



DECISION

Case Number: 19/KPPU-L/2007

Komisi Pengawas Persaingan Usaha (KPPU) – Commission for The Supervision of Business Competition (hereinafter referred to as **Commission**) that examines the alleged violation of Article 23 Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition (hereinafter referred to as **Law Number 5 Year 1999**, conducted by:-----

1. **EMI Music South East Asia**, having office address at Suites 2705-9 Tower 6 The Gateway 9 Canton Road Tsimshatsui Kowloon Hong Kong, hereinafter referred to as **“Reported I”**;-----
2. **PT EMI Indonesia**, having address at Graha Aktiva Lt. 5, Jl. H. R. Rasuna Said Blok X-1 Kav. 3, Jakarta 12950, hereinafter referred to as **“Reported II”**;-----
3. **Arnel Affandi, S.H.**, latest known to have address at Pondok Cibubur Blok H2/6 East Jakarta, hereinafter referred to as **“Reported III”**;-----
4. **Dewa 19**, having address at Pinang Mas VIII/US 19 Pondok Indah, Jakarta 12310, hereinafter referred to as **“Reported IV”**;-----
5. **Iwan Sastra Wijaya**, latest known to have office address at Jl. Kapuk Utara I/89, Kapuk Muara, Penjaringan, North Jakarta, hereinafter referred to as **“Reported V”**; -

has made a Decision as follows: -----

Commission Assembly: -----

Upon perusing the letters and documents of this case;-----

Upon hearing information from the Reported Parties;-----

Upon hearing information from the Witnesses;-----

Upon hearing and perusing information from the Experts; -----

Upon perusing the Investigation Report (hereinafter referred to as the **IR**);-----

ABOUT THE FACTS OF THE CASE

1. Considering that Commission received report concerning any suspicion of violation against Law Number 5 Year 1999 related to Dewa 19 movement from PT Aquarius Musikindo to EMI Music South East Asia;-----
2. Considering that after Commission conducted examination, clarification and filing, report is declared complete and clear;-----
3. Considering that due to complete and clear report, Commission Meeting held on August 30, 2007 decided that report was followed up at any stage of Preliminary Examination; -----
4. Considering that afterwards, Commission issued Decision Number 50/PEN/KPPU/IX/2007 dated September 10, 2007 concerning Preliminary Examination Number 19/KPPU-L/2007, commenced since September 10, 2007 until October 19, 2007 ((*Vide A1*);-----
5. Considering that for implementing Preliminary Examination, Commission issued Decree Number 162/KEP/KPPU/IX/2007 dated September 10, 2007 concerning Assignment of Commission Member as Examination Team in the Preliminary Examination of Case Number 19/KPPU-L/2007 (*Vide A2*);-----
6. Considering that furthermore, Executive Director of Commission Secretariat issued a Letter of Assignment Number 584/SET/DE/ST/IX/2007 dated September 10, 2007 assigned Commission Secretariat to assist Examination Team in the Preliminary Examination (*Vide A3*); -----
7. Considering that referring to decision of common leave in the interest of Idul Fitri (*Islamic celebration at the end of the Ramadhan fasting month*) Holiday 1428 H, Commission issued Decision of Commission Number 61/PEN/KPPU/X/2007 concerning Term Adjustment of Case Filing and Handling Activities at BCSC, so that term of Case Preliminary Examination Number 19/KPPU-L/2007 that originally since September 10, 2007 until October 19, 2007 was adjusted into since September 10, 2007 until October 30, 2007 (*Vide A17*); -----
8. Considering that in the Preliminary Examination, Examination Team heard any information from Reporter, Reported I, Reported II, Reported III and Reported IV (*Vide B1, B5, B6, B7, B8*); -----
9. Considering that after holding Preliminary Examination, Examination Team found sufficient initial evidence against violation of Article 23 Law Number 5 Year 1999;-----

10. Considering that according to Preliminary Examination Result, Examination Team recommended to Commission Meeting in order that examination was proceeded to Continuing Examination stage by deciding Iwan Sastra Wijaya as Reported V (*Vide* A29); -----
11. Considering that based on recommendation of Preliminary Examination Team, Commission agreed and issued Decision of Commission Number 65/PEN/KPPU/X/2007 dated October 30, 2007 concerning Continuing Examination of Case Number 19/KPPU-L/2007, commenced since October 31, 2007 until January 28, 2008 (*Vide* A31); -----
12. Considering that in order to hold Continuing Examination, Commission issued any Decision Number 176/KEP/KPPU/X/2007 dated October 30, 2007 concerning Assignment of Commission Member as Examination Team in Continuing Examination of Case Number 19/KPPU-L/2007 (*Vide* A32); -----
13. Considering that furthermore, Executive Director of Commission Secretariat issued Letter of Assignment Number 604/SET/DE/ST/X/2007 dated October 30, 2007 assigned Commission Secretariat to assist Examination Team in Continuing Examination (*Vide* A33);-----
14. Considering that referring to decision of common leave in the interest of Idul Adha (*Islamic Sacrifice Day*) Holiday 1428 H, Celebration of Christmas Day and 2008 National New Year, Decision of Commission Number 88/PEN/KPPU/XII/2007 concerning Term Adjustment of Case Filing and Handling Activities at BCSC was issued so that term of Case Continuing Examination Number 19/KPPU-L/2007 that originally since October 31, 2007 until January 28, 2008 was adjusted into since October 31, 2007 until February 4, 2008 (*Vide* A44); -----
15. Considering that after holding Continuing Examination, Examination Team deemed necessary to make Prolongation of Continuing Examination; -----
16. Considering that according to Commission Meeting result on January 31, 2008 approved recommendation of Examination Team in Continuing Examination to make Prolongation of Continuing Examination, Commission issued Decision Number 26/KPPU/KEP/II/2008 dated February 4, 2008 concerning Prolongation of Case Continuing Examination Number 19/KPPU-L/2007, commenced since February 5, 2008 until March 24, 2008 (*Vide* A71);-----
17. Considering that for making Prolongation of Continuing Examination, Commission issued Decision Number 27/KPPU/KEP/II/2008 dated February 4, 2008 concerning Assignment of Commission Member as Examination Team in Prolongation of Case Continuing Examination Number 19/KPPU-L/2007 (*Vide* A72); -----
18. Considering that furthermore, Executive Director of Commission Secretariat issued a Letter of Assignment Number 20/SET/DE/ST/II/2008 dated February 4, 2008

assigned Commission Secretariat to assist Examination Team in Prolongation of Continuing Examination (*Vide* A73);-----

19. Considering that in term of Continuing Examination and Prolongation, Examination Team heard Reporters, Witnesses and Experts (*Vide* B13, B14, B16, B17, B20, B22, B24, B25, B28, B29, B30, B31, B32, B33, B34, B35); -----

20. Considering that identity and information of Reporters, Witnesses and Experts were registered in Examination Official Report (EOR) to which the truth was recognized and signed by those concerned; -----

21. Considering that in Preliminary and Continuing Examination, Examination Team obtained, analyzed, and assessed a number of letters and/or documents, EOR and other evidences obtained during examination and investigation;-----

22. Considering that after conducting Continuing Examination, Examination Team made the following Report of Continuing Examination Result (*Vide* A90): -----

22.1. Violation Suspicion; -----

22.1.1. EMI Music South East Asia/EMI Music Asia (hereinafter referred to as "EMI Music South East Asia") and PT EMI Indonesia conspired with Arnel Affandi, S.H., Dewa 19 and Iwan Sastra Wijaya to obtain information of their rival business activities namely PT Aquarius Musikindo related to Cooperation Agreement between PT Aquarius Musikindo and Dewa 19 that among others, arranging on *Royalty Rate, Advance, Time Frame* and *Penalty*, which may result in unfair business competition by untrustworthy manner and/or illicitly so that was presumed to violate Article 23 Law Number 5 Year 1999; -----

22.2. Facts;-----

22.2.1. Concerning Reported Identity; -----

22.2.1.1. Whereas, Reported I was EMI Music South East Asia, having domicile in Hong Kong and having address at Suites 2705-9 Tower 6, The Gateway 9 Canton Road Tsimshatsui Kowloon Hong Kong. EMI Music South East Asia, a division of EMI Group Hong Kong Limited (formerly Manotick Limited and hereinafter referred to as Thorn EMI (Hong Kong Limited) established since 1985 in Hong Kong. EMI Music South East Asia was registered in 1997 as a division of EMI Group Hong Kong Limited and took part as position holder of regional EMI Music Group throughout Southeast Asia region. EMI Music South East Asia is a separate corporation from PT EMI Indonesia. EMI Music South East Asia is not ASIRI member (*Vide* C23 and C24);-----

- 22.2.1.2. Whereas, Reported II was PT EMI Indonesia Incorporated, having domicile in Indonesia and having address at Graha Aktiva Lt. 5, Jl. H. R. Rasuna Said Blok X-1 Kav. 3, Jakarta 12950 (*Vide A66*); -----
- 22.2.1.3. Whereas, Reported III was Arnel Affandi, an individual that in this case examination having position as Managing Director PT EMI Indonesia, which having Residence Identification Card (RIC) address at Komplek PLN No. 12 RT 001, RW 009 Cililitan, Kramat Jati Sub-District, East Jakarta and having correspondence address at Pondok Cibubur Blok H2/6 Jakarta Timur (*Vide B 6*); -----
- 22.2.1.4. Whereas, Reported IV was Dewa 19, a music group established in 1987, having address at Pinang Mas VIII/US 19 Pondok Indah, Jakarta 12310 (*Vide B5*); -----
- 22.2.1.5. Whereas, Reported V was Iwan Sastra Wijaya, an individual that in this case examination having position as Managing Director Blackboard and A&R Director PT EMI Indonesia, having address at Jl. Kapuk Utara I/89, Kapuk Muara, Penjaringan, North Jakarta. (*Vide B34 dan B35*);-
- 22.2.2. Concerning an Agreement between PT Aquarius Musikindo and Dewa 19; -----
- 22.2.2.1. Whereas, based on Article 4 point 4.1 sub-point 4.1.1 of Agreement Number 001/JS/DW/07/04 dated 12 July 2004, artists collectively (in group) or individually shall be formally bound to Aquarius for selling exclusively artist recording master in a number of 1 (one) album, i.e. Laskar Cinta (*Love Hero*) album (volume 7) plus other 4 (four) new songs that shall be joined with artist's songs that ever been in circulation for the purpose of making compilation albums or *The Best of* or *repackage*, in the following exclusively binding term: -----
- a. The artist shall submit 4 (four) new songs to Aquarius in the period of time at least 12 (twelve) months after Laskar Cinta artist circulated by Aquarius;-----
 - b. When within term mentioned at point a above the artist has not yet submitted the said 4 (four) new songs, then the artist is still exclusively bound to Aquarius (*Vide C5*); -----

- 22.2.2.2. Whereas, according to the Witness statement, a contract between Dewa 19 and PT Aquarius Musikindo was still valid because Dewa 19 had not yet accomplished an obligation of 4 (four) songs as included in an Agreement Number 001/JS/DW/07/04 dated 12 July 2004 (*Vide* B17); -----
- 22.2.2.3. Whereas, according to the Witness statement, Dewa 19 made a breach of moving to EMI Music South East Asia when Dewa 19 had not yet delivered 4 (four) songs to PT Aquarius Musikindo meaning that Dewa 19 had not completed a contract with PT Aquarius Musikindo (*Vide* B29); -----
- 22.2.2.4. Whereas, according to PT Aquarius Musikindo's statement, Dewa 19 had not accomplished an obligation of delivering 4 (four) new songs as included in an Agreement Number 001/JS/DW/07/04 dated 12 July 2004, so that still be bound a contract with PT Aquarius Musikindo (*Vide* B1);-----
- 22.2.3. Concerning Dewa 19 Desire for *Go International*;-----
 - 22.2.3.1. Whereas, Dewa 19 movement from PT Aquarius Musikindo to EMI Music South East Asia was based on ambition for *going international* (*Vide* B5, B30, B35, B13 and B32); -----
 - 22.2.3.2. Whereas, according to the Expert, for being able to *go international* no contract with music company that having domicile outside of Indonesia was needed. This can be seen from any Indonesian recording company that may sell the song overseas, such as Warner Indonesia sells through Warner Malaysia, Sony BMG in which every time album shall be created, report of production in Indonesia to Sony International in Hong Kong is always made (*Vide* B24); -----
 - 22.2.3.3. Whereas, according to the Expert, PT Aquarius Musikindo may could orbit the artist to *go international* because PT Aquarius Musikindo has access to foreign recording company (*Vide* B24); -----
 - 22.2.3.4. Whereas, according to the Witness, Dewa 19 could *go international* along with PT Aquarius Musikindo because

when was under the umbrella of PT Aquarius Musikindo, Dewa 19 ever made promotion abroad (*Vide* B14); -----

