



COPY

COMMISSION FOR THE SUPERVISION OF BUSINESS
COMPETITION OF
THE REPUBLIC OF INDONESIA
(The Commission)

DECISION

Case Number: 01/KPPU-L/2003

The Commission for the Supervision of Business Competition of the Republic of Indonesia (Komisi Pengawas Persaingan Usaha Republik Indonesia) hereinafter referred to as The Commission that examines an alleged violation against Law Number 5 Year 1999 regarding Prohibition of Monopolistic Practices and Unfair Competition hereinafter referred to as Law Number 5 Year 1999, which is allegedly performed by : -----

PT. (PERSERO) PERUSAHAAN PENERBANGAN GARUDA INDONESIA (abbreviated into "Garuda Indonesia"), having a domicile in Jakarta with an office address at Jl. Medan Merdeka Timur No. 13, Jakarta Pusat, hereinafter referred to as the Reported Party; -----

Has accordingly made a Decision as follows -----

THE COMMISSION ASSEMBLY FOR THE SUPERVISION OF BUSINESS COMPETITION (MAJELIS KOMISI PENGAWAS PERSAINGAN USAHA), hereinafter referred to as THE COMMISSION ASSEMBLY:

- Upon perusing all letters and documents related to this Case; -----
Upon hearing the information provided by the Reporting Party; -----
Upon hearing the information provided by the Reported Party; -----
Upon hearing the information provided by Witnesses; -----

Upon examining the activities of Reported Party; -----

ABOUT
THE FACTS OF THE CASE

1. Considering that the report of one business actor, hereinafter referred to as **the Reported Party**, in its written report on the date of 9th October 2002, received by the Commission on 9th October 2002, **principally declares as follows** -----
 - 1.1. That in order to support the aviation industry worldwide, equipment and infrastructure for efficient and effective distribution are needed. To meet such needs for equipment and infrastructure, a flag carrier, besides directly selling tickets through representative agents, carries out a cooperation with a tour and travel agent as a ticket-issuing agent; -----
 - 1.2. That, in the beginning, a tour and travel agent carries out a manual *booking* through a telephon call to a reservation office of the related flag carrier; -----
 - 1.3. That, in line with technological development, the seat *booking* in an aeroplane has been automated by the use of computerized network which is connected *online* with a reservation system or a *seat data inventory* owned by a flag carrier. Thereby, a tour and travel agent may directly have an access to the *seat data* of a flag carrier in a fast and accurate manner. Such a computerized system in worldwide flight is called *Computerized Reservation System*, hereby abbreviated into **CRS**. Positive impacts of the system, among other things, are: -----
 - 1.3.1. Service quality for consumers gets better since a tour and travel agent as a flag carrier's agent may provide direct information without telephoning the flag carrier. In case of full booking, a potential passenger may be given an alternative; --
 - 1.3.2. Work efficiency both in a flag carrier and a tour and travel agent is increasing, in which a ticket may be issued by the use of a computer and is not handwritten, and the report data of ticket sales are also more accurate and on time; -----
 - 1.3.3. Cost efficiency may also be achieved by a flag carrier in

which representative offices in all fours are unnecessary, because a tour and travel agent may access data by computer directly to an *inventory system* owned by a flag carrier; -----

- 1.4. That, to establish a CRS business, a big investment is needed, thereby throughout the world there are not many companies which are involved in this field. A number of existing CRSs are Sabre system, Galileo system, Amadeus system, Worldspan system and Abacus system; -----
- 1.5. That in general a flag carrier will cooperate with more than one CRS since all over the world there are too many tour and travel agents and generally each tour and travel agent applies one or more existing CRS systems. This is dependent upon a geographic area. For example, within the region of Southeast Asia, the Abacus system is widely applied. Within the region of Europe, the Galileo and the Amadeus systems are much used, and in the North America, the Sabre system is widely used by tour and travel agents; -----
- 1.6. That for a flag carrier, a cooperation with more than 1 (one) existing CRS is not unprofitable since incurred costs are based upon transactions, in which if there is no any transaction, no cost will be incurred; -----
- 1.7. That P.T. Abacus Indonesia is a subsidiary of **the Reported Party**. P.T. Abacus Indonesia which started its operation around 1995 and it is a distributor of the Abacus system. At that time, P.T. Abacus Indonesia was the only CRS provider within Indonesia; -----
- 1.8. That, since 1998, a competitor of P.T. Abacus Indonesia has been in operation. In order to anticipate the expansion of the competitor, **the Reported Party** made some policies to protect P.T. Abacus Indonesia; -----
- 1.9. That one of the protections that the Reporting Party considers unfair is that ARGAs system is only attached to the Abacus system. The ARGAs system owned by the Reported Party is a system applied to *book* the Reported Party's domestic flight tickets; -----
- 1.10. That the aforementioned policy makes a tour and travel agent may only use the Galileo system for booking international segments. Meanwhile, for domestic segments, the booking shall be through the

Abacus connection; -----

1.11. That, the occasions occurring in connection with the obstacles in the application of the Galileo system for ticket reservation were as follows: -----

1.11.1. On 10th October 2001, a big tour and travel agent for the Reported Party, namely P.T. Vayatour (that has been in cooperation with P.T. Abacus Indonesia since 1995, and since the operation of Galileo system in Indonesia, P.T. Vayatour applies the Galileo dan the Abacus systems) received a termination unilaterally from P.T. Abacus Indonesia. The reason of P.T. Abacus Indonesia termination is that P.T. Vayatour did not reach the fixed minimal target, namely 150 (one hundred and fifty) segments per terminal per month and very low application of the Abacus system; -----

1.11.2. In response to business relation termination by P.T. Abacus Indonesia, P.T. Vayatour in a letter on 12th October 2001 warned P.T. Abacus Indonesia to review the details of an Agreement between P.T. Abacus Indonesia and P.T. Vayatour in which, within the Agreement, not any article asserts a minimum target of 150 (one hundred and fifty) segments. In the Agreement, P.T. Vayatour is required to pay a monthly fee for equipment use, being a requirement already met by P.T. Vayatour; -----

1.11.3. In response to a reply letter from P.T. Vayatour, P.T. Abacus Indonesia in its letter on 19th October 2001 consented to the response of P.T. Vayatour. Nevertheless, P.T. Abacus Indonesia unilaterally terminated the connection to the Abacus system that existed in P.T. Vayatour; -----

1.11.4. According to the Reporting Party, the main goal of P.T. Abacus Indonesia to terminate the Abacus system in P.T. Vayatour is that P.T. Vayatour found it difficult to sell tickets of the Reported Party for domestic segment. Thereby, P.T. Vayatour was not necessary to support any system other than the Abacus system; -----

1.11.5. Despite the fact that the Abacus system was disconnected from P.T. Vayatour, the Reported Party remained

cooperative and offered an alternative for direct connection to the ARGA system on the condition that P.T. Vayatour provided a complete set of required communications equipment and network in order that P.T. Vayatour did not lose its income; -----

1.11.6. With a direct connection to the ARGA system that used its own equipment, P.T. Vayatour was allowed to install the Galileo *software* into the equipment. This in fact posed a problem because P.T. Abacus Indonesia then addressed a complaint to the Reported Party and said that it was illegal, due to the fact that *dual access* to the ARGA system it had was not exclusive anymore. The Reported Party then sent a complaint to P.T. Vayatour through a letter dated 16th April 2002; -----

1.11.7. On 28th May 2002, the Reported Party sent a letter to P.T. Vayatour and compelled P.T. Vayatour to apply the Abacus system again; -----

1.12. That occasions that occurred above in the opinion of the Reporting Party were unprofessional and tended to be dictatorial in nature for the reason that the Reported Party was in a dominant position and meant to force the agent not to carry out investment by itself and force the agent to rent computer sets from P.T. Abacus Indonesia. This process clearly made the agent unprofitable since the agent shall continually rent computer sets and was not given a chance to provide its own computer sets; -----

1.13. That the Reporting Party considers that the practices undertaken by the Reported Party violated some Articles of Law Number 5 Year 1999; -----

2. Considering that, according to the report above, the Commission investigated the report clarity pursuant to the regulations in the Commission Decision Number: 05/KPPU/KEP/IX/2000 regarding Procedures of Reporting and Administration of Alleged Violation of Law Number 5 Year 1999 (*Tata Cara Penyampaian Laporan dan Penanganan Dugaan Pelanggaran Terhadap UU Nomor 5 Tahun 1999*); -----

