

**GUIDELINES FOR IMPLEMENTATION OF PROVISIONS OF
ARTICLE 19 PARAGRAPH D OF LAW NUMBER 5 YEAR 1999
REGARDING
PROHIBITION OF MONOPOLISTIC PRACTICE AND
UNFAIR BUSINESS COMPETITION**

COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION (KPPU)

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Chapter I

Background

To ensure the business competition is fair, the House of Representatives of the Republic of Indonesia (DPR RI) issued Law No.5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition (hereinafter referred to as "Law No.5 Year 1999"). The effective implementation of Law No.5 Year 1999 is expected to foster a fair business culture to continuously promote and enhance the competitiveness among business actors. One of the purposes for the enactment of Business Competition Law is to ensure that the market mechanism works well and consumers benefit from the results of competition or consumers' surpluses.

Law No.5 Year 1999 governs the prohibition of agreements, activities and abuses of dominant position that may lead to unfair business competition. One of the activities in the Section of Prohibited Activities is discriminatory practice as provided in paragraph d of Article 19 of the Law.

Discrimination may be defined as any different treatment committed against a particular party. In the business environment, the business actor committing a discriminatory practice may be due to a variety of things. The most common discriminatory practice is price discrimination committed by the business actor to make maximum profits out of the consumers' surplus. The practice of price discrimination may give a positive impact on the welfare of community as a whole if compared to the imposition of one price (non-discriminatory). With the price discrimination, the number of produced goods that may be enjoyed by the community will increase if compared to the one-price method that is usually applied by a monopolistic firm.

Other discriminatory practices besides price discrimination may be committed with various motives. For example, this happens since there is a preference for a certain business actor that has been through years of experience for efficiency purposes. Other discriminatory practices may occur for reasons to exclude competitors from the market or inhibit potential competitors to enter the market. The discriminatory practice of this type of course would violate the principle of fair business competition.

Considering that the characteristics and impacts of discriminatory practices are extensive and varied, an in-depth analysis on goals and purposes and its effects are absolutely needed. For this reason, the guidelines of Paragraph d of Article 19 are required so as to create harmonious understandings among the Commission, business actors and other business actors in assessing this activity.

Chapter II

Objectives and Scopes of the Guidelines

2.1. Objectives of Preparation of the Guidelines

The Commission for the Supervision of Business Competition (the Commission) was established to oversee the implementation of Law No.5 Year 1999. The Commission's duties are mandated in Law No.5 Year 1999. One of the Commission's tasks is to prepare guidelines and/or publications related to Law No.5 Year 1999 (paragraph f of Article 35). These guidelines are needed to provide clear descriptions of the Articles and other things not yet specified in Law No.5 Year 1999. With the Guidelines, the business actors and other stakeholders are expected to adapt themselves to the Guidelines so as not to violate the business competition as stipulated by Law No.5 Year 1999.

Accordingly, the Guidelines of Paragraph d of Article 19 (hereinafter referred to as "the Guidelines") aims at:

1. Providing a clear and precise meaning of prohibition of discriminatory practices as referred to in Paragraph d of Article 19 of Law No.5 Year 1999.
2. Providing basic understandings and clear directions in the implementation of Paragraph d of Article 19 d that there is not any other interpretation other than that described in the Guidelines.
3. Being used by all parties as the basis for behaving so that no parties are harmed and then for creating business competition conditions that grow naturally.

The Guidelines for Paragraph d of Article 19 is not to explain how the Commission examines in performing law enforcement or providing advice and policies, but is focused on providing clear definitions, scopes, and restrictions on the provisions of prohibition of market domination.

Although these guidelines provide the elucidations of provisions on the discriminatory practice as stipulated in Paragraph d of Article 19, nevertheless in the enforcement of Law No.5 Year 1999, the Commission's considerations and decisions in

conducting examinations for discriminatory practices alleged to violate Law No.5 Year 1999 shall be given priority and are not only limited to the Guidelines.

2.2. Scopes of the Guidelines

The Guidelines for Paragraph d of Article 19 of Law No.5 Year 1999 cover the philosophy, spirit and course of the provisions in promoting fair competition. Systematically, these guidelines include:

Chapter I Background

Chapter II Objectives and Scopes of the Guidelines

This chapter details purposes of the preparation of the guidelines and the matters included in the Guidelines.