22.2.3.5. Whereas, according to the Witness, for being able to go *international* besides must join with an international recording company, the artist also shall move from Indonesia (*Vide* B16);-----

22.2.3.6. Whereas, according to the Expert and Witness, when Dewa 19 wanted to go *international*, no international recording company is required. The most important thing is the said artist work can accepted by international world (*Vide* B24 and B29); -----

22.2.3.7. Whereas, according to the Witness, a song criterion could be internationally marketed is when the song must be heard by local person of the pertinent country. In addition, it also depends on creativity of recording company (*Vide* B31);-----

22.2.3.8. Whereas, according to the Witness, for being able to go *international* a song the artist sings must be in English, even though many using in English. In essence, a song the artist sings is acceptable by international community (*Vide* B22); -----

22.2.4. Concerning the Process of Dewa 19 movement from PT Aquarius Musikindo to EMI Music South East Asia;-----

22.2.4.1. Whereas in 2004, Norman Cheng was notified by Iwan Sastra Wijaya that Dewa 19 planned to abandon PT Aquarius Musikindo (*Vide* C23);-----

22.2.4.2. Whereas, Iwan Sastra Wijaya was a man who introduced Ahmad Dhani Prasetyo (represented Dewa 19) to Norman Cheng (*Vide* B5, B30 and B35); -----

22.2.4.3. Whereas, a meeting between Dewa 19 and Norman Cheng was in the interest of signing up the cooperation contract taken place at Hotel Mulia on June 2004 (*Vide* B33); -----

22.2.4.4. Whereas, according to PT Aquarius Musikindo, on June 2004 Dewa 19 had a contract with EMI Music South East Asia (*Vide* B1); -----

22.2.4.5. Whereas, the signing of the contract between Dewa 19 and EMI Music South East Asia was held on June/July 2004 at Japan Restaurant within Hotel Mulia (*Vide* B13);

- 22.2.4.6. The meeting was attended by all personnel of Dewa 19 (Ahmad Dhani Prasetyo, Andra Ramadhan, Elfonda Mekel, Setyo Nugroho dan Muhammad Yuke Sampurna) and also attended by Iwan Sastra Wijaya, Norman Cheng, Arnel Affandi, Syamsul Huda and Jusak Irwan Sutiono (*Vide* B5, B13, B17, B30, B32 and B33);-----
- 22.2.4.7. Whereas, person who arranged the meeting is Iwan Sastra Wijaya (*Vide* B13); -----
- 22.2.4.8. Whereas, when the meeting held Iwan Sastra Wijaya and Arnel Affandi had no status or position at PT EMI Indonesia (*Vide* B13);-----
- 22.2.4.9. Whereas, in the meeting, the Witness, Jusak Irwan Sutiono and Arnel Affandi helped to change 2 contract paragraphs (*Vide* B13);-----
- 22.2.4.10. Whereas, mediator of Dewa 19 movement from PT Aquarius Musikindo to EMI Music South East Asia is Arnel Affandi (*Vide* B17);-----
- 22.2.4.11. Whereas, Arnel Affandi is a closed friend of Iwan Sastra Wijaya. Formerly, Arnel Affandi having status as a legal consultant at PT Aquarius Musikindo, besides Arnel Affandi also reviews any contracts with artists and *publishing* (*Vide* B20); -----
- 22.2.5. Concerning Agreement between EMI Music South East Asia and Dewa 19; -----
- 22.2.5.1. Whereas, agreement between EMI Music South East Asia and Dewa 19 was signed up in Jakarta on July 19, 2004. Said Agreement made in English (*Vide* C26);-----
- 22.2.5.2. Whereas, according to the Witness and Reporter, said Agreement made in Indonesian on June 2004. (*Vide* B32, B33 and B1);-----
- 22.2.6. Concerning Linkage between EMI Music South East Asia and PT EMI Indonesia;-----
- 22.2.6.1. Whereas, PT EMI Indonesia is the subordination from EMI Music South East Asia (*Vide* B17, B32 and B34); ----
- 22.2.6.2. Whereas, PT EMI Indonesia is the representative from EMI Music South East Asia. (*Vide* B28); -----
- 22.2.7. Concerning Provision of Association Rule Book (White Book) ; -----

- 22.2.7.1. Association Rule Book (White Book) is a reference for any recording company that is ASIRI member (*Vide B28*); -----
- 22.2.7.2. Whereas, according to Article 2 paragraph (1) of White Book, each ASIRI member bound for not recording or distributing song that is under agreement bond with other association member, in any version for the period of 180 (one hundred and eighty) days commenced from early date the song distributed or 540 (five hundred and forty) days commenced from the signing of song use agreement, depends on the matter fulfilled beforehand (*Vide C6*);-----
- 22.2.7.3. Whereas, based on Article 7 of White Book, each member that should make agreement of making voice recording with an artist who ever bound agreement with other member, should beg written information beforehand from the relevant company with the carbon copy forwarded to the association (*Vide C6*);-----
- 22.2.7.4. Whereas, according to Article 9 of the White Book, in case of recording artist bound an agreement of making voice recording work with two recording companies or more in the same time, then fulfillment of achievement prioritized is a company that makes an agreement beforehand with the concerned artist (*Vide C6*); -----
- 22.2.7.5. Whereas, PT Aquarius Musikindo and PT EMI Indonesia is ASIRI member (*Vide B28*); -----
- 22.2.8. Concerning Payment of *Advance Royalty* and *Royalty*; -----
- 22.2.8.1. Whereas, based on agreement between EMI Music South East Asia and Dewa 19, *advance royalty* payment of Dewa 19 paid by PT EMI Indonesia after getting approval from CFO EMI Music South East Asia (*Vide B13 and B34*); -----
- 22.2.8.2. Whereas, *royalty* payment of Dewa 19 paid by PT EMI Indonesia (*Vide B17 and B33*);-----
- 22.2.9. Concerning Confidential Information of Company;; -----
- 22.2.9.1. Whereas, content between artist and recording company was *private* and *confidential* (secret) that no competitor can be informed (*Vide B25*); -----

- 22.2.9.2. Whereas, the contract between recording company and artist is secret meaning that no existing information within the contract may be informed to other party primarily other recording company (*Vide* B22);-----
- 22.2.9.3. Whereas, the contract between artist and recording company is the company secret that confidentiality to other parties beyond the contract must be kept (*Vide* B31); -----
- 22.2.9.4. Whereas, an agreement between artist and recording company is confidential matter, arranging issues among others, *royalty, flat pay, option* (*Vide* B24); -----
- 22.2.9.5. Whereas, there are some issues that being a company's secret in any contract namely contract value, bonus, *royalty* price (per cassette), and facilities such as costume, dubbing at foreign studio, payment method and *penalty* (*Vide* B20);-----
- 22.2.9.6. Whereas, according to Witness, content of contract is confidential (*Vide* B16 dan B14);-----
- 22.2.10. Concerning Impact of Dewa 19 movement from PT Aquarius Musikindo to EMI Music South East Asia;-----
- 22.2.10.1. Appointment of Arnel Affandi (Reported III) as the Managing Director PT EMI Indonesia:-----
 - 22.2.10.1.1. Whereas, prior to occupy the Managing Director PT EMI Indonesia, Arnel Affandi was a General Manager (GM) ASIRI and a Legal Consultant at PT Aquarius Pustaka Musik (Publishing Company from PT Aquarius Musikindo) (*Vide* B7, B28 and B13); -----
 - 22.2.10.1.2. Whereas, dismissal letter of Jusak Irwan Sutiono from EMI Music South East Asia as the Managing Director PT EMI Indonesia is delivered by Iwan Sastra Wijaya and Arnel Affandy in which at the time has no any position at EMI Music South East Asia (*Vide* B32); -----
 - 22.2.10.1.3. Whereas, Dewa 19 movement from PT Aquarius Musikindo to EMI Music South East Asia, then Arnel Affandi has *bargaining*

position to be the Managing Director PT EMI Indonesia (*Vide* B24);-----

22.2.10.1.4. Whereas, since December 2004, Arnel Affandi occupied the position as the Managing Director PT EMI Indonesia to change Jusak Irwan Sutiono (*Vide* B7 and B13);-----

22.2.10.2. Appointment of Iwan Sastra Wijaya (Reported V) as the Director A&R PT EMI Indonesia;-----

22.2.10.2.1. Whereas, prior to occupy as the Director A&R PT EMI Indonesia, Iwan Sastra Wijaya was the management of Blackboard recording company until now (*Vide* B30 and B7);-----

22.2.10.2.2. Whereas, Iwan Sastra Wijaya occupies the position as Director A&R PT EMI Indonesia after Arnel Affandi becomes *Managing Director* PT EMI Indonesia (*Vide* B34 and B35);-----

22.2.10.3. Loss incurred to PT Aquarius Musikindo (*Vide* B1, A43); -

22.2.10.3.1. Whereas, as a result of the conspiracy, then PT Aquarius Musikindo suffers loss and demands compensation of IDR. 4,295,627,881,- in the following details :-----

Cassette product: 839,508 pcs x Rp 4,547 = IDR 3,817,242,876,-

CD product : 28,205 pcs x IDR 16,961= IDR 478,385.005,-

Total = IDR 4, 295,627,881,-

(Four billion two hundred ninety five million six hundred twenty seven and eight hundred eighty one rupiah);-----

22.3. Analysis;-----

22.3.1. Based on facts obtained during examination, Examination Team judged any adequate evidence about occurrence of conspiracy between EMI Music South East Asia, PT EMI Indonesia, Arnel Affandi, S.H., Dewa 19 and Iwan Sastra Wijaya to disclose the company's information of PT Aquarius Musikindo that is deemed confidential as follows:-----

- 22.3.2. Business Actor Element; -----
- 22.3.2.1. Whereas, in this case, party included in the qualification of Business Actor as intended in Article 1 point 5 Law Number 5 Year 1999 is EMI Music South East Asia and PT EMI Indonesia; -----
- 22.3.3. Other Party Element; -----
- 22.3.3.1. Whereas, in this case, party included in the qualification of Other Party is Arnel Affandi, Dewa 19 and Iwan Sastra Wijaya; -----
- 22.3.4. Conspiracy Element; -----
- 22.3.4.1. Whereas, in 2004, Norman Cheng was informed by Iwan Sastra Wijaya that Dewa 19 through Ahmad Dhani Prasetyo planned to abandon PT Aquarius Musikindo and joined with EMI Music South East Asia for *going international*. Concerning this Dewa 19 desire, Norman Cheng approved it; -----
- 22.3.4.2. Furthermore, Iwan Sastra Wijaya and Arnel Affandy arranged a meeting for the signing of the contract between Dewa 19 and EMI Music South East Asia at Hotel Mulia. This meeting was attended by all Dewa 19 personnel (Ahmad Dhani Prasetyo, Andra Ramadhan, Elfonda Mekel, Setyo Nugroho and Muhammad Yuke Sampurna) and attended also by Iwan Sastra Wijaya (Blackboard Management), Norman Cheng (CEO EMI Music South East Asia), Arnel Affandi (GM ASIRI as well as Legal Consultant of PT Aquarius Pustaka Musik), Syamsul Huda and Jusak Irwan Sutiono (MD PT EMI Indonesia);
- 22.3.4.3. Whereas, based on the above-mentioned fact, Examination Team judged the following act of EMI Music South East Asia: -----
- 22.3.4.3.1. Whereas, EMI Music South East Asia made no clarification to Dewa 19 concerning contract bond between Dewa 19 and PT Aquarius Musikindo. This act is carelessness because EMI Music South East Asia ought to know that Dewa 19 still bound the contract with PT Aquarius

