



DECISION

Case Number: 02/KPPU-L/2006

The Commission for the Supervision of Business Competition of the Republic of Indonesia hereinafter referred to as **The Commission** that examines an alleged violation against Article 19 paragraph d of Law Number 5 Year 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition, hereinafter referred to as **Law Number 5 Year 1999**, which was allegedly committed by: -----

The Reported Party: PT PERTAMINA (Persero) having its office at Jl. Merdeka Timur Number 1A, Central Jakarta 10110; -----
has accordingly made a decision as follows: -----

----- **The Commission Assembly**-----

- Having hearing the information provided by the Reporting Parties; -----
- Having hearing the information provided by the Reported Parties; -----
- Having hearing the information provided by the Witnesses; -----
- Having investigated the activities of the Reported Party; -----
- Having read the Investigation Report (*Berita Acara Pemeriksaan/BAP*) (hereinafter referred to as the **IR**);-----

ABOUT THE FACTS OF THE CASE

1. Considering that the Commission Secretariate received the reports dated 15 December 2005 and 11 January 2006 regarding an alleged violation against Law Number 5 Year 1999 in connection with a project for changing the PT PERTAMINA (Persero)'s logo;-----
2. Considering subsequently the Commission Secretariate makes clarifications or research on such reports that principally are: -----
 - 2.1 PT PERTAMINA (Persero) has violated a prevailing regulation in terms of

- changing its logo by directly appointing LANDOR without any tender process; -----
- 2.2 The policy of PT PERTAMINA (Persero) in changing its logo has discriminated against other business actors by treating LANDOR in a special way; -----
- 2.3 The policy of PT PERTAMINA (Persero) in changing its logo has caused the Indonesian country to bear the loss; -----
3. Considering that, after making clarifications and research for such reports, **the Commission confirmed that the reports have been complete and clear**; -----
4. Considering that, pursuant to those **complete and clear** reports, The Commission issued the Decision No.04/PEN/KPPU/II/2006 dated 7 February 2006 regarding Preliminary Investigation of Case No.02/KPPU-L/2006, in order to carry out Preliminary Examination as of 7 February 2006 to 20 March 2006; ----
5. Considering that, in order to carry out Preliminary Examination, the Commission issued the Decision Number 14/KEP/KPPU/II/2006 dated 7 February 2006 regarding the Assignment of the Commission's Members as the Preliminary Examination Team for Case Number 02/KPPU-L/2006. Subsequently, in order to assist the Examining Team in the Preliminary Examination, the Executive Director issued a Letter of Assignment No.15/SET/DE/ST/II/2006 dated 7 February 2006;
6. Considering that, in the Preliminary Examination, the Examining Team has listened to the information provided by the Reporting Parties and the Reported Parties; -----
7. Considering that, after carrying out the Preliminary Examination, the Examining Team found a strong indication of violation against Article 19 paragraph d of Law Number 5 Year 1999 with considerations, among others, as follows: -----
- 7.1 Whereas the provision in Chapter VII of Decision Letter from the Directors of PT PERTAMINA (Persero) Number 036/C0000/2004-SO regarding the Management of Goods/Service Procurement (hereinafter referred to as **SK 036**) that potentially gives rise to an unfair business competition; -----
- 7.2 Whereas PT PERTAMINA (Persero) has carried out discrimination by treating LANDOR in a special way through direct appointment, thereby eliminating or closing the business competition in the market of communications consulting services; -----
8. Considering that subsequently, the Examining Team recommended that the examination be continued to the stage of Advanced Examination; -----