3. Considering that, according to an investigation, the Commission declared

that the report was clearcut; -----

4. Considering that, according to such a clearcut report, the Commission, on 13th February 2003 by the Decision of the Commission Number: 02/PEN/KPPU/II/2003, decreed to undertake a Preliminary Examination; ----
5. Considering that, to undertake the Preliminary Examination, the Commission issued a Decision Number: 11/KEP/KPPU/II/2003 tanggal 13 Februari 2003 regarding Assignment of Members of the Commission in Preliminary Examination of Case of Report Number: 01/KPPU-L/2003 which comprises Ir. H. Moh. Iqbal as the Chairman; Ir. H. Tadjuddin Noersaid dan Faisal Hasan Basri, S.E., M.A., each as a Member, and assisted by Mohammad Noor Rofieq, S.T., Mohammad Reza, S.H., Gopprera Panggabean, S.E., Ak., Marcus Pohan, S.H., dan Verry Iskandar, S.H., each as an Investigator; Arnold Sihombing, S.H., and Dinni Melanie, S.H., each as Writer of Proceedings pursuant to Assignment Letter from Executive Director in the Commission Secretariate, Number: 02/SET/DE/II/2003 dated 13 Februari 2003; -----
6. Considering that, in the Preliminary Examination, the Examining Team has already listened to information provided by both the Reporting Party and the Reported Party; -----
7. Considering that, those identities and information provided by both the Reporting Party and the Reported Party were already recorded in an Investigation Report (*BAP*) and signed by both the Reporting Party and the Reported Party; -----
8. Considering that, having completed the Preliminary Examination from 13th February 2003 to 25th March 2003, the Examining Team discovered an indication of violation against Article 14, Article 15 paragraph (2), Article 17, Article 19 paragraphs *a*, *b*, and *d*, and Article 26 paragraph *b* of Law Number 5 Year 1999 that should be followed up and therefore recommended that the Commission perform an Advanced Examination; ----
9. Considering that, under the Examining Team's recommendation, in the Commission Meeting on 25th March 2003, the Commission accepted the Examining Team's recommendation. The Commission pronounced to proceed the Case of Report Number: 01/KPPU-L/2003 into the Advanced

Examination from 26th March 2003 to 25th June 2003, with the Commission's Decision Number: 03/PEN/KPPU/III/2003 dated 26 March 2003; -----

10. Considering that, in order to implement the Advanced Examination, a Decision of the Commission Number: 19/KEP/KPPU/III/2003 dated 26 March 2003 regarding Assignment of the Commission Assembly in Advanced Examination of the Case of Report Number: 01/KPPU-L/2003 was issued, which comprised Ir. H. Moh. Iqbal as the Chairman of the Assembly; Ir. H. Tadjuddin Noersaid and Faisal Hasan Basri, S.E., M.A. each as Member, and assisted by Mohammad Noor Rofieq, S.T., Mohammad Reza, S.H., Gopprera Panggabean, S.E., Ak., Marcus Pohan, S.H., and Verry Iskandar, S.H., each as an Investigator; Arnold Sihombing, S.H., and Dinni Melanie, S.H., each as a member of Committee (*Panitera*) pursuant to Assignment Letter from Executive Director in the Commission Secretariate Number: 03/SET/DE/III/2003 dated 26 March 2003; -----
11. Considering that, in the Advanced Examination, the Commission Assembly has already listened to information provided by the Reported Party ; -----
12. Considering that those identities and information provided by the Reported Party were already recorded in the Investigation Report (*BAP*) and signed by the Reported Party ; -----
13. Considering that, in the Advanced Examination, the Commission Assembly had listened to the information provided by 16 (sixteen) Witnesses under an oath; -----
14. Considering that those identities and information provided by those Witnesses were already recorded in the Investigation Report (*BAP*) and signed by the Witnesses; -----
15. Considering that, in the Preliminary Examination and the Advanced Examination, a number of letters and or documents were already discovered, examined and judged; -----
16. Considering that, in the Advanced Examination, the Commission Assembly has undertaken a field investigation for tour and travel agents; -----
17. Considering that the Commission Assembly has obtained appropriate evidences and judgement to make a Decision; -----

ON LEGAL MATTERS

1. Considering that, based upon information divulged in the Preliminary Examination and the Advanced Examination, both from the Reported Party and the Witnesses, and according to documents obtained during investigation, the Commission Assembly discovered a number of facts as follows: -----
 - 1.1. That the Reported Party is a business company situated in Jakarta. The Reported Party was established pursuant to Acts and Regulations that prevail within the territory of the Republic of Indonesia and with a Notarial Act pursuant to Last Revised Articles of Association (AD) Number 10 dated 3rd September 1998, prepared by Notary Public BRAY. Mahyastoeti Notanagoro, S.H., with the company's bussines activities as follows: -----
 - 1.1.1. Undertaking scheduled commercial air transportation for passengers, goods and mails domestically and internationally;
 - 1.1.2. Undertaking air transportation of passengers and goods domestically and internationally under contracts; -----
 - 1.1.3. Undertaking aircraft reparation and maintenance both for company's own needs and for a third party's needs; -----
 - 1.1.4. Supporting operational services of air transportation; -----
 - 1.1.5. Undertaking services for information system related to air transportation; -----
 - 1.1.6. Undertaking services for consultation, education and training related to air transportation; -----
 - 1.1.7. Undertaking services for checking air crew's health; -----
 - 1.2. That the Reported Party has developed a system of *Automated Reservation of Garuda Airways* (hereinafter referred to as "ARGA system") since 1974. The ARGA system is applied to implement online reservation by tour and travel agents. In the beginning, the ARGA system was developed as an *inventory system and a distribution system* for the Reported Party; -----
 - 1.3. That the Reported Party also has entered into agreements with the providers of the Abacus system, the Galileo system, the Amadeus system, the Worldspan system, the Infini system, the Axess system, and the Sabre system for worldwide flight information services for

the Reported Party; -----

- 1.4. That according to the Reported Party, for all areas in Indonesia, only the Abacus system and the Galileo system are currently available; --
- 1.5. That Witness I is a business company situated in Jakarta. And Witness I was established pursuant to Acts and Regulations prevailing within the Republic of Indonesia with a Notarial Act Number 53 dated 28th June 1995, prepared by Anna Sunardi, S.H., and pursuant to the Decision of Meeting on 19th March 2002 with Notarial Act Number 11 prepared by Notary Public Mrs Anna Sunardi, S.H. The company has a corporate business field, namely running a business in management consulting service for information technology as follows: -----
 - 1.5.1. Improvement of human resources related to effective and efficient transportation business; -----
 - 1.5.2. Development of reservation system in business activities; ---
- 1.6. That according to Witness I, the reason of the establishment of Witness I was that Abacus Distribution System Pte. Ltd. needed a *National Marketing Company* to market the Abacus system. Therefore, Abacus Distribution System Pte. Ltd. intended to establish a *National Marketing Company* in Indonesia. Since the Reported Party has shares in Abacus Distribution System Pte. Ltd., the Reported Party is offered to possess shares in Witness I. The reason why the Reported Party accepted the offer was business calculation; -----
- 1.7. That the share of Witness I owned by the Reported Party was 95% (ninety five percent) and Abacus Distribution System Pte. Ltd. was 5% (five percent); -----
- 1.8. That, in the beginning, the domestic ticket reservation system of the Reported Party is undertaken by placing a *dumb terminal* (ARDA terminal) in each tour and travel agent so that at the same time the tour and travel agent shall manage 2 (two) terminals, i.e. a *dumb terminal* which has an ARGA system inside it for reservation of a domestic flight ticket of the Reported Party and the Abacus terminal which has an Abacus system inside it for international flight ticket reservation; -----