Musikindo. Examination Team judged that it might be classified as the conspiracy; -----

22.3.4.3.2. Whereas, act of EMI Music South East Asia made contract with Dewa 19, even though EMI Music South East Asia had its representative in Indonesia, namely PT EMI Indonesia, is an act to avoid Article 7 and Article 9 of ASIRI White Book;-----

22.3.4.3.3. Whereas, EMI Music South East Asia demands Iwan Sastra Wijaya as the facilitator of Dewa 19 movement to EMI Music South East Asia, is a conspiracy act involving EMI Music South East Asia with Iwan Sastra Wijaya;-----

22.3.4.3.4. Whereas, act of EMI Music South East Asia that paid no *advanced royalty* directly to Dewa 19, but paid by PT EMI Indonesia, is inconsistent act to the contract between Dewa 19 and EMI Music South East Asia; --

22.3.4.3.5. Whereas, appointment of Arnel Affandi as the Managing Director (MD) PT EMI Indonesia by EMI Music South East Asia is a compensation on the role of Arnel Affandi in the process of Dewa 19 movement to EMI South East Asia; -----

22.3.4.4. Whereas, based on the above-mentioned fact, Examination Team judges the following act of PT EMI Indonesia:-----

22.3.4.4.1. Whereas, PT EMI Indonesia (during the Managing Director PT EMI Indonesia occupied by Jusak Irwan Sutiono) involves directly or indirectly in the process of recruiting Dewa 19 because participates to witness and follows to rectify the contract between EMI Music South East Asia and Dewa 19. Examination Team judges that PT EMI Indonesia is involved in the conspiracy in association with Dewa

19 movement to EMI Music South East Asia;-----

22.3.4.4.2. Whereas, when the contract signed up, Jusak Irwan Sutiono should notify to Norman Cheng that Dewa 19 is still bound a contract with PT Aquarius Musikindo;-----

22.3.4.4.3. Whereas, in spite of PT EMI Indonesia is not party in an agreement between EMI Music South East Asia and Dewa 19, but pays *advanced royalty* money to Dewa 19. Examination Team judges that PT EMI Indonesia is affiliated to EMI Music South East Asia as fact gathered during the examination;-----

22.3.4.5. Whereas, based on the above-mentioned fact, Examination Team judges the following act of Arnel Affandi S.H.: -----

22.3.4.5.1. Whereas, Arnel Affandi, as a former legal consultant of PT Aquarius Pustaka Musik and General Manager ASIRI at that time, witnessed the signing of the contract between Dewa 19 and EMI Music South East Asia. Examination Team judges Arnel Affandi has no any interest to attend and witness the signing of the said contract;-----

22.3.4.5.2. Whereas, Arnel Affandi amends 2 (two) paragraphs of contract together with Jusak Irwan Sutiono. Examination Team judges that Arnel Affandi involved in making contract between Dewa 19 and EMI Music South East Asia; -----

22.3.4.5.3. Whereas, Arnel Affandi acts as mediator in the process of Dewa 19 movement from PT Aquarius Musikindo to EMI Music South East

Asia. Examination Team judges that Arnel Affandi is involved in the conspiracy i.e. to facilitate the process of said Dewa 19 movement; -----

22.3.4.5.4. Whereas, Arnel Affandi appointed Iwan Sastra Wijaya as the Director A&R PT EMI Indonesia. Examination Team judges that said act as the compensation for Iwan Sastra Wijaya in the process of Dewa 19 movement to EMI Music South East Asia; -----

22.3.4.6. Whereas, based on the above-mentioned facts, Examination Team judges the act of Iwan Sastra Wijaya to facilitate Dewa 19 movement from Aquarius Musikindo to EMI Music South East Asia by introducing Dewa 19 to Norman Cheng (Managing Director EMI Music South East Asia) and arranges a meeting for the signing of the contract between Dewa 19 and EMI Music South East Asia at Hotel Mulia, then Examination Team judges that Iwan Sastra Wijaya is involved in the conspiracy in association with Dewa 19 movement to EMI Music South East Asia; -----

22.3.5. Confidential Company Information Element;-----

22.3.5.1. Whereas, in this case, Examination Team judges that confidential information of company is economic-valued information that confidentiality must be kept from parties beyond the agreement. Whereas, in this case, confidential information of company in recording industry is content of agreement between artist and recording company that containing among others, *advance, royalty, time frame, option, penalty*; -----

22.3.6. Element of Resulting In Unfair Business Competition; -----

22.3.6.1. Whereas, definition of unfair business competition as meant in Article 1 point 6 Law Number 5 Year 1999 was the competition inter business actor in carrying out production activities and/or marketing

of goods or service conducted by dishonest manner or illicit or to obstruct business competition; -----

22.3.6.2. Whereas, in this case, Examination Team judges a dishonest act perpetrated by EMI Music South East Asia, PT EMI Indonesia, Dewa 19, Arnel Affandi dan Iwan Sastra Wijaya is a form of conspiracy resulting in PT Aquarius Musikindo incurs loss;-----

22.4. Conclusion; -----

22.4.1. Based on analysis against facts and letter evidence tool and/or document obtained during the examination done, Examination Team concludes that there is adequate evidence concerning the occurrence of violation against Article 23 Law Number 5 Year 1999 perpetrated by EMI Music South East Asia, PT EMI Indonesia, Arnel Affandi, S.H., Dewa 19 and Iwan Sastra Wijaya; -----

23. Considering that Continuing Examination Team submits the Report of Continuing Examination Result to Commission Meeting for being conducted Commission Assembly;-----
24. Considering that furthermore, the Commission issues Decision of the KPPU Number 43/KPPU/PEN/III/2008 dated 18 March 2008 to hold the Commission Assembly commenced since March 18, 2008 until April 30, 2008 (*Vide* A91); -----
25. Considering that in order to hold the Commission Assembly, the Commission issues Decree Number 116/KPPU/KEP/III/2008 date 18 March 2008 concerning Assignment of Commission Member as the Commission Council in the Commission Assembly of Case Number 19/KPPU-L/2007 (*Vide* A92);-----
26. Considering that furthermore, Executive Director of Commission Secretariat issues the Letter of Assignment Number 154/SET/DE/ST/III/2008 dated 18 March 2008 assigned Commission Secretariat to assist the Commission Council in the Commission Assembly (*Vide* A93);-----
27. Considering that Commission Council submits the Report of Continuing Examination Result to Reported parties (*Vide* A95, A96, A97, A98, A99) ; -----
28. Considering that Commission Council provides a chance to examine a file of case (*enzage*) dated 10 April 2008 (*Vide* A95, A96, A97, A98, A99); -----
29. Considering that on 11 April 2008, Commission Council has called for Reported parties properly to be present in Commission Assembly (*Vide* A100, A101, A102, A103, A104); -----
30. Considering that Commission Council receives a written Response/Pleading submitted by Lawyer of Reported I, Reported II, Reported III, Reported IV, and

Reported V from Hotma Sitompel & Associates Law Office in Commission Council Assembly held on April 11, 2008; -----

31. Considering that Commission Council analyzes a written Response/Pleading on 9 April 2008, each from Reported I, Reported II, Reported III, Reported IV, and Reported V, which postulates the following 17 (seventeen) similar points as follows: (See A105, A106, A107, A108, A109): -----

31.1. The Commission has no authority to examine the case related to Copyright Agreement; -----

31.1.1. *A quo* merits of case is any objection against (signature) of *Artist Agreement* between EMI Music South East Asia and DEWA Group Band dated 19 July 2004 (vide C26);-----

31.1.1.1. Fact showed that main objection/issue in this case is the present of (signature) the above-mentioned *Artist Agreement*;-----

31.1.1.2. Thus, then before stepping away, we apparently need to pay attention whether type of such agreement is an examination object/including BCSC's authority to judge; -

31.1.2. *Artist Agreement* was the Copyright scope especially Law Number 19 of 2002 ("Copyright Act") in Chapter VII concerning Rights Related to Article 49 paragraph 1 that specifically regulates actor rights (artist rights); -----

31.1.2.1. Article 49 paragraph 1 of Copyright Act explicitly stated: "*Actor has exclusive rights to give permit or prohibits other party that without his/her approval to make, duplicate, or to broadcast voice recording and/or performance picture.*"; -----

31.1.2.2. Article 1 of Artist Agreement made between EMI Music South East Asia, represented by Mr. Norman Cheng and the Group Band comprising Ahmad Dhani Prasetyo, Andra Junaidi, Setyo Nugroho, Elfonda Mekel dan Yuke Sampoerna (all known as DEWA) dated 19 July 2004 stated: "*The company hereby orders to artist, therefore artist hereby records not less than 3 (three) volumes of album and 1 (one) special album such as "the best of" during the minimum time period of this agreement. The Artist gives the company single and exclusive rights from all recordings, albums, videos and artist performance in each language made during the time period of duplication such as recording on phonogram, by or without video*

including without limitation of each media and replication type that technology may invent as long as justified according law.” -----

31.1.2.3. Thus, definition of *Artist Agreement* is an agreement that includes in the Copyright scope particularly as arranged in Chapter VII concerning Rights Related to Article 49 paragraph 1 of Copyright Act;-----

31.1.3. Judgment against *Artist Agreement* between EMI Music South East Asia and DEWA Group Band is not BCSC authority;-----

31.1.3.1. Article 50 Law Number 5 Year 1999 concerning Ban of Monopolistic Practices and Unfair Business Competition (“Anti-Monopoly Act”) regulates that, “*Exempted from this Act provision is:*

- a. *Action or agreement that aims to implement applicable law and regulation; or*-----
- b. *Agreement related to intellectual property rights such as license, patent, trademark, copyright, design industrial product, integrated electronic circuit, and trade secret, and agreement related to franchise; or*--
- c. *Agreement of technical standard arrangement on goods and/or service that no competition is curbed or obstructed; or*-----
- d. *Agreement in the interest of agent affairs that no content accommodates provision to supply back goods and/or service at lower price than agreed price; or*-----
- e. *Agreement of research collaboration for enhancing or improving people living standard at large; or*-----
- f. *International agreement ratified by Government of Republic of Indonesia; or*-----
- g. *Agreement and/or act that aims to export that no demand and/or supply of home market is disrupted;--*
- h. *The business actor categorized in small enterprise; or*

- i. *Cooperation enterprise activities that specifically aims to serve its member.”*-----

31.1.3.2. Thus, because *Artist Agreement* is an agreement in the scope of copyright, then based on Article 50 point b of Anti-Monopoly Act, BCSC having no power to judge and

examine the said Artist Agreement and accordingly,
having no power to examine and decide a *quo* case;-----