9. Considering that, based on the recommendations from the Examining Team, the Commission issued the Commission's Decision No.08/PEN/KPPU/III/2006 dated 21 Maret 2006 regarding the Advanced Examination of Case Number: 02/KPPU-L/2006, decided to follow up the Case Number: 02/KPPU-L/2006 to the stage of Advanced Examination as from 21 March 2006 to 16 June 2006; -----
10. Considering that, in order to carry out the Advanced Examination, the Commission issued the Decision Number 57/KEP/KPPU/III/2006 dated 21 March 2006 regarding the Assignment of the Commission's Members as the Commission Assembly in the Advanced Examination of Case Number: 02/KPPU-L/2006. Subsequently, in order to assist the Commission Assembly in the Advanced Examination, the Executive Director issued a Letter of Assignment No.56/SET/DE/ST/III/2006 dated 21 March 2006; -----
11. Considering that, in relation to collective vacations and leaves, the Commission's Chairman issued its Decision Number: 09/PEN/KPPU/III/2006 dated 27 March 2006 regarding the adjustment of period for case handling in relation to collective vacations and leaves so that the period of the Advanced Examination of Case No. 02/KPPU-L/2006 was adapted from 21 March 2006 to 19 June 2006; -----
12. Considering that, in the Advanced Examination, the Commission Assembly has listened to the remarks provided by the Witnesses; -----
13. Considering that, there are some parties from whom information is required in the examination process of Case Number: 02/KPPU-L/2006, the Commission thought it necessary to carry out the Extended Advanced Examination. For this reason, the Commission Assembly issued the Decision Number 08/KEP/KMK-PL/KPPU/VI/2006 starting from 20 June 2006 until 31 July 2006; -----
14. Considering that, in order to carry out the Extended Advanced Examination, the Commission issued Decision Number: 91/KEP/KPPU/VI/2006 dated 20 June 2006 regarding the Assignment of the Commission's Member as the Commission Assembly in the Extended Advanced Examination of Case Number: 02/KPPU-L/2006. Subsequently, in order to assist the Commission Assembly in the Extended Advanced Examination, the Executive Director issued the Letter of Assignment No.156.2/SET/DE/ST/VI/2006 dated 20 Juni 2006; -----
15. Considering that in the Extended Advanced Examination, the Commission Assembly has listened to the information from the Witnesses and the Reported Parties; -----
16. Considering that the identities and remarks from the Reporting Parties, the

Reported Parties and the Witnesses were already recorded in the IR/BAP previously signed by the Reporting Parties, the Reported Parties and the Witnesses;-----

17. Considering that, in the Preliminary Examination, the Advanced Examination, and the Extended Advanced Examination, the Commission Assembly has obtained, examined and evaluated a number of letters and or documents, the IR/BAP and other evidence obtained during examination and investigation;-----
18. Considering that subsequently the Commission Assembly evaluates that it has had sufficient evidence and judgement for making a Decision; -----

ON THE LEGAL MATTERS

1. Considering that, pursuant to the remarks and documents obtained during the examination, the Commission Assembly found the following facts: -----

1.1 Identities of the Business Actor -----

1.1.1 Whereas PT PERTAMINA (Persero) is a business entity established under the Indonesian laws and regulations in the form of a Limited Company, established pursuant to the Deed of the Establishment Deed No.18 on 11th August 2008 made by Notary Public Lenny Ishak S.H and approved with the Decision of the Minister of Justice of the Republic of Indonesia No. C-24025.H.T.01.01.TH.2003 dated 9 October 2003 and was published in the Annex of the State Gazette of the Republic of Indonesia No. 93 dated 21 November 2003 with such following business activities (see *Evidence* B4, C24):-----

1.1.1.1 Carrying out business activities in oil and gas fields and their processed products and derivatives; -----

1.1.1.2 Carrying out business activities in the field of geothermal energy that existed at the time of establishment, including Geothermal Power Plant (PLTP), which has reached the final stages of negotiation and has become the property of the company; -----

1.1.1.3 Carrying out exploitation and marketing of Liquefied Natural Gas (LNG) and other products produced from the LNG plants; -----

1.1.1.4 Carrying out other business activities related to or supporting such a business activity; -----

1.2 **Relevant market;** -----

Whereas the relevant market in this case is the procurement of logo-designing service for PT PERTAMINA (Persero); -----

1.3 **Structure of Market for Logo-Designing Service in Indonesia;** -----

1.3.1 Whereas the **logo-designing service** both logos for corporate identity and logos for product may be undertaken by all business actors through all manufacturers who have expertises in graphic designs which include, but are not limited to, the corporations engaged in *branding consulting*, *advertising*, graphic designing and *strategic* corporate marketing (see Evidence B6, B7, B8, B10, B11, B12); -----

1.3.2 Whereas among the business actors referred to in the paragraph 1.3.1., the company that focuses its business activities on the field of logo designing and its *branding* strategy is the branding *consulting* company that has the competence to conduct brand research (*brand audit*) and strategy development, exploration for concepts of a new logo, development of a new logo and its design applications already selected, and to prepare a *manual* that may be used as a guideline in the implementation of the new logo (see Evidence B6, B7, B8, B10, B11); -----

1.3.3 Whereas some internasional *branding consultants* that currently conduct business activities in Indonesia are, among others, as follows (see Evidence B6, B7, B9, C25, C29, C31, C35): -----

Branding Consultant	Some Clients
LANDOR	Federal Express (FedEx), Caltex, British Petroleum (BP), Indosat, BNI, BII, Danamon, Medco Energy, Cathay Pasific, Garuda Indonesia Airways, Indofood.
Interbrand	Master Card, British Airways, BMW, Deutsche Telekom, Adidas, Heinz, Pepsi, Fuji, Nescafe, Gillette, Compaq, DHL, Thomas J. Lipton, Rabobank.