- 1.9. That, after the 1997 financial crisis, the ARGA system was not developed anymore as a sole distribution channel, but through a *dual access system*; -----
- 1.10. That the *dual access system* is an accompaniment of the ARGA system into the Abacus terminal, so that there are 2 systems in Abacus terminal, the ARGA system and the Abacus system. Eventhough, those systems are inside a computer, each system has its own uses. For *booking* internasional flight ticket of the Reported Party, the Abacus system is used, while for *booking* domestic flight ticket, the ARGA system is used; -----
- 1.11. That, after the application of *dual access policy*, all *dumb terminals* (ARGA terminals) in all tour and travel agents are withheld by the Reported Party. Under this policy, a Circular Letter is made for all national and international representatives of the Reported Party, in terms of replacement of the ARGA terminal into Abacus terminal; ----
- 1.12. That, with the *dual access facility*, the Reported Party controls each tour and travel agent more easily in implementing internasional flight ticket booking and domestic-internasional *mixed flight* ticket booking through the Abacus system; -----
- 1.13. That, pursuant to the proceedings of Synergy Meeting between the Reported Party and Witness I on 10th September 1999, the Reported Party made a policy of reservation into 3 (three), namely: (i) the *booking* of domestic flight tickets was through ARGA system within the *dual access facility*, (ii) the *booking* of internasional flight tickets was through CRS, and (iii) the *booking* of domestic-internasional *mixed flight* was through CRS; -----
- 1.14. That, according to *inter-office correspondence* of the Reported Party on 20th September 1999 regarding the application of the Abacus system, all *area managers and district managers* are informed domestically and internationally regarding the policy of ways in flight ticket *booking*, namely: the *booking* of internasional flight tickets shall be through the Abacus system or the Sabre system. Domestic-international *mixed flight ticket booking* was through the Abacus system and the *booking* of domestic flight tickets was through the ARGA system within the *dual access facility*; -----

- 1.15. That, pursuant to the proceedings of Synergy Meeting between the Reported Party and Witness I on 28th Januari 2000 and information of the Reported Party in investigation, the reasons why the Reported Party did not supply *dual access facility* to CRS provider other than Witness I were: -----
- 1.15.1. The Reported Party did not add existing *markets*; -----
 - 1.15.2. The *dual access* was given to CRS provider that has cheaper international flight ticket reservation; -----
 - 1.15.3. The *dual access* was given to Witness I since the marketing range of the system made available by Witness I was wider;
 - 1.15.4. In terms of effectiveness and efficiency, the system made available by Witness I is considered to have more values by the Reported Party; -----
- 1.16. That, pursuant to the proceedings of the Synergy Meeting between the Reported Party and Witness I on 2nd March 2000 regarding a tour and travel agent that performs any *fictitious booking*, the Reported Party shall furnish to Witness I a list of tour and travel agents. Then, Witness I shall issue a notice to the tour and travel agents, since the agent violated a *subscriber agreement* and its passage agency status may be reviewed; -----
- 1.17. That, pursuant to the proceedings of the Synergy Meeting between the Reported Party and Witness I on 18th December 2000, it was declared that on 28th August 2000 the distribution of flight tickets was agreed by the Reported Party within the area of Indonesia and shall be carried out through Abacus system. Therefore, the application of Galileo system through the ARGA system shall be anticipated; -----
- 1.18. That, pursuant to the proceedings of the Synergy Meeting between the Reported Party and Witness I on 18th December 2000, only a tour and travel agent with a *dual access* through the Abacus system shall be appointed as a domestic passage agent for the Reported Party; -----
- 1.19. That, pursuant to the proceedings of the Synergy Meeting between the Reported Party and Witness I on 18th December 2000, the Reported Party recognized that not any clear line exists that CRS is

outside the Abacus system that it can not *book* domestic flight tickets. Therefore, the Reported Party shall review the signed agreement with the CRS provider, especially from a territorial aspect. However, such the Reported Party's plan is not yet put into action; -----

- 1.20. That, the agreement between the Reported Party and CRS provider required that the Reported Party should provide equal treatment for all CRS providers. In case there was any functional development or another addition from ticket reservation system of the Reported Party in relation with ticket reservation service offered to one of the CRS providers, the Reported Party shall provide the same thing as terms and conditions which are also the same as other CRS providers required; -----
- 1.21. That, pursuant to the proceedings of the Synergy Meeting between the Reported Party and Witness I on 18th December 2000 for any tour and travel agent that applied the Abacus system that had not become an agent for the Reported Party, investigation by the Reported Party shall be performed and if the tour and travel agent met the requirements, it shall be given an access to the ARGA system or obtain a *dual access facility*; -----
- 1.22. That, pursuant to the proceedings of Synergy Meeting between the Reported Party and Witness I on 8th October 2001, for the time being the subject matter of *single access* would not be discussed and for that matter an agreement that contained distribution costs of the ARGA system would be prepared by using the Abacus terminal. Yet, until recently, such an agreement has not been made; -----
- 1.23. That, pursuant to the proceedings of the Synergy Meeting between the Reported Party and Witness I on 15th February 2002, the Marketing Director of the Reported Party advised that the policy of the Reported Party regarding the distribution of domestic flight tickets shall apply *single access*. Yet, until recently, the *single access* has never been implemented ; -----
24. That, pursuant to the Reported Party's Letter Ref. Number RZ/Garuda-2008/02 dated 15 April 2002 to President Director of the Reporting Party, the Reported Party did not permit the application of *dual access system* between the ARGA system and the Galileo

system, due to the fact that the Reported Party only provide *dual access facility* to Witness I, which is a subsidiary of the Reported Party; -----

1.25. That Witness I never recommended to apply *dual access system* free of charge. Witness I sent letters a number of times to the Reported Party to apply *single access system*. Such a *single access* shall be profitable to both the Reported Party and Witness I. Nevertheless, the Reported Party never responded; -----

1.26. That Witness I declared that whenever a tour and travel agent applies *dual access system* and the system is only applied for ticket reservation for domestic flight, this accordingly causes the Abacus system to be unproductive and Witness I shall be charged, since the Reported Party does not pay for the ARGAs system attached to the Abacus terminal; -----

1.27. That, according to Witness I, the application of this *dual access system* needed costll, in terms of communications cost, ticket printing cost, computer use cost and printer *message* cost that the Reported Party should have spent; -----

1.28. That, in relation with the distribution of the ARGAs system for domestic flight ticket reservation, Witness I, with a Letter Number ADSI/MID-2053/XI/2002 dated 12th November 2002, offered 3 (three) options to the Reported Party as follows: -----

1.28.1. *Single access* with a cost of 0.40 (zero point forty) US Dollar per *booking segment*; -----

1.28.2. *Dual access* with a cost of 29.250 (twenty nine thousands two hundred and fifty) US Dollar per month; -----

1.28.3. *Fixed dual access* by preparing a written policy in terms of subsidy that shall be charged to Witness I as a subsidiary of the Reported Party; -----

1.29. That, pursuant to a regulation on domestic passage agency of the Reported Party of 2001, an agent is an applicant or potential agent appointed as a selling agent for the Reported Party's domestic passage ticket documents; -----

1.30. That, pursuant to Regulations on Domestic Passage Agency of the Reported Party of 2001, a domestic passage agent has a main task

to assist the Reported Party in selling domestic tickets, and has a number of obligations of which one is to make reservation for any potential passenger by taking care of proper procedures and disciplines for reservation; -----

1.31. That, pursuant to the letter of the Reported Party Number: Garuda/DM-2574/2000 dated 6th July 2000 and to Regulations on Domestic Passage Agency of the Reported Party of 2001, the requirements for the involvement of a domestic passage agent for the Reported Party's are: -----

1.31.1. A domestic passage agent is a business company in the form of Limited Company (*Perseroan Terbatas / P.T.*); -----

1.31.2. A domestic passage agent has a legal business license for the establishment of a travel service company from an authorized governmental body; -----

1.31.3. A domestic passage agent has a paid-up capital as listed in its corporate Articles of Association (*AD*) and or its revised Articles of Association (*AD*) as authorized by the Minister of Justice and Human Rights (*MenHumHAM*) with a minimum capital of Rp.100.000.000 (one hundred million Rupiah) for Jabotabek, Surabaya, Ujung Pandang and Medan areas. Meanwhile, for areas outside those areas, a minimum capital shall amount to Rp.50.000.000 (fifty millions Rupiah). The agent shall furnish a passage ticket sale guarantee in terms of a cash guarantee or a bank guarantee or an insurance guarantee that corresponds to a guarantee value fixed by the Reported Party; -----

1.31.4. A domestic passage agent has a minimum of two staffs in a ticket selling and reservation section. The agent shall possess a certificate of passage course issued by an airline company or an training section authorized and acknowledged by the Reported Party; -----

1.31.5. A domestic passage agent's office shall not join any other business activity of its own and shall not be the office of another flag carrier; -----

