

CHAPTER I BACKGROUND

The Commission for the Supervision of Business Competition (KPPU) is an independent agency with prominent task to perform competition law enforcement as arranged in Law Number 5 of 1999. In implementing the task, KPPU is given authority to compile guideline in association with Law Number 5 of 1999, as included in Article 35 point f.

As part of implementation to Article 35 point f, KPPU arranges operational guideline of Law Number 5 of 1999 concerning definition of relevant market. This relevant market definition is a very important part in the process of proving the competition law enforcement, particularly concerning some potencies of market domination abuse by certain business actor. Effort of elaborating pertinent market has own complexity, which related to economic concept and methodology so that to understand it, guideline that may explain how the pertinent market defined in a case of competition is required.

In this context pertinent market guideline are compiled and may be expected giving clarification to entire competition law *stakeholders* concerning definition of relevant market and approach method KPPU uses to implement Law Number 5 of 1999 concerning Ban of Monopolistic Practices And Unfair Business Competition.

CHAPTER II GOAL AND SCOPE OF GUIDELINE

2.1. Goal of Guideline Preparation

The Commission for the Supervision of Business Competition (KPPU) established to conduct supervision on implementation of Law Number 5 of 1999. One of tasks mandated to KPPU based on Article 35 point f Law Number 5 of 1999 is to prepare Guideline on implementation to Law Number 5 of 1999. This guideline intended to provide clearer description about matters arranged in Law Number 5 of 1999, particularly in certain Article so that competition law stakeholders understand easily.

As in the goal of compiling the guideline by KPPU, goal of arranging the Relevant Market Guideline is to:

- a. Provide clear, correct, and accurate definition about what does the relevant market mean as intended in Law Number 5 of 1999 concerning Ban of Monopolistic Practices And Unfair Business Competition.
- b. Provide understanding basis and clear direction in defining relevant market according to Law Number 5 of 1999 so that possibility of separate interpretation other than described in this Guideline is not resulted in; and
- c. Used by all parties as information base in order to create any condition of business competition that may grow fairly.

Guideline about pertinent market as meant in Law Number 5 of 1999 is not intended to describe way of KPPU carries out examination in law enforcement or provides advice and judgment to the Government, but more focused to the effort of providing definition, scope and clear limitations concerning matters related to Relevant Market in Law Number 5 of 1999.

Although description of Relevant Market is already present, but Commission's view and verdict in the process of implementing law enforcement of Law Number 5 of 1999 will remain to be prioritized.

2.2. Scope of Guideline

This guideline describes measures that must be carried out to determine relevant market, as part of proof effort in competition law as arranged in Law Number 5 of 1999.

In order to make understanding easy, the structure of Relevant Market Guideline is then determined as follows:

Chapter I : Background

Chapter II : Goal and Scope of Guideline

This chapter describes on goal of preparing guideline and matters covered in the guideline.

Chapter III : Arrangement of Relevant Market

This chapter describes on definition and scope of Relevant Market based on Law Number 5 of 1999 and elaboration of elements contained in definition of Relevant Market.

Chapter IV : Relevant Market and Case Example

This chapter describes about concept and definition, type and impact of Relevant Market until to matters that are necessary to pay attention in analyzing Relevant Market assumed to violate Law Number 5 of 1999.

This chapter also elaborates some examples of case in association with Relevant Market.

Chapter V : Closing.

Systematic and language used in this Guideline is simply compiled and as clear as possible so that will allow all concerned parties read and understand easily provision of law and regulation related to Relevant Market, and this will be worthwhile to get legal certainty in implementing law enforcement to Law Number 5 of 1999.

CHAPTER III

ARRANGEMENT OF RELEVANT MARKET

Provision concerning relevant market can be found in Article 1 point 10 about general provision. Sound of the complete Article is as follows:

“Relevant Market is market related to coverage or certain marketing area by actor of business over equal goods and/or service or of the same type or substitute form goods and/or service.”

Definition of relevant market based on Article 1 point 10 mentioned above to emphasize on horizontal context describing business position of actor along with the competitor. Based on the Article, scope of relevant market definition in Law Number 5 of 1999 may be categorized in two perspectives, namely geography and product based-market. Geographic coverage-based market associates with coverage and/or market area. While, Product-based market relates to similarity, or in similar type and/or level of substitute.