Brands Group	China Airlines, China Development Bank, Telecom Malaysia, British American Tobacco Malaysia, Sheraton Hotel KL, Bangkok Bank, Ajinomoto Thailand, Bank Danamon, BRI, Bank Niaga, Hero Group, Bakrie Group, Bentoel, Danone Indonesia, Nutricia, Friesche Vlag, Indosat, Indofood, Darya-Varia.
--------------	--

1.3.4 Whereas, in addition to the above companies, several local *branding consultants* include, among others, BD+A, Nuage, Inkara, and Makki-Makki who have such clients as Bank Permata, Aqua, Ades, Astra Graphia (*see Evidence B6, B7, B8, B9*); -----

1.4 Methods for Selecting a Logo-designing Service Provider; -----

1.4.1 Whereas several methods for selecting a logo-designing service provider commonly undertaken by the service-using companies, namely (*vide Evidence B6, B7, B8, B9*); -----

1.4.1.1 Public Tender/Bid, namely the selection by issuing an open announcement that provides opportunities for all logo-designing service providers to take part in the tender/bid; -

1.4.1.2 Limited Tender/Bid (*beauty contest*), namely the selection by inviting some logo-designing service providers to submit their bids; -----

1.4.1.3 Direct Appointment, namely the selection by pointing a logo-designing service provider previously already established; -----

1.4.2 Whereas in each selection method above, the service user carries out the following stages (*see Evidence B6, B7, B8, B9*): -----

NO	Phase	Public Tender	Limited Tender	Direct Appointment
1.	Open Announcement	<input type="checkbox"/>	Limited invitation	-
2.	Delivery of proposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Participant's Presentation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	Evaluation of Participants	<input type="checkbox"/>	<input type="checkbox"/>	-

5.	Shortlisted Participants	<input type="checkbox"/>	<input type="checkbox"/>	-
6.	Negotiation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.	Appointment of tender winner	<input type="checkbox"/>	<input type="checkbox"/>	-
8.	SPK (Work Contract)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

1.5 **Procurement of Service for Designing PT PERTAMINA (Persero)'s logo; -----**

1.5.1 Backgrounds for Changing **PT PERTAMINA (Persero)'s logo; -----**

1.5.1.1 Whereas in order to improve the image and adjust the company's vision and mission, the Board of Directors of PT PERTAMINA (Persero) issued a policy to change the company's logo -----

1.5.1.2 Whereas, according to the descriptions from PT PERTAMINA (Persero), the authority to change the logo is the full authority of PT PERTAMINA (Persero)'s Board of Directors as implicitly stipulated in Article 11 of the Articles of Association (*Anggaran Dasar*) of PT PERTAMINA (Persero) (see Evidence B4, C24); -----

1.5.1.3 Whereas PT PERTAMINA (Persero) planed to *launch a new logo* on 10 December 2004 at the birthday of PT PERTAMINA (Persero) (see Evidence B17, C21, C22); ---

1.5.1.4 Whereas the procurement of goods and services of PT PERTAMINA (Persero) is based on the Decision Letter of its Board of Directors Number Kpts-036/C00000/2004-S0 regarding the Management of Procurement of Goods/Services (see Evidence B4, B5, B17, B18, C7); ----

1.5.1.5 Whereas the procurement of logo-designing service for PT PERTAMINA (Persero) is categorized as a type of procurement of "**communications consultant**" because, according to PT PERTAMINA (Persero), the term "**communications consultant**" includes *Integrated Marketing Communication (IMC), Advertising, Public Relation (Perception Management Consulting), Branding Consultant and Direct Marketing* (see Evidence B5);-----