1.31.6. A domestic passage agent has a fire-resistant iron cabinet to

- assure the document safety for valuable cargo of passage tickets; -----
- 1.31.7. A domestic passage agent shall not use the name of a flag carrier or the name of a domestic passage agent that is currently an agent for the Reported Party; -----
- 1.31.8. A domestic passage agent shall provide a set of automatic appliances for ticket selling which consist of, among other things, a ticket printer and a terminal *display* for ticket-issuing facilities; -----
- 1.31.9. A domestic passage agent shall provide an Abacus *connection*; -----
- 1.32. That, according to Witness III, there are 2 (two) kinds of tour and travel agents that function as agents of flag carriers, namely: -----
- 1.32.1. sub-agent is a tour and travel agent that can only make reservation, but cannot book a ticket; -----
- 1.32.2. agent is a tour and travel agent that can make reservation and book a ticket; -----
- 1.33. That Witness III declared that the Reported Party differentiate its agency statuses into 3 (three): domestic passage agent, internasional agent and domestic-international agent; -----
- 1.34. That, according to Witness I, the Abacus *connection* requirements are those for availability of the Abacus system in a tour and travel agent that will be appointed as an agent for the Reported Party; -----
- 1.35. That conditions and terms for subscribing to Abacus system are as follows: -----
- 1.35.1. A copy of Fixed License for Business (*Surat Izin Tetap Usaha*) of a tour and travel agent from the Regional Office of Tourism and Arts (*KanWil Pariwisata dan Kesenian*), stating that it has been in operation for 6 (six) months since award of the license; -----
- 1.35.2. A copy of Tax Payer's Number (*NPWP*); -----
- 1.35.3. A copy of certificate as an ASITA member; -----
- 1.35.4. A copy of certificate as an IATA member (if IATA is already present); -----
- 1.35.5. A copy of an identity card of corporate management as the

company's person in charge; -----

1.35.6. Non-IATA agent that shall rent the Abacus equipment and shall furnish a *cash deposit* as much as 6 (six) months of subscription costs of the Abacus equipment; -----

1.35.7. Subscription agreement of the Abacus equipment for such a non-IATA agent is valid for 1 (one) year and may be extended if requested; -----

1.36. That Witness II, Witness III, Witness IV, Witness V, Witness VII, Witness IX and Witness X confirm that when Abacus system was *installed* into the Abacus terminal, only the Abacus system was installed. In case, a person wishes to access to the ARGA system, he or she shall firstly make a request to the Reported Party to *install* the ARGA system; -----

1.37. That Witness VII and Witness XIII declared the reason why they would become the Reported Party's agents. It was because the domestic flights are still dominated by the Reported Party and that becoming an agent for the Reported Party has made it easier to become an agent for another flag carrier; -----

1.38. That Witness II, Witness IV, Witness V, Witness VIII and Witness XIII declared that a domestic ticket shall only be issued by the Reported Party using the Abacus terminal in that the inside of the Abacus terminal contained an ARGA system. Meanwhile, other systems cannot issue the Reported Party's domestic tickets, since the inside of the Abacus terminal did not have the ARGA system; -----

1.39. That Witness IV and Witness VIII once received letters from the Reported Party containing notices that the ARGA system can only be accessed through the Abacus system; -----

1.40. That Witness III and Witness VIII asserted that a tour and travel agent shall freely select a CRS to be applied. The selection of CRS by a tour and travel agent is based on a competitive renting price, incentive and service from each CRS provider; -----

1.41. That Witness III, Witness IV, Witness VI, Witness VIII, Witness X and Witness XIII declared that, even if a tour and travel agent preferred CRS to the Abacus system because CRS offered a competitive renting price, an incentive and better service, yet the tour and travel

agent eventually selected the Abacus system since it offered facilities for *booking* a domestic flight ticket of the Reported Party through the ARGA system connection; -----

1.42. That Witness VIII and Witness IX once received GA information that basically declared that the Reported Party would withdraw from its participation of the Galileo system. In order to anticipate it, Witness VIII moved *Passanger Name Record* to the system made available by Witness I. Additionally, Witness VIII and Witness IX decreased the uses of the Galileo system for international flight ticket reservation so that ticket issuance shall be more assured. Yet, until recently, the Reported Party has not actuated its statement yet; -----

1.43. That Witness IV declared that, after competitors entered, Witness I made a policy regarding the reduction of the Abacus terminal renting cost for a tour and travel agent capable of reaching a certain booking target; -----

1.44. That Witness I sent a letter Number: ADSI/MKT-2141/X/01 dated 10th October 2001 to P.T. Vayatour, Chase Plaza branch, regarding application of the Abacus system in which the letter principally declared that Witness I shall terminate the agreement of subscription to the Abacus system in that it could not meet the minimum booking requirement, i.e. 150 (one hundred and fifty) *booking* segments per month; -----

1.45. That, even if Witness III did not fulfill a minimum *booking* limit, Witness III was never reprimanded by Witness I, due to the fact that Witness III continued paying monthly renting costs for the Abacus terminal; -----

1.46. That the Reported Party sent a letter on 15 April 2002 to P.T. Vayatour, regarding the promotion of ARGA *dual access* with the Galileo that principally reprimanded P.T. Vayatour in that P.T. Vayatour had implemented the ARGA *dual access* with the Galileo, and declared that the *dual access* shall only be given exclusively to Witness I as a subsidiary of the Reported Party; -----

1.47. That Witness III and Witness IV declared that the requirement for international flight ticket issuance was that the agent shall have had an IATA accreditation according to ASITA recommendations.

Meanwhile, the conditions for becoming a domestic agent are dependent upon each flag carrier; -----

1.48. That, according to the Commission Assembly's request, the Department of Transportation through a Letter Number: AU/2974/DAU-748/2003 dated 16th June 2003 declared that market shares of the Reported Party's domestic flight in 2002 are according to the following: -----

1.48.1. The quantity of passengers shall be 40.81% (forty point eighty one percent); -----

1.48.2. Selling value shall be 46.80% (forty six point eighty percent);

1.48.3. *Load factor* shall be 81.40% (eighty one point forty percent); -

1.48.4. Frequency shall be 25.21% (twenty five point twenty one percent); -----

1.48.5. The quantity of aeroplanes shall be 43.77% (forty three point seventy seven percent); -----

1.49. That, based upon the investigation results, there are in fact some tour and travel agents that merely function as domestic flight agents of the Reported Party, but apply the Abacus system as a consequence of the Abacus *connection* requirement for becoming a domestic passage agent for the Reported Party; -----

1.50. That, according to the Reported Party, when examination was done, 2 (two) Directors of the Reported Party were the members of the Board of Commissioners of Witness I. They were Emirsyah Satar who held the position of the Director of Finance of the Reported Party and Wiradharma Bagus Oka who held the position of the Director of Strategy and General Affairs of the Reported Party; -----

1.51. That, in the Synergy Meeting between the Reported Party and Witness I on 10th September 1999, 28th January 2000, 13th March 2000, 18th December 2000, 8th October 2001 and 15th February 2002, Emirsyah Satar and Wiradharma Bagus Oka, both acting together and by oneself, attended the Meeting that discussed the *dual access*;

1.52. That, according to the Reported Party, the greatest income contribution was obtained from Asian and European flight routes; ----

1.53. That, according to data furnished by the Reported Party, Abacus Distribution System Pte. Ltd. made a policy to differentiate passive

tickets for flag carriers that held shares in Abacus Distribution System Pte. Ltd., in which a flag carrier shall pay a passive ticket as much as 0.35 (zero point thirty five) US Dollar inside of Taiwan and as much as 0.40 (zero point forty) US Dollar outside Taiwan; -----

1.54. That, according to data furnished by the Reported Party, the average cost per *booking* segment that applied the Abacus system in 2002 was 2.79 (two point seventy nine) US Dollar with a basic passive ticket as much as 0.40 (zero point forty) US Dollar; -----

1.55. That, according to data furnished by the Reported Party, the average cost per *booking* segment that applied the Galileo system for the Reported Party in 2002 was 5.87 (five point eighty seven) US Dollar;

2. Considering that, according to the aforementioned facts, the Commission Assembly arrived at some conclusions as follows: -----

2.1. That the Reported Party is a business company in the form of a legal body with bussines activities being, among other things, carrying out domestic and international scheduled commercial flight for passengers and flight-related information system services; -----

2.2. That, in order to support such flight business activities, the Reported Party developed the ARGA system as an information system for domestic air transportation. Meanwhile, for the international flight information system, the Reported Party cooperated with a CRS provider in the form of a distribution agreement; -----

2.3. That such an information system is applied by a tour and travel agent to undertake reservation and *booking* of a Reported Party's online flight ticket; -----