Chapter III Nature of Provisions in Paragraph d of Article 19

This chapter details the Nature of Provisions in Paragraph d of Article 19, including definitions and scopes implied by Paragraph d of Article 19, including elaboration of the element of Paragraph d of Article 19, and elucidates connection between Paragraph d of Article 19 and other Articles in Law No.5 Year 1999

Chapter IV Implementation of Paragraph d of Article 19 and Case Samples

This chapter details the implementation of Paragraph d of Article 19, included in these details are the framework of analysis used in assessing any violation of Paragraph d of Article 19, the impacts and indications of violations of Paragraph d of Article 19. This chapter also details several case samples of violation of Paragraph d of Article 19.

Chapter V Rules of Sanctions

This chapter details some sanctions that may be imposed on violations of Paragraph d of Article 19

Chapter VI Conclusion

Systematics and the structures of language of these Guidelines are made so simple and clear as possible to be understood, thereby facilitating all parties to understand the applicable rules and to avoid legal uncertainty in the enforcement of Law No.5 Year 1999.

Chapter III

Natures of Provision of Paragraph d of Article 19

3.1. Definitions and Scopes of Paragraph d of Article 19

In Law No.5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Competition, Paragraph d of Article 19 reads as follows:

Business actors shall be prohibited from engaging in one or more activities, either individually or jointly with other business actors, which may cause monopolistic practices and or unfair business competition, in the form of the following:

d. engage in discriminatory practices against certain business actors.

The scopes of the prohibition of activities governed by Paragraph d of Article 19 include discriminatory practices committed solely by a business actor and activities undertaken jointly with other business actors. The discriminatory practice itself is an activity that inhibits or is contrary to the principles of fair business competition. The actions that impede or conflict with unfair business competition under Paragraph d of Article 19 may be in terms of price discrimination and non-price discrimination.

3.2 Elucidations of Elements

In interpreting the content of Paragraph d of Article 19, the following elements may be described:

1. Element of **business actor**

Just as detailed in paragraph 5 of Article 1 of Law No.5 Year 1999, a business actor shall be:

"Any individual or business entity, either incorporated or not incorporated as legal entity, established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either independently or jointly based on agreement, conducting various business activities in the economic field."

2. Element of **conducting independently or jointly**

The activity conducted independently by a business actor is an independent

decision and action without cooperation with another business actor. The activity undertaken jointly is one undertaken by several business actors in the same relevant market in which these business actors have relations in the same business activity.

3. Element of **another business actor**

Another business actor is the business actor undertaking one or more activities concurrently in the relevant market. Another business actor according to the elucidations of point b of paragraph 2 of Article 17 of Law No.5 Year 1999 is a business actor with a significant ability to compete in the relevant market

4. Element of **undertaking one or several activities**

One or more activities carried out in terms of a separate activity or some concurrent activities aimed at squeezing a competing business actor.

5. Element of **that may cause monopolistic practices**

In compliance with paragraph 2 of Article 1 of Law No.5 Year 1999: Monopolistic practices shall be the centralization of economic power by one or more business actors, resulting in the control of the production and or marketing of certain goods and or services thus resulting in unfair business competition and potentially harmful to the public interests.

6. Element of **unfair business competition**

According to Article 1 paragraph 6 of Law No.5 Year 1999: Unfair business competition shall be competition among business actors in conducting activities for the production and or marketing of goods and or services in an unfair or unlawful or anti-competitive manner.

7. Element of **committing discriminatory practices**

Discriminatory practice is an act or treatment in a variety of different forms committed by one business actor against a particular business actor.

3.3. Relationships with other Articles

3.3.1 Article 17 and 18 regarding Monopoly and Monopsony

Paragraph d of Article 19 is part of Article 19 regarding Market Control. To that end, the relationship between Paragraph d of Article 19 and other Articles of Law No.5 Year 1999 is

considered from the viewpoint of Paragraph d of Article 19 as part of Article 19.

