor that must be balanced against the anti-competitive impacts that have been identified, rather than as a stand-alone factor (U.S. Department of Justice & Federal Trade Commission, 2023).

Efficiency Tensions-Market Forces in Digital Platform Mergers

The tension between efficiency theory and the doctrine of market power reaches its sharpest point when applied to merger transactions in the digital market, a context that neither school of thought fully anticipated in the early days of its development. The consolidation of Tokopedia and Gojek into a joint entity of GoTo is the most relevant case study to illustrate this tension in the Indonesian context. Parluhutan (2021) noted that until the time of the study, ICC did not have specific regulations regarding the ownership of big data as one of the parameters for assessing competition in the digital market, even though the ownership of massive amounts of data by the merged entities has the potential to have a unilateral and coordinated impact on competition in the relevant market, as well as strengthen the dominant position of business actors in the two-sided digital market.

These findings reveal the fundamental limitations of conventional market concentration indicators—both HHI and CR4 Index—which were originally designed to measure market strength based on the market share of sales of goods or services in a conventionally defined market. In a two-sided digital market, the source of market power is not always reflected in the conventional market share, but can come from exclusive access to user data, the network effect that makes platforms with larger user bases increasingly difficult to compete with, and cross-subsidized capabilities between business lines in an integrated digital ecosystem. Chandra, Gultom, and Handayani (2026) in their study on the legal aspects of business competition in the digital economy ecosystem also emphasized that monopoly practices on digital marketplace platforms require a different analytical framework from the conventional approach that has been used in the traditional goods and services market.

In comparison, Parluhutan (2021) notes that German competition law through the Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen or GWB) has explicitly regulated the existence of big data in the context of the essential facility doctrine as stipulated in Sec. 18 paragraph (3a) and Sec. 19 of the GWB, which is the basis for the German competition authority to conduct an investigation into the impact of big data ownership in the Facebook case. This comparison shows that more advanced jurisdictions in the regulation of the digital economy have begun to move beyond the classic dichotomy of efficiency versus market power, towards a new analytical framework specifically designed to capture non-traditional sources of market power. The lack of similar regulations in Indonesia is a significant challenge for ICC in maintaining and supervising the sustainability of effective competition in the national digital market.

This tension also has implications for how efficiency factors should be treated in the valuation of digital platform mergers. On the one hand, the Chicago School-style efficiency argument has a strong appeal in the digital context: the consolidation of two complementary platforms can result in significant operational efficiencies, expand the reach of services to consumers, and strengthen the competitiveness of combined entities in regional and global markets. On the other hand, Harvard School-style structural concerns are also relevant, given that digital markets tend to have winner-takes-most characteristics due to network effects, so that concentrations formed through mergers are potentially much more persistent and difficult to correct by market mechanisms than concentrations in conventional goods and services markets as assumed by the Chicago School.

The GoTo case also shows how efficiency arguments and structural arguments can both be legitimately raised by different stakeholders over the same transaction. From the perspective of business actors, the consolidation of Tokopedia and Gojek is argued to result in significant efficiencies through the integration of e-commerce, online transportation, and digital payment services in one integrated ecosystem, which in turn strengthens the competitiveness of the combined entity at the Southeast Asian regional level. From a structural vigilance perspective, on the other hand, the merger of two dominant platforms in different but complementary sectors has the potential to strengthen the bargaining position of the combined entity against business partners, including micro, small, and medium enterprises that rely on the platform as their primary distribution channel. This kind of complexity suggests that a single assessment based on one school of thought alone—either the theory of efficiency or the doctrine of market forces exclusively—risks producing incomplete conclusions about the actual competitive impact of such transactions.

Synthesis: Towards a More Adaptive Hybrid Framework

The analysis in the previous sections shows that ICC's merger assessment framework, although structurally accommodating both structural and efficiency elements, still has limitations in dealing with the characteristics of contemporary digital markets. To overcome these limitations, this article proposes three directions of reinforcement. First, the efficiency factor in ICC's assessment framework needs to be operationalized in a more structured manner through technical guidelines that contain clear efficiency defense criteria, including acceptable types of evidence, standards for quantifying the benefits of efficiency for consumers, and a testing mechanism for whether the efficiency benefits really cannot be achieved through other less restrictive alternatives.