- 31.2. Examination of Copyright Violation is an authority of Commercial Court;
 - 31.2.1. According to provision in Article 60 of Copyright Act that states:
“...*Litigation on copyright violation is filed to Chairman of Commercial Court...*”;-----
 - 31.2.2. Thus, it is explicitly regulated that power of examining a case related to violation of copyright is in Commercial Court and not in Business Competition Supervisory Commission (BCSC);-----
 - 31.2.3. Therefore, it should be since in the beginning Business Competition Supervisory Commission (BCSC) said that it has no power to examine and decide upon a *quo* report; -----
- 31.3. Violation of trade secret is a power of District Court; -----
 - 31.3.1. Whereas, based on Report of Continuing Examination Result for Case Number 19/KPPU-L/2007 date 14 March 2008 (“Examination Result Report”), on page 10 point 4, Examination Team judges the present of adequate evidence concerning conspiracy occurred among Reported parties to disclose confidential company information of PT. Aquarius Musikindo -----
 - 31.3.2. Confidential information element as described on page 10 point 4 in Examination Result Report is an economic-valued information where confidentiality must be kept from parties beyond agreement and in this case i.e. *advance, royalty, time frame, option, penalty*;-----
 - 31.3.3. Case to which according to Article 2 and Article 3 Law Number 30 of 2000 concerning Trade Secret (“Trade Secret Act”) was referred to:
“...*SCOPE OF TRADE SECRET*; -----
Article 2; -----
Scope of Trade Secret Protection includes production, processing, and sale methods, or other technology and/or business information that having economic value and unknown by public; -----
Article 3; -----
 - (1) *Trade Secret gets protection when the information is confidential, having economic value, and confidentiality is kept through duly effort*;-----
 - (2) *Information deemed confidential when it is only known by certain party or publicly unknown by people*;-----
 - (3) *Information deemed to have economic value when confidentiality nature of such information can be used to*

engage commercial business or activities or it can economically increase the profit;-----

(4) *Information deemed to be kept confidentiality when owner or parties who dominate to have undertaken fair and appropriate measures..*-----

31.3.4. Therefore, *advance, royalty, time frame, option, penalty* included in a contract between DEWA and PT. Aquarius Musikindo questioned in a *quo* case is trade secret of PT. Aquarius Musikindo as regulated in the scope of Trade Secret Act;-----

31.3.5. In Chapter VI concerning Dispute Settlement in Article 11 of Trade Secret Act said: -----

“(1) Holder of trade secret rights or license receiver can litigate to anyone who intentionally and without rights to conduct acts as intended in Article 4, such as: -----

a. compensation of damaged; and/or -----

b. terminating all acts as meant in Article 4; -----

(2) Litigation as intended in paragraph (1) is filed to District Court..” -----

31.3.6. This is in line with Article 50 point b of Anti-Monopoly Act that also exempts an agreement related to Intellectual Property Rights (“IPR”) including in association with trade secret from provision of intended Anti-Monopoly Act. Thus, in the event that if there is any disclosure violation of *–quod non-* trade secret, then BCSC still has no authority to judge a *quo* case. It is an absolute power of District Court;-----

31.4. BCSC has no power to examine and judge a *quo* case because it is an agreement default;-----

31.4.1. In Report of Continuing Examination Result explicitly mentioned the present of clause in Article 4 point 4.1. sub point 4.1.1 of an Agreement Number 001/JS/DW/07/04 dated 12 July 2004 between PT. Aquarius Musikindo and Dewa (vide C5), which then BCSC assumed that Dewa still has obligation to submit 4 (four) new songs to PT. Aquarius Musikindo and unexecuted yet;-----

31.4.2. By law, regardless whether or not one party has implemented the obligation in said agreement. Then effort of satisfying an agreement in case of one party deemed to violate an agreement is to file civil litigation to an authorized or selected District Court or even to agreed arbitration board; -----

- 31.4.3. Therefore, we plead for kindly distinguished Council may examine carefully C5 evidence particularly concerning clause of dispute settlement in said agreement, so that made bright and clear for this assembly, through forum to which default related to intended agreement must be solved: -----
- 31.4.4. Thus, we are sure and believe that distinguished Council would say that BCSC has no power to examine this case because *a quo* case more leads to default; -----
- 31.5. No legal item of evidence found that may prove any access of Reported III (Arnel Affandi) to the company secret of PT. Aquarius Musikindo in the form of final contract between PT. Aquarius Musikindo with its artists;
- 31.5.1. Whereas, in accordance with Examination Official Report of PT. Aquarius Musikindo (*vide* B1) in *a quo* case, it explained that PT. Aquarius Musikindo is a corporation that differs with PT. Aquarius Pustaka Musik and different in management; -----
- 31.5.2. Whereas, Arnel Affandi, SH is a former consultant from PT. Aquarius Pustaka Musik and never works at PT. Aquarius Musikindo (*vide* B1); -----
- 31.5.3. Where as evidence B6 mentioned Arnel Affandi task at PT. Aquarius Pustaka Musik is to arrange standard draft of contract without knowing commercial (business) aspect of the contract because in a standard draft of contract made by Arnel Affandi no names of parties and figures or transaction percentage arranged in the contract draft are included, moreover concerning *advance, royalty, time frame, option, and penalty*. As a consequence, Arnel Affandi, SH never knows details content of contract made between PT. Aquarius Musikindo and DEWA; -----
- 31.5.4. Whereas in examination no evidence could be shown that Arnel Affandi ever made *review* towards contract made by PT. Aquarius Musikindo moreover to *review* any contract contains business aspect categorized as trade secret of PT. Aquarius Musikindo as a contract between PT. Aquarius Musikindo and DEWA in viewing of fact that Arnel Affandi never works at PT. Aquarius Musikindo; -----
- 31.6. There is no legal evidence that may prove Arnel Affandi provides information concerning the company secret of PT. Aquarius Musikindo to EMI Music South East Asia or PT. EMI Indonesia; -----
- 31.6.1. Whereas, there is no evidence that Arnel Affandi informs EMI Music South East Asia concerning commercial (business) contract

between PT. Aquarius Musikindo and DEWA, because the fact is Arnel Affandi indeed didn't know the material content of commercial (business) contract between PT. Aquarius Musikindo and DEWA, in viewing of as mentioned in B6, Arnel Affandi never works at PT. Aquarius Musikindo but at PT. Aquarius Pustaka Musik;-----

31.6.2. Whereas, no items of evidence found that EMI Music South East Asia has known the material content of commercial (business) contract between PT. Aquarius Musikindo and DEWA when negotiation held between EMI Music South East Asia and DEWA; ---

31.7. No legal items of evidence that may prove and untrue that appointment of Arnel Affandi at PT. EMI Indonesia is because entrance of DEWA into EMI Music South East Asia; -----

31.7.1. Whereas, one surplus point Arnel Affandi joins into PT. EMI Indonesia as CEO is because at the time Arnel occupied a position of *General Manager* at ASIRI and owns broad *network* in music world;-----

31.7.2. Whereas the process of Arnel Affandi joins into PT. EMI Indonesia is through *fit and proper test* in Hong Kong; -----

31.7.3. Whereas, when Arnel Affandi joined into PT. EMI Indonesia, DEWA Group Band has joined first into EMI Music South East Asia;-----

31.7.4. Whereas, other witness namely Jusak Irwan Sutiono, the former Managing Director ("MD") PT. EMI Indonesia has no relationship in the entrance of DEWA with Arnel Affandi becomes MD at PT. EMI Indonesia (*vide* B13);-----

31.7.5. Whereas, expert witness, Bens Leo almost said any relationship, but necessary to note that it is only opinion and assumption because on the other hand, Bens Leo even acknowledged any capability of Arnel Affandi to become MD at international-labeled company as EMI. Ultimately, concerning the truth, it must be asked to other party who is actually receives Arnel as MD, and has explicitly been stated by EMI Music South East Asia that Arnel Affandi follows normal procedure i.e. through *fit and proper test* in Hong Kong and Examination Official Report of expert witness, Bens Leo himself in examination of *a quo* case; -----

31.8. No real evidence found that *Artist Agreement* made in Bahasa Indonesia; -----

31.8.1. Whereas, in a file no document of *Artist Agreement* in Bahasa Indonesia attached at all, just *Artist Agreement* in English dated 19 July 2004, signed up by Norman Cheng, Ahmad Dhani Prasetyo,

Andra Junaidi, Setyo Nugroho, Elfonda Mekel and Yuke Sampoerna otherwise found; -----

- 31.9. Witnesses information can not be accounted for; -----
- 31.9.1. Whereas, Setyo Nugroho (*vide* B33), Jusak Irwan Sutiyo (*vide* B13), PT. Aquarius Musikindo (*vide* B1) explicitly states that *Artist Agreement* between EMI Music South East Asia and DEWA made in Bahasa Indonesia; -----
- 31.9.2. In fact, document found in a file is Artist Agreement made in English, while no Bahasa Indonesia is found. Even the *Artist Agreement* in English also signed by Setyo Nugroho (*vide* C26); -----
- 31.9.3. Therefore, by evidentiary law, witness information that is vividly contradiction with the document that in fact signed alone, can not legally be accounted for and has no evidentiary power;; -----
- 31.9.4. Moreover in a file many witnesses proposed in fact has disappointment background either against EMI Music South East Asia, EMI Indonesia or against Arnel Affandi in personal or DEWA, or Iwan Sastrawijaya;-----
- 31.9.5. It is clearly seen in the witness, Setyo Nugroho (disappointed to DEWA and EMI Indonesia), Jusak Irwan Sutiyo (disappointed to EMI Music South East Asia and Iwan Sastrawijaya), Wong Aksan (disappointed to DEWA), Erwin Prasetya (disappointed to DEWA), Paul Sukran (showing his unsympathetic against Iwan Sastrawijaya), Agustin Sukotjo (*vide* B34, disappointed to Arnel Affandi);-----
- 31.10. In examination proven that EMI Music South East Asia is not ASIRI member;
- 31.10.1. In examination proven that EMI Music South East Asia is not ASIRI member. In examination against General Chairman of ASIRI (*vide* B28), it was in fact that provision in ASIRI WHITE BOOK only binds to ASIRI member; -----
- 31.10.2. Thus by law EMI Music South East Asia is not subjected to ASIRI WHITE BOOK provision as well as is not subjected to stipulation that must confirm an artist recording company previously. Moreover in case of artist himself (DEWA in this matter) has declared his contract with recording company previously (PT. Aquarius Musikindo in this matter) terminated (*vide* B13 i.e. information from Jusak who at that time occupied as MD of PT. EMI Indonesia);-----
- 31.11. No legal items of evidence found proving that by law PT. EMI Indonesia is a subordination or representative of EMI Music South East Asia; -----

- 31.11.1. Whereas in Examination Result Report, it was repeatedly mentioned as meant in Part of Facts, clause B point 1 and point 2 and in Part of Analysis, point 2, that PT. EMI Indonesia is a subordination or representative from EMI Music South East Asia. This is untrue because in fact that PT. EMI Indonesia and EMI Music South East Asia are two different corporations, separate, and standing alone ; --
- 31.11.2. PT. EMI Indonesia alone as a corporation in the form of standing alone limited liability company, does not fulfill the criteria to be disqualified as a representative (in this matter a representative from EMI Music South East Asia) in viewing that PT. EMI Indonesia shares owned by EMI Group International B.V., as shareholder by 2,475 share papers, PT. EMI Indonesia and Delta Holdings B.V., as shareholders at 25 share papers; -----
- 31.11.3. Based on composition of shareholder as mentioned above then it can be clearly seen that EMI Music South East Asia has no share at PT. EMI Indonesia so that PT. EMI Indonesia has no any legal relationship between EMI Music South East Asia and PT. EMI Indonesia; -----
- 31.11.4. In addition, definition of any representative of company can be looked in Article 1 point 7, Regulation of Trade Minister Number No. 37 of 2007 states that: "the company representative is a company acting to represent the company head office in order to engage any business and/or management according to power decided"-----
- 31.11.5. Then also arranged in Article 1 point 1, Regulation of Trade Minister Number 10 of 2006 that states, "Representative of Foreign Trading Company is an individual who has Indonesian Citizen or Foreign Citizen appointed by foreign company or combination of foreign company in overseas as the representative in Indonesia" -----
- 31.11.6. Thus, based on the above-mentioned provisions, then PT. EMI Indonesia is unable to be disqualified as a company representative because PT. EMI Indonesia is a standing alone corporation and not acting to represent a head office located in outside of country and not established upon designation from the party of foreign company. Thus, it is inappropriate if BCSC upon Continuing Examination Result declares that PT. EMI Indonesia as a subordination or representative from EMI Music South East Asia;
- 31.11.7. Concerning the present of royalty payment from PT. EMI Indonesia to DEWA doesn't prove that PT. EMI Indonesia is a subordination or

representative from EMI Music South East Asia. It is merely a financial aspect in which as a license receiver from EMI Music South East Asia to sell DEWA's album in Indonesia, PT. EMI Indonesia has payment obligation to EMI Music South East Asia. Through payment obligation of EMI Music South East Asia to DEWA by PT. EMI Indonesia, then PT. EMI Indonesia becomes to have collection right to EMI Music South East Asia upon the said payment. This is because of any *royalty* payment obligation, then by civil; it remains to be calculated by debt meeting mechanism. It is only financial issues, and has no relationship with a subordination or representation;-----