At glance, similarities exist between the controlling activities in Articles 17 and 18 and those in Article 19. But, there are at least two differences between Article 19 and those two Articles, namely:

- (i) Activities prohibited in Article 19 are more intensely considered in a context to dominate the relevant market, in the sense that the main impact of the activities will be recognized by each competing business actor in the relevant market. Conversely, the activities in Articles 17 and 18 are not necessarily intended to dominate the market. It can be that the activities tend more strikingly to demonstrate one's self-interests than to dominate the market;
- (ii) Article 19 does not require an ownership of particular market share limits, while Articles 17 and 18 specifically list the ownership of the particular market share limits.

3.3.2 Article 19 regarding Market Control

As it is known, Paragraph d of Article 19 is an integral part of Article 19 as a whole. In order to get to know the application of Paragraph d of Article 19, it is necessary to elucidate the differences between such a Paragraph and other Paragraphs in Article 19.

There are four activities prohibited in Article 19, viz.:

- a. reject and or impede certain other business actors from conducting the same business activities in the relevant market;
- b. bar consumers or customers of their competitors from engaging in a business relationship with such business competitors;
- c. limit the distribution and or sales of goods and or services in the relevant market;
- d. engage in discriminatory practices against certain business actors.

The elucidations for the above are as follows:

- a. Reject and or impede certain other business actors from conducting the same business activities in the relevant market.**

The action for rejecting and or impeding a certain business actor from conducting the same business activities in the relevant market may occur when the business actor rejects or

impedes the intended business actor in which the business actor aims to hold back both any potential business actor who will enter the relevant market and the existing competitors in the relevant market. The rejection or impediment may be committed individually or jointly through various ways, such as in case a potential business actor is not included in a partnership or agreement or the potential business actor is not permitted to get an access to essential facilities for production process. This kind of violation may occur in either horizontal or vertical business relationships.

For example, a telecommunications service company named Company X with a fixed line undertakes to hold an international direct dialing (IDD) business service. Being the owner of an essential facility access to network, Company X shall carry out transfer of international direct dialing (IDD) connection out of the business activities of international direct dialing (IDD) service conducted by Company X's competitor named Company Y. Thereby, in this case, Company X as the owner of market power has committed a market barrier in terms of impediment against Company Y to provide an IDD service.

b. Bar consumers or customers of their competitors from engaging in a business relationship with such business competitors;

The action for barring consumers or customers of their competitors from engaging in a business relationship with such business competitors occurs in vertical relationships among business actors in terms of prohibition for the consumer or customer not to conduct business relations with its competitors through sales contracts or exclusive supply contracts (*exclusive dealing*). The exclusive dealing considers whether or not the *inter-brand* competition in the market is strong. The action of barring the competing business actor's consumers or customers is implemented through exclusive dealing or arrangements of purposes, shapes and quantity of items that can be supplied.

For example, Company X as the operator of a container terminal within a seaport impedes its consumers to use the container terminal owned by its competing company named Company Y. If this practice is violated, the consumers are threatened through not allowing them to use the Company X's container terminal. The container terminal operating Company X is the largest company within the seaport.

b. Limit distribution and or sale of goods and or services in the relevant market;

The action for limiting distribution and or sale of goods and or services in the relevant market is performed in which a business actor limits the channel of supply or acceptance through requirement for using certain products from the business actor.

For example, the distributor of vehicle X requires that its vehicles shall only use spare parts supplied by the manufacturer of the vehicle and spare parts shall only be assembled by mechanics who were previously through a number of trainings provided by the vehicle X manufacturer.

Paragraph d of Article 19 is different from the three abovementioned conditions in terms of the parties who suffer losses. In paragraphs a, b and c of Article 19, the party suffering losses is the business actor competing in the relevant market. Thereby, the party suffering losses in Paragraph d of Article 19 is the business actor that collaborates with a discriminatory firm (supplier or customer) who may not be a competitor of the discriminatory firm.

3.3.3. Article 22 regarding Collusion

Paragraph d of Article 19 is also very closely related to Article 22 which prohibits collusion. Both of these Articles may raise the same effects but the forbidden aspects are different. Article 22 prohibits collusion while Paragraph d of Article 19 prohibits discrimination resulting from a collusion. Paragraph d of Article 19 is required to ensnare each discriminatory practice not caused by a collusion.