2.4. That, the aftermaths of economic crises in 1997 increased financial burdens of the Reported Party that forced it to reduce costs. One of the actions was withholding a *dumb terminal* of the Reported Party in every tour and travel agent, that later accompany the ARGA system inside the Abacus terminal; -----

2.5. That, on 28th August 2000, the Reported Party and Witness I agreed that the domestic ticket distribution of the Reported Party within the territory of Indonesia shall only be undertaken with a *dual access* through the Abacus terminal; -----

- 2.6. That, such a *dual access* policy was not put down in a written agreement. This was already acknowledged by the Reported Party and confirmed by the documents delivered by Witness I to the Commission Assembly -----
- 2.7. That such an agreement above was arrived because the transaction cost for international flights by means of the Abacus system was cheaper; -----
- 2.8. That the *dual access* shall only be given to Witness I as the provider of the Abacus system had purposes that: -----
 - 2.8.1. The Reported Party could control tour and travel agents across Indonesia in performing flight ticket reservation and *booking*; -----
 - 2.8.2. More and more tour and travel agents across Indonesia apply the Abacus system to reserve and *book* the Reported Party's international flights that eventually shall reduce the Reported Party's international flight transaction cost; -----
- 2.9. That the Reported Party shall only appoint any tour and travel agent that applied the Abacus system as a domestic passage agent; -----
- 2.10. That the Reported Party's position that dominated domestic flights and facilities to become an agent for any other flag carrier has been an interest for any tour and travel agent to be a domestic passage agent for the Reported Party; -----
- 2.11. That the ARGA system attached to the Abacus terminal caused another system to have difficulties in marketing among tour and travel agents since those tour and travel agents preferred the Abacus system that provides easiness to obtain the ARGA system connection; -----
- 2.12. That in order to support the *dual access policy*, the Reported Party added requirements for any tour and travel agent that the agent may be appointed as a domestic passage agent, i.e. providing the Abacus system firstly to further obtain a terminal ID for the tour and travel agent or the connection to ARGA system (a requirement of the Abacus *connection*) is opened; -----
- 2.13. That, the tour and travel agent that was appointed as a domestic passage agent for the Reported Party shall only need the ARGA

system. Yet, due to the requirements of the *Abacus connection*, the tour and travel agent shall provide the Abacus system that shall only be obtained from Witness I. Yet, as we generally know that to obtain the Abacus system, a tour and travel agent shall pay Witness I a certain sum of money; -----

2.14. That the Reported Party owns shares in Witness I as much as 95% (ninety five percent). With such a share majority ownership, the Reported Party had positioned two persons of its Board of Directors: Emirsyah Satar and Wiradharma Bagus Oka as the members of the Board of Commissioners of Witness I; -----

2.15. That the presence of two persons of the Board of Directors of the Reported Party as the members of the Board of Commissioners of Witness I gave rise to a conflict of interest due to the fact that the business activities of the Reported Party and Witness I are interrelated; -----

2.16. That, in the Synergy Meetings between the Reported Party and Witness I that discussed the *dual access*, at least one of two persons of the Board of Directors of the Reported Party who was a member of the Board of Commissioners of Witness I all the time attended those meetings in which one of the agreement results was that the Reported Party's ticket distribution across Indonesia shall only be performed through the Abacus system; -----

2.17. That, the aforementioned agreement deterred other CRS providers in the marketing of their systems, because the main reason for CRS selection by a tour and travel agent is according to the easy access for the reservation and *booking* of the Reported Party's domestic tickets; -----

3. Considering that prior to deciding this case, the Commission Assembly considered the Articles of Law Number 5 Year 1999 that were allegedly violated by the Reported Party; -----

4. Considering that the Article 14 of Law Number 5 Year 1999 contains the following: -----

4.1. Business actor -----

4.1.1. Considering that the meaning of a business actor in Article 1 paragraph 5 of Law Number 5 Year 1999 is an individual or

a business company, either in the form of a legal body or not a legal body which was established and situated and has a domicile or carry out business activities within the legal territory of the Republic of Indonesia, both individually and together through agreements, and hold a variety of business activities in economic sector; -----

4.1.2. Considering that the Reported Party is a business actor in accordance with Article 1 paragraph 5 of Law Number 5 Year 1999; -----

4.1.3. Considering that, according to the aforementioned, the factor of a business actor in Article 14 of Law Number 5 Year 1999 **was fulfilled**; -----

4.2. Agreement -----

4.2.1. Considering that the agreement as meant in Article 1 paragraph 7 of Law Number 5 Year 1999 is an action by one or more business actors to bind itself or themselves to one or more other business actors, whatever its or their names, in both written and verbal forms; -----

4.2.2. Considering that, in the Synergy Meeting between the Reported Party and Witness I on 28th August 2000, it was agreed that the distribution of domestic flight tickets of the Reported Party would be carried out with the *dual access* in which the ARGA system was attached to the inside of the Abacus terminal; -----

4.2.3. Considering that, according to the aforementioned, the factor of the Agreement in Article 14 of Law Number 5 Year 1999 **was fulfilled**; -----

4.3. Another business actor -----

4.3.1. Considering that the meaning of another business actor in Article 14 of Law Number 5 Year 1999 is a business actor as implied in Article 1 paragraph 5 of Law Number 5 Year 1999 whose position is in further process sequence from production process of goods and or services from a certain business actor; -----

4.3.2. Considering that Witness I is a business actor pursuant to

Article 1 Paragraph 5 of Law Number 5 Year 1999 whose position is in service process sequence from the Reported Party; -----

4.3.3. Considering that, according to the aforementioned, the factor of another business actor in Article 14 of Law Number 5 Year 1999 **was fulfilled**; -----

4.4. Dominating a number of products included in a production sequence of certain goods and or services in which each production sequence is a result of processing or an further process, both in a direct sequence and in an indirect sequence; -----

4.4.1. Considering that the meaning of dominating a number of products as included in a production sequence or as generally called vertical integration according to elucidation of Article 14 of Law Number 5 Year 1999 is the domination of a sequence of production of certain goods and or services from upstream to mainstream or the process continues on a certain service by a certain business actor. Eventhough a vertical integration practice may result in cheap goods and services, it may cause an unfair business competition that in turn may destroy the basic principles of community's economy. Such a practice is prohibited as long as it causes an unfair business competition and or makes community lose; -----

4.4.2. Considering that the further process of a certain service by the Reported Party is as follows: -----

4.4.2.1. That the Reported Party's business activity is to carry out scheduled commercial flight for domestic and international passengers by operating aeroplanes as a means of transportation; -----

4.4.2.2. That in this particular matter, a further process mastery of a certain service by the Reported Party is the further process mastery of information service and distribution service for domestic and international flight tickets by the Reported Party; --

4.4.2.3. That, in each aeroplane, there are seats available

- for passengers or service users; -----
- 4.4.2.4. That, to manage the *seat data* in each aeroplane for certain time and destination of flight, the Reported Party developed a system called the ARGA system; ---- -----
- 4.4.2.5. That the ARGA system functions as an *inventory* system containing the flight *seat data* of the Reported Party and distribution system for distributing the *data seat* available to tour and travel agents; -----
- 4.4.2.6. That, besides applying ARGA system as a distribution system, the Reported Party also cooperated with CRS service provider to distribute its *seat data* for certain time and destination of flight around the world through tour and travel agents; -----
- 4.4.2.7. That the Reported Party cooperated with a number of CRS service providers i.e. Abacus, Amadeus, Axess, Galileo, Infiny, Sabre, Worldspan; -----
- 4.4.2.8. That CRS is a product from such a CRS service provider, and is applied by tour and travel agents only to distribute the Reported Party's international flight ticket. Meanwhile, for distributing the Reported Party's domestic flight tickets, the ARGA system is applied; -----
- 4.4.2.9. That, besides cooperating with a CRS provider, the Reported Party also cooperated with a number of tour and travel agents; -----
- 4.4.2.10. That, the cooperation is intended to distribute the Reported Party's flight tickets to each passenger; -----
- 4.4.2.11. That any tour and travel agent that shall distribute the Reported Party's flight tickets to passengers shall possess CRS and the ARGA system, since the Reported Party has applied computerized

online booking system; -----

4.4.2.12. That, in the beginning, the Reported Party placed a *dumb terminal* that contain the ARGA system inside of it in each tour and travel agent that was appointed as a passage agent for the Reported Party. Consequently, a tour and travel agent started to manage 2 (two) terminals, i.e. ARGA terminal and Abacus terminal; -----