- 31.12. Legal relationship of DEWA Group Band – EMI Music South East Asia and legal relationship of EMI Music South East Asia – PT. EMI Indonesia; -----
 - 31.12.1. We are necessary to confirm that DEWA Group Band has no legal relationship and has no contract with PT. EMI Indonesia;---
 - 31.12.2. DEWA Group Band has a contract and has legal relationship with EMI Music South East Asia; -----
 - 31.12.3. PT. EMI Indonesia and EMI South East Asia are two different corporations. PT. EMI Indonesia established in 1997 based on Indonesian law of state while establishment of EMI South East Asia based on Hong Kong law of state in the name EMI Group Hong Kong Ltd; -----
 - 31.12.4. On one hand, legal relationship between DEWA Group Band and EMI Music South East Asia is both are bound in an *Artist Agreement* where DEWA Group Band binds itself to create album and to deliver single and exclusive rights to EMI Music South East Asia for recording, producing, and distributing the album throughout the world and as reward DEWA Group Band will gain share (in the form of royalty) from sale revenue; -----
 - 31.12.5. Concerning contract document and amount of intended royalty only owned and known by DEWA Group Band and EMI Music South East Asia alone;-----
 - 31.12.6. It is also necessary to express that EMI Music South East Asia is a foreign corporation (Hong Kong) and is not ASIRI member so that no rules made by ASIRI is bound; -----
 - 31.12.7. On the other hand, legal relationship between EMI Music South East Asia and PT. EMI Indonesia in association with DEWA Group Band is both are bound in bond agreement where if PT.

EMI Indonesia wants to produce (reproduces) and distributes DEWA Group Band's album within Indonesian territory in which the international exclusive rights is in the hand of EMI South East Asia, then PT. EMI Indonesia must pay a number of royalty to EMI Music South East Asia, not paying royalty to DEWA Group Band that actually has no relationship with PT. EMI Indonesia. If PT. EMI Indonesia ever pays *royalty* to DEWA Group Band, it is not because PT. EMI Indonesia has an obligation to pay PT. EMI Indonesia with the *royalty*, but to pay first *royalty* payment obligation from EMI SEA to DEWA for then collected by EMI Indonesia to EMI SEA;-----

31.13. No items of evidence found concerning the loss of PT. Aquarius Musikindo related to this case; -----

31.13.1. In the present file, calculation of loss proposed by a lawyer of PT. Aquarius Musikindo to BCSC as A28 and A43 evidences; ---

31.13.2. In the letter it is explicitly included the following method of calculation: "...assumed sale of The Best of Dewa's album will equal to sale of The Best of Dewa 19's album that released first by Aquarius until 31 December 2006 (and will continue to increase) namely..." -----

31.13.3. In said both evidences even clearly seen any change of number proposed by PT. Aquarius Musikindo's Lawyer so that letter of revision/change/correction is sent; -----

31.13.4. The letter content explicitly indicates real/material loss PT. Aquarius Musikindo suffers is not yet found. Only profit estimation that may be obtained is found, but remember that, in music industry we often estimate profit otherwise big loss even occurs (vide information of Iwan Sastra Wijaya); -----

31.13.5. We also pay attention that accuracy degree of calculation proposed is legally very obscure. It is extremely different when claimed is concerning something that amount of profit that will be gained to have been engaged. For example, it is engaged in a loan where 5% (five percent) interest will be given. If any act of inflicting debtor then it will be more appropriate when a creditor demands the said engaged interest. It is really different; -----

31.14. It is already proven that reason of Dewa move from PT Aquarius Musikindo to EMI Music South East Asia is due to *Go International* reason, not because of financial/economic consideration; -----

- 31.14.1. Whereas proven according to information of PT. Aquarius Musikindo, Ahmad Dhani Prasetyo, Iwan Sastrawijaya, Arnel Affandi, SH., Elfonda Mekel, SH., said DEWA changes a recording company from PT. Aquarius Musikindo to EMI Music South East Asia because it wants to *go international*;-----
- 31.15. Dewa has rights to choose recording company that protected by law; -----
- 31.15.1. In examination it is disclosed that DEWA move from PT. Aquarius Musikindo to EMI Music South East Asia is because of DEWA desire alone to *GO INTERNATIONAL*; -----
- 31.15.2. In Article 49 paragraph (1) of Copyright Act is strictly stated about exclusive rights from ACTOR (DEWA in this matter) namely, "The actor has exclusive rights to give permit or to prohibit other party that without his/her approval creates, reproduces, or broadcasts voice recording and/or performance picture" -----
- 31.15.3. Thus, it is fallacious by law the witnesses opinion (Jusak Irwan Sutiono, a former MD of PT. EMI Indonesia and currently as a MD at Warner), Wong Aksan and expert witness (Bens Leo) who judge about appropriate or not reason of DEWA's move from PT. Aquarius Musikindo to EMI Music South East Asia. Whatever DEWA's reason it is not considered logical or not by the witness or expert witness;-----
- 31.15.4. Moreover in this case reason of DEWA's move for *GOING INTERNATIONAL* using labeled company in Hong Kong (EMI Music South East Asia) where the best target market is in overseas (especially ASIA) is logical and justified by Iwan Sastra Wijaya who is a well-known person in recording industry either at national or international level; -----
- 31.16. No legal items of evidence that may prove Iwan Sastra Wijaya to provide a company secret information of PT Aquarius Musikindo to EMI Music South East Asia; -----
- 31.16.1. Whereas, in 2005, Iwan Sastra Wijaya entered into PT. EMI Indonesia as a Director, even before Iwan Sastra Wijaya has no relationship with PT. Aquarius Musikindo and above all he has no information access of PT. Aquarius Musikindo;-----
- 31.16.2. Whereas, an *Artist Agreement* made between DEWA and EMI Music South East Asia is on July 19, 2004;-----

- 31.16.3. Thus, no evidence found that Iwan Sastra Wijaya ever participates in the negotiation process of calculating the business between Dewa and EMI Music South East Asia and never provides or receives a company secret information of PT. Aquarius Musikindo to or from anyone too; -----
- 31.17. Any Blackboard transaction made by Iwan Sastra Wijaya has been proven;---
- 31.17.1. In examination of Iwan Sastra Wijaya's position at PT. EMI Indonesia is frequently questioned the reason and linked to DEWA movement to EMI Music South East Asia;-----
- 31.17.2. In his information Iwan Sastra Wijaya has expressed that he was appointed to be one of Directors at PT. EMI Indonesia because he sells "BLACKBOARD" company's licenses belongs to him to PT. EMI Indonesia;-----
- 31.17.3. This is confirmed by Bens Leo in his information stating that approximately 2 or 3 years ago Iwan through his Blackboard company had been merger with PT. EMI Indonesia; -----
- 31.17.4. Thus, it has been proven that entrance of Iwan Sastra Wijaya to PT. EMI Indonesia is in association with Blackboard transaction and not because other reason including reason that because DEWA movement to PT. EMI Indonesia resulting in Iwan Sastra Wijaya can enter into PT. EMI Indonesia; -----
- 31.18. Thus, then by law too, Article 23 Law Number 5 Year 1999 sounds: *Business actor is prohibited to conspire with other party in order to get information of its competitor business activities classified as company secret so that may result in unfair business competition occurs*, is already not proven in this case because:-----
1. Element of "getting information on competitor business activities that classified as a company secret" is unfulfilled even not proven Reported in this case owns access to said company secret; -----
 2. Element of "conspiring with other party" is unfulfilled because there is no evidence Reported parties work together each other for getting said company secret and then delivering to EMI Music South East Asia;-----
 3. Element of "unfair business competition occurs" is unfulfilled in this case because even the proof is any freedom of artist to choose the best recording company for the artist himself; -----
32. Considering that in Commission Assembly held on April 11, 2008 Reported II delivered supplement evidence such as a Certificate from Finance Director of EMI Music Indonesia (PT EMI Indonesia) dated 10 April 2008 stated that PT EMI

Indonesia made payment over masters application owned by EMI Music South East Asia such as *royalty* including DEWA Group Band where in case of in advance payment is found, then it will be calculated with *royalty* paid by PT EMI Indonesia to said EMI Music South East Asia (*Vide* A110); -----

33. Considering that in Council Assembly held on April 11, 2008 Reported IV delivered supplement evidence such as Decision of Central Jakarta District Court Number 110/Pdt.G/2007/PN.Jkt.Pst. decided suit case of PT Aquarius Musikindo against Ahmad Dhani Prasetyo, Andra Junaidi, Elfonda Mekel, Muhammad Yuke Sampurna and Setyo Nugroho on December 10, 2007 and read in open session for public on December 12, 2007 (*Vide* C37);-----
34. Considering that referring to assignment of Commission Council Member that is Mr. M. Nawir Messi, M.Sc. to Australia, then substitution of Commission Council Member is necessary deemed to undertake; accordingly, Chairman of Commission issued BCSC's Decision Number 157/KPPU/KEP/IV/2008 dated 21 April 2008 concerning Assignment a Commission Member as a Substitute Commission Council Member in Commission Assembly of Case Number 19/KPPU-L/2007 assigned a Member of Commission, Dr. A.M. Tri Anggraini, S.H., M.H. as a Member of Commission Council to substitute Ir. M. Nawir Messi, M.Sc.;-----
35. Considering that hereinafter the Commission Council judges to have had adequate evidence and judgment to take any Decision;-----

CONCERNING LAW

1. Considering that based on Report of Continuing Examination Result, opinion or defense of Reported parties, letters, documents, and other items of evidence the Commission Council judges and concludes the following matters: -----
 - 1.1. **Concerning Identity of Reported Parties;**-----
 - 1.1.1. Whereas, Reported I is EMI Music South East Asia, which having domicile in Hong Kong and having address at Suites 2705-9 Tower 6 The Gateway 9 Canton Road Tsimshatsui Kowloon Hong Kong, which is a division of EMI Group Hong Kong Limited (formerly Manotick Limited and then Thorn EMI (Hong Kong Limited), established in 1985 in Hong Kong, registered in 1997 as a division of EMI Group Hong Kong Limited and to have taken a role as regional position holder of EMI Music Group throughout Southeast Asia territory, which in this case to carry out business activities in Indonesian territory through collaboration with Dewa 19, which in this case having law domicile at Lawyer's office namely Law Office of Hotma Sitompoel & Associates

that having address at Jalan Martapura Nomor 3 Central Jakarta, and the Commission Council judges that EMI South East Asia in a *quo* case is eligible as Reported party;-----

1.1.2. Whereas, Reported II is PT EMI Indonesia, which established in 1996, in a form of National corporation that is a Foreign Investment Company (FIC), having domicile in Indonesia and having address at Graha Aktiva Lt. 5, Jl. H. R. Rasuna Said Blok X-1 Kav. 3, Jakarta 12950, having business activities within Indonesian territory, which in this case having law domicile at Lawyer's office namely Law Office of Hotma Sitompoel & Associates that having address at Jalan Martapura Nomor 3 Central Jakarta, and the Commission Council judges that PT EMI Indonesia in a *quo* case is eligible as Reported party;-----