- 1.5.1.6 Whereas subsequently the procurement of communications consultants are included as the procurement of goods and/or services specially treated as stipulated in the provisions of Chapter VII of Decision Letter 036 because of the characteristics associated with the competence of business consultants and certain things that are difficult to assess economically;-----
- 1.5.2 Direct Appointment for **LANDOR**; -----
- 1.5.2.1 Backgrounds for the Appointment of Landor;-----
- 1.5.2.1.1 Whereas since the beginning, the Directors of PT PERTAMINA (Persero) wanted to change the logo of PT PERTAMINA (Persero) that would be conducted by Landor due to the consideration for Landor's reputation and experience for ± 30 (thirty) years in the business of designing the logos of world's corporations, especially oil-producing companies worldwide (see Evidence B4, B5, B16, B17, C23); -----
- 1.5.2.1.2 Whereas subsequently, in August 2004, the Directorate for General Affairs and Human Resources of PT PERTAMINA (Persero) contacted and met with the Bank BNI Branding Team with an aim to study the change of the Bank BNI logo including its logo designer, namely Landor (see Evidence B7, B9, B16); -----
- 1.5.2.1.3 Whereas subsequently, on August 2004, PT PERTAMINA (Persero) invited LANDOR Indonesia to carry out a presentation regarding the change of PT PERTAMINA (Persero)'s logo (see Evidence B7, B16, C13);-----
- 1.5.2.1.4 Whereas on 31 August 2004, LANDOR was represented by Daniel Surya and LANDOR Hongkong held a presentation before the Directors of PT PERTAMINA (Persero) (see Evidence B7, B16, C13); -----

1.5.2.2 Process of Agreement to Direct Appointment for LANDOR; ---

1.5.2.2.1 Whereas on 3 September 2004, the Director for General Affairs and Human Resources of PT PERTAMINA (Persero) requested a principal agreement of direct appointment for the designing of the PT PERTAMINA (Persero)'s logo from the President Director of PT PERTAMINA (Persero) (see Evidence C22); -----

1.5.2.2.2 Whereas, at the request of such a principal agreement, the Director for General Affairs and Human Resources of PT PERTAMINA (Persero) put forward as follows (see Evidence C22): -----

1.5.2.2.2.1. Estimated cost for a new logo design at US\$ 300.000 (three hundred thousand USD); -----

1.5.2.2.2.2. Pursuant to SK 036, the logo-designing work shall be carried out through a public tender process, but due to the limited time target of logo designing (more or less three months), and assuming that this type of logo designing work is included in the specific procurement of goods/services, namely the category of communications consultancy, the most likely procurement system to finish the work of logo changing in timely manner is the direct appointment process;-----

1.5.2.2.2.3. Pursuant to competence consideration and results of information gathering in the market, the *World Wide Branding Consultant & Designer who is leading and mostly experienced in the design of oil*

company's logo is Landor; -----

1.5.2.2.3 Whereas with such considerations above, the Director for General Affairs and Human Resources advised PT PERTAMINA (Persero) to involve LANDOR as the agent for the change of the PT PERTAMINA (Persero)'s logo (see Evidence C22);-----

1.5.2.2.4 Whereas another reason of PT PERTAMINA (Persero) to appoint LANDOR directly was that LANDOR was not willing to participate in the tender or "beauty contest" in the selection of an agent for the change of a company's logo (see Evidence B4); -----

1.5.2.2.5 Whereas on 15 September 2004, the President Director of PT PERTAMINA (Persero) agreed to the request of a principal agreement of direct appointment for the work delivered by the PT PERTAMINA (Persero)'s President Director (see Evidence C22); -----

1.5.2.2.6 Whereas in the 6th Limited Meeting of Directors on 6 October 2004, the Directors of PT PERTAMINA (Persero) agreed the direct appointment for LANDOR as the agent for the work of logo changing by considering LANDOR's credibility and competency in the creation of world-class company's logos (see Evidence C23); -----

1.5.2.3 Preliminary Offer of LANDOR to PT PERTAMINA (Persero); -----

1.5.2.3.1 Whereas the Preliminary Offer of LANDOR was delivered at the presentation on 31 August 2004, with the details as follows (see Evidence B7, C13):-----

a. Work scopes & price offers; -----

ACTIVITY	COST (US\$)
----------	-------------

Brand Strategy Development	85.000
Identity Development	105.000
Look and Feel System	95.000
Guideline	95.000
TOTAL OFFERS	350.000

b. The term of work implementation is 19 (nineteen) to 23 (twenty three) weeks of work with the work implementation being estimated on September 2004; -----

c. The number of applications is 10 (ten) to 12 (twelve) that shall be completed on 20 November 2004; -----