3.3.4. Article 25 regarding Dominant Position

Distinct from Article 25 of Law No.5 Year 1999 on Dominant Position which more intensely gives emphasis on market structure, market control activities do not require a minimum limit of market share ownership. Even if the business actor has a market share below the minimum limit as referred to in Article 25, it is very likely that one business actor or a business group has the ability to influence one of the market aspects of certain goods or service in the relevant market.

Chapter IV

Implementation of Paragraph d of Article 19 and Case Samples

The phases that need being implemented in identifying discriminatory practices in violation of fair business competition are as follows:

4.1. Determination of Relevant Market

The preliminary step that shall be absolutely taken in analyzing the discriminatory practice under Paragraph d of Article 19 is defining the relevant market. This is necessary since the definition of this market would provide a framework for analysis on business competition; for example in determining whether a business actor, either individually or jointly with another or other business actors, has a *market power*, or has a big market share or big market power. The definition of the relevant market is also needed in determining whether an unfair business competition activity is included in the scopes of competition rules. For instance, when analyzing the potential entry of a competitor into a market, identification of the relevant market is absolutely needed.

In Law No.5 Year 1999 Article 1 (10), the relevant market is defined as the market related to a certain marketing scope or area by a business actor for goods and or service of the same or similar type or substitute for such goods and or service. In line with the definition above and considering economic viewpoints, two major dimensions are commonly considered in determining the definition of a relevant market, namely: (a) intended product (goods or service), and (b) geographic territory.

In Paragraph d of Article 19, the relevant market is not restricted to a business relationship that is merely horizontal, but it may include the business relationship that is horizontal and or vertical.

4.2 Identifying Market Control

From the economic standpoint, market control is defined as a business actor's capability of influencing price fixing or a quantity of product or other aspects in a market. Other aspects may include, but not limited to, marketing, purchasing, distribution, utilization, or access to certain goods or services in the relevant market. These activities may be carried out individually

by one business actor or jointly with other business actors, and may comprise one or several activities at the same time.

The discriminatory practice is closely related to the ownership of a significant market power in the relevant market. Market control will be difficult to achieve if the business actor, both individually and jointly, does not have a strong position in the relevant market. As an illustration, it is difficult to imagine that the business actors, both individually and jointly, who have a market share of only 10% can influence the price fixing, or production or other aspects in the relevant market. But, on the other hand, a business actor with a 50% market share in a duopoly market (where there are only two sellers) is also not absolutely capable of individually dominating the relevant market.

Market control will also be difficult to realize if the business actors, both individually and jointly, do not have significant market power in the relevant market. As an illustration, in a perfectly competitive market, a business actor is incapable of individually influencing the price fixing, so it just takes the price established in the market (price taker). In the meanwhile, in a monopoly market, the business actor has strong influences on price fixing, thus becoming the sole price maker in the relevant market. This means that in the perfectly competitive market structure, the business actors individually do not have the ability to dominate the relevant market; whereas, in the monopoly market structure, the business actors have great capabilities to dominate the relevant market.

Unlike the possession of a market power more focused on aspect of ability to influence the price above its competitive level, the market control has a broader scope, namely it also includes the capability to influence such other aspects as, among others, production, marketing, purchasing, distribution, and access. Accordingly, the possession of the market power is only one element of the market control. Or, in other words, the market control can also be exerted by a business actor through aspects other than the prices. For example, the business actor can dominate the relevant market through a distribution network, or access to essential facilities under his control.

In addition to possessing the dominant position, and or possessing the significant market power, the market domination by a business actor may also exist through the ownership of special factors that its competitors do not have. The special factors may include, but are not limited to, intellectual property rights (patent, copyright), government regulation, exclusive right

(license), distribution networks, financial support, vital facilities, consumer's loyalty or preferences. The possession of one or more of these factors make the business actor to be in a more advantaged position (viz. having more bargaining power) than its competitors.

Just as detailed above, the market control can be implemented by a business actor individually and jointly with other business actors. This indicates that there are forms of coordination of actions among the business actors involved. These forms of coordination can be in terms of formal (written) and informal (verbal) understandings (common understandings or meeting of minds).