Some vital elements in Article concerning relevant market are:

Market

Market is economic organization where buyers and seller either direct or indirect can make transaction of goods and/or service trades.

Range or marketing area

Refer to determination of relevant market based on geographic aspect or area/territory that is a location of business actors to engage their business activity, and/or location for availability or distribution of product and service and/or some areas have condition of relative uniform competition and dissimilar compared with condition of competition with another area.

Business Actor

Business actor is an individual or company, either in a form of corporation or non-corporation established and having domicile or engages business in the territory of Republic of Indonesia, either individually or collectively through an agreement, carries out various

business activities in economic field.

Equal or similar type or substitute

Referring to definition of relevant market based on product. Product will be categorized in relevant market or may be substituted each other when in consumer's opinion there is any similarity in case of function/allotment/use, specific character, and comparison of the product price level to other goods price. From supply aspect, substitute goods is potential product manufactured by actor of business that having potential to enter into the market.

Definition of relevant market is an initial stage from business competition analysis where application performed case by case. The process of proving violation assumed to Law Number 5 of 1999 in general started by making definition of its relevant product and market. Through determination of relevant market, involved business actor and impact of anti-competition from each violation assumed to Law Number 5 of 1999.

As mentioned before, defining of relevant market is vital part from effort of proving violation assumed to Law Number 5 of 1999. In some Articles that arranged in Law Number 5 of 1999, relevant market that is an article element so that defining is required as part of element complying process. However in another Article, relevant market is not an element of Article, yet its defining is very helpful for KPPU in effort of understanding product and market along with the dynamic that will ease KPPU effort of proof in the process of law enforcement. Relationship between relevant market as an element of Article or not will be described more detailed in guideline of each Article in the Chapter of Banned Agreement, Banned Activities, and the Chapter of Dominant Position.

Some Articles that have linkage with defining of relevant market are among others:

Relationship of Relevant Market Use with Article

Article	Arrangement Substance	Linkage of relevant market with Element of Article
4	Oligopoly practices	Market place
5	Price Determination Agreement	Competitor business actor
7	Price determination beneath	Competitor business actor

Article	Arrangement Substance	Linkage of relevant market with Element of Article
	market price	
8	Resale Price Maintenance	Other business actor
9	Area Division	Competitor business actor
10	Boycott	Competitor business actor
11	Cartel	Competitor business actor
12	Trust	Other business actor
13	Oligopsonic Practices	Market place
14	Vertical Integration	Other business actor
15	Closed Agreement	Other business actor (Party)
16	Agreement with foreign party	Other business actor
17	Monopolistic Practices	Market place
18	Monopsonic Practices	Market place
19a	Entrance barrier by business actor	Relevant Market
19b	Impede consumer/customer of its competitor business actor for not dealing business with the competitor business actor.	Competitor in relevant market
19c	Restriction of product distribution	Relevant market
19d	Discrimination	Certain business actor
20	Loss Sale	Relevant market
22	Tender Conspiracy	Other party (type of horizontal conspiracy)
23	Information Conspiracy	Other Party and Competitor
24	Conspiracy for inhibiting production/marketing	Competitor business actor
25	Dominant position	Market place
26a	Double Position	Relevant market

Article	Arrangement Substance	Linkage of relevant market with Element of Article
26b	Double Position	Close linkage in the field or type of business
26c	Double Position	Market place
27	Stock Ownership	Market place
28	Merger, Fusion, and Acquisition	Horizontal and vertical merger
29	Merger, Fusion, and Acquisition	Horizontal and vertical merger

CHAPTER IV

RELEVANT MARKET AND CASE EXAMPLE

4.1 Introduction

Relevant market is a concept made to define about market size of any product. This market size is vital, because it may identify how big certain product dominated in the market by actor of business. In relevant market that having very narrow coverage, then actor of business that quite possibly dominates certain product is considered to be holders of dominant position. Otherwise, when definition of the product market has broader coverage, then the actor of business may not be considered as holder of dominant position.