1.5.2.3.2 Whereas, with reference to such a presentation, on 3 September 2004 the Director for General Affairs and Human Resources of PT PERTAMINA (Persero) requested that LANDOR officially submitted proposals and formal bids with a scope of corporate identity development which includes Analysis & Strategy Development, *Creative Development*, *Identity System Development*, and *Technical Guideline of Logo Design and Its Application* (see Evidence C14): -----

1.5.2.4 Negotiations between PT PERTAMINA (Persero) with LANDOR (see Evidence B7, B16, C15, C16, C17, C18, C19, C36, C37, C38); -----

1.5.2.4.1 Whereas at the meeting on 8 September 2004, PT PERTAMINA (Persero) requested that LANDOR decreased the preliminary offer with the same scope of work; -----

1.5.2.4.2 Whereas subsequently, LANDOR was willing to decrease the offer 10% (ten percent) out of the preliminary offer into US\$315.000 (three

hundred and fifteen thousand US dollar); -----

1.5.2.4.3 Whereas, regarding such an offer from LANDOR, PT PERTAMINA (Persero) kept requesting LANDOR to decrease its price and thus LANDOR forwarded 3 (three) alternatives of proposed offers as follows: -----

a. *Basic Program* comprising *Brand Audit & Strategy, Identity Development, Look & Feel, System Development and Brand Guidelines* inclusive of *global benchmarking and external interview* with an offering price amounting to US\$210.000 (two hundred ten thousand US dollar); -----

b. *Brand Audit & Strategy, Identity Development, Look & Feel System Development*, inclusive of *global benchmarking and external interview* with an offering price amounting to US\$250.000 (two hundred and fifty thousand US dollar);-----

c. *Brand Book Development, Guidelines Development* an offering price amounting to US\$ 65,000 (sixty five thousand U.S. dollars); -----

1.5.2.4.4 Whereas on 17 September 2004, PT PERTAMINA (Persero) and LANDOR discussed three (3) offering alternatives and, after the negotiation, finally PT PERTAMINA (Persero), and Landor agreed to the offering price of US\$255,000 (two hundred fifty-five thousand U.S. dollars) with the details of work scope including *Brand Audit & Strategy Development, Identity Development, Look and Feel System Development, Brand Guideline Development*, --

1.5.2.5 The Core Team for Changing the Logo/Identity of PT

PERTAMINA (Persero) (see Evidence B16, B17, C20, C21, C46); -----

1.5.2.5.1 Whereas on 23 September 2004 PT PERTAMINA (Persero) established a Core Team for Changing the Corporate Logo/Identity ("**Core Team**") coordinated by the Director for General Affairs and Human Resources of PT PERTAMINA (Persero); -----

1.5.2.5.2 Whereas such a "**Core Team**" has the following tasks:-----

a. Assessing, evaluating and deciding the design of the PT PERTAMINA (Persero)'s logo and its application as a corporate identity, based on the appointed consultant's proposal; -----

b. Preparing the corporate culture change in support of the change of company's logo; --

c. Coordinating the implementation of the new logo design in each directorate; -----

d. Socializing the change of the corporate logo/identity to the company's external parties; -----

e. Reporting its work results to the President Director of PT Pertamina (Persero); -----

1.5.2.5.3 Whereas the Core Team performed its duties during the 4 (four) months for PT Pertamina (Persero) planned to *launch* a new logo at the birthday of PT PERTAMINA (Persero) on 10 December 2004; -----

1.5.2.5.4 Whereas since the activities for changing the logo are still in the designing process, then on 7 February 2005, the President Director of PT PERTAMINA (Persero) extended the Core Team's working period for 1 (one) year as of 23 January 2005; -----

1.5.3 **The contract between PT PERTAMINA (Persero) and LANDOR**
 (see Evidence B7, B16, C12, C39); -----

1.5.3.1 Whereas on 3 November 2004, LANDOR delivered the final proposal of the agreement results regarding work scopes and price offerings, namely: -----

ACTIVITY	COST (US\$)	TIME
Brand Audit & Strategy Development Including: <i>Kick off Briefing & Planning Meeting, Information Preview, Brand Audit, Global Benchmarking, Management Interviews, External Interviews, Strategy Development, Management Presentation, Final Strategy Recommendation</i>	70.000	5-6 weeks
Identity Development Including: <i>creative development, Prototype development, Work session, design refinement, Management presentation, Master artwork development</i>	70.000	5-6 weeks
Look and Feel System Development Including: <i>system development, work session & refinements, manegement presentation, final at-work development</i>	65.000	6-7 weeks
Brand Guideline Development Including: <i>content outline, guideline developments, work session, final identity guidelines</i>	50.000	5-6 weeks
TOTAL OFFER	255.000	21-24 weeks