4.4.2.13. That in 1997, the Reported Party suffered from financial crisis. As one of its efforts to reduce the spending of costs, the Reported Party planned not to place a *dumb terminal* in a tour and travel agent, but attach the ARGA system to a computer that previously has had an Abacus system inside it; ----

4.4.2.14. That, on 28th August 2000, as a realization of the plan, the Reported Party and Witness I has agreed to distribute the Reported Party's domestic flight tickets by using the Abacus terminal; -----

4.4.2.15. That, one of the reasons why the Reported Party attached only the ARGA system to the inside of the Abacus terminal is because the Abacus system charge an inexpensive fee for each transaction of the Reported Party's international flight ticket; -----

4.4.2.16. That the expectation of the Reported Party with the application of the ARGA system into the Abacus terminal is that more and more tour and travel agents across Indonesia apply the Abacus system that eventually shall reduce the transaction cost of international flight of the Reported Party; -----

4.4.2.17. That this business was put in effect by imposing requirements to each tour and travel agent that will be a domestic passage agent in which the Reported Party shall provide the Abacus *connection*; -----

4.4.2.18. That, with the requirements of the Abacus *connection*, the Reported Party combined its domestic flight information service with its international flight information service in order that the Reported Party could control tour and travel agents in Indonesia in carrying out reservation and *booking* of the Reported Party's flight tickets; -----

4.4.3. Considering that, according to the aforementioned, the factor of dominating a number of products included in a sequence of production of certain goods and or services in which each production sequence is a result of processing or a further process, both in a direct sequence and in an indirect sequence in Article 14 of Act Number 5 Year 1999, **was fulfilled**; -----

4.5. Unfair Business Competition -----

4.5.1. Considering that the meaning of unfair business competition in Article 1 paragraph 6 is a competition among business actors in running the production activities and or the marketing of goods and or service in a way that is dishonest or against law or that hinders business competition; -----

4.5.2. Considering that the Reported Party is an Indonesian flag carrier that has a domestic market share as much as 46.84% (forty six point eighty four percent) in accordance with a selling value and 40.81% (forty point eighty one percent) according to the quantity of passengers; -----

4.5.3. Considering that the Reported Party is a *flag carrier* with a big domestic market share and a ticket selling price which is relatively more expensive than other domestic flag carriers. This has been a main interest for each tour and travel agent to become a domestic passage agent for the Reported Party; -----

4.5.4. Considering that, by becoming a domestic agent for the Reported Party, a tour and travel agent will be easier to be an agent for a foreign flight flag carrier; -----

4.5.5. Considering that, to become a domestic passage agent for

the Reported Party, a tour and travel agent shall meet the Reported Party's requirements; -----

4.5.6. Considering that, having agreed the *dual access* by the Reported Party and Witness I on 28th August 2000, the Reported Party made additional requirements to become a domestic passage agent for the Reported Party, and a tour and travel agent shall previously own the *Abacus connection*; -----

4.5.7. Considering that the requirements of the *Abacus connection* requires a tour and travel agent to provide the *Abacus terminal* which has an *Abacus system* inside it to be attached to the *ARGA system*; -----

4.5.8. Considering that, attaching the *ARGA system* only to the *Abacus terminal* causes hindrances towards marketing of other *CRSs* to tour and travel agents in Indonesia. This is because the selection of *CRS* by the majority of tour and travel agents was based upon the presence or absence of the *ARGA system* and not upon good service consideration, a competitive renting cost and a provision of incentive; -----

4.5.9. Considering that, according to the aforementioned, the factor of unfair business competition in Article 14 of Law Number 5 Year 1999 **was fulfilled**; -----

5. Considering that Article 15 paragraph (2) of Law Number 5 Year 1999 that contains factors as follows: -----

5.1. Business actor -----

5.1.1. Considering that a business actor in Article 1 paragraph 5 of Law Number 5 Year 1999 is an individual or a business company, either in the form of a legal body or not a legal body which was established and situated and has a domicile or carry out business activities within the legal territory of the Republic of Indonesia, both individually and together through agreements, and hold a variety of business activities in economic sector; -----

5.1.2. Considering that the Reported Party is a business actor in accordance with Article 1 paragraph 5 of Law Number 5

Year 1999; -----

- 5.1.3. Considering that, according to the aforementioned, the factor of a business actor in Article 14 of Law Number 5 Year 1999 **was fulfilled**; -----

5.2. Agreement -----

- 5.2.1. Considering that the agreement as meant in Article 1 paragraph 7 of Law Number 5 Year 1999 is an action by one or more business actors to bind itself or themselves to one or more other business actors, whatever its or their names, in both written and verbal forms; -----

- 5.2.2. Considering that the involvement of a domestic passage agent for the Reported Party was put down in an agreement called passage agency agreement between the Reported Party and a tour and travel agent; -----

- 5.2.3. Considering that, according to the aforementioned, the factor of agreement in Article 15 paragraph (2) Of Law Number 5 Year 1999 **was fulfilled**; -----

5.3. Another party -----

- 5.3.1. Considering that the meaning of another party in this case is a tour and travel agent; -----

- 5.3.2. Considering that, according to the aforementioned, the factor of another party in Article 15 paragraph (2) Of Law Number 5 Year 1999 **was fulfilled**; -----

5.4. Goods and or service receiving party -----

5.4.1. Receiving party-----

- 5.4.1.1. Considering that the meaning of a receiving party in this case is a tour and travel agent; -----

- 5.4.1.2. Considering that, according to the aforementioned, the factor of a receiving party in Article 15 paragraph (2) of Law Number 5 Year 1999 **was fulfilled**; -----

5.4.2. Goods and or services -----

- 5.4.2.1. Considering that the meaning of service according to Article 1 paragraph 17 of Law Number 5 Year 1999 is each service in terms of work or achievement that is sold within a community for use by any consumer or

business actor; -----

5.4.2.2. Considering that a tour and travel agent appointed as a domestic passage agent for the Reported Party accepted a job from the Reported Party in terms of selling service or distribution of domestic tickets; ----

5.4.2.3. Considering that, in its position as a domestic passage agent for the Reported Party, a tour and travel agent provides services to any passenger in obtaining a ticket as a proof of contract for passenger transporting to a certain destination in a fixed time; -----

5.4.2.4. Considering that, since the Reported Party has developed the ARGA system for a reservation system and a domestic flight ticket booking system, a tour and travel agent shall use the ARGA system to carry out reservation and *booking* of the Reported Party's domestic flight tickets; -----

5.4.2.5. Considering that, for that reason, a tour and travel agent appointed to become a domestic passage agent by the Reported Party shall receive the ARGA system to carry out the work; -----

5.4.3. Considering that, according to the aforementioned, the factor of a party that receives goods and or services in Article 15 paragraph (2) Act Number 5 Year 1999 **was fulfilled**; -----

5.5. Purchasing another goods and or service from a supplying business actor -----

5.5.1. Purchasing other goods and or services -----

5.5.1.1. Considering that the meaning of purchasing another service is purchasing a service other than the service supplied by a business actor, both produced and or marketed by the business actor and or another business actor; -----

5.5.1.1.1. That, for reservation and *booking* of a Reported Party's domestic flight ticket, the ARGA system was used; -----

.5.1.1.2. That a tour and travel agent that becomes a domestic passage agent for the Reported Party should have had only the ARGA system. Nevertheless, to be appointed as a domestic passage agent, the Reported Party requires the application of the Abacus *connection*; --

5.5.1.1.3. That, the Abacus *onnection* requires a tour and travel agent to provide the Abacus terminal in which there was beforehand an Abacus system inside of it in order to obtain the ARGA system; -

5.5.1.1.4. That, to obtain the Abacus terminal, a tour and travel agent shall pay a setain sum of money to Witness I; -----

5.5.1.1.5. That Abacus system is not for use in *booking* a domestic flight ticket of the Reported Party; -----

5.5.1.2. Considering that, according to the aforementioned, the factor of purchasing other goods and or service in Article 15 paragraph (2) of Law Number 5 Year 1999 **was fulfilled**; -----

5.5.2. Supplying business actor -----

5.5.2.1. Considering that the meaning of a supplying business actor is a business actor that supplies goods and or service to a receiving party; -----

5.5.2.2. Considering that Witness I is a business actor that supplies the Abacus system through a renting system of the Abacus terminal; -----

5.5.2.3. Considering that, according to the aforementioned, the factor of a supplying business actor in Article 15 paragraph (2) of Of Law Number 5 Year 1999 **was fulfilled**; -----