In this matter, defining of market then being very strategic of the existence because through this definition process, various factual conditions in the market can be analyzed in competition perspective.

On the other hand, defining of relevant market may be useful to identify actor of business with its competitor, and as restriction in measuring its size of impact from anti-competition act takes place. It is necessary to remember that existence of impact from anti-competition act may occur in relevant market where anti-competition act is present. Generally it takes place in case where anti-competition act has horizontal impact and/or against the competitor. In other event, existence of impact may occur in relevant market that is different with relevant market where anti-competition act occurs. It may commonly occur in anti-competition act that having vertical impact and/or not against the competitor.

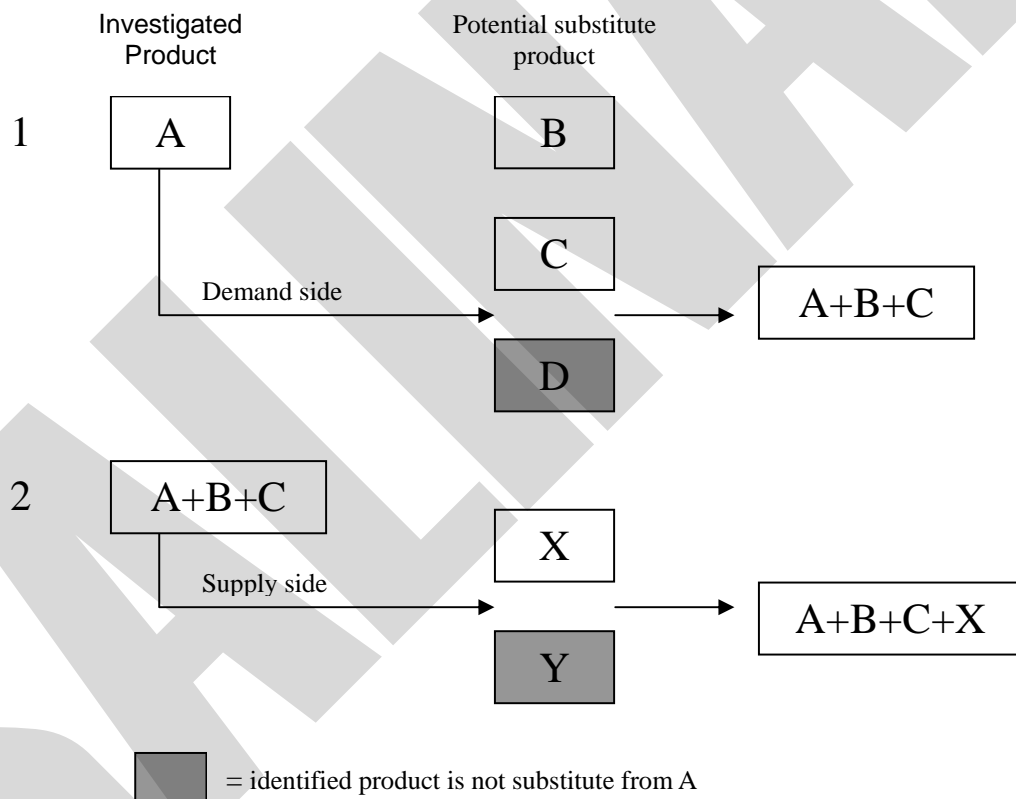
4.2 Relevant Market Concept

In general, based on universal approach, relevant market owns two vital aspects, namely product and geography (location). From these two aspects relevant market is then specified in competition cases.

4.2.1 Product Market

Product market is defined as competitor's products from certain product plus another product that may become substitute of the product. Another product becomes substitute of any product when the existence of another product confines price rise space of the product.

Product market may be identified from demand side first, for then followed by analysis of supply side. Product market can be simply illustrated in a figure below.



Above figure indicates that product A is investigated one. While B, C, and D as products having potential into substitute from A. Result of investigation from demand side showed that consumer migration from product A only occurs to B and C. It may occur as a result of price change from product A influences total demand of product B and C but has no impact toward total demand of product D,

so that conclusion may be drawn that relevant market from demand side includes product A, B, and C.