1.5.3.2 Whereas such a final proposal also acts as a work contract between LANDOR and PT PERTAMINA (Persero), and PT PERTAMINA (Persero) signed the agreement sheet in the LANDOR's proposed final offer on 4 November 2004; -----

1.6 Other Facts; -----

1.6.1 Whereas in Year 2000, Interbrand Indonesia worked out the logos of such products of PT PERTAMINA (Persero) as Pertamina and Pertamina Plus (See Evidence B10); -----

1.6.2 Whereas Interbrand Indonesia also once re-designed the logo and package of the lubricating oil Prima SP (See Evidence B10); -----

1.6.3 The offer of Interbrand Indonesia to PT PERTAMINA (Persero) (See Evidence B10, C11); -----

1.6.3.1 Whereas on 8 October 2004, Interbrand Indonesia made an offer on program for changing the PT PERTAMINA (Persero)'s logo to be submitted directly to the Director for General Affairs and Human Resources of PT PERTAMINA (Persero); -----

1.6.3.2 Whereas in the offering, Interbrand Indonesia proposed the logo-changing program with the scopes of work including auditing phase, logo design concepting phase, design concept development phase and its applications, *visual guide communication and* the application phase for corporate logo launching; -----

1.6.3.3 Whereas, for such scopes of work, Interbrand Indonesia proposed a preliminary offer amounting to Rp.2.000.000.000 (two billion rupiah); -----

1.6.3.4 Whereas the Interbrand Indonesia's offer has never been responded by PT PERTAMINA (Persero); -----

1.6.4 LANDOR as the agent that carried out the work of changing of the logos of Bank BNI and Indosat (See Evidence B4, B7, B9, C49, C50); -----

1.6.4.1 Whereas, prior to the appointment, in order to carry out the changing of the new logo of PT PERTAMINA (Persero), LANDOR also worked out the changing of the logos of other such companies in Indonesia as Bank BNI and

Indosat; -----

1.6.4.2 Whereas the appointment of LANDOR to be the agent that carried out the work of changing of the logos of the companies mentioned above was made through a *beauty contest*; -----

1.6.4.3 Whereas, in obtaining the works above, LANDOR competed with such logo-designing companies as Interbrand Indonesia, Brandz, Bridge, Makki-Makki, and Nuage; -----

2. Considering that based on the facts above, the Commission Assembly evaluated the following things: -----

2.1 PT PERTAMINA (Persero) gave LANDOR special treatments; -----

2.1.1 Whereas PT PERTAMINA (Persero) has given LANDOR special treatments in the procurement of logo-designing service for PT PERTAMINA (Persero) in terms of: -----

2.1.1.1 Not managing to find out another comparative logo-designing company; -----

2.1.1.1.1 Whereas, pursuant to the examination results, it was found that, besides LANDOR, some logo-designing companies in Indonesia possess competency and are capable to work out the changes for the PT PERTAMINA (Persero)'s logo as detailed in point 1.3.3; -----

2.1.1.1.2 Whereas PT PERTAMINA (Persero) invited LANDOR only in order that LANDOR should carry out presentations and deliver a proposed offer for the implementation of changing of the PT PERTAMINA (Persero)'s logo;-----

2.1.1.1.3 Whereas a number of logo-designing companies stated that they would be willing to and or were capable of working out the changing of the PT PERTAMINA (Persero)'s logo; -----

2.1.1.1.4 Whereas thereby, PT PERTAMINA (Persero) did not make an effort to seek comparative

logo-designing companies; -----

2.1.1.2 PT PERTAMINA (Persero) ignored other *branding consultants*; -----

2.1.1.2.1 Whereas, besides LANDOR, other *branding consultants* forwarded offers for the work of changing the logo of PT PERTAMINA (Persero) as detailed in point 1.6.3;-----

2.1.1.2.2 Whereas PT PERTAMINA (Persero) never responded and/or considered the offer, even if the *branding consultant* had experience carrying out the work of changing and or development of any *brand* or product from PT PERTAMINA (Persero); -----

2.1.1.2.3 Whereas as such PT PERTAMINA (Persero) had already carried out an action that ignored other competent *branding consultants*; -----