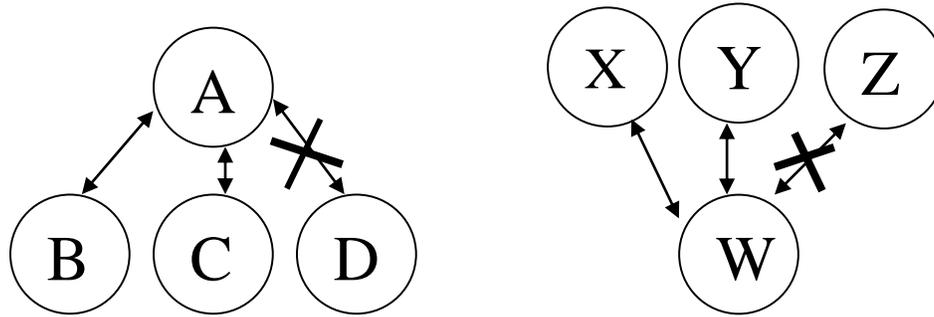
From the above description, the possession of the dominant position, or the possession of the significant market power, or the possession of the special factors is a precondition (necessary condition) or an early indication for the creation of a market control by a business actor. But the possession of the three aspects above is not enough to be made a basic reason for violation of Law No.5 Year 1999 by the business actor, without having instruments of evidence on anti-competitive activities that result in monopolistic practices and or unfair business competition.

4.2. Discriminatory Practices Against Certain Business Actor

Committing a discriminatory practice against a certain business actor is a determination of treatment in different ways regarding the requirements for supplying or purchasing goods and or services. All kinds of different treatments against a certain business actor may be included within the scope of Paragraph d of Article 19. But, whether or not the discriminatory practice is prohibited, it is the area of the *rule of reason* where the Commission needs to prove its motives and impacts.

A discriminatory practice that can be decided to be prohibited by Paragraph d of Article 19 is defined as an act without social, economic, technical justifications and other considerations of efficiency. The following are descriptions of business relationship in this kind of prohibited activity.

Figure 1



Remarks :

A, W = Business Actors

B, C, X, Y = Other Business Actors

D, Z = Certain business Actors

↔ = Activity to perform one or several activities both individually and jointly with other business actors

↔ = Discriminatory Activity

The practice of direct assignment by an institution or company for a service needed is an example of discrimination if more than one company are capable of offering the same goods and services. For example, if Company A immediately appoints company X to change its logo without going through transparent bidding process, the direct assignment is a form of discrimination against other business actors. Non-price discrimination also occurs if the chances for competition are only given to some companies, while some other capable companies are given the chances.

Another form of discrimination is fixing different requirements for different suppliers of goods and services with an intention to award one particular supplier. The fixing of the same standards and requirements to all suppliers of different classes may also give rise to discrimination. The burden of fee or warranty imposed equally on a big-size supplier and a small-size one would be perceived differently, and consequently the discrimination is weighted against the small-size supplier.

In addition to being experienced by suppliers of goods and services, discrimination may also happen to consumers or distributors. A company may commit discrimination in terms of only selling its products to a particular party (consumer) and not willing to sell the same products to a competitor of its consumer who subscribes to the products.

Accordingly, in short, the samples of discriminatory practices in violation of Paragraph d of Article 19 are as follows:

- a) Direct assignment in a job, without legal, social, economic, and technical justifications and other acceptable reasons.
- b) Refusal to conduct business relationship with certain parties without legal, social, economic, and technical justifications and other acceptable reasons.
- c) Setting certain requirements leading to certain companies without legal, social, economic, and technical justifications and other acceptable reasons.
- d) Setting different requirements for different business actors in the same market without legal, social, economic, and technical justifications and other acceptable reasons.
- e) The matter related to the Government programs such as fostering Small and Medium Enterprises (SMEs/*UKM*), the fixing of the same terms between SMEs/*UKM* and large enterprises in which these programs should be recognized by SMEs as discriminatory requirements, and thus this matter are categorized to violate Paragraph d of Article 19.

4.4. Impacts and Indications of Discriminatory Practice

The discriminatory practice as required in Paragraph d of Article 19 shall have an impact causing an unfair business competition in both horizontal level (in the market of discriminatory business actors) and or in vertical level (in the market of victims of discriminatory practices).