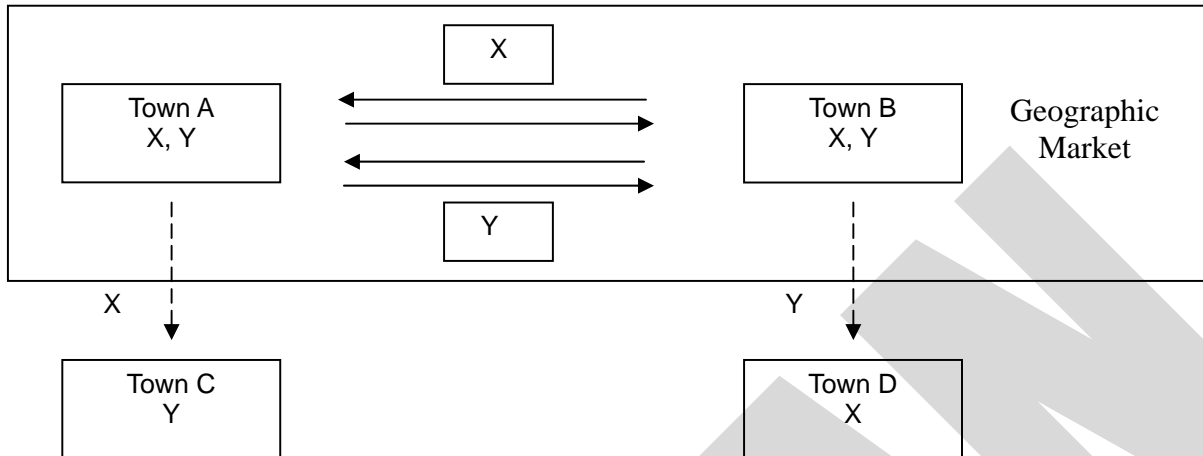
Afterwards, product A, B, and C investigated from supply side in order to identify actor of business that having potential to enter into the product market. Figure shows that there are two actors of business who may enter into the market when manufacture product X and Y. Result of investigation showed that only product X that having potential into substitute of product A, B, and C. It may occur as a result of price rise from product A, B, and C influences potential producer to shift its production capacity and produce X in order to enter into the market. In this case, then ultimately concluded that relevant market of those products includes A, B, C, and X.

4.2.2 Geographic Market

Geographic market is a territory where any actor of business may enhance its price without attracting entrance of new business actor or without significant consumer loss, which migrates to other business actor outside the territory. This occurs among others, due to transportation cost that consumer must expend is insignificant, so that unable to push migration of the product consumer occurs.

When in the country a product sold in insignificant transportation cost, then geographic market of the product is entire territories of the country. On the other hand, if an actor of business sells product in a certain territory and has no access to product from the outside territory, then it may also be concluded that geographic market of the product is in the territory.

Figure below illustrates product X and Y that having equal function, characteristic, and price, with area of sale in town A, B, C, and D. When product X and Y dealt significantly in town A and B, but only a little in town C and D, then it may be concluded that geographic market for X and Y is town A and B.



Legends:

X and Y are substitute product

—————▶ : Product transaction in significant amount

- - - - -▶ Product transaction in insignificant amount

In the progress, when geographic market territory border of any product is unable to be easily specified, then determination of geographic market border can be conducted by identifying whether price rise in a region is substantially able to influence any other region. When so, then those both locations exist in similar market. It is necessary to note that use of this concept enables to define geographic market without regarding availability of actual substitute goods in the location when investigation carried out.

Several indicators may be used in this case. One of them is indicator of price movement relationship among the analyzed territory. Relationship of similar course price movement among the analyzed territory can be indication that both are in equal geographic market. Otherwise, when significant price difference and uncorrelated price fluctuation inter-territory are found, then these being indication that those territories exist in different geographic market.

4.3 Determination of Relevant Market Definition

Determination of relevant market definition becomes the most basic thing in effort of proving some violations to Law Number 5 of 1999. There are some approaches undertaken such as through approach using supply and demand elasticity. In practice, it is relatively hard to measure this supply and demand elasticity. It is because elasticity measurement needs data and information that may reflect buying power (*ability to pay*) and willingness to buy from the consumer. Until now availability of those data is still hard to ensure. In fact, the process of case handling at KPPU itself has owned stage and strict and tying time limit. Actually, this phenomenon is circumstance that commonly occurs, which many authorities of competition supervisor in various countries encounter.