1.1.3. Whereas Reported III is Arnel Affandi, S.H., and individual that in this examination of case occupies as *Managing Director* of PT EMI Indonesia, having address at Graha Aktiva Lt. 5, Jl. H. R. Rasuna Said Blok X-1 Kav. 3, Jakarta 12950, having Residence Identification Card (RIC) address at Komplek PLN No. 12 RT 001, RW 009 Cililitan, Kramat Jati Sub-district, East Jakarta, having correspondence address during examination at Pondok Cibubur Blok H2/6 East Jakarta, which in this case having law domicile at Lawyer's office namely Law Office of Hotma Sitompoel & Associates that having address at Jalan Martapura Nomor 3 Central Jakarta, and the Commission Council judges that Arnel Affandi, S.H. in a *quo* case is eligible as Reported party;-----

1.1.4. Whereas Reported IV is Dewa 19, which is a music group established in 1987, where in 2004 had members of Ahmad Dhani Prasetyo, Andra Junaidi, Setyo Nugroho, Elfonda Mekel dan Muhammad Yuke Sampurna, having correspondence address at Pinang Mas VIII/US 19 Pondok Indah, Jakarta 12310, which in this case having law domicile at Lawyer's office namely Law Office of Hotma Sitompoel & Associates that having address at Jalan Martapura Nomor 3 Central Jakarta, and the Commission Council judges that Dewa 19 in a *quo* case is eligible as Reported party;-----

1.1.5. Elfonda Mekel and Muhammad Yuke Sampurna, which having correspondence address at Pinang Mas VIII/US 19 Pondok Indah, Jakarta 12310, which in this case having law domicile at Lawyer's office namely Law Office of Hotma Sitompoel & Associates that having address at Jalan Martapura Nomor 3 Central Jakarta, and the

Commission Council judges that Dewa 19 in a *quo* case is eligible as Reported party;-----

- 1.1.6. Whereas Reported V is Iwan Sastra Wijaya, an individual that in this examination occupies as *Managing Director* of Blackboard and A&R *Director* of PT EMI Indonesia, having office address at Jl. Kapuk Utara I/89, Kapuk Muara, Penjaringan, North Jakarta, which in this case having law domicile at Lawyer's office namely Law Office of Hotma Sitompoel & Associates that having address at Jalan Martapura Nomor 3 Central Jakarta, and the Commission Council judges that Iwan Sastra Wijaya in a *quo* case is eligible as Reported party; -----
- 1.2. Concerning Agreement made between PT Aquarius Musikindo and Dewa 19 (Reported IV); -----
 - 1.2.1. Whereas Dewa 19 (Reported IV) has not yet finished an obligation to deliver 4 (four) new songs as included in an Agreement Number 001/JS/DW/07/04 dated 12 July 2004, so that Dewa 19 (Reported IV) is still bound to the contract with PT Aquarius Musikindo; -----
 - 1.2.2. Whereas, based on supplement evidence filed by Reported IV i.e. Decision of Central Jakarta District Court Number 110/Pdt.G/2007/PN.Jkt.Pst.decided suit case of PT Aquarius Musikindo against Ahmad Dhani Prasetyo, Andra Junaidi, Elfonda Mekel, Muhammad Yuke Sampurna and Setyo Nugroho on December 10, 2007 and read in open session for public on December 12, 2007, in which one of decision dictums in *rekonpensi*, the Judge Council declared that Agreement Number 001/JS/DW/07/04 dated 12 July 2004 is void; -----
 - 1.2.3. Whereas the Commission Council judges that said agreement is still valid for parties because Decision of Central Jakarta District Court Number 110/Pdt.G/2007/PN.Jkt.Pst. as mentioned above, has not had permanent legal force;-----
- 1.3. Concerning Dewa 19 Desire (Reported IV) to *Go International*; -----
 - 1.3.1. Whereas, PT Aquarius Musikindo and PT EMI Indonesia (Reported II) is proved marketing music product of Dewa 19 (Reported IV) to abroad;-----
 - 1.3.2. Whereas, according to Reported parties, reason of Dewa 19 (Reported IV) move from PT. Aquarius Musikindo to EMI Music South East Asia (Reported I) is because of *going international* reason, not because of financial/economic consideration.

- 1.3.3. Whereas, the Commission Council judges that in order of *going international*, Dewa 19 (Reported IV) must not sign up the contract with EMI Music South East Asia (Reported I), but sufficient with a music company in Indonesia;-----
- 1.4. Concerning the Process of Dewa 19 Move (Reported IV) from PT Aquarius Musikindo to EMI Music South East Asia (Reported I); -----
- 1.4.1. Whereas, the process of Dewa 19 move (Reported IV) from PT Aquarius Musikindo to EMI Music South East Asia (Reported I) involves PT EMI Indonesia (Reported II), Arnel Affandi, S.H. (Reported III) and Iwan Sastra Wijaya (Reported V);-----
- 1.4.2. Whereas, according to Reported parties, no legal items of evidence found that may prove Arnel Affandi (Reported III) to provide information concerning the company secret of PT. Aquarius Musikindo to EMI Music South East Asia (Reported I) or PT. EMI Indonesia (Reported II);-----
- 1.4.3. Whereas, according to supplement evidence from Reported II, PT EMI Indonesia (Reported II) is not involved in the process of Dewa 19 (Reported IV) movement to EMI Music South East Asia (Reported I) over payment of royalty to Dewa 19 (Reported IV); -----
- 1.4.4. Whereas, according to Reported parties,
- 1.4.5. no legal items of evidence found that may prove Iwan Sastra Wijaya (Reported V) to provide a company secret information PT. Aquarius Musikindo to EMI Music South East Asia (Reported I);-----
- 1.4.6. Whereas, the Commission Council judges that involvement evidence of PT EMI Indonesia (Reported II), Arnel Affandi, S.H. (Reported III) and Iwan Sastra Wijaya (Reported V) is found in the process of Dewa 19 (Reported IV) move from PT Aquarius Musikindo to EMI Music South East Asia (Reported I);-----
- 1.5. Concerning an Agreement between EMI Music South East Asia (Reported I) and Dewa 19 (Reported IV);-----
- 1.6. Whereas, an agreement between EMI Music South East Asia and Dewa 19 is sign up in Jakarta on July 19, 2004 made in English, but according to Witnesses and Reporter, the said agreement is made in Bahasa Indonesia on June 2004;-----
- 1.6.1. Whereas, in an Artist Agreement between EMI Music South East Asia and Dewa 19 dated 19 July 2004, in Article 11 concerning Choice of Law, said that *“During the term this agreement should be construed according to the law of Republic of Indonesia. In accordance of*

settlement of dispute might rise during the term Bahasa Indonesia will be used as Choice of Language” -----

- 1.6.2. Whereas, based on point 1.5.2. Part Concerning Law of a *quo* decision indicates the present of agreement made in Bahasa Indonesia as reference when dispute occurs in the agreement; -----
- 1.6.3. Whereas, according to Reported parties, no real evidence is found that an *Artist Agreement* is made in Bahasa Indonesia;-----
- 1.6.4. Whereas, the Commission Council judges that an agreement between EMI Music South East Asia (Reported I) and Dewa 19 (Reported IV) is signed up in Jakarta on July 10, 2004 that made into two languages namely Bahasa Indonesian and English, but it is not essential issue that is properly considered in this Decision; -----
- 1.7. Concerning Linkage between EMI Music South East Asia (Reported I) and PT EMI Indonesia (Reported II);-----
 - 1.7.1. Whereas, PT EMI Indonesia (Reported II) is a subordination from EMI Music South East Asia (EMI Music South East Asia (Reported I) and is a representative from (EMI Music South East Asia (Reported I); ----
 - 1.7.2. Whereas, according to Reported parties, no legal items of evidence is found to prove that legally PT. EMI Indonesia (Reported II) is a Subordination or Representative of EMI Music South East Asia (Reported I); -----
 - 1.7.3. Whereas, the Commission Council judges that PT EMI Indonesia (Reported II) is a subordination from EMI Music South East Asia (Reported I) and is a representative from EMI Music South East Asia (Reported I) because EMI Music South East Asia (Reported I) is a division of EMI Group Hong Kong Limited and to have taken a role as regional position holder of EMI Music Group throughout Southeast Asian territory where one of those is Indonesia; -----
- 1.8. Concerning Provision of Association Rule Book (White Book); -----
 - 1.8.1. Whereas, based on provision in Article 9 of Association Rule Book (White Book), when Dewa 19 (Reported IV) was bound agreement of producing voice recording work with two recording companies namely PT Aquarius Musikindo and EMI Music South East Asia (Reported I) at the same time, then fulfillment of achievement to be prioritized is to a company that first makes an agreement with pertinent artist i.e. with PT Aquarius Musikindo;-----
 - 1.8.2. Whereas, party bound to provision of Association Rule Book (White Book) is each ASIRI member; -----

- 1.8.3. Whereas, according to Reported parties, EMI Music South East Asia (Reported I) is not ASIRI member; -----
- 1.8.4. Whereas, PT Aquarius Musikindo is ASIRI member; -----
- 1.8.5. Whereas, the Commission Council has opinion that EMI Music South East Asia (Reported I) engages business activities within Indonesian territory by making collaboration agreement with Dewa 19 (Reported IV) through Artist Agreement signed up on July 19, 2004 where at the same time Dewa 19 (Reported IV) still bound to the contract with PT Aquarius Musikindo through Agreement Number 001/JS/DW/07/04 dated 12 July 2004; -----
- 1.8.6. Whereas, the Commission Council has opinion that Dewa 19 (Reported IV) ought to conduct fulfillment of achievement first to PT Aquarius Musikindo; -----
- 1.8.7. Whereas, in spite of EMI Music South East Asia (Reported I) is not ASIRI member, but EMI Music South East Asia (Reported I) is indirectly subjected to the stipulation of Association Rule Book (White Book) because act as intended in point 1.7.5 Part Concerning Law of *a quo* decision; -----
- 1.9. Concerning Payment of *Advance Royalty* and *Royalty*;-----
 - 1.9.1. Whereas, based on agreement between EMI Music South East Asia (Reported I) and Dewa 19 (Reported IV), payment of Dewa 19 *advance royalty* conducted by PT EMI Indonesia after getting approval from CFO of EMI Music South East Asia (Reported I);-----
 - 1.9.2. Whereas, according to supplement evidence from PT EMI Indonesia (Reported II) i.e. Certificate from Finance Director of PT EMI Indonesia (Reported II) dated 10 April 2008 stated that PT EMI Indonesia (Reported II) makes payment upon masters application owned by EMI Music South East Asia (Reported I) in the form of royalty including DEWA Group Band where in case in advance payment is found, then it shall be calculated with royalty paid by PT EMI Indonesia (Reported II) to the said EMI Music South East Asia (Reported I); -----
 - 1.9.3. Whereas, the Commission Council judges that payment of in advance royalty and royalty by PT EMI Indonesia (Reported II) to Dewa 19 (Reported IV) is a form of conspiracy between PT EMI Indonesia (Reported II) and EMI Music South East Asia (Reported I) because PT EMI Indonesia (Reported II) is not one of parties in an Artists Agreement made on July 19, 2004 between EMI Music South East

Asia (Reported I) and Dewa 19 (Reported IV) that is obliged to pay *advance royalty* and *royalty* to Dewa 19 (Reported IV);-----