2.2 The reasons of PT PERTAMINA (Persero) carried out direct appointment were baseless and incorrect; -----

2.2.1 Limited time for *launching a new logo*; -----

2.2.1.1 Whereas the reason of PT PERTAMINA (Persero) to select the direct appointment method for LANDOR was the limited time for *launching the logo* to be held on 10 December 2004 as detailed in point 1.5.2.2.2 above; -----

2.2.1.2 Whereas the *launching of* PT PERTAMINA (Persero)'s logo was done on 10 December 2005 or about 13 (thirteen) months since the Directors decided to appoint LANDOR directly; -----

2.2.1.3 Whereas actually within the period of 13 (thirteen) months, PT PERTAMINA (Persero) had sufficient time to select a logo-designing service provider in a more competitive through a tender or a *beauty contest*; -----

2.2.1.4 Whereas herewith the reason why PT PERTAMINA (Persero) selected the direct appointment method was due to the fact that the limited time available is groundless; -----

2.2.2 LANDOR was not willing to comply with the *beauty contest* process; -

- 2.2.2.1 Whereas one of the reasons why PT PERTAMINA (Persero) directly appointed LANDOR was because LANDOR was not willing to comply with the *beauty contest* process; -----
- 2.2.2.2 Whereas prior to being appointed to undertake the work of the changing of the new logo of PT PERTAMINA (Persero), LANDOR also carried out the work of changing the new logos of Bank BNI and Indosat; -----
- 2.2.2.3 Whereas the process of direct appointment of LANDOR to change the logos of the two companies mentioned above was done through the *beauty contest* process; -----
- 2.2.2.4 Whereas as such the reason why PT PERTAMINA (Persero) stated that LANDOR was not willing to comply with the *beauty contest* was not true; -----

2.3 The Provision of Chapter VII in SK 036 was Inapplicable in the Appointment of LANDOR; -----

- 2.3.1 Whereas PT PERTAMINA (Persero) included the procurement of communications consulting services as the procurement of goods and/services specially treated as stipulated in the provisions of Chapter VII of SK 036; -----
- 2.3.2 Whereas, in the project for designing the logo of PT PERTAMINA (Persero), the Commission Assembly found that LANDOR was not a communications consulting agency and LANDOR's scopes of works did not include the procurement of communications consulting services; -----
- 2.3.3 Whereas as such the direct appointment of LANDOR in this case cannot be based on the provisions of Chapter VII of SK 036; -----

2.4 Impacts of Direct Appointment for LANDOR; -----

2.4.1 Impacts on other business actors; -----

- 2.4.1.1 Whereas the logo-designing service procurement undertaken by PT PERTAMINA (Persero) as a big company is an activity that may be categorized as a monumental activity that may enrich references and enhance the logo-designing company's reputation; -----

2.4.1.2 Whereas the action of PT PERTAMINA (Persero) that, from the beginning, wanted LANDOR to be a logo designer has eliminated the opportunity for other logo-designing companies to add the references and enhance their reputation; -----

2.4.2 Impacts on PT PERTAMINA (Persero); -----

2.4.2.1 Whereas the action of PT PERTAMINA (Persero) that, since the beginning, wanted LANDOR to be the company that would be the maker of PT PERTAMINA (Persero)'s logo has eliminated the competition of offers from logo-designing companies; -----

2.4.2.2 Whereas with the absence of competition, there were no comparative choices for PT Pertamina (Persero) in assessing the LANDOR's offers both in terms of price, scope of work and quality of work; -----

2.4.2.3 Whereas as such, the action above gave rise to the loss of chances for PT PERTAMINA (Persero) to obtain the competitive price, scope of work and quality of work;-----

3. Considering that, based on those facts and in relation with the alleged violation against the provision of Article 19 paragraph d of Law Number 5 Year 1999, the Commission Assembly assessed that the compliance of the elements of the Article is as follows; -----

3.1 Considering that Article 19 paragraph a of Law No 5 Year 1999 states that: *"A business actor is prohibited to undertake one or some activities, both by oneself and with other business actors, that may give rise to monopolistic practice and or Unfair Business Competition in terms of: -----*

(d) undertaking discriminative practices against certain business actor";-----

3.2 Considering that Article 19 paragraph d Law Number 5 year 1999 contains the following elements: -----

3.2.1 Business actor; -----

3.2.1.1 Whereas a business actor pursuant to the provision of Article 1 paragraph 5 of Law No.5 Year 1999 is *"each individual or business agency that is a legal body or not a legal body established and situated or doing activities within the jurisdiction of the Republic of Indonesia, both by*

oneself or mutually through an agreement, and holds various business activities in the economic field.”-----