In the running progress, approach to supply and demand elasticity can be performed through consumer preference analysis, by using three vital parameters as approach tool (*proxy*) namely, price, character and use (function) of product. Those used three parameters may provide valid and comprehensive information about substitute nature of any product with other product, through more appropriate methodology and analysis process with data constraint and time limit of KPPU. Following is short description from use of those three parameters for defining geographic and product market.

4.3.1 Product Market: The Considered Factor

As previous explained, preference or consumer desire is determinant factor in defining product market. This preference is not represented by primary indicator namely price, character or attribute and use (function) of relevant product.

4.3.1.1 Price Indicator

Following are some price factors that will be considered in determining relevant market:

- Product price that reflects appropriate or competitive market price. Analysis process on inappropriate or non-competitive price tends to create wider relevant market estimation.
- The analyzed products must not have equality of price, because

variation of price from the analyzed products quite possibly occurs. Essence of analysis toward price parameter is not on nominal amount, but on consumer reaction to change of price occurs in the product;

- Increase of price (hypothetically) must only occur in product A, while no price of substitute product changes. In other word, increase of price A may not have impact of inflation.
- Increase of price must be assumed continuously, i.e. long lasting (*non transitory*). Fluctuation of short term and cyclical price as well as possible is excluded to avoid inaccuracy in the processing and analysis of price change;
- Increase of hypothetic price should only a bit, but significant. By a bit of price rise buyer response only moves to the product that is close substitute from product A. Increase of higher price may result in consumer migrates to the product is close substitute from product A. Increase of price should adequate significant so that may result in buyer reaction. Increase of smaller price will not change buyer behavior because there is any cost the buyer expends for knowing alternative products prior to then migrate.

As information, authority of competition supervisor in some countries using the simulated quantitative limit of price rise ranges with 5%-10%.

Similar method can be applied in Indonesia with adjustable quantitative limit to local condition

4.3.1.2 Character Factor and Product Utility

Following is description about non-price parameter namely character (attribute) of product and utility (function):

- Product in a market should not perfect substitutes. In some specific conditions, it is relatively hard to find out perfect substitute product. Thus, defining of product is enough based on close substitute

concept.

- Product in a market should not have similar quality. As known together, currently product differentiation level has been too high, where certain product has widest range of variation, either from technical specification, brand, or packaging. As long as consumer determines that related products have similar character and function, and then they can be said as substitute each other detached from technical specification, brand or certain packaging that adhere in those products. Conversely, when consumer specifies that those products have no similarity of the required function and character, then they can not be categorized as substitute, although resemblance or similarity in technical specification, brand and packaging is found.

4.3.2 Geographic Market

Determination of market based on geographic aspect is extremely fixed by availability of product that being analysis object. Some determinant factors in the availability of product is a company policy, transportation cost, length of trip, tariff, and regulations that confine traffic of trade inter city/territory. Those various factors will determine width and coverage of territory and product that being analysis object. In this matter, online trading and paperless transaction mechanism tends to obscure barrier and boundary inter territory. In other word, various significant progresses in on line transaction will tend to extend geographic market coverage from any product. This being other factor that will be anticipated in determination of relevant market related to geographic.

In association with the company policy, this factor is one of direct indications concerning geographic market coverage. In this matter, a company management decision will critical determine product logistic primarily for the region or territory that made as marketing target. Determination of region or territory that being marketing target of course is part of the strategy adjusted to the company's program and strategic plan. Thus, strategy of marketing area that has or will be fixed by the company management will provide information about width or

geographic coverage and product that being analysis object.

In addition to the company policy, indicator about cost and time of transportation, tariff, and regulation influence availability of product directly in certain area. In other word, those fourth parameters may become indication on width and geographic coverage from product that made as analysis object. Simply, high transportation cost and length time of transportation will complicate actor of business to extend its product marketing area. Thus, market coverage in the situation will be relatively limited to existing production or marketing area. Otherwise, when cost and time of transportation is relatively insignificant, then there is any incentive for actor of business to carry out market expansion leading to wider marketing area.