- 1.10. Concerning Confidential Company Information: -----
 - 1.10.1. Whereas, content of the contract between artist and recording company that among others, *advance, royalty, time frame, option, and penalty* are the company secret that confidentiality must be kept to other parties outside of the contract;-----
 - 1.10.2. Whereas, according to Reported parties, the company secret in a *quo* case is the trade secret as included in Law Number 30 of 2000 concerning Trade Secret;-----
 - 1.10.3. Whereas, the Commission Council judges that content of the contract between PT Aquarius Musikindo and Dewa 19 (Reported IV) as information of the competitor business activities that is the company secret as intended in Article 23 Law Number 5 Year 1999; -----
- 1.11. Concerning Impact of Dewa 19 (Reported IV) move from PT Aquarius Musikindo to EMI Music South East Asia (the I); -----
 - 1.11.1. Whereas, Arnel Affandi, S.H. occupies as the Managing Director of PT EMI Indonesia (Reported II) after Dewa 19 (Reported IV) movement from PT Aquarius Musikindo to EMI Music South East Asia (Reported I); -----
 - 1.11.2. Whereas, according to Reported parties, no legal items of evidence is found that may prove and untrue that appointment of Arnel Affandi at PT. EMI Indonesia (Reported II) is due to entrance of Dewa 19 (Reported IV) to EMI Music South East Asia (Reported I);-----
 - 1.11.3. Whereas, Iwan Sastra Wijaya (Reported V) occupies the position as Director A&R of PT EMI Indonesia (Reported II) after Arnel Affandi, S.H. becomes *Managing Director* of PT EMI Indonesia (Reported II);
 - 1.11.4. Whereas, according to Reported parties, the entrance of Iwan Sastra Wijaya (Reported V) to PT. EMI Indonesia (Reported II) is in association with Blackboard transaction i.e. licenses sale of "BLACKBOARD" company and not for other reason including reason that because of DEWA (Reported IV) movement to PT. EMI Indonesia (Reported II);-----
 - 1.11.5. Whereas, as a result of the conspiracy, PT Aquarius Musikindo then inflicts loss and demands compensation by IDR 4,295,627,881,- (four billion two hundred ninety five million six hundred twenty seven and eight hundred eighty one rupiah); -----

- 1.11.6. Whereas, according to Reported parties, no legal items of evidence is found concerning PT. Aquarius Musikindo loss in association with this case; -----
- 1.11.7. Whereas, the Commission of Council judges that Arnel Affandi, S.H. (Reported III) and Iwan Sastra Wijaya (Reported V) acquire advantage i.e. position gain at PT EMI Indonesia (Reported II) as a result of Dewa 19 (Reported IV) move from PT Aquarius Musikindo to EMI Music South East Asia (Reported I); -----
- 1.11.8. Whereas, the Commission Council judges that loss inflicted by PT Aquarius Musikindo either material or potential loss is found as a result of Dewa 19 (Reported IV) move from PT Aquarius Musikindo to EMI Music South East Asia (Reported IV); -----

- 2. Formal Aspect;-----
 - 2.1. Concerning BCSC Jurisdiction; -----
 - 2.1.1. Whereas, according to Reported parties, BCSC has no power to examine the case related to Copyright agreement because violation of Copyright is an authority of Commercial Court;-----
 - 2.1.2. Whereas, according to Reported parties, violation of trade secret is an authority of District Court; -----
 - 2.1.3. Whereas, according to Reported parties, BCSC has no power to examine and judge *a quo* case because it is agreement default case;-----
 - 2.1.4. Whereas, the Commission Council has opinion that EMI Music South East Asia (Reported I) engages business activities within the Republic of Indonesian's territory so that subjected to Indonesian law and regulation as also included in Article 11 concerning *Choice of Law* in *Artist Agreement* between EMI South East Asia (Reported I) and Dewa 19 (Reported IV); -----
 - 2.1.5. Whereas, case subject of *a quo* is not an agreement related to Copyright, Trade Secret or default, but prohibition of conspiracy between business actor and other party to obtain information of competitor business activities classified as the company secret so that may result in unfair business competition occurs; -----
 - 2.1.6. Whereas, thereby, the Commission Council concludes that BCSC has jurisdiction against EMI Music South East Asia (Reported I) in case of *a quo*; -----
- 3. Material Aspect;-----

- 3.1. Whereas, Article 23 Law Number 5 Year 1999 sounds as follows “*Business actor is prohibited to conspire with other party in order to get information of its competitor business activities classified as company secret so that may result in unfair business competition occurs*; -----
- 3.2. Whereas elements in Article 23 Law Number 5 Year 1999 are as follows:-----
- 3.2.1. Business Actor Element; -----
- 3.2.1.1. Whereas, based on Article 1 point 5 Law Number 5 Year 1999 said “*Business actor is an individual or company either in the form of corporation or non-corporation, which established and having domicile or engages business activities in the Republic of Indonesian’ territory, either individually or collectively through an agreement, carries out various business activities in economy*”, -----
- 3.2.1.2. Whereas in this case, the inclusive in Business Actor as intended in Article 1 point 5 Law Number 5 Year 1999 is EMI Music South East Asia (Reported I) and PT EMI Indonesia (Reported II) as described in point 1.1.1. and point 1.1.2. Part Concerning Law of a *quo* decision; -----
- 3.2.1.3. Whereas, thereby, the business actor element is fulfilled;
- 3.2.2. Element of conspiring; -----
- 3.2.2.1. Whereas, based on Article 1 Point 8 Law Number 5 Year 1999 mentioned that “ *Business conspiracy is a form of cooperation conducted by a business actor with other business actor in the purpose of dominating relevant market for the interest of conspiring business actor*; -----
- 3.2.2.2. Whereas, in 2004, Norman Cheng was informed by Iwan Sastra Wijaya (Reported V) concerning Dewa 19 (Reported IV) through Ahmad Dhani Prasetyo who planned to abandon PT Aquarius Musikindo and joined with EMI Music South East Asia (Reported I) in order that *go international*. For this Dewa 19 (Reported IV) desire, Norman Cheng agrees it; -----
- 3.2.2.3. Whereas, furthermore, Iwan Sastra Wijaya (Reported V) and Arnel Affandi (Reported III) arrange a meeting for the signing of the contract between Dewa 19 (Reported IV) and EMI Music South East Asia (Reported I) at Mulia Hotel. This meeting attended by all personnel of Dewa 19 (Reported IV) (Ahmad Dhani Prasetyo, Andra Ramadhan, Elfonda Mekel, Setyo Nugroho dan

Muhammad Yuke Sampurna) and also attended by Iwan Sastra Wijaya (Reported V) (Blackboard Management), Norman Cheng (CEO EMI Music South East Asia), Arnel Affandi (Reported III) (*General Manager* of ASIRI as well as Legal Consultant of PT Aquarius Pustaka Musik), Syamsul Huda and Jusak Irwan Sutiono (*Managing Director* PT EMI Indonesia);-----

3.2.2.4. Whereas, the Commission Council judges that act of EMI Music South East Asia (Reported I) is as follows:

3.2.2.4.1. Whereas, EMI Music South East Asia (Reported I) doesn't make clarification to Dewa 19 (Reported IV) concerning contract bond between Dewa 19 (Reported IV) and PT Aquarius Musikindo. This act is a negligence because EMI Music South East Asia (Reported I) should know that Dewa 19 (Reported IV) still bound to the contract with PT Aquarius Musikindo; -----

3.2.2.4.2. Whereas, an act of EMI Music South East Asia (Reported I) that makes the contract with Dewa 19 (Reported IV), in spite of EMI South East Asia (Reported I) owns any representative in Indonesia i.e. PT EMI Indonesia (Reported II), is an act to avoid Article 7 and Article 9 of ASIRI White Book; ---

3.2.2.4.3. Whereas, EMI Music South East Asia (Reported I) asks Iwan Sastra Wijaya as a facilitator of Dewa 19 (Reported IV) movement to EMI Music South East Asia (Reported I), is a conspiracy act involving EMI Music South East Asia (Reported I) with Iwan Sastra Wijaya (Reported V);-----

3.2.2.4.4. Whereas, an act of EMI Music South East Asia (Reported I) that paying *advanced royalty* indirectly to Dewa 19 (Reported IV), but paid by PT EMI Indonesia (Reported II), is an inconsistent act to *Article 7* point c of *Artists Agreement* between Dewa 19

(Reported IV) and EMI Music South East Asia (Reported I); -----

3.2.2.4.5. Whereas, appointment of Arnel Affandi as *Managing Director* of PT EMI Indonesia (Reported II) by EMI Music South East Asia (Reported I) is a compensation upon the role of Arnel Affandi in the process of Dewa 19 (Reported IV) movement to EMI Music South East Asia (Reported I); -----

3.2.2.4.6. Whereas, the Commission Council concludes that EMI Music South East Asia (Reported I) is involved in the conspiracy; -----

3.2.2.5. Whereas, the Commission Council judges that an act of PT EMI Indonesia (Reported II) is as follows:-----

3.2.2.5.1. Whereas, PT EMI Indonesia (Reported II) (during *Managing Director* of PT EMI Indonesia occupied by Jusak Irwan Sutiono) is involved either direct or indirect in the process of recruiting Dewa 19 (Reported IV) because follows to witness and rectify the contract between EMI Music South East Asia (Reported I) and Dewa 19 (Reported IV); -----

3.2.2.5.2. Whereas, when the signing of the contract, Jusak Irwan Sutiono ought to inform Norman Cheng that Dewa 19 still bound to the contract with PT Aquarius Musikindo; -----

3.2.2.5.3. Whereas, PT EMI Indonesia (Reported II) even though is not party in an agreement between EMI Music South East Asia (Reported I) and Dewa 19 (Reported IIV), but pays *advanced royalty* money to Dewa 19 (Reported IV). the Commission Council judges that PT EMI Indonesia (Reported II) is affiliated to EMI Music South East Asia (Reported I) as fact obtained during examination;-----

3.2.2.5.4. Whereas, the Commission Council concludes that PT EMI Indonesia (Reported II) is involved in the conspiracy; -----

- 3.2.2.6. Whereas, the Commission Council judges that an act of Arnel Affandi S.H. (Reported III) is as follows:-----
- 3.2.2.6.1. Whereas, Arnel Affandi, S.H. as a former legal consultant of PT Aquarius Pustaka Musik dan GM of ASIRI at that time, witnessed the signing of the contract between Dewa 19 and EMI Music South East Asia. the Commission Council judges that Arnel Affandi has no any interest to attend and witness the signing of the contract; -----
- 3.2.2.6.2. Whereas, Arnel Affandi, S.H. changes 2 (two) paragraphs of the contract together with Jusak Irwan Sutiono. the Commission Council judges that Arnel Affandi, S.H. (Reported III) is involved in the preparation of *Artist Agreement* between Dewa 19 (Reported IV) and EMI Music South East Asia (Reported I);
- 3.2.2.6.3. Whereas, Arnel Affandi, S.H. (Reported III) as a mediator in the process of Dewa 19 (Reported IV) movement from PT Aquarius Musikindo to EMI Music South East Asia (Reported I). The Commission Council judges that Arnel Affandi, S.H. (Reported III) is involved in the conspiracy i.e. to facilitate the process of Dewa 19 (Reported IV) move; -----
- 3.2.2.6.4. Whereas, Arnel Affandi, S.H. (Reported III) appoints Iwan Sastra Wijaya (Reported V) as the Director A&R of PT EMI Indonesia (Reported II). the Commission Council judges that said act as compensation for Iwan Sastra Wijaya (Reported V) in the process of Dewa 19 (Reported IV) movement to EMI Music South East Asia (Reported I); -----
- 3.2.2.6.5. Whereas, the Commission Council concludes that Arnel Affandi, S.H. (Reported III) is involved in the conspiracy;-----
- 3.2.2.7. Whereas, the Commission Council judges an act of Dewa 19 (Reported IV) is as follows: -----