Some impacts on business competition that may arise out of the violation of Paragraph d of Article 19 include, among others, but are not limited to:

- a. Overthrowing of certain business competitors out of the relevant market, or
- b. Reduced roles suffered by certain competing business actors (with decreasing proportions) in the relevant market, or
- c. Forced infliction that may be exerted by one (a group of) business actor(s) in the relevant market, or
- d. Emergence of various competitive barriers (e.g. barriers to entry or expansion) in the

- relevant market, or
- e. Decreased fair business competition in the relevant market, or
 - f. Violation that may cause monopolistic practices, or
 - g. Decreased choices by consumers.

Some indications worthy of consideration in analyzing violations of discriminatory cases as stipulated in Paragraph d of Article 19 include, among others, but are not limited to:

- a. Different treatments for certain business actors in the relevant market.
- b. Reasons for such different treatments do not have reasonable justification from the legal, social, economic, and technical viewpoints and other acceptable reasons. Not all kinds of discrimination violate the principles of fair business competition. Many times, non-price discriminations have understandable motives as long as these are implemented in a transparent way, such as for the enhancement of local entrepreneurs, Small and Medium Enterprise (SMEs), and other kinds of positive discrimination.
- c. Impacts from such different treatments lead to unfair business competition.

4.5. Analyses of Violations

Considering the impacts of discriminatory practices with two distinct sides (pro-competitive and anti-competitive), in order to arrive at a conclusion that an unfair business competition has occurred, the justifications, at least economically, of the actions already taken should be paid attention. For example, not all forms of discrimination violate the principle of fair business competition. There are economic reasons for such actions; for example: for the sake of cost efficiency, guaranteed supply of raw materials, and persistent distribution. Similarly, the same applies to the price discrimination. This kind of discrimination is often committed by a company to maximize profits by fixing different prices between a customer and another customer, depending on each elasticity level.

4.6. Case Samples

The following are some case samples related to violations of Paragraph d of Article 19 of Law No.5 Year 1999:

4.6.1. Direct Assignment

PT X directly assigns PT Y without going through the bidding phases to undertake the improvement of e-reporting and monitoring systems and at the same time grants an exclusive right to be the sole provider of *e-reporting* and monitoring system in the premises of PT X. PT Y shall collect application fees from each company using the systems. Such PT X's policy shall be deemed to have discriminated other business actors that provide e-reporting and monitoring systems by giving PT Y special treatment. This case sample obviously violates Paragraph d of Article 19 of Law No.5 Year 1999.

4.6.2. Refusal to do business relationships with certain parties without legal, social, economic, technical justifications and other acceptable reasons

PT A is the best and largest flour milling company in Indonesia. Currently, there are already several flour milling/producing companies, excluding PT A, and also many flour imports are shipped from Turkey. PT D as a producer of premium bread gets grade-1 flour produced by PT A. Basically, PT A has got many competitors, but PT D assumes that the quality of grade-1 flour produced by PT A is the best in its class and thereby needs the said flour. But when landing requests for flour purchase, PT D is rejected for no obvious reason, even if the PT A's production capacity can fulfill those requests. However, PT A refuses selling the flour to PT D. Instead, it only sells to its affiliates.

4.6.3. Impose specific requirements that tend to select a certain company or companies without legal, social, economic, technical justifications and other acceptable reasons

PT B had a medicinal product with an amlodipine substance used for healing high blood disease; this product sells very good in the market, and thus many distributors wish to get involved in marketing the medicine. However, to become a distributor of PT B, PT B asked for the requirements of capital ownership and certain tools that can only be met by PT C as PT B's affiliate, even if actually the requirements were not necessary for the distribution of the medicine. Other companies with wide coverage including Java, Bali and Sumatra and capability to carry out minimum distributions for regions that had become their markets were not given any opportunity to participate in distributing the products selling good in the market.

4.6.4 Impose different requirements for different business actors in the same market without legal, social, economic, technical justifications and other acceptable reasons.

PT A is a hypermarket company receiving goods supplies from suppliers to meet the needs of its outlet(s). To meet its needs for *dairy products*, PT A required the company C's ownership of refrigerators to be installed in PT A's outlet(s) but didn't require the same condition for company B, since company B could use PT A's refrigerators.