Trade barrier such as tariff and non-tariff becomes boundary for determination of relevant market based on geographic aspect. Trade tariff results in enhancement of imported product price so that lowering consumer buying interest in the product. As a consequence is product traffic that enters into a certain territory (country) becomes to decrease or insignificant. By the more decrease, product supply in a territory tends to narrow geographic coverage from product that being analysis object.

Meanwhile, current regulations to secure health and safety such as license and certificate of product can also determine geographic market boundary. Equal circumstance is also found for the regulation or policy that tends to restrict distribution or trading of trans-administrative/province territory product domestically. Almost similar with tariff barrier, regulation barrier tends to constrict geographic coverage from product that being analysis object.

4.3.3 Case Example

4.3.3.1 Resolution of Relevant Market in Case of Cellular Telecommunication Cross-Ownership (Case Number: 07/KPPU-L/2007)

Product Market

In this case Assembly decided that product market in this case is cellular service where in it excluding Fixed Wireless Access (FWA) and Public Switch Telephone Network (PSTN) (Case Verdict Number: 07/KPPU-L/2007 Para. 3.1.4 Page 591).

This relied on analysis in the aspect of utility, characteristic, and price level of Cellular, FWA, and PSTN.

Based on utility aspect, Cellular, FWA, and PSTN have similarity, i.e. helpful in activity of data and voice communication. However, according to characteristic aspect, i.e. mobility, FWA, and PSTN have limited mobility that significantly different with cellular that having full mobility when the case was investigated. Based on aspect of price level, price level of FWA and PSTN being close and different away with price level offered by cellular service (Vase Verdict Number: 07/KPPU-L/2007 Para. 3.1.4 Page 5 - 7).

Result of consumer survey conducted by investigator team to examine hypothesis on the possibility of any cellular telecommunication service substitute each other with FWA and PSTN services indicate that transition of cellular telecommunication service user into FWA telecommunication service and PSTN telecommunication service in elastic condition so that it can be concluded that PSTN and FWA are not substitute product for Cellular (Case Verdict Number: 07/KPPU-L/2007; page 6 and page 592-593).

Geographic Market

Assembly considers that geographic market in this case is including cellular telecommunication service throughout Indonesia, even though not all cellular phone operators have equal width service coverage. This based on the fact that there is any competition inter business actor of cellular telecommunication service entire the Indonesian's territory.

Assembly thinks that in defining geographic market it can be relied on the pressure of competition and price in one location that influenced by competition and price in other location. The present of effect, makes both areas become one inherent geographic market. This influence can be seen from price change pattern in both territories (Case Verdict Number: 07/KPPU-L/2007 Page 7-8 and 593-594).

The Assembly finds out the fact that all cellular phone operators decide similar tariff wherever the cellular customer exists or to apply nationally tariff. As an illustration, Telkomsel never apply higher tariff in untouchable territory by other phone operator service compared with tariff in the area served by all cellular operators found in Indonesia. It means that present or absent of other operator in any territory, Telkomsel will apply tariff model that equals to other touchable territory by all operators. It indicates that throughout the territory of reachable Telkomsel service, competition with other cellular telephone occurs, although other cellular telephone operator uncertain to operates throughout the territory reachable by Telkom service. It indicates the present of competition pressure effect that having impact 'n each region even though availability of cellular service is similar.

On the other hand, the Assembly also finds the fact that no barrier either from technology side or regulation for cellular operator in order to sell its product throughout the Indonesian territory.

Based on analysis of the product and geographic market, the Assembly stated that **definition of product market in this case is cellular telecommunication service industry, while the geographic market is throughout the Indonesian territory.**

Arrangement of Relevant Market in Case of “Competitor Removal Program” (Case Number: 06/KPPU-L/2004)

In this case, the Assembly used two relevant market dimensions, i.e. product and geographic market. Based on product market criteria, that brand C battery distributed by the Reported (PT. X) or other battery distributed by competitor can be classified according to kind, type or quality. Viewed from type, battery can be distinguished into Alkaline and Carbon Zinc or Manganese battery (hereinafter referred to as “**Manganese battery**”). Those each batteries have different characteristic and price among one and another so that each has different market segmentation too (Case Verdict Number: 06/KPPU-L/2004 page 8).