6. Considering that Article 17 of Law Number 5 Year 1999 contains the following; -----
 - 6.1. Business actor-----
 - 6.1.1. Considering that the meaning of a business actor in Article 1 paragraph 5 of Law Number 5 Year 1999 is an individual or a business company, either in the form of a legal body or not a legal body established within the legal territory of the Republic of Indonesia. And the business actor currently has a domicile or undertakes business activities, both individually and together through agreements, and holds a variety of business activities in economic sector within the legal territory of the Republic of Indonesia; -----
 - 6.1.2. Considering that the Reported Party is a business actor in accordance with Article 1 paragraph 5 of Law Number 5 Year 1999; -----
 - 6.1.3. Considering that, according to the aforementioned, the factor of a business actor in Article 17 of Law Number 5 Year 1999 **was fulfilled**; -----
 - 6.2. Monopoly of production and or marketing of goods and or service
 - 6.2.1. Considering that, the Reported Party's business activity is to undertake scheduled commercial air transportation service for domestic passengers, goods, and mail (domestic flights) and for international passengers, goods, and mail (international flights); -----
 - 6.2.2. Considering that, to market the scheduled commercial air transportation service for domestic passengers, the Reported Party developed the ARGAs system. While, to market the scheduled commercial air transportation service for international passengers, the Reported Party cooperated with a number of CRS providers; -----
 - 6.2.3. Considering that, in the Synergy Meeting on 28th August 2000 between the Reported Party and Witness I, it was agreed that the reservation and *booking* of domestic flight tickets are done through the ARGAs system which is attached to the Abacus terminal which is called the *dual access*

policy; -----

6.2.4. Considering that the *dual access policy* causes only a distribution domination of the ARGA system by Witness I and do not cause market domination of domestic flight service by the Reported Party; -----

6.2.5. Considering that, according to the aforementioned, the factor of domination over production and or marketing of goods and or service in Article 17 paragraph (1) of Law Number 5 Year 1999 **was not fulfilled**; -----

6.3. Considering that, since the factor of domination over production and or marketing of goods and or service in Article 17 paragraph (1) of Law Number 5 Year 1999 **was not fulfilled**, another factor in Article 17 of Law No. 5 Year 1999 **needn't be proved anymore**; -----

7. Considering that Article 19 paragraphs *a*, *b*, and *d* of Law Number 5 Year 1999 contains the factors as follows: -----

7.1. Business actor-----

7.1.1. Considering that the meaning of a business actor in Article 1 paragraph 5 of Law Number 5 Year 1999 is an individual or a business company, either in the form of a legal body or not a legal body established within the legal territory of the Republic of Indonesia. And the business actor currently has a domicile or undertakes business activities, both individually and together through agreements, and holds a variety of business activities in economic sector within the legal territory of the Republic of Indonesia; -----

7.1.2. Considering that the Reported Party is a business actor in accordance with Article 1 paragraph 5 of Law Number 5 Year 1999; -----

7.1.3. Considering that, according to the aforementioned, the factor of a business actor in Article 19 of Law Number 5 Year 1999 **was fulfilled**; -----

7.2. Carry out a number of activities both individually and together with other business actors, reject and or hinder a certain business actor in doing the same activity -----

- 7.2.1. Considering that the Reported Party has rejected other CRS providers other than the Abacus system provider to take part in the distribution of the ARGAs system with a reason that they are in the same level of participation, Other CRS providers other than the Abacus system charge higher transaction fees; -----
- 7.2.2. Considering that the Reported Party anticipated the introduction of the Galileo system through the ARGAs system to make reservation and *booking* of the Reported Party's domestic flight tickets; -----
- 7.2.3. Considering that, according to the aforementioned, the factor of rejecting and or hindering a certain business in doing the same activity in Article 19 paragraph *a* **was fulfilled**; -----
- 7.3. Hinder any consumer or subscriber to a business actor as his competitor not to have a business relation with the business actor as his competitor -----
 - 7.3.1. Considering that the factor of hindering a consumer or subscriber to a business actor as his competitor is not relevant in this case, since the Reported Party is not a Reporting Party's competitor and each Party runs different business activities; -----
 - 7.3.2. Considering that, according to the aforementioned, the factor of hindering a consumer or subscriber to a business actor as his competitor not to have a business relation with the business actor as his competitor in Article 19 paragraph *b* **was not fulfilled**; -----
- 7.4. Exerting discrimination against a certain business actor -----
 - 7.4.1. Considering that, the *dual access* agreement made between the Reported Party and Witness I caused the Reported Party to exert discrimination against a certain business actor that provides CRS in Indonesia; -----
 - 7.4.2. Considering that, according to the aforementioned, the factor of exerting discrimination against a certain business actor in Article 19 paragraph *d* **was fulfilled**; -----
- 7.5. Unfair business competition -----

- 7.5.1. Considering that the meaning of unfair business competition according to Article 1 paragraph 6 Law Number 5 Year 1999 is a competition among business actors in running production activities and or the marketing of goods and or service in a way that is dishonest or against law or that hinders business competition; -----
- 7.5.2. Considering that the Reported Party is an Indonesian flag carrier that has a domestic market share as much as 46.84% (forty six point eighty four percent) in accordance with a selling value and 40.81% (forty point eighty one percent) according to the quantity of passengers; -----
- 7.5.3. Considering that the Reported Party that is a *flag carrier* with a big domestic market share and a ticket selling price which is relatively more expensive than other domestic flag carriers. This has been a main interest for each tour and travel agent to become a domestic passage agent for the Reported Party; -----

- 7.5.4. Considering that, by becoming a domestic agent for the Reported Party, a tour and travel agent will be easier to be an agent for a foreign flight flag carrier; -----
- 7.5.5. Considering that, to become a domestic passage agent for the Reported Party, a tour and travel agent shall meet the Reported Party's requirements; -----
- 7.5.6. Considering that, having agreed the *dual access* by the Reported Party and Witness I on 28th August 2000, the Reported Party made additional requirements to become a domestic passage agent for the Reported Party, and a tour and travel agent shall previously own the *Abacus connection*; -----
- 7.5.7. Considering that the requirements of the *Abacus connection* requires a tour and travel agent to provide the Abacus terminal which has an Abacus system inside it to be attached to the ARGA system; -----
- 7.5.8. Considering that, attaching ARGA system only to the Abacus

terminal causes hindrances towards marketing of other CRSs to tour and travel agents in Indonesia. This is because the selection of CRS by the majority of tour and travel agents was based upon the presence or absence of the ARGA system and not upon good service consideration, a competitive renting cost and a provision of incentive; -----

7.5.9. Considering that, according to the aforementioned, the factor of unfair business competition in Article 19 of Law Number 5 Year 1999 **was fulfilled**; -----

7.6. Considering that the violation by the Reported Party against Article 19 paragraphs *a and d* of Law Number 5 Year 1999 did not cause the Reported Party dominate the domestic market or cause the Reported Party to remain in a position that dominates the domestic market since this violation shall only give rise to the strengthening the market domination of Witness I; -----

7.7. Considering that, due to the aforementioned reason, the factor of market domination **was not fulfilled**; -----

8. Considering that Article 26 paragraph *b* of Law Number 5 Year 1999 contains the factors as follows: -----

8.1. The Board of Directors or The Board of Commissioners -----

8.1.1. Considering that the meaning of the Board of Directors according to Article 1 paragraph 4 of Law No. 1 Year 1995 regarding Limited Company (*Perseroan Terbatas*) is a corporate organ that is fully responsible for corporate management for the interests and goals of the company and that represents the company both inside and outside a Court of Justice in harmony with the Articles of Association (AD); ----

8.1.2. Considering that the meaning of the Board of Commissioners according to Article 1 paragraph 5 of Law Number 1 Year 1995 regarding Limited Company (*Perseroan Terbatas*) is a corporate organ whose task is to implement general and or specific supervision and give advice to the Board of Directors in running the company; -----

8.1.3. Considering that, until the time when examination was completed, 2 (two) Directors of the Reported Party, namely

Emirsyah Satar and Wiradharma Bagus Oka as the members of the Board of Commissioners of Witness I; -----

8.1.4. Considering that, in the Synergy Meeting between the Reported Party and Witness I on 18th December 2000 that reconfirmed that the *dual access* policy shall be done by means of the Abacus system, and the Meeting were also attended by Emirsyah Satar and Wiradharma Bagus Oka who at that time acted as representatives of the Reported Party; --