4.6.5 Impose the same requirements for the business actor belonging to a different status of economy.

PT C was a supermarket that fixed *trading terms* and the same amount of *fees* to both suppliers classified both as Small and Medium Enterprises (SMEs/UKM) and as big suppliers. This of course would make SMEs feel relatively more burdened so that it could be interpreted that PT C would only wish suppliers classified as big companies. Thus, the same requirements for different classes may be regarded as discriminatory requirements, thereby this can be categorized as violating Paragraph d of Article 19.

CHAPTER V: SANCTIONS

Pursuant to Law No.5 Year 1999, the Commission is authorized to impose an administrative sanction on the business actor that violates the provisions of Article 19 in terms of as follows:

Article 47

1. The Commission is authorized to impose a sanction in terms of administrative measures on the business actor who violates the provisions of this Law.
2. The administrative measures referred to in paragraph (1) shall be as follows:
 - a. stipulation declaring agreements as intended in Article 4 up to and including Article 13, Article 15 and Article 16 as null and void; and or
 - b. order the business actor to stop any activity proven to have been causing monopolistic practices and unfair business competition and or be harmful to the community, and or
 - c. order the business actor to stop the abuse of dominant position and or
 - d. affirmation of cancellation of the merger or consolidation of business entities and share acquisition as intended in Article 28 and or
 - e. stipulation of compensation payment and or
 - f. imposition of a fine at a minimum of IDR. 1,000,000,000.00 (one billion Indonesian Rupiah) and at a maximum of IDR 25,000,000,000.00 (twenty-five billion Indonesian Rupiah) .
 - g. imposition of a fine at a minimum of IDR 1,000,000,000 (one billion Indonesian Rupiah) and at a maximum of IDR. 25,000,000,000.00 (twenty five billion Indonesian Rupiah)

Basic Criminal Sanctions

Article 48

- (1) Violations of the provisions of Article 4, Article 9 up to and including Article 14, Article 16 up to and including Article 19, Article 25, Article 27, and Article 28 shall be subject to the criminal sanction of a fine of minimum IDR. 25,000,000,000.00 (twenty-five billion Indonesian Rupiah) and maximum IDR.100,000,000,000.00 (one hundred billion

Indonesian Rupiah), or the criminal sanction of imprisonment as replacement of a fine for no longer than 6 (six) months.

- (2) Violations of the provisions of Article 5 up to and including Article 8, Article 15, Article 20 up to and including Article 24, and Article 26 of this Law shall be subject to the criminal sanction of a fine of minimum IDR. 5,000,000,000.00 (five billion Indonesian Rupiah) or maximum IDR. 25,000,000,000.00 (twenty-five billion Indonesian Rupiah), or a criminal sanction of imprisonment as replacement of a fine for no longer than 5 (five) months
- (3) Violations of the provisions of Article 41 of this Law shall be subject to a fine of minimum IDR. 1,000,000,000.00 (one billion Indonesian Rupiah) and maximum IDR. 5,000,000,000.00 (five billion Indonesian Rupiah) or a criminal sanction of imprisonment as replacement of a fine for no longer than 3 (three) months.

Additional Criminal Sanctions

Article 49

In compliance with the provisions of Article 10 of the Criminal Code, in addition to the sanctions set forth in Article 48, additional criminal sanctions may be imposed in the form of:

- a. revocation of business licenses; or
- b. prohibition of business actors proven to have violated this law from filling the positions of director or commissioner for at least 2 (two) years and for no longer than 5 (five) years; or
- c. orders to stop certain activities or actions resulting in losses to other parties.

Chapter 6. Closing

The market control undertaken through discriminatory efforts or actions in a market is an action prohibited in Law No.5 of 1999 since it may hinder the business competition. In order to get clear definition on what is meant by a discriminatory measure, it is expected that each business actor shall use these Guidelines in fairer competition mechanism in the market. It is possible that the Guidelines will continue to be refined in line with business development and allow it to get a clearer definition on elucidations on what is meant by the discriminatory measure. .

Therefore, any person or party suffering from a loss through a discriminatory measure committed by a business actor is allowed to report in writing to the Commission with obvious details on the incidence of such a violation, by attaching the identity of the Reporting Party to the address below. Each identity of the Reporting Party will be kept confidential by the Commission.

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