Second, conventional market concentration indicators need to be complemented by additional indicators specifically designed to capture the sources of non-traditional market power in the digital economy, as pioneered by the German competition authorities through the regulation of big data within the framework of the essential facilities doctrine. This step does not necessarily mean that ICC should adopt a more dominant market power doctrine; On the contrary, this step allows the efficiency assessment to be more accurate, because the efficiency claims of a new digital platform merger can be assessed proportionately if the competition authority first has an accurate picture of the scale of market power resulting from the transaction.

Third, given the limitations of the post-merger notification regime as highlighted by Nasrulloh (2021) and Anggraini (2015), this article recommends further study on the feasibility of transitioning to a mandatory pre-merger notification regime for transactions that meet certain thresholds, especially in the rapidly growing digital economy sector. The pre-merger regime will allow ICC to conduct a thorough substantive assessment—including efficiency claim testing as well as structural risk testing—before the merger transaction is actually executed, thereby reducing the risk that the established market concentrations will become difficult to correct after the merger is legally effective. These three strengthening directions together are expected to result in a more adaptive merger control framework, which is not trapped in a rigid dichotomy between efficiency theory and market force doctrine, but rather integrates the two proportionally according to the characteristics of the market at hand.

Fourth, in line with emerging practices in various developed jurisdictions, this article also recommends that ICC consider the development of technical guidelines specifically aimed at merger assessment in the digital economy sector, such as anti-competitive thresholds and presumption zones that are regularly updated through the Merger Guidelines in the United States (U.S. Department of Justice & Federal Trade Commission, 2023). Such guidelines should ideally contain specific criteria to identify and measure market forces derived from data ownership, network effects, and cross-subsidy capabilities across business lines in an integrated digital ecosystem, so that the assessment of digital platform mergers in Indonesia is no longer solely dependent on conventional market concentration indicators designed for the context of traditional goods and services markets.

CONCLUSION

This article has analyzed the tension between efficiency theory (Chicago School) and market force doctrine (Harvard School) as two schools of legal and economic thought that underlie merger control in business competition law, both at the theoretical-comparative level and at the level of its application in the Indonesian legal framework. The results show that ICC's five-factor assessment framework for assessing merger and acquisition transactions is a hybrid synthesis that accommodates both structural and efficiency elements, without explicitly favoring either of the dominant schools of thought—a characteristic that is in line with a trend also seen in the evolution of the United States Merger Guidelines, which has continued to shift between the two poles of thought over the past several years. the last decade.

The tension between the two doctrines becomes most evident in the context of digital platform mergers, as reflected in the case of the consolidation of Tokopedia and Gojek into GoTo, which reveals the limitations of conventional market concentration indicators in capturing non-traditional sources of market power, such as big data ownership and network effects. The lack of specific regulations regarding these parameters in Indonesia's competition legal framework, in contrast to more advanced jurisdictions such as Germany, is a significant challenge that needs to be addressed immediately given the rapid growth of the national digital economy.

Based on these findings, this article recommends three directions to strengthen the merger control framework in Indonesia: the operationalization of more structured efficiency verification criteria, the development of additional market concentration indicators that are able to capture the source of non-traditional digital market strength, and the feasibility study of the transition to a mandatory pre-merger notification regime. These three recommendations are expected to encourage the formation of a more adaptive competition legal framework, which proportionately integrates efficiency considerations and structural considerations according to the characteristics of the market at hand, rather than being trapped in a rigid dichotomy between the two schools of thought that are the focus of this study. Further empirical research, especially one that examines ICC's decisions in merger cases quantitatively, will be very useful to test and enrich the conceptual framework offered in this article.

More broadly, this study emphasizes that the enforcement of competition law, as one of the important pillars of business law, cannot be separated from a continuous dialogue with the discipline of economics. The tension between efficiency theory and the doctrine of market forces that is the focus of this article is not a problem that will never be completely resolved, but rather a productive tension that actually encourages the continuous evolution of the legal framework of business competition in various jurisdictions, including Indonesia. For business law practitioners, an adequate understanding of these two schools of thought is an important provision in providing strategic legal advice to business actors planning merger and acquisition transactions, while for policymakers, this understanding is an important foundation in designing a regulatory framework that is able to balance the interests of economic efficiency with the importance of maintaining a competitive and healthy market structure for all stakeholders. This includes micro, small, and medium enterprises that are often in a weaker bargaining position than large business actors as a result of merger consolidation.

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