8.1.5. Considering that, according to the aforementioned, the factor of being members of the Board of Directors or the Board of Commissioners of a company who at the same time were the members of the Board of Directors or the Board of Commissioners of another company in Article 26 of Law Number 5 Year 1999 **was fulfilled**; -----

8.2. Having a close connection in type of business -----

8.2.1. Considering that the Abacus system owned by Witness I is a system that combines a *software package* to do some functions, including seat reservation in an aeroplane, schedule, reservation for a number of air services, mobiles and hotels, automatic ticket reservation and display of aeroplane fares in Indonesia; -----

8.2.2. Considering that the Reported Party uses the Abacus system as one of CRSs to distribute the international flight service; -----

8.2.3. Considering that, with the possession of the Abacus system, a tour and travel agent may notice a flight schedule, information on availability of seats and ticket tariffs, seat reservation and international flight ticket issuance by the Reported Party and other flag carriers; -----

8.2.4. Considering that, according to the aforementioned, the factor of having a close connection in a type of business in Article 26 paragraph *b* of Law Number 5 Year 1999 **was fulfilled**; -

8.3. Unfair business competition-----

8.3.1. Considering that the meaning of unfair business competition according to Article 1 paragraph 6 of Law Number 5 Year

1999 is a competition among business actors in running the production activities and or the marketing of goods and or service in a way that is dishonest or against law or that hinders business competition; -----

- 8.3.2. Considering that the Reported Party is an Indonesian flag carrier that has a domestic market share as much as 46.84% (forty six point eighty four percent) according to a selling value and 40.81% (forty point eighty one percent) according to the quantity of passengers; -----
- 8.3.3. Considering that the Reported Party is a *flag carrier* with a big domestic market share and a ticket selling price is relatively more expensive than other domestic flag carriers. This has been a main interest for each tour and travel agent to become a domestic passage agent for the Reported Party; -----
- 8.3.4. Considering that, to become a domestic passage agent for the Reported Party, a tour and travel agent will be easier to become an agent for a flag carrier for foreign flight; -----
- 8.3.5. Considering that, to become a domestic passage agent for the Reported Party, a tour and travel agent shall meet the Reported Party's requirements; -----
- 8.3.6. Considering that, having agreed the *dual access* by the Reported Party and Witness I on 28th August 2000, the Reported Party made additional requirements to become a domestic passage agent for the Reported Party, and a tour and travel agent shall previously own the *Abacus connection*; -----
- 8.3.7. Considering that the requirements of the *Abacus connection* requires a tour and travel agent to provide the Abacus terminal which has an Abacus system inside it to be attached to the ARGA system; -----
- 8.3.8. Considering that, attaching the ARGA system only to the Abacus terminal causes hindrances towards marketing of other CRSs to tour and travel agents. This is because the selection of CRS by the majority of tour and travel agents

was based upon the presence or absence of the ARGA system and not upon good service consideration, a competitive renting cost and a provision of incentive; -----

8.3.9. Considering that, according to the aforementioned, the factor of unfair business competition in Article 26 of Law Number 5 Year 1999 **was fulfilled**; -----

9. Considering that the Commission Assembly considers Article 50 paragraph *d* regarding points excepted from Law Number 5 Year 1999 -----

9.1. That Article 50 of paragraph *d* states that the excepted point from Law Number 5 Year 1999 is the agreement on agency that contains no regulations to resupply goods and or services with lower prices than agreed prices; -----

9.2. That the meaning of Agent according to Article 50 paragraph *d* of Law Number 5 Year 1999 is an individual or business that acts not on his own name, but acts for and on behalf of a person who assigns the individual or business to purchase, sell or market; -----

9.3. That a tour and travel agent in running its business uses its own name and issues an account on its own name in order that the tour and travel agent is in charge of its own financial and commercial risks. On the contrary, through an agreement the agent works for and on behalf of another business actor, so that financial and commercial risks are in charge of the employer (*principal*); -----

9.4. That, according to the aforementioned, the agreement on passage agency between the Reported Party and a tour and travel agent is not included in the agreement on passage agency excepted in Article 50 paragraph *d* of Law Number 5 Year 1999; -----

10. Considering that, prior to arriving at a decision, the Commission Assembly considers it necessary to keep in mind the following: -----

10.1. That, in the Synergy Meeting on 28th August 2000, the Reported Party shall prepare a special regulation that regulates distribution costs of the ARGA system through the Abacus system. However, until recently, the Reported Party has not made such an agreement yet. -----

10.2. That Witness I has made a number of efforts in order that the Reported Party shall pay the service delivered by Witness I, such as

through a letter to the Reported Party Number: ADSI/MIP-2053/XI/02 dated 12 November 2002, but the Reported Party never sent a written response. This indicated that the Reported Party did not have a good intention; -----

- 10.3. That this *dual access* policy was in charge of Witness I, since Witness I shall be in charge of costs for distribution of the ARGAs system. However, after competitors entered, the *dual access* policy causes Witness I to get competitive profits in marketing its system to tour and travel agents in Indonesia compared to other CRSs; -----
- 10.4. That, in fact, the *dual access* policy caused an unfair business competition in CRS marketing to tour and travel agents; -----
- 10.5. That the requirements of the *Abacus connection* cause a tour and travel agent only sold the Reported Party's domestic tickets, was in charge of additional costs in terms of *installation* cost of *the* Abacus system and rental cost of the Abacus tools, in which the Abacus system in fact was not needed for reservation and *booking* of a Reported Party's domestic ticket; -----
- 10.6. That the Reported Party has violated Law Number 5 Year 1999 for a somewhat long time, namely since the agreement of the *dual access* on 28th August 2000 at least until the end of Advanced Examination on 25th June 2003; -----
- 10.7. That the Reported Party has acted in an uncooperative manner, by not delivering some documents as it previously agreed to deliver. The documents, among other things, are those that enlisted an agreement on the *dual access* between the Reported Party and Witness I, even if they were properly requested by the Commission Assembly; -----
11. Considering that, according to the facts disclosed in examinations and conclusions from the Commission Assembly; -----
12. In view of Article 43 paragraph 3 of Law Number 5 Year 1999; -----

DECIDE

1. **Declare that the Reported Party legally and factually violated Article 14 of Law Number 5 Year 1999;** -----
2. **Declare that the Reported Party legally and factually violated Article 15 paragraph (2) of Law Number 5 Year 1999;** -----

3. **Declare that the Reported Party did not evidently violated Article 17 of Law Number 5 Year 1999; -----**
4. **Declare that the Reported Party did not evidently violated Article 19 paragraphs *a, b and d* of Law Number 5 Year 1999; -----**
5. **Declare that the Reported Party legally and factually violated Article 26 paragraph *b* of Law Number 5 Year 1999; -----**
6. **Command the Reported Party to stop vertical integration in terms of cancellation of an exclusive agreement of the *dual access* with Witness I; -----**
7. **Command the Reported Party to withdraw the requirements of the *Abacus connection* in the appointment of a domestic passage agency;**
8. **Punish the Reported Party to pay an administrative fee of Rp.1.000.000.000 (one billion Rupiah) as a non-taxed state income that shall be paid to State Cash Office (Kas Negara) of the Ministry of Finance (DepKeu), Directorate General of Budget (DJA), State Treasury and Cash Office (KPKN Jakarta I) located in Jl. Ir. H. Juanda No. 19, Jakarta Pusat through a State-owned Bank with a receipt code 1212; -----**
9. **Command the Reported Party to execute this decision in a period of 30 (thirty) working days, since the acceptance of this decision; -----**

This decision was accordingly made in the Commission Assembly Meeting on Wednesday on 30th July 2003 and read before a trial which was declared open to public on Monday, 4th August 2003; -----

We, the members of the Commission, Ir. Moh. Iqbal as the Chairman of the Assembly; Ir. Tadjuddin Noersaid and Faisal H. Basri, S.E. M.A., each as a member, assisted by Mohammad Noor Rofieq, S.T., Mohammad Reza, S.H., Gopprera Panggabean, S.E., Ak., Marcus Pohan, S.H., Verry Iskandar, S.H., each as an Investigator and Arnold Sihombing, S.H., and Dinni Melanie, S.H., each as a member of Clerk Committee (*Panitera*). -----

The Chairman of
the Assembly,
signed

Ir. H. Moh. Iqbal

Assembly Member,
signed
Ir. H. Tadjuddin Noersaid

Assembly Member
signed
Faisal H. Basri, S.E., M.A.

Clerk

signed

Arnold Sihombing, S.H.

signed

Dinni Melanie, S.H.