Whereas for Manganese type, either brand C battery and competitor’s battery can be differed on type, quality, and/or color. Whereas, based on document of the Reported concerning price comparison of brand C battery toward competitor in the period of June 2003, the Reported classifies battery product and the competitor battery based on kind, type, and quality or color as indicated in the following table:

Classification Table of Manganese Battery Product

Brand C	Other Brand	Other Brand
R-20 SPW	R-20 HITAM	R-20 NEO HITOP
R-20 SPC	-	R-20 HITOP
R-20 BIRU	R-20 MERAH	R-20 PRIMA
R-20 HIJAU	R-20 PERAK	R-20 HIJAU
R-20 KUNING	-	R-20 KUNING

R-14 SPW	R-14 HITAM	R-14 NEO HITOP
R-14 BIRU	R-14 MERAH	R-14 PRIMA
R-6 SPW	R-6 HITAM	R-6 NEO HITOP
R-6 SPC	-	R-6 HITOP
R-6 BIRU	R-6 MERAH	R-6 PRIMA
R-6 HIJAU	R-6 PERAK	R-6 PELITA

Based on those data, the Reported has classified battery product marketed in such a manner so that each type and quality or color of battery have competitor respectively and among type or quality of battery one does not compete with type or quality of other battery.

When looked from demand side, consumer considers that each type of battery product has different characteristic or function and price. Thus, each type of the battery has market respectively where between a type of battery and other type of battery are not substitutable or interchangeable each other. Whereas, based on information from the witnesses, blue battery buyer will not move to other battery if blue battery is unavailable. In this case, the reporter delivers supposition about any PGK perpetrated by the Reported addressed to Panasonic battery, particularly for single pack AA item. Thus, based on the above-mentioned facts, Assembly thinks that relevant product market in this case is "UM-3 manganese battery or R6 Biru or AA Blue or product that quality, function and price are equivalent to it."

In Geographic Market perspective, based on the document and result of investigation to the Reporter, he expressed supposition that discount program for similar battery throughout Indonesia has occurred except in Sumatera region. Whereas, the Assembly thinks that some factors may be used to determine a geographic market. One of those factors is actual sales pattern that refers to *Antitrust Law Development, ABA Section of Antitrust Law, Fifth Edition 2002 Volume 1, page 577-578.*

Referring to actual sales pattern of the Reported, it can be mapped out battery marketing pattern, which divides its marketing area consisting of Banten, DKI Jakarta, West Java, Central Java, East Java, Bali, Sulawesi and Kalimantan.

In order to support the marketing pattern, the Reporter used more or less 80 agents for outside Java territory. As additional information, based on result of field investigation carried out by KPPU, similar program is not found in the territory of Kalimantan and Sulawesi. Whereas, based on result of field investigation and examination, PGK found in a number of traditional wholesaler and semi wholesaler in Java and Bali territory where marketing or distribution of brand C battery product is directly under control by the Reported. Thus, based on those facts, the Assembly thinks that relevant geographic market in this case is a number of traditional wholesaler and semi wholesaler within Java and Bali territory.

CHAPTER V

CLOSING

Definition about “Relevant Market” as arranged in Article 1 point 10 is an initial phase of business competition analysis that application carried out case by case. Through determination of relevant market, clear information and size concerning market width and depth can be found, involved business actor and impact of anti-competition from each assumption of violation to Law Number 5 of 1999.

Guideline about relevant market as intended in Law Number 5 of 1999 is more focused to the effort of providing meaning, scope, and clear definition about matters related to Relevant Market in Law Number 5 of 1999. Operational Guideline about this Relevant Market can be expected giving explanation to business actor, legal and economic practitioner, government and public society concerning relevant market and approach method used by KPPU.

There is unclosed possibility that this Operational Guideline has not yet completely accommodated the applicable theory and practice; therefore, improvement in line with advancement of theory and practice will be continuously undertaken.

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