- 3.2.2.7.1. Whereas, Ahmad Dhani Prasetyo is a personnel of Dewa 19 (Reported IV) who knows about the substance of agreement between PT Aquarius Musikindo and Dewa 19 (Reported IV);-----
- 3.2.2.7.2. Whereas, a personnel of Dewa 19 (Reported IV) who has desire to *go international* is Ahmad Dhani Prasetyo; -----
- 3.2.2.7.3. Whereas, a personnel of Dewa 19 (Reported IV) who has utmost role in the process of Dewa 19 (Reported IV) movement from PT Aquarius Musikindo to EMI Music South East Asia (Reported I) is Ahmad Dhani Prasetyo; -
- 3.2.2.7.4. Whereas, party who request a meeting with Norman Cheng through Iwan Sastra Wijaya (Reported V) is Ahmad Dhani Prasetyo;-----
- 3.2.2.7.5. Whereas a personnel of Dewa 19 (Reported IV) who arranges the signing schedule of *Artist Agreement* dated 19 July 2004 between Dewa 19 (Reported IV) and EMI Music South East Asia (Reported I) is Ahmad Dhani Prasetyo;-----
- 3.2.2.7.6. Whereas, a personnel of Dewa 19 (Reported IV) who discloses content of agreement between Dewa 19 (Reported IV) and PT Aquarius Musikindo to EMI Music South East Asia (Reported I) is Ahmad Dhani Prasetyo; -
- 3.2.2.7.7. Whereas, Commission Council that Dewa 19 (Reported IV) is involved in the conspiracy; ---
- 3.2.2.8. Whereas, the Commission Council judges an act of Iwan Sastra Wijaya (Reported V) is as follows:-----
 - 3.2.2.8.1. Whereas, Iwan Sastra Wijaya (Reported V) facilitates Dewa 19 (Reported IV) movement from PT Aquarius Musikindo to EMI Music South East Asia (Reported I) by way of introducing Dewa 19 (Reported IV) to Norman Cheng (MD of EMI Music South East Asia) and arranges the meeting for the signing of the contract between Dewa 19 (Reported IV)

and EMI Music South East Asia at Mulia Hotel, then the Commission Council judges that Iwan Sastra Wijaya (Reported V) is involved in the conspiracy in association with Dewa 19 (Reported IV) movement to EMI Music South East Asia (Reported I);-----

3.2.2.8.2. Whereas, the Commission Council concludes that Iwan Sastra Wijaya (Reported V) is involved in the conspiracy; -----

3.2.2.9. Whereas, thereby, element of Conspiring is **fulfilled**.

3.2.3. Other party element;-----

3.2.3.1. Whereas, other party means parties who are involved in the process of Dewa 19 (Reported IV) movement from PT Aquarius Musikindo to EMI Music South East Asia (Reported I) that makes the conspiracy either business actor and/or other legal subject related to the movement process; -----

3.2.3.2. Whereas, the Commission Council concludes that the meaning of other Party in this *a quo* case is Arnel Affandi (Reported III), Dewa 19 (Reported IV) and Iwan Sastra Wijaya (Reported V);-----

3.2.3.3. Whereas, thereby, Other Party element is **fulfilled**;-----

3.2.4. Element of competitor business activities information classified as the company secret; -----

3.2.4.1. Whereas, confidential company information is information that owns economic value and hence confidentiality must be kept from parties beyond the agreement;

3.2.4.2. Whereas, the Commission Council concludes that in this *a quo* case, confidential company information in an agreement between Dewa 19 (Reported IV) and PT Aquarius Musikindo among others, *advance, royalty, time frame, option and penalty*;-----

3.2.4.3. Whereas, thereby, element of its competitor business activities information classified as the company secret is **fulfilled**;-----

3.2.5. Element of resulting in unfair business competition occurs; -----

3.2.5.1. Whereas, the meaning of unfair business competition as intended in Article 1 point 6 Law Number 5 Year 1999 is "*Competition inter business actor in carrying out activities*

of production and/or marketing of goods and /or service done by unfair manner or illicit or to inhibit business competition”; -----

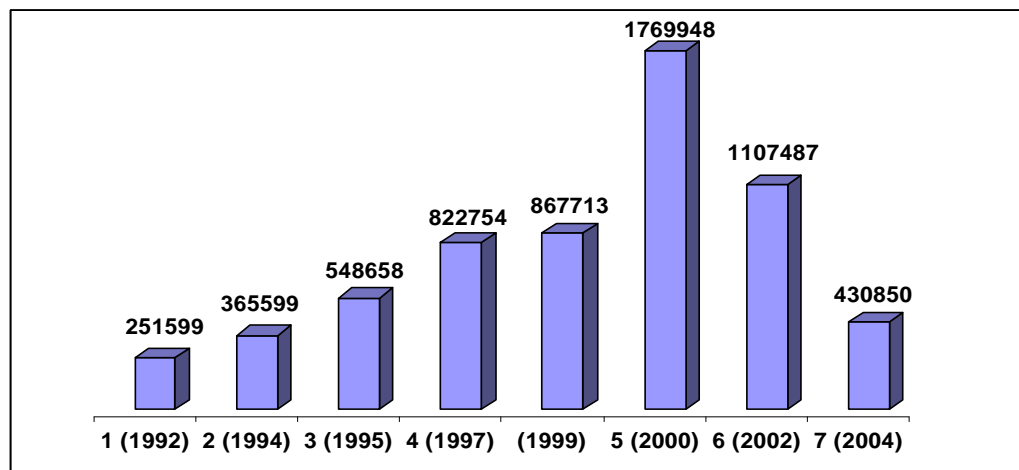
3.2.5.2. Whereas, the Commission Council concludes that illicit act perpetrated by EMI Music South East Asia (Reported I), PT EMI Indonesia (Reported II), Arnel Affandi, S.H. (Reported III), Dewa 19 (Reported IV), and Iwan Sastra Wijaya (Reported V) are the form of conspiracy that resulting in loss of PT Aquarius Musikindo; -----

3.2.5.3. Whereas, thereby, element of resulting in unfair business competition occurs **to be fulfilled**; -----

3.3. Whereas, the Commission Council considers compensation claim proposed by PT Aquarius Musikindo as follows; -----

3.3.1. Whereas, as a result of the conspiracy, then PT Aquarius Musikindo inflicts loss and demand compensation by IDR 4, 295,627,881,- (four billion two hundred ninety five million six hundred twenty seven and eight hundred eighty one rupiah); -----

3.3.2. Whereas, time series data of cassette and compact disc (CD) sale from Dewa 19 albums as presented in the following graphic: -----



3.3.3. Whereas, based on the above graphic, the lowest album number of sale is the first album namely album "19" released in 1992 in a number of 251,599 (two hundred fifty one thousand five hundred ninety nine) pieces, while the highest album sale is the fifth Album i.e. "Bintang Lima" Album released in 2000 in a number of 1,769,948 (one million seven hundred sixty nine thousand nine hundred and forty eight) pieces; -----

3.3.4. Whereas, based on the above graphic, number of "The Best" Album sale released in 1999 was 867,713 (eight hundred sixty seven thousand seven hundred and thirteen) pieces; -----

3.3.5. Whereas, based on the above graphic, average of Dewa 19 album sale from 7 (seven) albums plus 1 (one) "The Best" Album are Best" 770,576 (seven hundred seventy thousand five hundred and seventy six) pieces; -----

3.3.6. Whereas, based on average of Dewa 19 album sale from 7 (seven) albums plus 1 (one) "The Best" Album and after being multiplied by cassette and CD profit, then total loss as a result of Dewa 19 (Reported IV) movement from PT Aquarius Musikindo to EMI Music South East Asia (Reported I) is IDR 3,814,749,520,- (three billion eight hundred fourteen million seven hundred forty nine thousand five hundred and twenty); -----

3.3.7. Whereas, loss as intended in point 3.3.6.derives from the proportional number of cassette (839,508 pieces) and CD (28,205 pieces) are multiplied by average of Dewa 19 album sale (770,576 pieces) and are multiplied by profit for each cassette (IDR 4,547,-) and CD (IDR 16,961,-) i.e.:-----

Cassette product	=	839,508/867,713 pcs x 770,576 pcs x
		IDR 4,547,-
		= IDR 3,389,917,803,-
CD product	=	28,205/867,713 pcs x 770,576 pcs x
		IDR 16,961,-
		= IDR 424,831,717,-
Total	=	IDR 3,389,917,803,- + IDR 424,831,717,-
		= IDR 3,814,749,520,-

3.3.8. Whereas, the Commission Council judges loss fairness of PT Aquarius Musikindo as a result of Dewa 19 (Reported IV) movement from PT Aquarius Musikindo to EMI Music South East Asia (Reported I) is IDR 3,814,749,520,- (three billion eight hundred fourteen million seven hundred forty nine thousand five hundred and twenty); -----

4. Conclusion; -----

4.1. Considering that, based on judgment and explanation of fulfilling the above element, the Commission Council comes to the following conclusion: -----

4.1.1. Whereas, EMI Music South East Asia (Reported I), PT EMI Indonesia (Reported II), Arnel Affandi, S.H. (Reported III), Dewa 19

(Reported IV) and Iwan Sastra Wijaya (Reported V) perpetrate violation of Article 23 Law Number 5 Year 1999;-----

4.1.2. Whereas, as a result of the conspiracy, PT Aquarius Musikindo loss due to Dewa 19 (Reported IV) movement to EMI Music South East Asia (Reported I) is IDR 3,814,749,520,- (three billion eight hundred fourteen million seven hundred forty nine thousand five hundred and twenty);-----

5. Considering that, before deciding this case, the Commission Council judges the following matters:-----

5.1. Whereas, CEO of EMI Music South East Asia (Reported I) i.e. Norman Cheng was never present during examination at BCSC, but only represented by IT Regional Director of EMI Music South East Asia and its Lawyer;-----

5.2. Whereas, PT EMI Indonesia (Reported II) provides no document requested by Continuing Examination Team among others, the Company Statute, time series Financial Statement, and regular Report to the shareholder;-----

5.3. Whereas, Arnel Affandi, S.H. (Reported III) behaves cooperative and always present in examination at BCSC;-----

5.4. Whereas, Dewa 19 (Reported IV) was present in Preliminary Examination, but was never present in Continuing Examination at BCSC;-----

5.5. Whereas, Iwan Sastra Wijaya (Reported V) was present in Continuing Examination, but was absent in the prolongation of Continuing Examination;--

6. Considering that, based on above fact and conclusion, and in viewing of Article 43 paragraph (3) Law Number 5 Year 1999, the Commission Council herewith:-----

HAVING DECIDED

1. Declared that EMI Music South East Asia (Reported I), PT EMI Indonesia (Reported II), Arnel Affandi, S.H. (Reported III), Dewa 19 (Reported IV) and Iwan Sastra Wijaya (Reported V) was legally and convincingly **proven** to violate provision in Article 23 Law Number 5 Year 1999;-----

2. Ordered Arnel Affandi, S.H. (Reported III), Dewa 19 (Reported IV) and Iwan Sastra Wijaya (Reported V) for no longer perpetrate the conspiracy in the form of secret information disclosure of the company that may result in unfair business competition occurs;-----

3. Decided EMI Music South East Asia (Reported I) and PT EMI Indonesia (Reported II) for paying any compensation to PT Aquarius Musikindo by IDR 3,814,749,520,- (three billion eight hundred fourteen million seven hundred forty nine thousand five hundred and twenty);-----

4. Punished EMI Music South East Asia (Reported I) and PT EMI Indonesia (Reported II) for paying fine by IDR 1,000,000,000,- (one billion rupiah) that must be paid into State Treasury as payment of fine revenue upon violation in business competition of Trade Department, Secretariat General of Business Competition Supervisory Commission through Government bank with receipt code **423755** (Violation Fine Revenue in Business Competition; -----

Such this decision was decided in Deliberation Meeting of the Commission Council on the day of Thursday, 24 April 2008 and was read before assembly declared open for public on the day of Friday dated 25 April 2008 by us, Commission Council members, Dr. Sukarmi, S.H., M.H. as Chairman of Commission Council, Ir. Dedie S. Martadisastra. S.E., M.M. and Dr. A.M. Tri Anggraini, S.H., M.H. as Commission Council Member respectively, assisted by Dinni Melanie, S.H. and Manaek S.M. Pasaribu, S.H., by each as registrar.

Chairman of Council,

Dr. Sukarmi, S.H., M.H.

Member of Council,

Member of Council,

Ir. Dedie S. Martadisastra. S.E., M.M.

Dr. A.M. Tri Anggraini, S.H., M.H.

Registrar,

Dinnie Melanie, S.H.

Manaek S.M. Pasaribu, S.H.