3.2.1.2 Whereas the intended business actor is PT PERTAMINA (Persero) as a legal body that undertakes business activity in oil and oil products that, in this case, carries out the procurement of logo-designing service for the revision of its own logo; -----

3.2.1.3 Whereas PT PERTAMINA (Persero) is a business actor as already detailed in paragraph 1.1 Section on Legal Matters; -----

3.2.1.4 Whereas hereby the element of the business actors is **fulfilled**; -----

3.2.2 Carrying out discriminative practices against certain business actors; --

3.2.2.1 Whereas the meanings of discriminative practices are the different actions, attitudes and treatments against certain business actors in order to obtain the same opportunity as other business actors in the same relevant market; -----

3.2.2.2 Whereas the actions of PT PERTAMINA (Persero) as detailed in paragraph 2.1 may be categorized as a discriminative practice since PT PERTAMINA (Persero) has treated LANDOR in a special way and did not provide any opportunity for other logo-designing companies to get the work of designing of PT PERTAMINA (Persero)'s logo; -----

3.2.2.3 Whereas subsequently, in connection with the reason why PT PERTAMINA (Persero) directly appointed LANDOR was due to its reputation, competence and experience as detailed in point 1.5.2.1.1., the Commission Assembly considered that this reason can not be used as a justification since, pursuant to the examination results, some other business actors had the same reputation, competence and experience as LANDOR did as detailed in paragraph 1.3; -----

3.2.2.4 Whereas hereby the element of discriminative practices against certain business actors is **fulfilled**; -----

3.2.3 Unfair business competition; -----

- 3.2.3.1 Whereas pursuant to the provision of Article 1 paragraph 6 of Law Number 5 Year 1999, an unfair business competition is the *competition among business actors in undertaking production activities and or marketing of goods and or services carried out in **dishonest or against the law or blocking the business competition***; -----
- 3.2.3.2 Whereas the action of PT PERTAMINA (Persero) in directly appointing LANDOR was against the provision of Chapter VII of SK 036 since LANDOR is not a communications consultant; -----
- 3.2.3.3 Whereas the action of PT PERTAMINA (Persero) in directly appointing LANDOR as the executor of logo designing was an action that inhibited business competition since it closed chances for other logo-designing companies to supply PT PERTAMINA (Persero) with the logo-designing service; -----
- 3.2.3.4 Whereas hereby, the direct appointment of LANDOR by PT PERTAMINA (Persero) was an action of unfair business competition so that the element of unfair business competition **was fulfilled**; -----
4. Considering that, based on the facts and conclusions above, and bearing in mind Article 43 paragraph (3) of Law Number 5 Year 1999, the Commission Assembly:

DECIDED

1. **Affirming that PT PERTAMINA (Persero) is legally and convincingly proved to have violated Article 19 paragraph d of Law Number 5 Year 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition since PT PERTAMINA (Persero) appointed LANDOR directly for designing the logo of PT PERTAMINA (Persero) without any legal reason;---**
2. **Penalizing PT PERTAMINA (Persero) to pay a penalty amounting to Rp.1.000.000.000,- (one billion rupiah) that shall be paid to the State Treasury Office (*Kas Negara*) as the state's non-tax income of the Ministry of Finance (*DepKeu*), Directorate General of Treasures (*DitJen*)**

Perbendaharaan), Service Point of State Treasures (Kantor Pelayanan Perbendaharaan Negara) Jakarta I, having its domicile at Jl. Ir. H. Juanda Number 19, Central Jakarta through a state-owned bank with an acceptance code 1212; -----

Herewith this decision was decreed through a convention in the Commission Assembly Session on Tuesday, 12 September 2006 and read out before the court which was declared open to the public on Wednesday dated 13 September 2006 by the Commission Assembly comprising Erwin Syahril, S.H., as the Chairperson of the Commission Assembly, Faisal H. Basri, S.E., M.A. dan Dr. Syamsul Maarif, S.H., LL.M., each as a Member of the Assembly, assisted by: M. Hadi Susanto, S.H. and Akhmad Muhari, S.H. each as a Registrar.

Chairperson of the
Commission Assembly,

signed

Erwin Syahril, SH.

Member of the Commission Assembly, signed Faisal H. Basri, SE, MA	Member of the Commission Assembly, signed Dr. Syamsul Maarif, LL.M
Registrar,	
signed. M. Hadi Susanto, S.H.	signed Akhmad Muhari, S.H